

## CHAPTER He-P 800 RESIDENTIAL CARE AND HEALTH FACILITY RULES

Statutory Authority: RSA 151:9

## PART He-P 804 ASSISTED LIVING RESIDENCE–RESIDENTIAL CARE LICENSING

**Readopt with amendment He-P 804.03 and He-P 804.04, effective 11-3-17 (Document #12414), to read as follows:**

He-P 804.03 Definitions.

(a) “Abuse” means any one of the following:

(1) “Emotional abuse” means the misuse of power, authority, or both, verbal harassment, or confinement which results or could result in the mental anguish or emotional distress of a resident;

(2) “Physical abuse” means the misuse of physical force which results or could result in physical injury to a resident; or

(3) “Sexual abuse” means contact or interaction of a sexual nature involving a resident without his or her informed consent.

(b) “Activities of daily living (ADL)” means basic daily routine tasks such as eating, transferring, toileting, bathing, dressing, and medication management.

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

(d) “Administer” means an act whereby one or more doses of a medication are 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.

(e) “Administrative remedy” means an action imposed upon a licensee in response to non-compliance with RSA 151 and He-P 804.

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

(g) “Admission” means the point in time when a resident, who has been accepted by a licensee for the provision of services, physically moves into the facility.

(h) “Advance directive” means a directive 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” ~~shall include~~ living wills and durable powers of attorney for health care, in accordance with RSA 137-J.

(i) “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, or a surrogate decision maker identified under RSA-J:34-37.

(j) “Applicant” means an individual, agency, partnership, corporation, government entity, association, or other legal entity seeking a license to operate an ALR-RC pursuant to RSA 151:2, I(e).

(k) “Area of non-compliance” 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 804, or other federal or state requirements.

(l) “Assessment” means an evaluation of the resident to determine the care and services that are needed.

(m) “Assisted living residence–residential care (ALR-RC)” means a long term care residence providing personal care at the residential care level pursuant to RSA 151:9, VII(a)(1).

(n) “Care assessment for residential services (CARES) tool-~~(CARES)~~” means the document developed by the department to assess the needs of a resident or prospective resident as required by RSA 151:5-a, I.

(o) “Care plan” means a written guide developed by the licensee, in consultation with the resident, guardian, agent, or personal representative, if any, as a result of the assessment process for the provision of care and services.

(p) “Change of ownership” means the transfer of the controlling interest of an established ALR-RC to any individual, agency, partnership, corporation, government entity, association or other legal entity.

(q) “Chemical restraints” means any medication that is used for discipline or staff convenience, in order to alter a resident’s behavior such that the resident requires a lesser amount of effort or care, and is not in the resident’s best interest, and not required to treat medical symptoms.

(r) “Clinical laboratory improvement amendments (CLIA)” means the requirements outlined at 42 CFR Part 493 which set forth the conditions that all laboratories must meet to be certified to perform testing on human specimens. ~~A laboratory is defined as a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. These examinations also include procedures to determine, measure, or otherwise describe the presence or absence of various substances or organisms in the body. Facilities only collecting or preparing specimens, or both, or only serving as a mailing service and not performing testing are not considered laboratories.~~

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

(t) “Core services” means those minimal services to be provided to any resident by the licensee that ~~are~~must be included in the basic rate.

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

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

(w) “Demonstrated competency” means the ability of the employee to demonstrate to an evaluator that he or she is able to complete the required task in a way that reflects the minimum standard including, but not limited to, a certificate of completion of course material or a post test to the training provided.

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

(y) “Direct care” means hands-on care and services provided to a resident, including but not limited to medical, nursing, psychological, or rehabilitative treatments, bathing, transfer assistance, feeding, dressing, toileting, and grooming.

(z) “Directed plan of correction” means a plan developed and written by the department that specifies the actions the licensee must take to correct identified areas of non-compliance.

(aa) “Discharge” means moving a resident from a licensed facility or entity to a non-licensed facility or entity.

(ab) “Do not resuscitate order (DNR order)”, means an order, signed by a licensed provider, 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. This term also includes “do not attempt resuscitation order (DNAR order)”.

(ac) ~~“Elopement” means when a resident who is cognitively, physically, mentally, emotionally, or chemically impaired wanders away, walks away, runs away or otherwise leaves a caregiving facility or environment unsupervised or unnoticed, without the knowledge of the licensee’s personnel. “Elopement” means when a resident who is cognitively, physically, mentally, emotionally, or chemically impaired, or cognitively intact wanders away, walks away, runs away, escapes, or otherwise leaves a caregiving facility or environment unsupervised or unnoticed, without knowledge of the licensee’s personnel.~~

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

(ae) “Employee” means anyone employed by the ALR-RC and for whom the ALR-RC has direct supervisory authority.

(af) “Enforcement action” means the imposition of an administrative fine, the denial of an application, or the revocation or suspension of a license in response to non-compliance with RSA 151 or He-P 804.

(ag) “Equipment” means any plumbing, heating, electrical, ventilating, air-conditioning, refrigerating, and fire protection equipment, and any elevators, dumbwaiters, escalators, boilers, pressure vessels, or other mechanical facilities or installations related to building services, not to include portable refrigerators. This term includes “fixtures”.

(ah) “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.

(ai) “Facility” means “facility” as defined in RSA 151:19, II.

(aj) “Guardian” means a person appointed in accordance with RSA 464-A to make informed decisions relative to the resident’s health care and other personal needs.

(ak) “Health care occupancy” means facilities that provide sleeping accommodations for individuals who are incapable of self-preservation because of age, physical or mental disability, or because of security measures not under the occupant’s or occupants control.

(al) “Household member” means the caregiver, all family members, and any other individuals age 17 or older, other than residents, who have resided at the licensed premises for more than 30 days.

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

(an) “Infectious waste” means those items specified by Env-~~Sw 103.28~~~~Wm 904~~.

(ao) “Informed consent” means the decision by a resident, his or her guardian, agent, or surrogate decision-maker to agree to a proposed course of treatment, after the resident, guardian, agent, or surrogate decision-maker 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.

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

(aq) “Inspection” means the process followed by the department to determine an applicant’s or a licensee’s compliance with RSA 151 and He-P 804 or to respond to allegations, pursuant to RSA 151:6, of non-compliance with RSA 151 and He-P 804.

(ar) “Laboratory” means any building, place, or mobile laboratory van, for the biological, microbiological, serological, chemical, immunohematological, biophysical, cytological, pathological or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of disease.

~~(asf)~~ “License” means the document issued by the department or licensee of an ALR-RC which authorizes operation in accordance with RSA 151 and He-P 804, and includes the name of the licensee, the name of the business, the physical address, the licensing classification, the effective date, and license number.

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

~~(aut)~~ “Licensed practitioner” means a:

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

~~(avw)~~ “Licensed premises” means the building or buildings that comprise the physical location that the department has approved for the licensee to conduct operations in accordance with its license.

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

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

(ayx) “Life safety code” means the ~~standards, adoption by reference of the life safety code~~, as published by the National Fire Protection Association and as amended by the state board of fire control and ratified by the general court pursuant to RSA 153:5.

(azy) “Mechanical restraint” means locked or secured ALR-RCs or units within an ALR-RC, or anklets, bracelets, or similar devices that cause a door to automatically lock when approached, thereby preventing a resident from freely exiting the ALR-RC or unit within.

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

(bba) “Mobile” means capable of moving from place to place, with or without assistive devices, without the assistance of others.

(bcb) “Modification” means the reconfiguration of any space;<sup>3</sup> the addition, relocation, or elimination of any door or window;<sup>3</sup> the addition or elimination of load-bearing elements;<sup>3</sup> the reconfiguration or extension of any system;<sup>3</sup> or the installation of any additional equipment. The term does not include repair or replacement of interior finishes.

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

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

(bfe) “Nursing care” means the provision or oversight of a physical, mental, or emotional condition or diagnosis by a nurse that, if not monitored on a routine basis by a nurse, would or could result in a physical or mental harm to a resident.

(bfg) “Orders” means a document, produced verbally, electronically, or in writing, by a licensed practitioner for medications, treatments, and referrals, and signed by the licensed practitioner using terms such as authorized by, authenticated by, approved by, reviewed by, or any other term that denotes approval by the licensed practitioner.

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

(bih) “Patient rights” means the privileges and responsibilities possessed by each resident provided by RSA 151:21. ~~This term includes “resident rights.”~~

(bji) “Personal care” means personal care services that are non-medical, hands-on services provided to a resident including, but not limited to, assistance with ~~activities of daily living such as grooming, toileting, eating, dressing, bathing, getting into or out of a bed or chair, walking, or reminding the resident to take medications.~~ ADL’s.

(bkj) “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.

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

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

(b~~mf~~) “Plan of correction (POC)” means a plan developed and written by the licensee, which specifies the actions that will be taken to correct areas of non-compliance with applicable rules or codes identified at the time of a clinical or life safety code inspection conducted pursuant to RSA 151:6-a or during the course of a complaint investigation conducted pursuant to RSA 151:6.

(b~~on~~) “Point of care devices” means a system of devices used to obtain medical, diagnostic results including but not limited to:

- (1) A lancing or finger stick device to get a blood specimen;
- (2) A test strip ~~and~~/or reagents to apply a specimen to for testing; or
- (3) A meter or monitor to calculate and show the results, including:
  - a. Blood glucose meters, also called “glucometers”;
  - b. Prothrombin Time (PT) and International Normalized Ratio (INR) anticoagulation meters; or
  - c. A Cholesterol meter.

(b~~pe~~) “Point of care testing (POCT)” means medical diagnostic testing performed using either manual methods or hand held instruments at or near the point of care, at the time and place of patient care.

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

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

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

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

(b~~ts~~) “Qualified personnel” means personnel that have been trained to and have demonstrated competency to adequately perform tasks which they are assigned such as, nursing staff, clinical staff, housekeeping staff trained in infection control, and kitchen staff trained in food safety protocols.

(b~~ut~~) “Reconstruction” means the reconfiguration of a space that affects an exit or a corridor shared by more than one occupant space, or the reconfiguration of a space such that the rehabilitation work area is not permitted to be occupied because existing means of egress and fire protection systems, or their equivalent, are not in place or continuously maintained.

(b~~vt~~) “Renovation” means the replacement in type or strengthening of building elements, or upgrading of building elements, material, equipment, or fixtures, without involving the reconfiguration of spaces.

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

(bxw) “Reportable incident” means an occurrence of any of the following while the resident is either in the ALR-RC or in the care of ALR-RC personnel:

- (1) The unanticipated death of the resident;
- (2) An injury to a resident, that is potentially due to abuse or neglect; or
- (3) The elopement or unexplained absence of a resident from the ALR-RC.

(byx) “Resident” means any person admitted to or in any way receiving care, services, or both from a facility licensed in accordance with RSA 151 and He-P 804.

(bzy) “Residential board and care occupancy,” means “residential board and care occupancy” as defined in NFPA 101 of the state fire code, namely “means an occupancy used for lodging and boarding of 4 or more residents not related by blood or marriage to the owners or operators for the purpose of providing personal care services.”

(cabz) “Resident record” means a separate file maintained for each resident, which includes all documentation required by RSA 151 and He-P 804, and as required by other federal or state laws.

(cba) “Respite care” means the admission of a person from his or her primary residence to an ALR-RC, on either a planned or emergency basis, for a period not to exceed 30 days in order to relieve the primary caregiver from the demands of providing home-based care.

(ccb) “Self administration of medication with assistance” means the resident takes his or her own medication(s) after being prompted by personnel, but without requiring physical assistance from others.

(cde) “Self administration of medication without assistance” means the resident takes his or her own medication(s) without the assistance of personnel, including prompting.

