

CHAPTER He-P 800 RESIDENTIAL AND HEALTH CARE FACILITY RULES

PART He-P 812 RULES FOR AMBULATORY SURGICAL CENTERS

He-P 812.01 Purpose. The purpose of this part is to set forth the licensing requirements for all ambulatory surgical centers (ASC) pursuant to RSA 151:2, I(d).

Source. #5514, eff 11-25-92; ss by #6530, eff 6-27-97,
EXPIRED: 6-27-05

New. #9727-A, eff 6-18-10

He-P 812.02 Scope. This part shall apply to any individual, agency, partnership, corporation, government entity, association or other legal entity operating an ASC, except:

- (a) All facilities listed in RSA 151:2, II(a)-(g); and
- (b) All entities which are owned or operated by the state of New Hampshire, pursuant to RSA 151:2, II(h).

Source. #5514, eff 11-25-92; ss by #6530, eff 6-27-97,
EXPIRED: 6-27-05

New. #9727-A, eff 6-18-10

He-P 812.03 Definitions.

- (a) “Abuse” means any one of the following:
 - (1) “Emotional abuse” means the misuse of power, authority, or both, verbal harassment, or unreasonable confinement which results or could result in the mental anguish or emotional distress of patients;
 - (2) “Physical abuse” means the misuse of physical force which results or could result in physical injury to patients; and
 - (3) “Sexual abuse” means contact or interaction of a sexual nature involving patients without his or her informed consent.
- (b) “Administrative remedy” means a corrective action imposed upon a licensee in response to non-compliance with RSA 151 or He-P 812.
- (c) “Administrator” means the person responsible for all aspects of the operation of an ASC on a day-to-day basis.
- (d) “Admission” means accepted by a licensee for the provision of services to a patient.
- (e) “Advance directive” means a legal document 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.
- (f) “Adverse event” means a negative consequence of care that results in unintended injury which may or may not have been preventable, and which is listed in RSA 151:37-38.

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(g) “Affiliated or related parties” means companies or individuals that serve as operators, landlords, management companies or advisors, real estate or consulting companies, members of limited liability companies, administrative services companies, lenders and companies providing financial guarantees, captive or affiliated insurance companies.

(h) “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.

(i) “Ambulatory surgical center (ASC)” means any building, place or a portion thereof, exclusive of physician or dentist’s offices, that maintains and operates services for the performance of outpatient surgical procedures.

(j) “Anesthesiologist” means a physician who is licensed to practice medicine in the state of New Hampshire and who is accredited by the American Board of Anesthesiology, the American College of Anesthesiology, or the American Osteopathic Board of Anesthesiology.

(k) “Applicant” means an individual, agency, partnership, corporation, government entity, association, or other legal entity seeking a license to operate a ASC pursuant to RSA 151:2, I(d).

(l) “Care plan” means a documented guide developed by the licensee, in consultation with personnel, the patient, and/or the patient’s guardian, agent or personal representative, if any, as a result of the assessment process for the provision of care and services.

(m) “Certified ASC” means an ASC certified by the Centers for Medicare and Medicaid Services (CMS) to provide Medicare or Medicaid funded care or services.

(n) “Certified nurse operating room (CNOR)” means a registered nurse certified by the American Association of Operating Room Nurses.

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

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

(q) “Contracted employee” means a temporary employee working under the direct supervision of the ASC but employed by an outside agency.

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

(s) “Deficiency” means any action, failure to act or other set of circumstances that cause a licensee to be out of compliance with RSA 151 or He-P 812.

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

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

(v) “Do not resuscitate order (DNR order)” also known as “Do not attempt resuscitation order (DNAR order)” means an order that, in the event of an actual or imminent cardiac or respiratory arrest, chest compression and ventricular defibrillation will not be performed, the patient will not be intubated or manually ventilated, and there will be no administration of resuscitation drugs.

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

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(x) “Exploitation” means the illegal use of a patient’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 patient through the use of undue influence, harassment, duress, deception or fraud.

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

(z) “Governing body” means a group of individuals who are responsible for policy direction of the ASC.

(aa) “Guardian” means a person appointed in accordance with RSA 463, RSA 464-A, or the laws of another state, to make informed decisions relative to the patient’s health care and other personal needs.

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

(ac) “Informed consent” means the decision by a person or his/her guardian or agent to agree to a proposed course of treatment, after the person 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.

(ad) “Inspection” means the process followed by the department to determine a licensee’s compliance with RSA 151 and He-P 812 or to respond to allegations of non-compliance with RSA 151 and He-P 812.

(ae) “License” means the document issued to an applicant which authorizes operation of a ASC in accordance with RSA 151 and He-P 812, and includes the name of the licensee, the name of the business, the physical address, the license category, the effective date and license number.

(af) “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 and the type(s) of services authorized.

(ag) “Licensed practitioner” means anyone licensed by the appropriate New Hampshire licensing board.

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

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

(aj) “Medical director” means a physician licensed in New Hampshire in accordance with RSA 329 and certified by the American Board of Medical Specialties or certified by the American Osteopathic Association in the field of surgery or anesthesia, who is responsible for overseeing the quality of medical care and services at the ASC.