(ced) “Self-directed medication administration” means a resident, who has a physical limitation that prohibits him or her from self administration of medication, with or without assistance, directs personnel to physically assist in the medication process which ~~doesshall~~ not include assisting with injections or filling insulin syringes.

(cfe) “Self evacuate” means the resident can initiate and complete movement from any location in the ALR-RC to an exit without assistance from personnel other than verbal or physical prompting.

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

(chg) “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.



(c)h “State monitoring” means the placement of individuals by the department at an ALR-RC to monitor the operation and conditions of the facility.

(c)j “Therapeutic diet” means a diet ordered by a licensed practitioner as part of the treatment for disease, clinical conditions, or increasing or decreasing specific nutrients in the food consumed by the resident.

(c)k “Underwriters laboratories (UL) listed” means that the global safety certification company UL has confirmed that the product is safe for use.

(c)l “Unexplained absence” means an incident involving a resident leaving the premises of the ALR-RC without the knowledge of the ALR-RC personnel in a manner that is contrary to their normal routine.

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

#### He-P 804.04 License Application Submission.

(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, Health Care License, or Special Health Care Services,” (January 2022), signed by the applicant or 2 of the corporate officers, affirming and certifying 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 ALR-RC;

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

(5) A resume identifying the qualifications of the ALR-RC administrator;

(6) Copies of applicable licenses for the ALR-RC 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 and codes ~~adopted by reference~~ as defined in RSA 153:1, VI-a, except as modified in Saf-FMO 300 , including, at a minimum, the One and Two Family Dwelling chapter or the Residential Board and Care chapter of the life safety code, and local fire ordinances applicable for an assisted living residence–residential care; and

b. For a building under construction, the written approvals required by a. above shall be submitted at the time of the application based on the local official's review of the building plans and upon completion of the construction project;

(8) If the ALR-RC uses a private water supply, documentation that the water supply has been tested in accordance with RSA 485, ~~and Env-Dw 702.02,~~ or Env-DW 704.02, or if a public water supply, a copy of a water bill; and

(9) The results of a criminal records check from the NH department of safety for the applicant(s), licensee if different than the applicant, administrator, and household members.

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

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

**Readopt with amendment He-P 804.06 through He-P 804.14, effective 11-3-17 (Document #12414), to read as follows:**

He-P 804.06 License Expirations and Procedures for Renewals.

(a) A license shall be valid on the date of issuance and expire one year from the date of issuance 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 804.04(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 current license number;

(2) A request for renewal of any existing non-permanent waivers previously granted by the department, in accordance with He-P 804.10(f), if applicable. If such a request is not received, the rule(s) for which the waiver was previously requested shall not continue to be waived beyond the expiration of the current license;

- (3) A list of any current employees who have a permanent waiver granted in accordance with He-P 804.18(g)(2); and
  - (4) A copy of any non-permanent or new variances applied for or granted by the state fire marshal, in accordance with Saf-C 6005, or successor rules, whether adopted by the department of safety, or amended pursuant to RSA 153:5, I by the state fire marshal, with the board of fire control.
- (d) In addition to to He-P 804.06(b), if a private water supply is used, the licensee shall provide documentation that every 3 years the water supply has been tested for bacteria and nitrates and determined to be at acceptable levels, in accordance with Env-Dw 702.02 for bacteria and Env-Dw 704.02 for nitrates.
- (e) Following an inspection as described in He-P 804.09, a license shall be renewed if the department determines that the licensee:
- (1) Submitted an application containing all the items required by He-P 804.06(b) and (c), as applicable, prior to the expiration of the current license; and
  - (2) Is found to be in compliance with RSA 151 and He-P 804 at the renewal inspection, or submitted an acceptable plan of correction if areas of non-compliance were cited.
- (f) Any licensee who does not submit a complete application for renewal prior to the expiration of an existing license and does not intend to cease operation shall be required to submit an application for an initial license pursuant to He-P 804.04 and shall be subject to a fine in accordance with He-P 804.14(c)(7).

He-P 804.07 ALR-RC New Construction and Existing Rehabilitation.

- (a) For new construction and for rehabilitation of an existing building, including, but not limited to, renovations, modifications, reconstruction, and additions, construction documents and shop drawings, including architectural, sprinkler, and fire alarm plans shall be submitted to the department 60 days prior to the start of such work.
- (b) The architectural, sprinkler, and fire alarm plans in (a) above shall accurately show the room designation(s) and exact measurements of each area to be licensed, including but not limited to window and door sizes and each room's use.
- (c) Architectural, sprinkler, and fire alarm plans shall be submitted to the state fire marshal's office as required by RSA 153:10-b, V.
- (d) Any licensee or applicant who wants to use performance-based design to meet the fire safety requirements shall provide the department with documentation of fire marshal approval for such methods.
- (e) The department shall review construction documents, drawings, and plans of a newly proposed or existing facility for compliance with all applicable sections of RSA 151 and He-P 804 and shall notify the applicant or licensee as to whether the proposal complies with these requirements.
- (f) 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.
- (g) The ALR-RC shall comply with all applicable state laws, rules, and local ordinances when undertaking construction or rehabilitation.

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

(1) The state fire code and codes ~~adopted by reference~~ as defined in RSA 153:1, VI-a, except as modified in Saf-FMO 300, including but not limited to at a minimum:

- a. For 3 residents or fewer, the One and Two Family Dwelling chapter of the life safety code; and
- b. For 4 residents or more, the Residential Board and Care Occupancy chapter of the life safety code;

(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; and

(3) The FGI “Guidelines for Design and Construction of Residential Health, Care, and Support Facilities” (2018 edition), available as noted in Appendix A; and

(i) All ALR-RCs newly constructed or rehabilitated after the 2022 effective date of these rules shall comply with the Facility Guidelines Institutes (FGI) “Guidelines for Design and Construction of Residential Health, Care, and Support Facilities,” Residential Healthcare chapter, (2018 edition), as applicable, available as noted in Appendix A.

(j) Where rehabilitation is done within an existing facility, all such work shall comply, insofar as practicable, with applicable sections of the FGI “Guidelines for Design and Construction of Residential Health, Care, and Support Facilities,” Residential Healthcare chapter, (2018 edition) available as noted in Appendix A.

(k) The department’s bureau of health facilities administration shall be the authority having jurisdiction for the requirements in (h)-(j) above and shall negotiate compliance and grant waivers in accordance with He-P 804.10 as appropriate.

(l) Penetrations, holes, or other openings in fire walls, fire partitions, smoke barriers, floors, and ceilings that allow the transfer of fire, heat, or smoke shall be closed and sealed using a listed or approved sealant that provides an equivalent rating as provided by the original surface.

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

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

(o) The building, including all construction and rehabilitated spaces, shall be subject to an inspection pursuant to He-P 804.09 prior to its use.

He-P 804.08 ALR-RC Requirements for Organizational or Service Changes.

(a) The ALR-RC 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) Number of beds authorized under the current license; or
- (6) Services.

(b) The ALR-RC 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;
- (3) An increase in number of beds authorized under the current license; or
- (4) A change in services.

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

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

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

- (1) Ownership, unless the current licensee is in full compliance, in which case an inspection shall be conducted as soon as practical by the department;
- (2) The physical location;
- (3) An increase in the number of beds or residents authorized under the current license;
- (4) A change in licensing classification; or
- (5) A change that places the facility under a different life safety code occupancy chapter.

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

(g) A revised license and license certificate shall be issued for a change in the ALR-RC name or a change in address without a change in physical location.

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

- (1) A change of administrator;
- (2) An increase or decrease in the number of beds;
- (3) A change in the scope of services provided; or
- (4) When a waiver has been granted in accordance with He-P 804.10.

(i) The ALR-RC shall inform the department in writing when there is a change in administrator no later than 5 days prior to a change or as soon as practicable in the event of a death or other extenuating circumstances requiring an administrator change and provide the department with the following:

- (1) A resume identifying the name and qualifications of the new administrator;
- (2) Copies of applicable licenses for the new administrator; and
- (3) The results of a criminal background check from the NH department of safety for the new administrator;
- (4) The results of the criminal attestation as described in He-P 804.18(w); and
- (5) The results of the bureau of elderly and adult services (BEAS) registry check per He-P 804.18(h).

(j) Upon review of the materials submitted in accordance with (i) above, the department shall make a determination as to whether the new administrator meets the qualifications for the position as specified in He-P 804.18(i) and (k).

(k) If the department determines that the new administrator does not meet the qualifications, it shall so notify the licensee in writing so that a waiver can be sought or the licensee can search for a qualified candidate.

(l) When there is to be a change in the services provided, the ALF-RC shall provide the department with a description of the service change and, where applicable, identify what additional personnel ~~shall~~will be hired and their qualifications, how the new services ~~shall~~will be incorporated into the infection control and quality improvement programs, and describe what changes, if any, in the physical environment will be made.

(m) The department shall review the information submitted under (l) above and determine if the added services can be provided under the ALR-RC's current license.

(n) The ALR-RC shall inform the department in writing via e-mail, fax, or mail of any change in the e-mail address as soon as practicable and in no case later than 10 days of the change as this is the primary method used for all emergency notifications to the facility.

(o) A restructuring of an established ALR-RC that does not result in a transfer of the controlling interest of the facility, but which might result in a change in the name of the facility or corporation, shall not constitute a change in ownership and a new license shall not be required.

(p) If a licensee chooses to cease operation of an ALR-RC, the licensee shall submit written notification to the department at least 60 days in advance which shall include a written closure plan.

#### He-P 804.09 Inspections.

(a) For the purpose of determining compliance with RSA 151 and He-P 804, as authorized by RSA 151:6 and RSA 151:6-a, the licensee shall admit and allow any department representative at any time to inspect the following:

- (1) The licensed premises;
- (2) All programs and services provided by the ALR-RC; and
- (3) Any records required by RSA 151 and He-P 804.

(b) The department shall conduct a clinical and life safety code inspection, as necessary, to determine full compliance with RSA 151 and He-P 804 prior to:

- (1) The issuance of an initial license;
- (2) A change in ownership, except as allowed by He-P 804.08(e)(1);
- (3) A change in the physical location of the ALR-RC;
- (4) A change in the licensing classification;
- (5) An increase in the number of beds;
- (6) Occupation of space after construction, renovations, or alterations; or
- (7) The renewal of a license.

(c) In addition to (b) above, the department shall conduct an inspection, as necessary, to verify the implementation of any POC accepted or issued by the department as part of an annual inspection or as a follow-up inspection focused on confirming the implementation of a POC.

(d) A statement of findings for clinical inspections or a notice to correct for life safety code inspections shall be issued when, as a result of any inspection, the department determines that the ALR-RC is in violation of any of the provisions of He-P 804, RSA 151, or other federal or state requirement.

(e) If areas of non-compliance were cited in either a notice to correct or a statement of findings, the licensee shall submit a POC, in accordance with He-P 804.12(c), within 21 days of the date on the letter that transmits the inspection report.

#### He-P 804.10 Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 804 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 or provide a reasonable explanation why the applicable rule should be waived; and
- (4) The period of time for which the waiver is sought if less than permanent.

(b) A waiver shall be permanent unless the department specifically places a time limit on the waiver.

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

- (1) Meets the objective or intent of the rule;
- (2) Does not negatively impact the health, safety, or well-being 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.

(f) When a licensee wishes to renew a non-permanent waiver beyond the approved period of time, the licensee shall apply for a new waiver with the renewal application or at least 60 days prior to the expiration of the existing waiver, as appropriate, by submitting the information required by (a) above.

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

He-P 804.11 Complaints.

(a) The department shall investigate any complaint that meets the following conditions:

(1) The alleged violation(s) occurred not more than 6 months prior to the date the department was made aware of the allegation(s);

(2) The complaint is based upon the complainant's first-hand knowledge regarding the allegation(s) or on information reported directly to the complainant by a person who has first-hand knowledge regarding the allegation(s); and

(3) There is sufficient specific information for the department to determine that the allegation(s), if proven to be true, would constitute a violation of any of the provisions of RSA 151 or He-P 804.

(b) When practicable the complaint shall be in writing and contain the following information:

(1) The name and address of the ALR-RC, 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 804.

(c) Investigations shall include all techniques and methods for gathering information which are appropriate to the circumstances of the complaint, including, but not limited to:

(1) Requests for additional information from the complainant or the facility;

(2) A physical inspection of the premises;

(3) Review of any relevant records and

(4) Interviews with individuals who might have information that is relevant to the investigation.

(d) For a licensed ALR-RC, the department shall:

(1) Provide written notification of the results of the investigation to the licensee along with an inspection report if areas of non-compliance were found as a result of the investigation;

(2) Notify any other federal, state, or local agencies of suspected violations of their statutes or rules based on the results of the investigation, as appropriate;

(3) Notify the licensee in writing and take no further action if the department determines that the complaint is unfounded, under (a) above, or does not violate any statutes or rules; and

(4) Require the licensee to submit a POC in accordance with He-P 804.

(e) The following shall apply for the unlicensed individual or entity:



(1) In accordance with RSA 151:7-a, II, the department shall provide written notification to the owner or person responsible that includes:

- a. The date of investigation;
- b. The reasons for the investigation; and
- c. Whether or not the investigation resulted in a determination that the services being provided require licensing under RSA 151:2, IV;

(2) In accordance with RSA 151:7-a, II, the owner or person responsible shall be allowed 7 business days from the date of the notice required by (1) above to submit a written response to the findings prior to the department's issuance of a warning;

(3) In accordance with RSA 151:7-a, I, following an investigation conducted under RSA 151:6 or an inspection under RSA 151:6-a, which results in a determination that the services being provided require licensing under RSA 151, the department ~~shall~~may issue a written warning, ~~following an investigation conducted under RSA 151:6 or an inspection under RSA 151:6 a,~~ to the owner or person responsible, requiring compliance with RSA 151 and He-P 804;

(4) The warning in (e)(3) above, shall include:

- a. The time frame within which the owner or person responsible shall comply with the directives of the warning;
- b. The final date by which the action or actions requiring licensure ~~shall~~must cease or by which an application for licensure ~~shall~~must be received by the department before the department initiates any legal action available to it to cease the operation of the facility; and
- c. The right of the owner or person responsible to appeal the warning under RSA 151:7-a, III, which shall be conducted in accordance with RSA 151:8 and RSA 541-A:30, III, as applicable; and

(5) Any person or entity who fails to comply after receiving a warning as described in (e)(3) above, shall be subject to an action by the department for injunctive relief under RSA 151:17 and an administrative fine pursuant to He-P 804.13(c)(6).

(f) 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 an adjudicative proceeding relative to the licensee.

#### He-P 804.12 Administrative Remedies.

(a) The department shall impose administrative remedies for violations of RSA 151, He-P 804, or other applicable licensing rules, including:

- (1) Requiring a licensee to submit a POC in accordance with (c) below;

- (2) Imposing a directed POC upon a licensee in accordance with (d) below;
- (3) Imposing conditions upon a licensee; or
- (4) Monitoring of a licensee.

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

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

(c) A POC shall be developed and enforced in the following manner:

(1) Upon receipt of a statement of findings or a notice to correct, the licensee shall submit its written POC for each finding;

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

(2) The licensee shall submit a written POC to the department within 21 days of the date on the letter that transmitted the statement of findings or notice to correct unless the licensee requests, either verbally or in writing, and the department agrees, to extend that deadline, based on the following criteria:

- a. The licensee demonstrates that he or she has made a good faith effort to develop and submit the POC within the 21 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 each POC and accept each plan that:

- a. Achieves compliance with RSA 151 and He-P 804;
- b. Addresses all areas of non-compliance as cited in the statement of findings or notice to correct;
- c. Prevents a new violation of RSA 151 or He-P 804 as a result of the implementation of the POC; and
- d. Specifies the date upon which the areas of non-compliance will be corrected;

(4) If the POC is acceptable, the department shall issue a license certificate or provide written notification of acceptance of the POC, whichever is applicable;

(5) If the POC is not acceptable, the department shall notify the licensee in writing within 14 days of the reason for rejecting the POC;

(6) 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:

a. 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

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;

(7) The revised POC shall comply with (c)(1) above and be reviewed in accordance with (c)(3) above;

(8) 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 He-P 804.12(d) and a fine in accordance with He-P 804.13(c)(13);

(9) The department shall verify the implementation of any POC that has been submitted and accepted by:

a. Reviewing materials submitted by the licensee;

b. Conducting an onsite follow-up inspection; or

c. Reviewing compliance during the next annual inspection;

(10) Verification of the implementation of any POC shall only occur after the date of completion specified by the licensee in the plan; and

(11) 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 804.12(b); and

b. Issued a directed POC in accordance with (d) below and shall be subject to a fine, as appropriate, in accordance with He-P 804.13(c)(14) below.

(d) The department shall develop and impose a directed POC that specifies corrective actions for the applicant or licensee to implement when:

(1) As a result of an inspection, areas of non-compliance were identified that require immediate corrective action to protect the health and safety of the residents and personnel;

(2) A revised POC is not submitted within 14 days of the written notification from the department or such other date as applicable if an extension was granted by the department; or

(3) A revised POC submitted by the licensee or administrator has not been accepted.

(e) If at the time of the next inspection the directed POC referenced in (d) above has 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 in accordance with He-P 804.13(c);
- (3) Deny the application for a renewal of a license in accordance with He-P 804.13(b); or
- (3) Revoke the license in accordance with He-P 804.13(b).

(f) The department shall offer an opportunity for informal dispute resolution to any applicant or licensee who disagrees with an area or areas of non-compliance cited by the department on a statement of findings or a notice to correct, provided that the applicant or licensee submits a written request for an informal dispute resolution to the department.

(g) The informal dispute resolution shall be requested in writing by the applicant, licensee, or administrator no later than 14 days from the date the statement of findings or notice to correct was issued by the department.

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

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

(j) Any violations cited for the state fire code may be appealed to the New Hampshire state fire marshal and shall not be the subject of informal dispute resolution as describe in this section.

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

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

- (1) Repeated non-compliance on the part of the facility in areas that impact the health, safety, or well-being of residents; or
- (2) The presence of conditions in the ALR-RC that negatively impact the health, safety, or well-being of residents.

He-P 804.13 Enforcement Actions and Hearings.

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

- (1) The reasons for the proposed action;
- (2) The action to be taken by the department;
- (3) If a fine is imposed, the automatic reduction of the fine by 25% if the fine is paid within 10 days of the date on the written notice from the department and the area of non-compliance has been corrected, or a POC has been accepted and approved by the department; and
- (4) The right of an applicant or licensee to an administrative hearing in accordance with RSA 151:8 or RSA 541-A:30, III, as applicable, before the enforcement action becomes final.

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

- (1) An applicant or a licensee violated a provision of RSA 151 or He-P 804 which poses a risk of harm to the health, safety, or well-being of a resident;
  - (2) An applicant or licensee has failed to pay an administrative fine imposed by the department;
  - (3) An applicant or licensee 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 or schedule an initial inspection, the applicant or licensee fails to submit an application that meets the requirements of He-P 804.04;
  - (5) The applicant, licensee, or any representative or employee of the applicant or licensee:
    - a. Provides false or misleading information to the department;
    - b. Prevents, interferes, or fails to cooperate with any inspection or investigation conducted by the department; or
    - c. Fails to provide requested files or documents to the department;
  - (6) The licensee failed to implement or continue to implement a POC that has been accepted or imposed by the department in accordance with He-P 804.12(c), (d), and (e);
  - (7) The licensee has submitted a POC that has not been accepted by the department in accordance with He-P 804.12(c)(5) and has not submitted a revised POC in accordance with He-P 804.12(c)(6);
  - (8) The licensee is cited a third time under RSA 151 or He-P 804 for the same violation within the last 5 inspections;
  - (9) A licensee, or its corporate officers, has had a license revoked and submits an application during the 5 year prohibition period specified in (k) below;
  - (10) Unless a waiver has been granted, upon inspection, the applicant's premise is not in compliance with RSA 151 or He-P 804;
  - (11) Unless a waiver has been granted, the department makes a determination that the applicant, administrator, licensee, or a household member has been found guilty of or plead guilty to a felony assault, fraud, theft, abuse, neglect, or exploitation of any person, in this or any other state, or had an investigation for abuse, neglect, or exploitation adjudicated and founded by the department or any administrative agency in this or any other state;
  - (12) The applicant or licensee employs an administrator who does not meet the qualifications for the position under circumstances in which the department has not granted a waiver; or
  - (13) The applicant has had a license revoked by any division or unit of the department within 5 years prior to the application.
- (c) The department shall impose fines as follows:
- (1) For a failure to cease providing unlicensed services after being notified by the department of the need for a license, in violation of RSA 151:2, the fine shall be \$2000.00 for an applicant or unlicensed entity;

- (2) For a failure to cease operations after a denial of a license, after receipt of an order to cease and desist operations, in violation of RSA 151:2 and RSA 541-A:30, or continuing to operate after a failure to renew the license by the expiration date, the fine for an applicant, unlicensed entity, or a licensee shall be \$2000.00;
- (3) For advertising services or otherwise representing themselves as having a license to provide services that they are not licensed to provide, in violation of RSA 151:2, III, the fine for an applicant, licensee, or unlicensed entity shall be \$500.00;
- (4) For a failure to transfer a resident whose needs exceed the services or programs provided by the ALR-RC, in violation of RSA 151:5-a, the fine for a licensee shall be \$500.00;
- (5) For admission of a resident whose needs at the time of admission exceed the services or programs authorized by the ALR-RC licensing classification, in violation of RSA 151:5-a, II, and He-P 804.15(a), the fine for a licensee shall be \$1000.00;
- (6) 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 804.11(e)(5), the fine for an unlicensed provider or a licensee shall be \$500.00;
- (7) For a failure to submit a renewal application for a license at least 120 days prior to the expiration date, in violation of He-P 804.06(b), the fine for a licensee shall be \$100.00;
- (8) For a failure to notify the department prior to a change of ownership, in violation of He-P 804.08(a)(1), the fine for a licensee shall be \$500.00;
- (9) For a failure to notify the department prior to a change in the physical location, in violation of He-P 804.08(a)(2), the fine for a licensee shall be \$1000.00;
- (10) For a failure to notify the department of a change in e-mail address as required by He-P 804.08(n), the fine for a licensee shall be \$100.00;
- (11) For a failure to allow access by the department to the ALR-RC's premises, programs, services, or records, in violation of He-P 804.09(a), the fine for an applicant, unlicensed entity, or licensee shall be \$2000.00;
- (12) For a failure to notify the department prior to a change in the administrator or medical director, in violation of He-P 804.08(i), the fine for a licensee shall be \$100.00;
- (13) For a failure to submit a POC or revised POC, within 21 or 14 days, respectively, of the date on the letter that transmits the inspection report, or the date of an extension as granted, in violation of He-P 804.12(c)(2) and (5), the fine for a licensee shall be \$500.00;
- (14) For a failure to implement or maintain the corrective action set forth in any POC that has been accepted or issued by the department, in violation of He-P 804.12(c)(11) & (e) the fine for a licensee shall be \$1000.00;
- (15) For a failure to establish, implement, or comply with licensee policies, as required by He-P 804.14(b) and He-P 804.19(e), the fine for a licensee shall be \$500.00;
- (16) For a failure to provide services or programs required by the licensing classification and specified by He-P 804.14(c), the fine for a licensee shall be \$500.00;