(ak) “Medical staff” means those physicians and other licensed practitioners permitted by law and ASC policies to provide patient care services independently within the scope of his or her practice act.

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

(am) “Neglect” means an act or omission which 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 any patient.

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(an) “Nursing care” means assisting patients to attain or maintain optimal health by implementing a strategy of care to accomplish defined goals and by evaluating responses to nursing care and medical treatment.

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

(ap) “Owner” means a person or organization who has controlling interest in the ASC.

(aq) “Patient” means any person admitted to or in any way receiving care, services or both from an ASC licensed in accordance with RSA 151 and He-P 812.

(ar) “Patient record” means documents maintained for each person receiving care and services, which includes all documentation required by RSA 151, He-P 812 and all documentation compiled relative to the patient as required by other federal and state requirements.

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

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

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

(av) “Physician” means a medical doctor currently licensed in the state of New Hampshire pursuant to RSA 329.

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

(ax) “Policies and procedures” means a licensee’s written method of performing duties and providing services.

(ay) “Professional staff” means personnel who are licensed, registered or certified by the state to provide health care services.

(az) “Qualified anesthesia personnel” means an anesthesiologist or a physician with training and experience in the administration of anesthesia or a certified registered nurse anesthetist.

(ba) “Stabilize” means to provide medical care to allow the client to be moved or transferred to another ASC or general hospital without negative effects.

(bb) “Surgery” means a branch of medicine concerned with disease or conditions requiring or amenable to operative or manual procedures.

Source. #5514, eff 11-25-92; amd by #6530, eff 6-27-97; amd by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99; paragraphs (g), (p) and (q) EXPIRED: 6-27-05

New. #9727-A, eff 6-18-10

He-P 812.04 Initial License Application Requirements.

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

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

(3) If applicable, proof of authorization from the New Hampshire secretary of state to do business in 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” if a sole proprietorship or if otherwise applicable;

(4) List of affiliated or related parties;

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

(6) A resume identifying the name and qualifications of the ASC administrator;

(7) Copies of applicable licenses and/or certificates for the ASC administrator;

(8) 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, Saf-C 6000, including the ambulatory health care occupancy chapter of NFPA 101 as adopted by the commissioner of the department of safety, and local fire ordinances applicable for an ambulatory surgical center; and

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

(9) If the ASC uses a private water supply, documentation that the water supply has been tested in accordance with RSA 485 and Env-Ws 313.01 and 314.01 and determined to be at acceptable levels, or, if a public water supply is used, a copy of a water bill; and

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

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

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

Source. #5514, eff 11-25-92; amd by #6530, eff 6-27-97; amd by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99; paragraph (e) EXPIRED: 6-27-05

New. #9727-B, eff 6-18-10

He-P 812.05 Processing of Applications and Issuance of Licenses.

(a) An application for an initial license shall be complete when the department determines that all items required by He-P 812.04(a) have been received.

(b) If an application does not contain all of the items required by He-P 812.04(a), the department shall notify the applicant in writing of the items required before the application can be processed.

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

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

(e) Following an inspection, a license shall be issued if the department determines that an applicant requesting an initial license is in full compliance with RSA 151 and He-P 812.

(f) The department shall deny a licensing request after reviewing the information in He-P 812.04(a)(10) above if it determines that the administrator:

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

(2) Has been convicted of a sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation;

(3) Has had a finding by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation of any person; or

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

(g) All licenses issued in accordance with RSA 151 shall be non-transferable by person or location.

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Source. #5514, eff 11-25-92; amd by #6530, eff 6-27-97; amd by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99; paragraphs (c) and (d) EXPIRED: 6-27-05

New. #9727-A, eff 6-18-10

He-P 812.06 License Expirations and Procedures for Renewals.

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

(b) Each licensee shall complete and submit to the department an application form pursuant to He-P 812.04(a)(1) at least 120 days prior to the expiration of the current license.

(c) The licensee shall submit with the renewal application:

- (1) The materials required by He-P 812.04(a)(1) and (5);
- (2) The current license number;
- (3) A request for renewal of any existing waivers previously granted by the department, in accordance with He-P 812.10(f), if applicable; and
- (4) A copy of any correspondence applying for a variance or variances granted by the state fire marshal.

(d) In addition to (c) above, if a private water supply is used, the licensee shall provide documentation that every 3 years the water supply has been tested for bacteria and nitrates and determined to be at acceptable levels, in accordance with Env-Ws 313.01 for bacteria and Env-Ws 314.01 for nitrates.

(e) Following an inspection as described in He-P 812.09, a license shall be renewed if the department determines that the licensee:

- (1) Submitted an application containing all the items required by (c) and (d) above as applicable, prior to the expiration of the current license;
- (2) Has submitted a POC that has been accepted by the department and implemented by the licensee if deficiencies were cited at the last licensing inspection or investigation; and
- (3) Is found to be in compliance with RSA 151 and He-P 812 at the renewal inspection.