- (17) For exceeding the licensed capacity, in violation of He-P 804.14(n), the fine for a licensee shall be \$500.00 per day;
- (18) For providing false or misleading information or documentation, in violation of He-P 804.14(t), the fine for an applicant or licensee shall be \$1000.00 per offense;
- (19) For a failure to meet the needs of a resident or residents, as described in He-P 804.15(a), the fine for a licensee shall be \$500.00 per resident;
- (20) For employing an administrator or other personnel who do not meet the qualifications for the position, in violation of He-P 804.18(e)-(f), under circumstances where the department has not granted a waiver in accordance with He-P 804.10, the fine for a licensee shall be \$500.00;
- (21) For failure to cooperate with the inspection or investigation conducted by the department, in violation of He-P 815.09(a), the fine shall be \$2000.00;
- (22) For failure to submit architectural plans or drawings, when applicable, prior to undertaking construction or renovation of the licensed facility in violation of He-P 804.07(a), the fine for a licensed facility shall be \$500.00;
- (23) For occupying a renovated area of a licensed facility or new construction prior to approval by local and state authorities, as required by He-P 804.09(b)(6), the fine shall be \$500 which shall be assessed daily if the facility fails to vacate the renovated area immediately upon receiving notice from the department;
- (24) When an inspection determines that a violation of RSA 151 or He-P 804 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 area of non-compliance is cited within 2 years of the original area of non-compliance, the fine for a licensee shall be \$1000.00; or
  - b. If the same area of non-compliance is cited a third time within 2 years of being fined in a. above, the fine for a licensee shall be \$2000.00; and
- (25) Each day that the individual or licensee continues to be in violation of the provisions of RSA 151 or He-P 804 shall constitute a separate violation and shall be subject to fines in accordance with He-P 804.13(c) provided that if the applicant or licensee is making good faith efforts to comply with the provisions of RSA 151 or He-P 804, as verified by documentation or other means, the department shall not issue a daily fine.
- (d) Payment of any imposed fine to the department shall meet the following requirements:
- (1) Payment shall be made in the form of check or money order made payable to the “Treasurer, State of New Hampshire” or cash in the exact amount due; and
  - (2) Cash, money order, or certified check shall be required when an applicant or licensee has issued payment to the department by check, and such check was returned for insufficient funds.
- (e) The department shall impose state monitoring under the following conditions:
- (1) Repeated poor compliance on the part of the facility in areas that mightay impact the health, safety or well-being of residents; or



(2) Concern that the conditions in the ALR-RC have the potential to worsen.

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

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

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

(i) 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 804 is achieved.

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

(k) When an ALR-RC's license has been denied or revoked, the applicant, family member, licensee, or administrator shall not be eligible to apply for a license or be employed as an administrator for 5 years if the denial or revocation specifically pertained to their role in the program.

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

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

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

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

(n) Notwithstanding (m) 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 804.

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

(p) 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 804.

He-P 804.14 Duties and Responsibilities of the Licensee.

(a) The licensee shall comply with all relevant federal, state, and local laws, rules, codes, and ordinances as applicable.

(b) The licensee shall have written policies and procedures to include:

(1) The rights and responsibilities of admitted residents in accordance with the residents' patients' bill of rights under RSA 151:20, II;

(2) The policies described in He-P 804.14(r), He-P 804.16(c)(11), and He-P 804.19(e); and

- (3) A policy that ensures the safety of all persons present on the licensed premises where firearms are permitted.
- (c) The licensee shall provide the following core services:
- (1) Health and safety services to minimize the likelihood of accident or injury, with protective care and oversight provided 24 hours a day regarding:
    - a. The residents' functioning, safety, and whereabouts; and
    - b. The residents' health status, including the provision of intervention as necessary or required;
  - (2) Emergency response and crisis intervention;
  - (3) Assistance with taking and ordering medications as needed;
  - (4) The provision of 3 nutritious meals and snacks in accordance with He-P 804.21 unless the resident chooses other options according to their admission agreement;
  - (5) Housekeeping, laundry, and maintenance services in accordance with the admission agreement;
  - (6) The availability of activities, for which the facility shall make reasonable accommodation for residents with disabilities, to include, but not be limited to, television, radio, internet, games, newspapers, visitors, and music, designed to sustain and promote physical, intellectual, social, and spiritual well-being of all residents in accordance with the admission agreement;
  - (7) Assistance in arranging medical and dental appointments, which shall include assistance in arranging transportation to and from such appointments and reminding the residents of the appointments; and
  - (8) Supervision of residents when required to offset cognitive deficits that may pose a risk to self or others if the resident is not supervised.
- (d) The licensee shall have a system to regularly identify the ALR-RC's daily census, including times when a resident is absent from the ALR-RC.
- (e) The licensee shall assist with arranging transportation to community activities, as available, designed to meet the individual interests of residents to sustain and promote physical, intellectual, social, and spiritual well-being of all residents.
- (f) 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. Such basic supplies shall be included in the basic rate except that there may be an additional charge for specific brands or items required to meet individual residents' needs or requests;
  - (2) Identify in the admission agreement the cost, if any, of basic supplies or other services for which there will be a charge;
  - (3) Ensure that all personnel have received the training necessary to be qualified personnel to include demonstrated competency in the training given with documentation maintained in the employee file;

- (4) Comply with all dementia training requirements pursuant to RSA 151:47-49 including continuing education that shall include new information on best practices in the treatment and care of persons with dementia and be provided for:
  - a. A minimum of 6 hours for initial continuing education to covered administrative staff members and covered direct service staff members; and
  - b. A minimum of 4 hours of ongoing training each calendar year.
- (5) Require any paid provider of direct care, other than an employee, providing health care related services to provide a brief written, signed, and dated note describing the reason for the service(s), and the next planned visit, if known; and
- (6) Have a clearly identified policy for CPR that includes the following:
  - a. If CPR is not performed, the policy shall include a statement that 911 shall be called in an emergency;
  - b. If CPR is performed, there shall be either at least one person on duty per shift who is certified to perform CPR or an AED available for use; and
  - c. This policy shall be signed by each resident and their guardian, agent, or personal representative, if any, and be located in the resident's file with their admission agreement.
- (g) The licensee shall educate personnel about the needs and services required by the residents under their care and document such education to include demonstrated competencies.
- (h) Physical or chemical restraints shall only be used in the case of an emergency, pursuant to RSA 151:21, IX.
- (i) As soon as is practicable and in no case longer than 24 hours after the use of a physical or chemical restraint, the resident's licensed practitioner, guardian, agent, or personal representative, if any, and the department shall be notified of the use of such restraints.
- (j) The use of mechanical restraints, limited to locked or secured ALR-RCs, or units within an ALR-RC, or anklets, bracelets, or similar devices that cause a door to automatically lock when approached, thereby preventing a resident from freely exiting the ALR-RC or unit within as permitted by the state fire code, shall be allowed.
- (k) Notwithstanding (j) above, the following methods of mechanical restraints shall be prohibited:
  - (1) Full bed rails;
  - (2) Gates, if they prohibit a resident's free movement throughout the living areas of the ALR-RC;
  - (3) Half doors, if they prohibit a resident's free movement throughout the living areas of the ALR-RC;
  - (4) Geri chairs, when used in a manner that prevents or restricts a resident from getting out of the chair at will;
  - (5) Wrist or ankle restraints;

- (6) Vests or pelvic restraints; and
  - (7) Other similar devices that prevent a resident's free movement.
- (l) For reportable incidents, the licensee shall:
- (1) Complete an investigation to determine if abuse or neglect could have been a contributing factor to the incident;
  - (2) Fax to 271-4968 or, if a fax machine is not available, convey by electronic or regular mail, the following information to the department within 48 hours of a reportable incident:
    - a. The ALR-RC 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 reportable incident;
    - d. The name of resident(s) involved in or witnessing the reportable incident;
    - e. The date and time of the reportable incident;
    - f. The action taken in direct response to the reportable incident, including any follow-up;
    - g. If medical intervention was required, by whom and the date and time;
    - h. When the resident's guardian, agent, or personal representative, if any, was notified;
    - i. The signature of the person reporting the reportable incident;
    - j. The date and time the resident's licensed practitioner was notified, if applicable; and
    - k. The date the facility performed the investigation required by (1) above;
  - (3) As soon as practicable, notify the guardian, agent, or personal representative, if any;
  - (4) As soon as practicable, notify the local police department, the department, and the guardian, agent, or personal representative, if any, when a resident has an elopement or unexplained absence and the licensee has searched the building and the grounds of the ALR-RC without finding the resident; and
  - (5) Notify the department with a written report within 5 days describing the actions taken by personnel, the final outcome or continuation of the reportable incident, and actions taken to prevent a reoccurrence if it was not submitted in the initial report.
- (m) The licensee shall comply with the ~~residents' bill of rights as set forth in~~ requirements of RSA 151:19-30.
- (n) The licensee shall not exceed the maximum number of residents or beds licensed by the department, unless authorized by the department, such as during an emergency.
- (o) The licensee shall give a resident and the resident's guardian, agent, or personal representative, as applicable, written notice of the following:
- (1) For an increase in the cost or fees for any ALR-RC services, 30 days advance notice shall be required except for residents receiving Medicaid whose financial liability is determined by the

- state's standard of need, or residents funded by the department's ~~E~~choices for ~~H~~independence program in accordance with He-E 801 and which limitation shall only pertain to costs and fees under the direction of these programs; or
- (2) For an involuntary change in room or bed location, the facility shall make reasonable accommodation of individual needs and preferences and give 14 days advanced notice, unless the change is required to protect the health, safety, and well-being of the resident or other residents, in such case the notice shall be as soon as practicable.
- (p) In addition to the posting requirements specified in RSA 151:29, the licensee shall post the following documents in a conspicuous area accessible to residents, employees, and visitors:
- (1) The current license certificate issued in accordance with RSA 151:2;
  - (2) All inspection reports for the last 12 months in accordance with He-P 804.09(d) and He-P 804.11(d);
  - (3) A copy of the ~~patients~~residents' bill of rights specified by RSA 151:21;
  - (4) A copy of the licensee's complaint procedure, including a statement that complaints may be submitted, in writing, to The Department of Health and Human Services, Office of Legal and Regulatory Services, Health Facilities Administration, 129 Pleasant Street, Concord, NH 03301 or by calling 1-800-852-3345, and information on how to contact the office of the long-term care ombudsman; and
  - (5) The licensee's evacuation floor plan identifying the location of, and access to, all fire exits.
- (q) The licensee shall determine whether smoking will be allowed at the ALR-RC.
- (r) If smoking is to be allowed, the licensee shall develop and implement smoking policies and designate smoking areas in accordance with RSA 155:66, RSA 155:68, and RSA 155:69 and He-P 804.26(f).
- (s) 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, other residents, or other household members.
- (t) The licensee shall not falsify any documentation required by law or provide false or misleading information to the department.
- (u) The licensee shall not advertise or otherwise represent themselves as having a license to provide services that they are not licensed to provide.
- (v) The licensee shall comply with all conditions of warnings and administrative remedies issued by the department and all court orders.
- (w) The licensee shall develop quality assurance plans and policies that evaluate:
- (1) The quality of care and services provided to residents;
  - (2) Compliance with RSA 151 and He-P 804;
  - (3) The effectiveness of training provided to personnel; and
  - (4) The effectiveness of corrective actions taken in response to statements of findings, notices to correct, and problems identified in (1)-(3) above.

**Readopt with amendment He-P 804.16 through He-P 804.18, effective 11-3-17 (Document #12414), to read as follows:**

He-P 804.16 Required Services.

(a) The licensee shall provide administrative services that include the appointment of an administrator who:

- (1) Is responsible for the day-to-day operations of the ALR-RC;
- (2) Works no less than 35 hours per week at the ALR-RC, which may include day, evening, night, and weekend hours;
- (3) Meets the requirements of He-P 804.18(k);
- (4) Designates, in writing, a staff member who shall assume the responsibilities of the administrator in his or her absence; and
- (5) In the event the administrator will be absent for a period to exceed 30 consecutive days, the facility shall notify the department who the interim administrator will be and submit credentials to verify he or she meets the requirements of (3) above.

(b) At the time of application for admission, the licensee shall provide the resident and the guardian, agent, or personal representative, if any, a written copy of the residential service agreement pursuant to RSA 161-J, except that a copy of the residential service agreement shall not be required if the facility admission agreement includes all of the provisions of a residential service agreement.

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

- (1) The basic daily, weekly, and monthly fee;
- (2) A list of the core services required by He-P 804.14(c) that are covered by the basic rate;
- (3) Information regarding the timing and frequency of cost of care increases;
- (4) The time period covered by the admission agreement;
- (5) The criteria and acuity level that the resident must maintain in order to remain a resident at an ALR-RC in accordance with He-P 804.15(a);
- (6) The ALR-RC's house rules;
- (7) The grounds for immediate termination of the agreement, pursuant to RSA 151:21, V;
- (8) The ALR-RC's responsibility for resident discharge planning;
- (9) Information regarding care, services, or supplies not provided in the core services, to include:
  - a. The availability of services;
  - b. The ALR-RC's responsibility for arranging services; and
  - c. The fee and payment for services, if known;

- (10) The licensee's policies and procedures regarding:
  - a. Arranging for the provision of transportation;
  - b. Arranging for the provision of third party services, such as a hairdresser or cable television;
  - c. Monitoring third party services contracted directly by the resident and provided on the ALR-RC premises;
  - d. Handling of resident funds pursuant to RSA 151:24 and He-P 804.14(s);
  - e. Bed hold, in compliance with RSA 151:25;
  - f. Storage and loss of the resident's personal property; and
  - g. Smoking;
- (11) The licensee's medication management services;
- (12) The list of grooming and personal hygiene supplies provided by the ALR-RC as part of the basic daily, weekly, or monthly rate;
- (13) A copy of the most current version of the ~~residents'~~ patients' bill of rights under RSA 151:21 and the ALR-RC's policy and procedure for implementing the bill of rights pursuant to RSA 151:20, II;
- (14) A copy of the resident's right to appeal an involuntary transfer or discharge under RSA 151:26, II(a)(5);
- (15) The ALR-RC'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;
- (16) Information on accessing the long-term care ombudsman;
- (17) Information on advanced directives;
- (18) Whether or not personnel are trained in cardiopulmonary resuscitation (CPR), first aid, or both, or whether or not the facility has an AED on-site and available for use in an emergency;
- (19) Information that if the facility changes its current acceptance of payment sources, it shall provide 60 days' notice of such change; and
- (20) A statement that a resident's inability to cover the cost of care may result in discharge.

(d) The ALR-RC shall assess each resident's needs using the "~~Care Assessment for Residential Services (CARES)~~ Tool" (January 2022).

(e) All personnel who administer the CARES Tool shall be trained to complete the CARES Tool by the department or entities listed in RSA 151:5-a, III.

(f) The assessment described in (d) above shall:

- (1) Be completed no more than 30 days prior to or within 24 hours following admission to the ALR-RC;



- (2) Be completed in consultation with the resident and guardian, agent, or personal representative, if any;
  - (3) Be repeated every 6 months or after any significant change as defined in He-P 804.03([chbv](#));
  - (4) Be signed and dated by the individual who completed the CARES Tool; and
  - (5) Be signed by the resident and guardian, agent, or personal representative, acknowledging that the CARES Tool was completed as directed in (2) above.
- (g) If the guardian, agent, or personal representative if any is unable to sign the Cares Tool the facility shall have documented evidence that the guardian, agent, or personal representative has had an opportunity to take part in completing and reviewing the completed Cares Tool..
- (h) If the CARES Tool identifies the need for a nursing assessment, the nursing assessment shall be completed within 72 hours of the completion of the CARES Tool.
- (i) If the nursing assessment indicates that the resident cannot safely evacuate, the resident shall be ineligible for care and services at the ALR-RC.
- (j) If the nursing assessment completed in accordance with (h) above is completed by a licensed practical nurse (LPN), the assessment shall be reviewed and co-signed by the registered nurse (RN) or physician that is supervising the LPN prior to implementation.
- (k) If the Cares Tool indicates a need for a care plan, the care plan shall be:
- (1) Completed within 24 hours of the initial Cares Tool and within 24 hours of the completion of all subsequent Cares Toolsexcept where a nursing assessment is required in which case, the care plan shall be completed within 24 hours following the nursing assessment;
  - (2) Made available to personnel who assist residents;
  - (3) Completed in consultation with the resident and guardian, agent, or personal representative, if any; and
  - (4) If the resident and guardian, agent, or personal representative, if any, are unable or unwilling to participate as required by (3) above, it shall be documented in the resident record.
- (l) The care plan identified in (k) above shall include on an ongoing basis:
- (1) The date the problem or need was identified;
  - (2) A description of the problem or need;
  - (3) The goal or objective of the plan;
  - (4) The action or approach to be taken;
  - (5) The responsible person(s) or position; and
  - (6) The date of reevaluation, review, or resolution.
- (m) Each care plan shall be reviewed at least every 6 months to determine if:
- (1) All items identified in the care plan are being met;

- (2) The care plan will be continued for another 6 months; and
  - (3) The care plan will be revised to meet the current needs of the resident.
- (n) Progress notes for each resident shall be written at least quarterly and include, at a minimum:
- (1) Changes in mobility, weight, memory, skin integrity, continence, medications, behavior, and personal care needs; and
  - (2) A summary of visits to licensed practitioners and referrals.
- (o) For individuals receiving medical, nursing, or rehabilitative care or services, or hospice care, the facility shall ensure that a discipline specific care plan:
- (1) Is completed within 24 hours of the discipline specific assessment;
  - (2) Is completed in consultation with the resident and guardian, agent, or personal representative, if any;
  - (3) Is updated following the completion of all future discipline specific assessments;
  - (4) Is available to personnel who assist residents in the implementation of the discipline specific care plan;
  - (5) Addresses the needs identified in the discipline specific assessment;
  - (6) Includes the date the medical, nursing, or rehabilitative care or services, or hospice care need was identified;
  - (7) Identifies the resident goal or approach to be taken to address the medical, nursing, or rehabilitative care or services, or hospice care need;
  - (8) Includes the date of reevaluation of the medical, nursing, or rehabilitative care or services, or hospice care need and the name of the responsible person; and
  - (9) Is maintained in the resident's record.
- (p) For individuals receiving medical, nursing, or rehabilitative care or services, or hospice care, progress notes shall be written at every visit by the practitioner performing the service.
- (q) At the time of a resident's admission, the licensee shall obtain orders from a licensed practitioner for medications, prescriptions, and therapeutic diets, as applicable.
- (r) The licensee shall have each resident obtain a health examination by a licensed practitioner within 30 days prior to admission or within 72 hours following admission to the ALR-RC.
- (s) The health examination referenced in (r) above shall include:
- (1) Diagnoses, if any;
  - (2) The medical history;
  - (3) A list of current medications including over-the-counter medications, treatments, and therapeutic diets, if applicable; and
  - (4) Allergies.

(t) Each resident shall have at least one health examination every 12 months by a licensed practitioner, unless the licensed practitioner determines that an annual health examination is not necessary and specifies in writing an alternative time frame, or unless the resident refuses in writing. Any such resident refusal shall be made annually.

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

(v) When a resident refuses care or services that could result in a threat to the resident's health, safety, or well-being, or that of others, the licensee or personnel shall:

- (1) Inform the resident of the potential consequences of their refusal;
- (2) Notify the licensed practitioner and guardian, if any, of the resident's refusal of care or services; and
- (3) Document in the resident's record the items in (1) and (2) above, the refusal of care or services, and the resident's reason for the refusal.

(w) The licensee shall maintain an emergency data sheet, updated as needed and at a minimum at the conclusion of each RAT assessment, in the resident's record and promptly give a copy to emergency medical personnel in the event of an emergency transfer to another medical facility.

(x) The emergency data sheet referenced in (w) above shall include:

- (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;
- (4) Medications, including last dose taken and when the next dose is due;
- (5) Allergies;
- (6) Functional limitations to include but not be limited to physical limitations, hearing loss, visual impairment, and cognitive challenges;
- (7) Date of birth;
- (8) Insurance information;
- (9) Advanced directives; and
- (10) Any other pertinent information not specified in (1)-(9) above.

(y) The licensee may only perform POCT, that are waived complexity as designated by the federal drug administration (FDA) and known as CLIA-waived laboratory tests, unless the facility is also licensed by the State of New Hampshire as a laboratory under He-P 808.

(z) If CLIA-waived laboratory testing is performed by personnel, the licensee shall:

- (1) Obtain the appropriate CLIA certificate as per 42 CFR Part 493.15; and

(2) Develop and implement a point of care testing policy, which educates and provides procedures for the proper handling and use of POCT devices, including the documentation of training and demonstrated competency of all testing personnel.

(aa) The Licensee shall have current copies of manufacturer's instructions and package inserts and follow all manufacturer's instructions and recommendations for the use of POCT meters and devices to include, but not limited to:

- (1) Storage requirements for POCT meters and devices, test strips, test cartridges, and test kits;
- (2) Performance of test specimen requirements, testing environment, test procedure, troubleshooting error codes, and messages, reporting results; and
- (3) All recommended and required quality control procedures for POCT meters and devices.

(ab) Licensee's performing CLIA-waived laboratory testing or specimen collection shall be in compliance with He-P 808, He-P 817, and 42 CFR 493, as applicable.

(ac) If a facility has independent living units within the same structure which are not separated by a firewall from the licensed facility, they shall be subject to the same requirements as licensed units with regard to fire and building codes, including inspections.

(ad) If ALR-RC services as defined by He-P 804.03(l) are provided by the staff of the facility to individuals in an independent living unit, the unit(s) ~~shall~~ must be redesignated as licensed units in the ALR-RC and an application for a bed increase ~~shall~~ must be completed as required by He-P 804.08(a)(5) and (b)(3).

#### He-P 804.17 Medication Services.

(a) All medications shall be made available to the resident in accordance with the written and signed orders of the licensed practitioner or other professional with prescriptive powers.

(b) All medications and treatments shall be reviewed, re-ordered, and signed by a licensed practitioner on an annual basis or when indicated by a change in the resident's condition.

(c) Medications, treatments, and therapeutic diets ordered by a licensed practitioner or other professional with prescriptive powers shall be available to give to the resident within 24 hours, or when available in accordance with the licensed practitioner's written direction.