Source. #5514, eff 11-25-92; ss by #6530, eff 6-27-97, EXPIRED: 6-27-05

New. #9727-A, eff 6-18-10

He-P 812.07 ASC Construction, Modifications or Renovations.

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

- (1) A new building;
- (2) Structural alterations to any patient area;
- (3) Alterations that require approval from local or state authorities; and

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(4) Alterations that might affect compliance with the health and safety, fire or building codes, including but not limited to, fire suppression, detection systems and means of egress.

(b) The department shall review plans for construction, renovation or structural alterations of an ASC for compliance with all applicable sections of RSA 151 and He-P 812 and notify the applicant or licensee as to whether the proposed changes comply with these requirements.

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

(d) The ASC shall comply with all applicable licensing regulations when doing construction, modifications or alterations.

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

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

(2) The state building code as defined in RSA 155-A:1, IV, as amended by the building code review board pursuant to RSA 155-A:10, V.

(f) All ASCs newly constructed or renovated after the 2010 effective date of He-P 812 shall comply with the Outpatient Surgical Facilities chapter of the American Institute of Architects "Guidelines for Design and Construction of Health Care Facilities," 2010 edition. Existing ASCs shall be evaluated on a case by case basis as to compliance with current requirements.

(g) The completed building shall be subject to an inspection pursuant to He-P 812.09 prior to its use.

Source. #5514, eff 11-25-92; ss by #6530, eff 6-27-97,
EXPIRED: 6-27-05

New. #9727-A, eff 6-18-10

He-P 812.08 ASC Requirements for Organizational Changes.

(a) The ASC 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; or

(5) Affiliated parties or related parties.

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

(c) The ASC shall complete and submit a new application and obtain a new or revised license, license certificate or both, as applicable, prior to operating, for:

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- (1) A change in ownership; or
- (2) A change in the physical location.

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

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

- (1) The information specified in He-P 812.04(a)(10);
- (2) A resume identifying the name and qualifications of the new administrator; and
- (3) Copies of applicable licenses for the new administrator.

(f) Upon review of the materials submitted in accordance with (e) above, the department shall make a determination as to whether:

- (1) None of the factors in He-P 812.05(f) is true for the administrator; and
- (2) The administrator meets the qualifications for the position as specified in He-P 812.16(b).

(g) If the department determines that the new administrator does not meet the qualifications as specified in He-P 812.16(b), it shall so notify the ASC in writing so that a waiver can be sought or the program can search for a qualified candidate.

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

(i) The department shall review the information submitted under (h) above and determine if the added services can be provided under the ASC current license including physical plant restrictions.

(j) An inspection by the department shall be conducted prior to operation when there are changes in the following, including but not limited to:

- (1) Ownership, unless the current licensee has no outstanding administrative actions in process and there will be no changes made by the new owner in the scope of services provided; or
- (2) The physical location of the ASC, including when the change is within the current building.

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

(l) A revised license and license certificate shall be issued for changes in the ASC's name.

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

- (1) A change of administrator; or
- (2) When a waiver has been granted.

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

(o) The licensee shall return the previous license to the department within 10 days of the ASC changing its ownership, physical location, address or name.

Source. #5514, eff 11-25-92; ss by #6530, eff 6-27-97,
EXPIRED: 6-27-05

New. #9727-A, eff 6-18-10

He-P 812.09 Inspections.

(a) For the purpose of determining compliance with RSA 151 and He-P 812, 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 ASC; and
- (3) Any records required by RSA 151 and He-P 812.

(b) The department shall conduct an inspection to determine full compliance with RSA 151 and He-P 812, to include a clinical and a life safety inspection, prior to:

- (1) The issuance of an initial license;
- (2) A change in ownership except as allowed by He-P 812.08(j)(1);
- (3) A change in the licensee's physical location;
- (4) Occupation of space after construction, renovations or structural alterations; or
- (5) The renewal of a non-certified ASC 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.

Source. #5514, eff 11-25-92; amd by #6530, eff 6-27-97; amd
by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99;
paragraph (b)(7) EXPIRED: 6-27-05

New. #9727-A, eff 6-18-10

He-P 812.10 Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 812 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 patients as the rule from which a waiver is sought; and

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(4) The period of time for which the waiver is sought.

(b) Waivers shall not exceed 12 months, or the current license expiration date, except as allowed by He-P 812.17(e).

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

(1) Meets the objective or intent of the rule;

(2) Does not have the potential to negatively impact the health or safety of the patients; and

(3) Does not negatively affect the quality of patient 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 the waiver beyond the approved period of time, the licensee shall apply for a new waiver by submitting the information required by (a) above:

(1) When the licensee submits its application for license renewal pursuant to He-P 812.06(c); or

(2) At least 15 days prior to the expiration of the waiver if the waiver expires on a date other than the expiration date of the licensing certificate.

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

Source. #5514, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9727-A, eff 6-18-10

He-P 812.11 Complaints.