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

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

(e) Each medication order shall legibly display the following information:

- (1) The resident's name;
- (2) The medication name, strength, prescribed dose, and route, if different than by mouth;
- (3) The frequency of administration;

- (4) The indications for usage, to include the maximum allowed dose in a 24-hour period, for all medications that are used PRN; and
  - (5) The dated signature of the ordering practitioner as allowed by He-P 804.03(ca).
- (f) Except for pharmaceutical samples, each prescription medication container and medication record together shall collectively legibly display the following information in such a way so as to clearly identify the intended recipient, unless it is an emergency medication as allowed by (ab) below:
- (1) The resident's name;
  - (2) The medication name, strength, the prescribed dose, and route of administration;
  - (3) The frequency of administration;
  - (4) The indications for usage of all PRN medications;
  - (5) The date ordered;
  - (6) The name of the prescribing practitioner; and
  - (7) The expiration date of the medication(s).
- (g) Pharmaceutical samples shall be used in accordance with the licensed practitioner's written order and labeled by the licensed practitioner, the administrator, licensee, or their designee, with the resident's name, and shall be exempt from (f)(2)-(6) above.
- (h) The dosage, frequency, and route of administration on the labels of all prescription medications for each resident shall be identical to the dosage, frequency, and route of administration on the facility medication record except as allowed by (i) below.
- (i) The change in the dose of a medication, or the discontinuation of a medication, shall be authorized in writing by a licensed practitioner and the ALR-RC shall indicate in writing, in the medication record, the date the dose or the discontinuance occurred.
- (j) Only a pharmacist shall make changes to prescription medication container labels except as allowed by (k) below.
- (k) When the licensed practitioner or other professional with prescriptive powers changes the dose and personnel are unable to obtain a new prescription label, the original container shall be clearly marked without obstructing the pharmacy label to indicate a change in the medication order.
- (l) Only a licensed nurse shall accept telephone orders for medications, treatments, and therapeutic diets, and the licensed nurse shall immediately transcribe and sign the order.
- (m) The transcribed order in (l) above shall be counter-signed by the authorized prescriber within 30 days of receipt.
- (n) No medications shall be given to or taken by a resident until a written order is received, except as allowed by (l) or (m) above.
- (o) ALR-RCs that do not have a licensed nurse as described in (l) above on duty at the time an order for medications, treatments, or therapeutic diets are to be given shall receive said order in written form with the licensed practitioner's signature and the date of the order.

(p) Faxes of signed orders or other electronic media with electronic signatures shall be acceptable to meet the requirements of (o) above.

(q) All over-the-counter medications as defined by He-P 804.03(av) shall have a signed practitioner's order specifying that the resident may take the medication according to the instructions of the manufacturer, or specifying the dosage, frequency, and route.

(r) The medication storage area for medications not stored in the resident's room shall be:

- (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.

(s) All medication at the ALR-RC shall be kept in the original containers as dispensed by the pharmacy and properly closed after each use except as authorized by (ad)(6) below.

(t) 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.

(u) If controlled substances, as defined by RSA 318-B, are stored in a central storage area in the ALR-RC, they shall be kept in a separately locked compartment within the locked medication storage area accessible only to authorized personnel.

(v) The licensee shall develop and implement written policies and procedures regarding a system for maintaining counts of controlled drugs.

(w) Except as required by (x) below, any contaminated, expired, or discontinued medication shall be destroyed within 30 days following the expiration date, the date a licensed practitioner discontinued the order, or the medication becomes contaminated, whichever occurs first.

(x) Destruction of contaminated, expired, or discontinued controlled drugs shall:

- (1) Be in accordance with acceptable standards of practice;
- (2) Be accomplished in the presence of at least 2 people who shall sign, date, and record the amount destroyed; and
- (3) Be documented in the record of the resident for whom the drug was prescribed.

(y) When a resident is going to be absent from the ALR-RC at the time medication is scheduled to be taken, the medication container shall be given to the resident if the resident is capable of self administration of medication without assistance.

(z) If a resident is going to be absent from the ALR-RC at the time medication is scheduled to be taken and the resident is not capable of self administration of medication without assistance, the medication container shall be given to the person responsible for the resident while the resident is away from the ALR-RC.

(aa) Upon discharge or transfer, the licensee shall make the resident's current medications available to the resident and the guardian, agent, or personal representative, if any, and upon death of a resident, the facility shall return or destroy all remaining medications, as appropriate, and document in resident record.

(ab) 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.

(ac) Residents shall receive their medications by one of the following methods:

- (1) Self administration of medication without assistance as defined by He-P 804.03(br);
- (2) Self-directed medication administration as defined by He-P 804.03(bs);
- (3) Self administration of medication with assistance as defined by He-P 804.03(bq); or
- (4) Administered by individuals authorized by law, including via delegation.

(ad) If a nurse delegates care, including the task of medication administration, to an individual not licensed to administer medications, the nurse and delegate shall comply with the rules of medication delegation pursuant to Nur 404, as applicable, and RSA 326-B.

(ae) For residents who self administer medication without assistance, the licensee shall:

- (1) Obtain a written order from a licensed practitioner on an annual basis:
  - a. Authorizing the resident to self administer medication without assistance; and
  - b. Authorizing the resident to store the medications in their room;
- (2) Evaluate the resident on a 6 month basis or sooner, based on a significant change in the resident, to ensure they maintain the physical and mental ability to self administer medication without assistance;
- (3) Have the resident store the medication(s) in his or her room by keeping them in a locked drawer or container to safeguard against unauthorized access and making sure that this arrangement will maintain the medications at proper temperatures;
- (4) If a resident requests, allow the resident's medication to be placed in a central locked storage area provided by the ALR-RC;
- (5) Have a copy of the key to access the locked medication storage area in the resident's room;
- (6) Allow the resident to fill and utilize a medication system that does not require that medication remain in the container as dispensed by the pharmacist; and
- (7) Except as provided for in (4) above, not be responsible, in any way, for management or control of the resident's medications.

(af) The licensee shall allow the resident to self direct administration of medications if the resident:

- (1) Has a physical limitation due to a diagnosis that prevents the resident from self administration of medications with or without assistance;
- (2) Receives evaluations every 6 months or sooner, based on a significant change in the resident, to ensure the resident maintains the physical and mental ability to self direct administration of medications;
- (3) Obtains an annual written verification of the resident's physical limitation and self-directing capabilities from the resident's licensed practitioner and requests the ALR-RC to file the verification in their resident record; and

- (4) Verbally directs personnel to:
  - a. Assist the resident with preparing the correct dose of medication by pouring, applying, crushing, mixing, or cutting; and
  - b. Assist the resident to apply, ingest, or instill the ordered dose of medication.
- (ag) If a resident self administers medication with assistance, personnel shall be permitted to:
  - (1) Remind the resident to take the correct dose of his or her medication at the correct time;
  - (2) Place the medication container within reach of the resident;
  - (3) Remain with the resident to observe the resident taking the appropriate amount and type of medication as ordered by the licensed practitioner;
  - (4) Record on the resident's daily medication record that they have supervised the resident taking his or her medication; and
  - (5) Document in the resident's record any observed or reported side effects, adverse reactions, refusal to take medications, or medications not taken.
- (ah) If a resident self administers medication with assistance, personnel shall not physically handle the medication in any manner.
- (ai) Except for those residents who self administer medication without assistance, the licensee shall maintain a written record for each medication taken by a resident at the ALR-RC that contains the following information:
  - (1) Any allergies or adverse 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.
- (aj) The facility shall have a written policy that incorporates the requirements listed in (ad)-(ai) for use in training and for reference by employees supervising medication administration.
- (ak) Personnel who are not licensed practitioners or nurses but who assist a resident with self administration of medication with assistance or self-directed administration of medication shall, prior to providing such assistance, complete, at a minimum, a 4-hour medication assistance education program covering both prescription and non-prescription medication.
- (al) A licensed nurse, licensed practitioner, or pharmacist shall teach the medication assistance education program, whether in-person or through other means such as electronic media provided it meets the requirements of (ak) above and (am) below.



(am) The medication supervision education program required by (ak) above shall include:

- (1) Infection control and proper hand washing techniques;
- (2) The 5 rights relative to medication, which are:
  - a. The right resident;
  - b. The right medication;
  - c. The right dose;
  - d. Medication administered at the right time; and
  - e. Medication administered via the right route;
- (3) Documentation requirements;
- (4) General categories of medications such as antihypertensives or antibiotics;
- (5) Desired effects and potential side effects of medications; and
- (6) Medication precautions and interactions.

(an) The administrator may accept documentation of training required by (ak) above if it was previously obtained by the applicant for employment at another licensed ALR-RC.

(ao) The licensee shall report to the resident's licensed practitioner any adverse reactions and side effects to medications or medication errors, such as incorrect medications, immediately but not to exceed 24 hours depending on the severity of the reaction or error, and shall document in the resident's record the reaction, the error, and date, time, and person notified.

(ap) No medication, whether prescription medication or over-the-counter medication, shall be borrowed from another resident.

(aq) An ALR-RC shall have written orders from the licensed practitioner for all medications being taken by residents except for residents who have a licensed practitioner's order to self administer medications without assistance and keep the medicine in their room.

(ar) An ALR-RC may keep non-prescription stock medications for a resident when accompanied by a licensed practitioner's order and each resident has his or her own container for the medication.

(as) The therapeutic use of cannabis by residents who are qualifying residents possessing a registry identification card shall be permitted at an ALR-RC provided:

- (1) The facility designates itself as a facility caregiver as allowed by RSA 126-X:2, XVI; or
- (2) The facility permits a resident to possess and use cannabis at the licensed premises, the resident is able to self-administer medication without assistance, and the cannabis remains in the possession of the resident.

(at) An ALR-RC that permits the therapeutic use of cannabis in accordance with (as) above shall develop, maintain, and implement a general policy relative to resident use of cannabis at the licensed premises, including storage, security, and administration.

(au) An ALR-RC that designates itself as a facility caregiver according to (as)(1) above shall:

- (1) Have a resident-specific policy relative to the therapeutic use of cannabis that identifies how the cannabis will be obtained, stored, and administered to the resident; and
  - (2) Treat cannabis in a manner similar to medications with respect to its storage and security when assisting qualifying residents with the therapeutic use of cannabis.
- (av) An ALR-RC shall not permit the smoking of cannabis if smoking is not allowed on the ALR-RC premises.

He-P 804.18 Personnel.

(a) The licensee shall ensure that sufficient numbers of qualified personnel are present in the ALR-RC to meet the needs of residents at all times as determined by each Cares Tool.

(b) For those ALR-RCs licensed for 17 or more beds, at least one awake personnel shall be on duty at all times, including overnight, while residents are in the ALR-RC.

(c) For those ALR-RCs licensed for 16 or fewer beds, at least one awake personnel shall be on duty at all times, including overnight, while residents are in the ALR-RC, unless:

- (1) There is a UL listed communication system whereby residents can contact and awaken the sleeping personnel member via an intercom or other communication system in the personnel member's room;

- (2) If the ALR-RC has residents with a history of exit seeking, the licensee has installed and maintains a functioning wander prevention system that will awaken the sleeping personnel; and

- (3) All residents:

- a. Require nothing more than occasional reminding or cueing;

- b. Require nothing more than verbal prompting for mobility and evacuation issues;

- c. Have no acute medical needs or ongoing nursing needs; and

- d. Have no history of being verbally or physically abusive.

(d) For all applicants for employment, for all volunteers, for all independent contractors who will provide direct care or personal care services to residents or who will be unaccompanied by an employee while performing non-direct care or non-personal care services within the facility, and for all household members, the licensee shall:

- (1) Obtain and review a criminal records check from the New Hampshire department of safety, except, pursuant to RSA 151:2-d, VI, for those licensed by the New Hampshire board of nursing; and

- (2) Review the results of the criminal records check in (1) above in accordance with (e) below; and

- (3) Verify the qualifications of all applicants prior to employment.