(a) The department shall investigate complaints that allege:

(1) A violation of RSA 151 or He-P 812;

(2) That an individual or entity is operating as a ASC without being licensed; or

(3) That an individual or entity is advertising or otherwise representing the ASC as having or performing services for which they are not licensed to provide, pursuant to RSA 151:2, III.

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

(1) The name and address of the ASC, 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 812.

(c) For the ASC, the department shall:

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- (1) Provide written notification of the results of the investigation to the licensee along with an inspection report if deficiencies were found as a result of the investigation; and
 - (2) Notify any other federal, state or local agencies of alleged violations of their statutes or rules based on the results of the investigation, as appropriate.
- (d) If the department determines that the complaint is unfounded or does not violate any statutes or rules, the department shall so notify the unlicensed individual or licensee and take no further action.
- (e) If the investigation results in deficiencies being cited, the licensee shall be required to submit a POC in accordance with He-P 812.12(c).
- (f) For the unlicensed individual or entity the department shall provide written notification to the owner or person responsible that includes:
- (1) The date of inspection;
 - (2) The reasons for the inspection; and
 - (3) Whether or not the inspection resulted in a determination that the services being provided require licensing under RSA 151:2, I(f).
- (g) The owner or person responsible shall be allowed 7 days from the date of receipt of the notice required by (f) above to respond to a finding that they are operating without a license or submit a completed application for a license, in accordance with RSA 151:7-a, II.
- (h) If the owner of an unlicensed ASC does not comply with (g) above, or if the department does not agree with the owner's response, the department shall:
- (1) Issue a written warning to immediately comply with RSA 151 and He-P 812; and
 - (2) Provide notice stating that the individual has the right to appeal the warning in accordance with RSA 151:7-a, III.
- (i) Any person or entity who fails to comply after receiving a warning as described in (h) above shall be subject to an action by the department for injunctive relief under RSA 151:17.
- (j) The fact that the department takes action for injunctive relief under RSA 151:17 shall not preclude the department from taking other action under RSA 151, He-P 812 or other applicable laws.
- (k) Complaint investigation files shall be confidential in accordance with RSA 151:13 and shall not be disclosed publicly but shall be released by the department on written request only:
- (1) To the department of justice when relevant to a specific investigation;
 - (2) To law enforcement when relevant to a specific criminal investigation;
 - (3) When a court of competent jurisdiction orders the department to release such information; or
 - (4) In connection with any adjudicative proceedings relative to the licensee.

Source. #5514, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9727-A, eff 6-18-10

He-P 812.12 Administrative Remedies.

(a) The department shall impose administrative remedies for violations of RSA 151, He-P 812 or other applicable licensing rules, including:

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

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

- (1) Identifies each deficiency;
- (2) Identifies the specific remedy(s) that has been proposed; and
- (3) Provides the licensee with the following information:
 - a. The right to a hearing in accordance with RSA 541-A and He-C 200 prior to the fine becoming final; and
 - b. The automatic reduction of a fine by 25% if the licensee waives the right to a hearing, the fine is paid within 10 days of the date on the written notice from the department and the deficiency has been corrected, or a POC has been accepted and approved by the department.

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

- (1) Upon receipt of a notice of deficiencies, the licensee shall submit a POC detailing:
 - a. How the licensee intends to correct each deficiency;
 - b. What measures will be put in place, or what system changes will be made to ensure that the deficiency does not recur; and
 - c. The date by which each deficiency shall be corrected;
- (2) The licensee shall submit a POC to the department within 21 days of the date on the letter that transmitted the inspection report unless the licensee requests, either verbally or in writing, and the department agrees, to extend that deadline, based on the following criteria:
 - a. The licensee demonstrates that he or she has made a good faith effort to develop and submit the POC within the 21 day period but has been unable to do so; and
 - b. The department determines that the health, safety or well-being of a patient will not be jeopardized as a result of granting the extension;
- (3) The department shall review and accept each POC that:
 - a. Achieves compliance with RSA 151 and He-P 812;
 - b. Addresses all deficiencies and deficient practices as cited in the inspection report;

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- c. Prevents a new violation of RSA 151 or He-P 812 as a result of the implementation of the POC; and
 - d. Specifies the date upon which the deficiencies will be corrected;
- (4) If the POC is acceptable, the department shall issue a license certificate or provide written notification of acceptance of the POC, whichever is applicable;
- (5) If the POC is not acceptable, the department shall notify the licensee in writing 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 patient will not be jeopardized as a result of granting the waiver;
- (7) The revised POC shall comply with (1) above and be reviewed in accordance with (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 (d) below and a fine in accordance with (f)(11) below;
- (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 a 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 812.12(b); and
 - b. Issued a directed POC in accordance with (d) below and shall be subject to a fine in accordance with (f)(12) below.
- (d) The department shall develop and impose a directed POC that specifies corrective actions for the licensee to implement when:
- (1) As a result of an inspection, deficiencies were identified that require immediate corrective action to protect the health and safety of the patients and personnel;

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(2) A revised POC is not submitted within 14 days of the written notification from the department; or

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

(e) If at the time of the next inspection the directed POC referenced in (d) above has not been implemented by the completion date stated in the directed POC, the department shall, as appropriate and taking into consideration the severity of the deficiencies that resulted in the directed POC as well as the ASC's history of receiving prior warnings and enforcement actions:

(1) Issue a warning that enforcement action will be taken if the POC is not implemented;

(2) Impose a fine;

(3) Deny the application for a renewal of a license; or

(4) Revoke or suspend the license in accordance with He-P 812.13.

(f) 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 provider;

(2) For a failure to cease operations after a denial of a license or after receipt of an order to cease and desist immediately, in violation of RSA 151:2 and RSA 541-A:30, the fine for an applicant, unlicensed provider or a licensee shall be \$2000.00;

(3) For advertising services or otherwise representing themselves as having a license to provide services that they are not licensed to provide, in violation of RSA 151:2, III, the fine for an applicant, licensee or unlicensed provider shall be \$500.00;

(4) For a failure to transfer a patient whose needs exceeds the services or programs provided by the ASC, in violation of RSA 151:5-a, the fine shall be \$500.00;

(5) For admission of a patient whose needs exceed the services or programs authorized by the ASC licensing classification, in violation of RSA 151:5-a, II, and He-P 812.18(a) and (b), 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 812.11(h), the fine shall be \$500.00;

(7) For a failure to submit a renewal application for a license prior to the expiration date, in violation of He-P 812.06(b), the fine shall be \$100.00;

(8) For a failure to notify the department prior to a change of ownership, in violation of He-P 812.08(a)(1), the fine 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 812.08(a)(2), the fine shall be \$500.00;

(10) For a refusal to allow access by the department to the ASC's premises, programs, services or records, in violation of He-P 812.09(a), the fine for an applicant, individual or licensee shall be \$2000.00;

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- (11) For a failure to submit a POC or revised POC, within 21 or 14 days, respectively, of the date on the letter that transmits the inspection report, in violation of He-P 812.12(c)(2) or (6), the fine for a licensee shall be \$100.00 unless an extension has been granted by the department;
- (12) For a failure to implement any POC that has been accepted or issued by the department, in violation of He-P 812.12(c)(11), the fine for a licensee shall be \$1000.00;
- (13) For a failure to establish, implement or comply with licensee policies, as required by He-P 812.14(d), the fine for a licensee shall be \$500.00;
- (14) For a failure to provide services or programs required by the licensing classification and specified by He-P 812.14(c), the fine for a licensee shall be \$500.00;
- (15) For falsification of information contained on an application or of any records required to be maintained for licensing, in violation of He-P 812.14(f), the fine shall be \$500.00 per offense;
- (16) For a failure to meet the needs of the patient, in violation of He-P 812.14(i)(1), the fine for a licensee shall be \$500.00;
- (17) For employing an administrator or other personnel who do not meet the qualifications for the position, in violation of He-P 812.16(b), the fine for a licensee shall be \$500.00;
- (18) For failure to report an adverse event as required by He-P 812.15(a), the fine for a licensee shall be \$2000.00 per occurrence;
- (19) For failure to report infections and process measures as identified and required by He-P 812.21(m) and (n), the fine for a licensee shall be \$1000.00 per occurrence;
- (20) When an inspection determines that a violation of RSA 151 or He-P 812 has the potential to jeopardize the health, safety or well-being of a patient, in addition to any other enforcement actions taken by the department, the fines assessed shall be as follows:
- a. If the same deficiency is cited within 2 years of the original deficiency, the fine for a licensee shall be double the initial fine, but not to exceed \$2000.00; and
 - b. If the same deficiency is cited a third time within 2 years of being fined in a. above, the fine for a licensee shall be triple the fine, not to exceed \$2000.00;
- (21) Each day that the individual or licensee continues to be in violation of the provisions of RSA 151 or He-P 812 shall constitute a separate violation and shall be fined in accordance with He-P 812.12(f); and
- (22) If the applicant or licensee is making good faith efforts to comply with (4), (6) or (17) above, the department shall not issue a daily fine.
- (g) Payment of any imposed fine to the department shall meet the following requirements:
- (1) Payment shall be made in the form of check or money order made payable to the "Treasurer, State of New Hampshire" or cash in the exact amount due; and
 - (2) Cash, money order, or certified check shall be required when an applicant or licensee has issued payment to the department by check, and such check was returned for insufficient funds.

Source. #5514, eff 11-25-92; ss by #6530, eff 6-27-97,
EXPIRED: 6-27-05

New. #9727-A, eff 6-18-10

He-P 812.13 Enforcement Actions and Hearings.

(a) At the time of imposing a fine, or denying, revoking or suspending a license, the department shall send to the applicant or licensee a written notice that sets forth:

- (1) The reasons for the proposed action;
- (2) The action to be taken by the department; and
- (3) The right of an applicant or licensee to a hearing in accordance with RSA 151:8 or RSA 541-A:30, III, as applicable, before the enforcement action becomes final.