(e) Unless a waiver is granted in accordance with (g)(2) below, the licensee shall not offer employment, contract with, or engage a person in (d) above, or allow a household member to continue to reside in the residence, if the person:

- (1) Has been convicted of a felony in this or any other state;

- (2) Has been convicted of a sexual assault, other violent crime, assault, fraud, theft, abuse, neglect, or exploitation in this or any other state;
  - (3) Has had a finding by the department or any administrative agency in this or any other state for assault, fraud, theft, abuse, neglect, or exploitation of any person; or
  - (4) Otherwise poses a threat to the health, safety, or well-being of residents.
- (f) If the information identified in (e) above regarding any person in (d) above is learned after the person is hired, contracted with, or engaged, or after the person becomes a household member, the licensee shall immediately notify the department and either:
- (1) Cease employing, contracting with, or engaging the person, or not permit the household member to continue to reside in the residence; or
  - (2) Request a waiver of (e) above.
- (g) If a waiver of (e) above is requested, the department shall review the information and the underlying circumstances in (e) above and shall either:
- (1) Notify the licensee that the person cannot or can no longer be employed, contracted with, or engaged by the licensee, or the person cannot or can no longer reside in the facility if, after investigation, it determines that the person poses a threat to the health, safety, or well-being of a resident; or
  - (2) Grant a waiver of (e) above if, after investigation, it determines that the person does not pose a current threat to the health, safety, or well-being of a resident(s).
- (h) The licensee shall check the names of the persons in (d) above against the bureau of elderly and adult services (BEAS) state registry, maintained pursuant to RSA 161-F:49 and He-E 720, and against the NH board of nursing, nursing assistant registry, maintained pursuant RSA 326-B:26 and 42 CFR 483.156, prior to employing, contracting with, or engaging them, or prior to allowing or continuing to allow a household member to reside at the residence.
- (i) The licensee shall not employ, contract with, engage, or allow to reside in the facility any person in (d) above who is listed on the BEAS state registry or the NH board of nursing, nursing assistant registry unless a waiver is granted by BEAS or the NH board of nursing, respectively.
- (j) In lieu of (d) and (h) above, the licensee may accept from independent agencies contracted by the licensee or by an individual resident to provide direct care or personal care services a signed statement that the agency's employees have complied with (d) and (h) above and do not meet the criteria in (e) and (i) above.
- (k) All administrators appointed after the 2022 effective date of these rules shall be at least 21 years of age and have one of the following combinations of education and experience:
- (1) A bachelor's degree from an accredited institution and one year of experience working in a health care facility;
  - (2) A New Hampshire license as an RN and at least 6 months of experience working in a health care facility;
  - (3) An associate's degree from an accredited institution and at least 2 years of experience working in a health care facility; or

- (4) A New Hampshire license as an LPN and at least one year of experience working in a health care facility.
- (l) All administrators shall obtain and document 12 hours of continuing education related to the operation and services of the ALR-RC each annual licensing period, in accordance with (t) and (u) below.
- (m) All direct care personnel shall be at least 18 years of age unless they are:
  - (1) A licensed nursing assistant working under the supervision of a nurse in accordance with Nur 700; or
  - (2) Involved in an established educational program working under the supervision of a nurse.
- (n) The licensee shall inform personnel of the line of authority at the ALR-RC.
- (o) The licensee shall educate personnel about the needs and services required by the residents under their care.
- (p) Prior to having contact with residents or food, personnel 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, both conducted not more than 12 months prior to employment, contract, or engagement;
  - (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 and Prevention “Guidelines for Preventing the Transmission of *M. tuberculosis* in Health-Care Settings” (2005 edition), available as noted in Appendix A, if the person has either a positive TB test, or has had direct contact or potential for occupational exposure to *M. tuberculosis* through shared air space with persons with infectious tuberculosis.
- (q) In lieu of (p)(1) above, independent agencies contracted by the facility or by an individual resident to provide direct care or personal care services may provide the licensee with a signed statement that its employees have complied with (p)(1) and (3) above before working at the ALR-RC.
- (r) Prior to having contact with residents or food, personnel shall receive a tour of and orientation to the ALR-RC that includes the following:
  - (1) The residents’ rights in accordance with RSA 151:20;
  - (2) The ALR-RC’s resident complaint procedures;
  - (3) The duties and responsibilities of the position;
  - (4) The emergency medical procedures;
  - (5) The emergency and evacuation procedures;
  - (6) The infection control procedures as required by He-P 804.22;
  - (7) The procedures for food safety for personnel involved in preparation, serving, and storing of food; and

(8) The mandatory reporting requirements including RSA 161-F:46 and RSA 169-C:29.

(s) The licensee shall provide all personnel with an annual continuing education or in-service education training, which at a minimum contains the following:

- (1) The licensee's resident's rights and complaint procedures required under RSA 151;
- (2) The licensee's infection control program;
- (3) The licensee's written emergency plan; and
- (4) The mandatory reporting requirements including RSA 161-F:46 and RSA 169-C:29.

(t) The facility administrator, licensed nurse, if available, or the administrator's designee who has completed the 4-hour medication assistance supervision program required by He-P 804.17(ak) shall provide and document in writing, an annual review of its policies and procedures for self administration of medication without assistance, self administration of medication with assistance, and self-directed medication administration to all direct care personnel.

(u) The ALR-RC shall maintain a separate employee file for each employee, which shall include the following:

- (1) A completed application for employment or a resume;
- (2) Proof that the individual meets the minimum age requirements;
- (3) A statement signed by each individual that he or she has received a copy of and received training on the implementation of the licensee's policy setting forth the residents rights and responsibilities as required by RSA 151:21;
- (4) A copy of the results of the criminal record check as described in (d) above;
- (5) A job description signed by the individual that identifies the:
  - a. Position title;
  - b. Qualifications and experience; and
  - c. Duties required by the position;
- (6) Record of satisfactory completion of the orientation program required by (r) above;
- (7) Information as to the general content and length of all in-service or educational programs attended;
- (8) Record of satisfactory completion of all required education programs and demonstrated competencies that are signed and dated by the employee;
- (9) A copy of each current driver's license, including proof of insurance, if the employee transports residents using their own vehicle;
- (10) Documentation that the required physical examinations or health screenings, TB test results, and radiology reports of chest x-rays, if required, have been completed by the appropriate health professionals;
- (11) The statement required by (w) below; and

(12) The results of the registry checks in (h) above.

(v) The ALR-RC shall maintain the records, but not necessarily a separate file, for all volunteers and for all independent contractors who provide direct care or personal care services to residents or who will be unaccompanied by an employee while performing non-direct care or non-personal care services within the facility, as follows:

(1) For volunteers, the information in (u)(1), (3), (4), (6), and (8)-(12) above; and

(2) For independent contractors, the information in (u)(3), (4), (6), and (8)-(12) above, except that the letter in (j) and (q) above may be substituted for (u)(4), (10), and (12) above, if applicable.

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

(1) Do not have a felony conviction in this or any other state;

(2) Have not been convicted of a sexual assault, other violent crime, assault, theft, fraud, abuse, neglect, or exploitation or pose a threat to the health, safety, or well-being of a resident; and

(3) Have not had a finding upheld by the department or any administrative agency in this or any other state for assault, fraud, theft, abuse, neglect, or exploitation of any person.

(x) An individual shall not have to re-disclose any of the matters in (w) above if the documentation is available and the department has previously reviewed the material and determined that the individual can continue employment, contract, or engagement.

(y) The licensee shall protect and store in a secure and confidential manner all records described in (u) and (v) above.

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

(1) That immunizations shall be provided and reported in accordance with RSA 151:9-b, I-V; and

(2) The facility shall have a plan that identifies and documents, with dates, employees that have received or declined to receive immunizations.

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

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

(ac) The policy in (ab) above shall include:

(1) Education;

(2) Procedures for monitoring the distribution and storage of controlled substances;

- (3) Voluntary self-referral by employees who are addicted;
- (4) Co-worker reporting procedures;
- (5) Drug testing procedures to include at a minimum, testing where reasonable suspicion exists;
- (6) Employee assistance procedures;
- (7) Confidentiality;
- (8) Investigation, reporting, and resolution of controlled drug misuse or diversion; and
- (9) The consequences for violation of the controlled substance abuse, misuse, and diversion prevention policy.

**Readopt with amendment He-P 804.20, effective 11-3-17 (Document #12414), to read as follows:**

He-P 804.20 Respite Care in ALR-RC.

(a) The licensee shall only admit an individual for respite care services when the needs of the individual are compatible with the services and programs offered by the facility as allowed by its license and the facility can meet the needs of the individual in accordance with He-P 804.15(a)-(d).

(b) When a temporary admission to an ALR-RC occurs and the individual is scheduled for a stay of no more than 30 consecutive days as agreed upon by the individual and the licensee as part of a discharge plan, the licensee shall:

- (1) Obtain written verification signed by the resident, guardian or agent, if any, or personal representative, indicating they have been given a copy of the ~~resident-patient~~ rights and responsibilities as required by RSA 151:20, I;
- (2) Obtain a signed admission agreement listing the services that shall be provided;
- (3) Be permitted to use the prescription label on the medication container as the licensed practitioner's order provided that:
  - a. The medication is in the original bottle as dispensed by the pharmacy;
  - b. The pharmacy label has not been altered in any manner;
  - c. The prescription label indicates that the medication is still current; and
  - d. The medication container contains all the same medication or has been labeled by the pharmacy verifying that the bottle contains all the same prescription medication;
- (4) Complete the CARES Tool prior to or immediately on admission to determine that the potential residents' needs can be met by the facility;
- (5) Note in the resident's record, the resident's allergies, if any, diagnoses, and history of wandering or unexplained absences; and
- (6) Obtain copies of current advanced directives information, if available.

(c) For planned recurrent respite care the resident shall be discharged but may be readmitted using the same admission documents completed within the previous 6 months, as long as there are no identified

changes in the resident's condition or care needs except that the medication requirement in (b)(3) above shall be re-verified.

(d) If the resident exceeds the 30-day time period, the resident shall no longer be considered to be receiving respite care and:

- (1) A complete admission shall occur within 72 hours; or
- (2) The resident shall be discharged from the facility.

**Readopt with amendment He-P 804.25 and He-P 804.26, effective 11-3-17 (Document #12414), to read as follows:**

He-P 804.25 Physical Environment.

(a) The physical environment shall be maintained, inside and outside, so as to provide for the health, safety, well-being, comfort, and privacy of resident(s) and personnel, including reasonable accommodations for residents and personnel with mobility limitations.

(b) The ALR-RC shall:

- (1) Have all emergency entrances and exits accessible at all times;
- (2) Be maintained in good repair and kept free of hazards to personnel and residents, including but not limited to hazards from falls, burns, or electric shocks;
- (3) Be free from environmental nuisances, including excessive noise and odors;
- (4) Keep all corridors free from obstructions; and
- (5) Take reasonable measures to prevent the presence of rodents, insects, and vermin to include but not limited to:
  - a. Having tightly fitting screens on all doors, windows, or other openings to the outside unless the door is self-closing and remains closed when not in use;
  - b. Repairing holes and caulking of pipe channels; and
  - c. Extermination by a pesticide applicator licensed under RSA 430.

(c) Equipment providing heat within an ALR-RC including, but not limited to, gas furnace or boiler, oil furnace or boiler, wood stove, or pellet stove shall:

- (1) Maintain a temperature as follows, except where residents have control of the thermostat in their own room:
  - a. Be at least 65 degrees Fahrenheit at night; and
  - b. Be at least 70 degrees Fahrenheit during the day if the resident(s) are present; and
- (2) Be serviced once a year or as recommended by the manufacturer with written documentation of such service retained for at least 4 years.