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

- (1) An applicant or a licensee has violated provisions of RSA 151 or He-P 812, which violations have the potential to harm a patient's health, safety or well-being.
- (2) An applicant or a licensee has failed to pay a fine imposed under administrative remedies;
- (3) An applicant or a licensee has had a check returned to the department for insufficient funds and has not re-submitted the outstanding fee or fine in the form of cash, money order or certified check;
- (4) After being notified of and given an opportunity to supply missing information, an applicant or licensee fails to submit an application that meets the requirements of He-P 812.04;
- (5) An applicant, licensee or any representative or employee of the applicant or licensee:
 - a. Provides false or misleading information to the department;
 - b. Prevents or interferes, or fails to cooperate with any inspection or investigation conducted by the department; or
 - c. Fails to provide requested files or documents to the department;
- (6) The licensee failed to implement or continue to implement a POC that has been accepted or imposed by the department in accordance with He-P 812.12(d) and (e);
- (7) The licensee is cited a third time under RSA 151 or He-P 812 for the same violations within the last 5 inspections;
- (8) A licensee, including corporation officers or board members, has had a license revoked and submits an application during the 5-year prohibition period specified in (h) below;
- (9) Upon inspection, the applicant's premise is not in compliance with RSA 151 or He-P 812;
- (10) The department makes a determination that one or more of the factors in He-P 812.05(f) is true; or
- (11) The applicant or licensee fails to employ a qualified administrator or has not received a waiver allowing the employment of an administrator who does not meet all of the qualifications listed in He-P 812.16(b).

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

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

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

(f) If an immediate suspension is upheld, the licensee shall not resume operating until the department determines through inspection that compliance with RSA 151 and He-P 812 is achieved.

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

(h) When an ASC's license has been denied or revoked, the applicant, licensee or administrator shall not be eligible to reapply for a license or be employed as an administrator for at least 5 years, if the enforcement action pertained to their role in the ASC.

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

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

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

(j) Notwithstanding (i) 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 812.

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

(l) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 151, RSA 541-A:30, III, or He-P 812.

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

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

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

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

Source. #9727-A, eff 6-18-10

He-P 812.14 Duties and Responsibilities of All Licensees.

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

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(b) The licensee shall define, in writing, the scope and type of services to be provided by the ASC, which shall include at a minimum, the required services listed in He-P 812.18.

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

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

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

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

(g) The licensee shall not:

(1) Advertise or otherwise represent itself as operating a ASC, unless it is licensed; and

(2) Advertise that it provides services that it is not authorized to provide.

(h) The licensee shall comply with all conditions of warnings and administrative remedies issued by the department, and all court orders.

(i) Licensees shall:

(1) Meet the needs of the patients during those hours that the patients are in the care of the ASC;

(2) Initiate action to maintain the ASC in full compliance at all times with all relevant health and safety requirements contained in applicable federal, state and local laws, rules, regulations, and ordinances;

(3) Establish, in writing, a chain of command that sets forth the line of authority for the operation of the ASC;

(4) Appoint an administrator and medical director;

(5) Verify the qualifications of all personnel;

(6) Provide sufficient numbers of personnel who are present in the ASC and are qualified to meet the needs of patients during all hours of operation;

(7) Provide the ASC with sufficient supplies, equipment and lighting to meet the needs of the patients; and

(8) Implement any POC that has been accepted by the department.

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

(1) Has a guardian appointed by a court of competent jurisdiction;

(2) Has a durable power of attorney for health care that has been activated; or

(3) Is an un-emancipated minor.

(k) If the licensee accepts a patient who is known to have a disease reportable under He-P 301 or an infectious disease, which is any disease caused by the growth of microorganisms in the body which might or

might not be contagious, the licensee shall follow the required procedures for the care of the patients, as specified by the United States Centers for Disease Control and Prevention “2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings” (June 2007).

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

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

- (1) The current license certificate issued in accordance with RSA 151:2;
- (2) All inspection reports issued in accordance with He-P 812.09(b), for the previous 12 months;
- (3) A copy of the patients’ bill of rights;
- (4) A copy of the licensee’s policies and procedures relative to the implementation of patient rights and responsibilities as required by RSA 151:20;
- (5) The licensee’s floor plan for fire safety, evacuation and emergencies, identifying the location of, and access to all fire exits; and
- (6) A copy of the licensee’s complaint procedure, including the address and phone number of the department to which complaints may also be made, which shall also be posted on the facility website if available.

(n) The licensee shall admit and allow any department representative to inspect the ASC and all programs and services that are being provided at any time for the purpose of determining compliance with RSA 151 and He-P 812 as authorized by RSA 151:6 and RSA 151:6-a.

(o) Licensees shall, in accordance with He-P 812.15:

- (1) Report all adverse events to the department as required by He-P 812.15(a)-(c);
- (2) Submit additional information if required by the department; and
- (3) Report the event to other agencies as required by law.

(p) A licensee shall, upon request, provide a patient or the patient’s guardian or agent, if any, with a copy of his or her patient record pursuant to the provisions of RSA 151:21, X.

(q) All personnel records required for licensing shall be legible, current, accurate and available to the department during an inspection or investigation conducted in accordance with RSA 151:6 and RSA 151:6-a.

(r) Any licensee that maintains electronic records shall develop written policies and procedures designed to protect the privacy of patients and personnel that, at a minimum, include:

- (1) Procedures for backing up files to prevent loss of data;
- (2) Safeguards for maintaining the confidentiality of information pertaining to patients and personnel; and
- (3) Systems to prevent tampering with information pertaining to patients and personnel.

(s) The licensee shall develop policies and procedures regarding the release of information contained in patient records.

(t) The licensee shall provide cleaning and maintenance services, as needed, to protect patients, personnel, and the public.

(u) The building housing the ASC shall comply with all state and local:

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

(v) Smoking shall be prohibited in the ASC as required by RSA 155:66, I(b).

(w) Upon request, the licensee shall give a patient and the patient's guardian, agent, or personal representative, as applicable, a listing of all known applicable charges and identify what care and services are included in the charge.

Source. #9727-A, eff 6-18-10

He-P 812.15 Adverse Event Reporting.

(a) Pursuant to RSA 151:37-38, the ASC administrator or designee shall report to the department the following adverse events:

(1) Surgical events including:

- a. Surgery performed on a wrong body part that is not consistent with the documented informed consent for that patient. Reportable events under this subparagraph do not include situations requiring prompt action that occur in the course of surgery or situations where urgency precludes obtaining informed consent;
- b. Surgery performed on the wrong patient;
- c. The wrong surgical procedure performed on a patient that is not consistent with the documented informed consent for that patient. Reportable events under this subparagraph do not include situations requiring prompt action that occur in the course of surgery or situations where urgency precludes obtaining informed consent;
- d. Retention of a foreign object in a patient after surgery or other procedure, excluding objects intentionally implanted as part of a planned intervention and objects present prior to surgery that are intentionally retained; and
- e. Death during or immediately after surgery of a normal, healthy patient who has no organic, physiologic, biochemical, or psychiatric disturbance and for whom the pathologic processes for which the operation is to be performed are localized and do not entail a systemic disturbance;

(2) Product or device events including:

- a. Patient death or serious disability associated with the use of contaminated drugs, devices, or biologics provided by the facility when the contamination is the result of generally detectable contaminants in drugs, devices, or biologics regardless of the source of the contamination or the product;

- b. Patient death or serious disability associated with the use or function of a device in patient care in which the device is used or functions other than as intended. "Device" includes, but is not limited to, catheters, drains, and other specialized tubes, infusion pumps, and ventilators; and
 - c. Patient death or serious disability associated with intravascular air embolism that occurs while being cared for in a facility, excluding deaths associated with neurosurgical procedures known to present a high risk of intravascular air embolism;
- (3) Patient protection events including:
- a. An infant discharged to the wrong person;
 - b. Patient death or serious disability associated with patient disappearance, excluding events involving adults who have decision-making capacity; and
 - c. Patient suicide or attempted suicide resulting in serious disability while being cared for in a facility due to patient actions after admission to the facility, excluding deaths resulting from self-inflicted injuries that were the reason for admission to the facility;
- (4) Care management events including:
- a. Patient death or serious disability associated with a medication error, including, but not limited to, errors involving the wrong drug, the wrong dose, the wrong patient, the wrong time, the wrong rate, the wrong preparation, or the wrong route of administration, excluding reasonable differences in clinical judgment on drug selection and dose;
 - b. Patient death or serious disability associated with a hemolytic reaction due to the administration of ABO/HLA-incompatible blood or blood products;
 - c. Maternal death or serious disability associated with labor or delivery in a low-risk pregnancy while being cared for in a facility, including events that occur within 42 days post delivery and excluding deaths from pulmonary or amniotic fluid embolism, acute fatty liver of pregnancy, or cardiomyopathy;
 - d. Patient death or serious disability directly related to hypoglycemia, the onset of which occurs while the patient is being cared for in a facility;
 - e. Death or serious disability, including kernicterus, associated with failure to identify and treat hyperbilirubinemia in neonates during the first 28 days of life. "Hyperbilirubinemia" means bilirubin levels greater than 30 milligrams per deciliter;
 - f. Stage 3 or 4 ulcers acquired after admission to a facility, excluding progression from stage 2 to stage 3 if stage 2 was recognized upon admission;
 - g. Patient death or serious disability due to spinal manipulative therapy; and
 - h. Artificial insemination with the wrong donor sperm or wrong egg;
- (5) Environmental events including:
- a. Patient death or serious disability associated with an electric shock while being cared for in a facility, excluding events involving planned treatments such as electric countershock;

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- b. Any incident in which a line designated for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances;
- c. Patient death or serious disability associated with a burn incurred from any source while being cared for in a facility;
- d. Patient death or serious disability associated with a fall while being cared for in a facility; and
- e. Patient death or serious disability associated with the use or lack of restraints or bedrails while being cared for in a facility; and

(6) Criminal events including:

- a. Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed health care provider;
- b. Abduction of a patient of any age;
- c. Sexual assault on a patient within or on the grounds of a facility; and
- d. Death or significant injury of a patient or staff member resulting from a physical assault that occurs within or on the grounds of a facility.