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

(e) Portable space heating devices shall be prohibited, unless the following conditions 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.
- (f) Unvented fuel-fired heaters shall not be used in any ALR-RC.
- (g) Ventilation shall be provided in all enclosed living areas by means of a mechanical ventilation system or one or more screened windows that can be opened.
- (h) 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.
- (i) The number of sinks, toilets, tubs, or showers shall be in a ratio of one for every 6 individuals, unless household members and personnel have separate bathroom facilities not used by residents.
- (j) All showers and tubs shall have slip resistant floors and surfaces which are intact, easily cleanable, and impervious to water.
- (k) All hand-washing facilities shall be provided with hot and cold running water.
- (l) Bedrooms shall have at least 100 square feet for each resident 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.
- (m) Bedrooms in an ALR-RC licensed prior to 4/3/2008 shall:
- (1) Be exempt from (l) above;
  - (2) Provide at least 80 square feet per resident in a private room; and
  - (3) Provide at least 70 square feet per resident in a semi-private room.
- (n) Each bedroom shall:
- (1) Contain no more than 2 beds;
  - (2) Have its own separate entry to permit the resident to reach his or her bedroom without passing through the room of another resident;
  - (3) Have a side hinge door and not a folding or sliding door or a curtain;
  - (4) Not be used simultaneously for other purposes;
  - (5) Be separated from halls, corridors, and other rooms by floor to ceiling walls;
  - (6) Be located on the same level as the bathroom facilities if the resident has impaired mobility as identified by the RAT; and
  - (7) If a licensed bedroom is temporarily being utilized for another purpose, it shall retain the capability of being restored to meet the requirements of a licensed bedroom within 24 hours and without requiring additional construction or renovation.
- (o) The licensee shall provide the following for the residents' use, as needed:
- (1) A bed appropriate to the needs of the resident;

- (2) A firm mattress that complies with the state fire code and codes ~~adopted by reference~~ as defined in RSA 153:1, VI-a, except as modified in Saf-FMO 300;
- (3) Clean linens, blankets, and a pillow;
- (4) A bureau, mirror, and bedside table;
- (5) A lamp;
- (6) A chair;
- (7) A closet or storage space for personal belongings; and
- (8) Window blinds, shades, or curtains that provide privacy.

(p) The resident may use his or her own personal possessions provided they do not pose a risk to the resident or others and may waive any of the items in (o) above with a note signed by the resident or guardian and which note shall be placed in the resident's file.

(q) The licensee shall provide the following rooms to meet the needs of residents:

- (1) One or more living rooms or multipurpose rooms; and
- (2) Dining facilities with a seating capacity capable of meeting the needs of all residents.

(r) Each licensee shall have a UL listed communication system in place so that all residents can effectively contact personnel when they need assistance with care or in an emergency.

(s) Lighting shall be available to allow residents to participate in activities such as reading, needlework, or handicrafts.

(t) All bathroom, bedroom, and closet doors shall either swing or slide and have latches or locks which shall be designed for easy opening from the inside and outside in an emergency.

(u) Screens shall be provided for doors, windows, or other openings to the outside.

He-P 804.26 Fire Safety.

(a) All ALR-RCs shall meet at a minimum the following:

- (1) For facilities with 3 residents or fewer, the One and Two Family Dwelling chapter of the life safety code; and
- (2) For facilities with 4 residents or more, the Residential Board and Care Occupancy chapter of the life safety code.

(b) All ALR-RCs shall have:

- (1) Smoke detectors on every level and in every bedroom that are interconnected and either hardwired, powered by the ALR-RC's electrical service, or wireless, as approved by the state fire marshal for the ALR-RC;
- (2) At least one UL listed, ABC type portable fire extinguisher, with a minimum rating of 2A-10BC, installed on every level of the building, and which meets the following requirements:

- a. Maximum travel distance to each extinguisher shall not exceed 50 feet;

- b. Fire extinguishers shall be inspected either manually or by means of an electronic monitoring device or system at least once per calendar month, at intervals not exceeding 31 days;
- c. Records for manual inspection or electronic monitoring shall be kept to demonstrate that at least 12 monthly inspections have been performed for the most recent 12-month period;
- d. Documentation of manual fire extinguisher inspections must be maintained on-site in accordance with NFPA 10 and available at the time of the inspection or investigation;
- e. Documentation of electronically monitored fire extinguishers must be provided to the department within 2 business days of the completion of the inspection or investigation;
- f. Annual maintenance shall be performed on each extinguisher by trained personnel, and each extinguisher shall have a tag or label securely attached that indicates that maintenance was performed; and
- g. The components of the electronic monitoring device or system shall be tested and maintained annually in accordance with the manufacturer's listed maintenance manual; and

(3) An approved carbon monoxide monitor on every level.

(c) A fire safety program shall be developed and implemented to provide for the safety of residents and personnel.

(d) Immediately following any fire or emergency situation, licensees shall notify the department by phone to be followed by written notification within 72 hours, with the exception of:

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

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

- (1) The date and time of the incident;
- (2) A description of the location and extent of the incident, including any injury or damage;
- (3) A description of events preceding and following the incident;
- (4) The name of any personnel or residents who were evacuated as a result of the incident, if applicable;
- (5) The name of any personnel or residents 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) If the licensee has chosen to allow smoking within the ALR-RC, a designated smoking area 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.

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

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

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

(i) Fire drills shall be conducted as follows:

- (1) For buildings constructed to the One and Two Family Dwelling chapter or the Residential Board and Care Occupancy chapter of the life safety code, the following shall be required:
  - a. The administration of every residential board and care facility shall have, in effect and available to all supervisory personnel, written copies of a plan for protecting all persons in the event of fire, for keeping persons in place, for evacuating persons to areas of refuge, and for evacuating persons from the building when necessary;
  - b. Willing residents shall be trained to assist each other in case of fire or emergency to the extent that their physical and mental abilities permit them to do so, without additional personal risk;
  - c. All ALR-RC facilities identified in (1) above shall conduct fire drills not less than 6 times per year on a bimonthly basis, with not less than 2 drills conducted during the dark of night when a majority of residents are sleeping. Actual exiting from windows shall not be required, however opening the window and signaling for help shall be an acceptable alternative;
  - d. The drills shall involve the actual evacuation of all residents to an assembly point, as specified in the fire safety plan, and approved by the department and the local fire authority based on construction of the building, and shall provide residents with experience in egressing through all exits and means of escape;
  - e. Facilities shall complete a written record of fire drills that includes the following:
    1. The date and time including AM/PM the drill was conducted and if the actual fire alarm system was used;
    2. The location of exits used;

3. The number of people, including residents, personnel, and visitors, participating at the time of the drill;
4. The amount of time taken to completely evacuate the facility;
5. The name and title of the person conducting the drill;
6. A list of problems and issues encountered during the drill;
7. A list of improvements and resolution to the issues encountered during the fire drill; and
8. The names of all staff members participating in the drill;

f. At no time shall a staff member who has not participated in a fire drill be the only staff member on duty within the facility;

g. At least annually, and whenever a resident experiences a significant change, as defined in He-P 804.03(~~chb~~), the facility shall conduct a resident Fire Safety Evacuation Scoring System (FSES) as listed in NFPA 101A, Alternatives to Life Safety, to determine the resident's needs during a fire drill including, but not limited to, mobility, assistance to evacuate, staff needed, risk of resistance, and residents' ability to evacuate on their own and choose an alternate exit;

h. At least annually, the facility shall review all residents' FSES in totality to ensure that the facility can meet not only the needs of each individual resident but the resident population as a whole during a time of emergency;

i. Based on the review in h. above, if the facility is unable to meet the needs of any resident based on the FSES, the facility shall address the safety concerns through a variety of interventions such as resident discharge, additional staff, and modification to the current building; and

j. The fire drills for facilities built to the Residential Board and Care Occupancy chapter of the life safety code shall be permitted to be announced, in advance, to the residents just prior to the drill;

Edit. Delete.

(2) For buildings constructed to the Health Care Occupancy chapter of the life safety code and to the rules and regulations adopted and enforced by the state fire marshal's office and/or the municipality, or which have been physically evaluated, rehabilitated, and approved by a New Hampshire licensed fire protection engineer, the state fire marshal's office, and the department to meet the Health Care Occupancy chapter, the following shall be required:

- a. The facility shall develop a fire safety plan, which provides for the following:
  1. Use of alarms;
  2. Transmission of alarms to fire department;
  3. Emergency phone call to fire department;
  4. Response to alarms;
  5. Isolation of fire;
  6. Evacuation of immediate area;

7. Evacuation of smoke compartment;
  8. Preparation of floors and building for evacuation;
  9. Extinguishment of fire; and
  10. Written emergency telephone numbers for key staff, fire and police departments, poison control center, 911, and ambulance service(s);
- b. Fire drills shall be conducted quarterly on each shift to familiarize facility personnel including, but not limited to, medical personnel, maintenance engineers, and administrative staff, with the signals and emergency action required under varied conditions;
  - c. Fire drills shall include the transmission of a fire alarm signal and simulation of emergency fire conditions;
  - d. Buildings that have a shelter in place, also known as defend in place, shall have this plan approved by the department and their local fire chief and shall be constructed to meet the Health Care Occupancy chapter of the life safety code;
  - e. When drills are conducted between 9:00 p.m. and 6:00 a.m., a coded announcement shall be permitted to be used instead of audible alarms;
  - f. If the facility has an approved defend or shelter in place plan, then all personnel, residents, and visitors shall evacuate to that appropriate location or to the outside of the building to a selected assembly point and drills shall be designed to ensure that residents are given the experience of evacuating to the appropriate location or exiting through all emergency exists;
  - g. Facilities shall complete a written record of fire drills and include the following:
    1. The date and time including AM/PM the drill was conducted and if the actual fire alarm system was used;
    2. The location of exits used;
    3. The number of people, including residents, personnel, and visitors, participating at the time of the drill;
    4. The amount of time taken to completely evacuate the facility, ~~or~~ evacuate to an approved area of refuge, or evacuate through a horizontal exit;
    5. The name and title of the person conducting the drill;
    6. A list of problems and issues encountered during the drill;
    7. A list of improvements and resolution to the issues encountered during the fire drill; and
    8. The names of all staff members participating in the drill; and
  - h. Written records of the fire drills shall be maintained on site and available to the department during an inspection or investigation conducted in accordance with RSA 151:6 and RSA 151:6-a; and

i. At no time shall a staff member who has not participated in a fire drill be the only staff member on duty within the facility; and

(3) The facility shall conduct a fire drill in the presence of a representative of the department, state fire marshal’s office, or the local fire department upon request.

**APPENDIX A: Incorporation by Reference Information**

<b>Rule</b>	<b>Title</b>	<b>Publisher; How to Obtain; and Cost</b>
He-P 804.07 ( <del>hg</del> )(3), ( <del>ih</del> ), and ( <del>ij</del> )	Facility Guidelines Institute’s (FGI) “Guidelines for Design and Construction of Residential Health, Care, and Support Facilities” (2018 Edition)	Publisher: Facility Guidelines Institute (FGI) Cost: \$75.00/book or \$200.00/user, per year for subscription to website. The incorporated document is available for purchase at <a href="https://www.fgiguideines.org/guidelines/2018-fgi-guidelines/">https://www.fgiguideines.org/guidelines/2018-fgi-guidelines/</a>
He-P 804.18(p)	United States Centers for Disease Control and Prevention’s “Guidelines for Preventing the Transmission of <i>M. tuberculosis</i> in Health-Care Settings” (2005 Edition)	Publisher: United States Centers for Disease Control and Prevention Cost: Free of Charge The incorporated document is available at: <a href="https://www.cdc.gov/tb/publications/slidesets/infectionguidelines/default.htm">https://www.cdc.gov/tb/publications/slidesets/infectionguidelines/default.htm</a>

**APPENDIX B**

<b>Rule</b>	<b>Specific State or Federal Statutes the Rule Implements</b>
He-P 804.03	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.04	RSA 151:9, I(c); RSA 151:9, VII(a)(1)
He-P 804.06	RSA 151:9, I(c); RSA 151:9, VII(a)(1)
He-P 804.07	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.08	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.09	RSA 151:9, I(e); RSA 151:9, VII(a)(1)
He-P 804.10	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.11	RSA 151:9, I(e); RSA 151:9, VII(a)(1)
He-P 804.12	RSA 151:9, I(l); RSA 151:9, VII(a)(1)
He-P 804.13	RSA 151:9, I(f); RSA 151:9, VII(a)(1)
He-P 804.14	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.16	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.17	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.18	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.20	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.25	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.26	RSA 151:9, I(a); RSA 155:68; RSA 155:69; RSA 153:4 and 5