(b) If the ASC suspects an adverse event occurred, the ASC administrator or designee shall send a report to the department in electronic or paper format, within 15 days, including:

- (1) ASC information;
- (2) Patient information;
- (3) Event information; and
- (4) Type of occurrence as listed in (a) above.

(c) For events reported in (b) above the ASC shall within 60 days provide the department:

- (1) An analysis that includes the type of harm and contributing factors; and
- (2) A corrective action plan that includes what corrective actions are planned, who is responsible for implementation, when the action will be implemented and what measurements will be used to evaluate the corrective action plan or the justification for not implementing a corrective action plan if the ASC determines that one is not required.

(d) If the ASC suspects that it received a patient from a sending ASC or hospital that was subject to an adverse event, then the receiving ASC administrator or designee shall notify the sending ASC or hospital's administrator or designee and the department. The department shall inform the sending ASC or hospital that a report is required in accordance with (b) above.

(e) Upon receipt of a report of an adverse event, the department shall:

- (1) Review information for completeness;
- (2) Review corrective action plan for system changes that reduce the risk repeat of similar adverse events;

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- (3) Communicate specific concerns to the ASC if the department does not find the corrective action plan credible;
- (4) Track and analyze adverse events for trends, underlying system problems; and
- (5) Provide information and make referrals to other state agencies as appropriate.

Source. #9727-A, eff 6-18-10

He-P 812.16 Organization and Administration.

(a) Each ASC shall have a governing body whose duties include:

- (1) Management and control of the operation of the ASC;
- (2) Assessment and improvement of the quality of care and services;
- (3) Appointment of the ASC administrator;
- (4) Adoption of policies and procedures defining responsibilities for the operation of the ASC and the establishment of a medical staff;
- (5) Approval of medical staff policies and procedures establishing the medical staff responsibilities;
- (6) Responsibility for management of the overall operation and fiscal viability of the ASC;
- (7) Responsibility for determination of the qualifications for appointment for all managers, medical staff and personnel; and
- (8) Ensuring compliance with all relevant health and safety requirements of federal, state and local laws rules and regulations.

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

(1) Meets one of the following qualifications:

- a. The administrator shall have a master's degree from an accredited institution in business administration or a health related field;
- b. The administrator shall have a bachelor's degree from an accredited institution and at least 2 years of experience working in a health related field; or
- c. The administrator shall be a registered nurse and at least 3 years of experience working in a health related field; and

(2) Shall be responsible to the governing body for the daily management and operation of the ASC including:

- a. Management and fiscal matters;
- b. Implementing the policies and procedures adopted by the governing body;
- c. The employment and termination of personnel necessary for the efficient operation of the ASC;

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- d. The designation of an alternate, in writing, who shall be responsible for the daily management and operation of the ASC in the absence of the administrator;
- e. Attendance at meetings of the governing body, medical staff and personnel, to serve as a liaison to the governing body;
- f. The planning, organizing, and directing of such other activities as may be delegated by the governing body;
- g. The delegation of responsibility to subordinates as appropriate;
- h. Ensuring development and implementation of ASC policies and procedures on:
 - 1. Patient's rights as required by RSA 151:20;
 - 2. Advanced directives as required by RSA 137-J;
 - 3. Discharge planning as required by RSA 151:26;
 - 4. Organ and tissue donor identification and procurement, as applicable;
 - 5. Withholding of resuscitative services from patients pursuant to RSA 137-H and RSA 137-J; and
 - 6. Adverse event reporting; and
- i. Notifying the department, directly or through delegation, as specified in He-P 812.15, of any adverse event involving a patient; and

(3) May hold more than one position within the ASC provided the individual meets the qualifications of each position.

(c) Each ASC shall have a medical staff in accordance with the policies and procedures established under (a)(4) above.

(d) There shall be a full-time director of nursing services who:

- (1) Is currently licensed in the state of New Hampshire pursuant to RSA 326-B, or licensed pursuant to the multi-state compact;
- (2) Has a minimum of 4 years relevant experience;
- (3) Is responsible for:
 - a. Establishment of standards of nursing practice used in the ASC;
 - b. Ensuring that the admission process and patient assessment process coordinates patient requirements for nursing care with available nursing resources;
 - c. Participating with the governing body, administrator and medical staff to improve the quality of nursing care at the ASC; and
 - d. Nursing care as authorized by their nurse practice act and according to RSA 326-B; and
- (4) May hold more than one position within the ASC provided the director of nursing meets the qualifications of each position.

Source. #9727-A, eff 6-18-10

He-P 812.17 Personnel.

- (a) The licensee shall develop a job description for each position at the ASC containing:
- (1) Duties of the position;
 - (2) Physical requirements of the position; and
 - (3) Education and experience requirements of the position.
- (b) For all new hires, the licensee shall:
- (1) Obtain and review a criminal records check from the New Hampshire department of safety in accordance with RSA 151:2-d;
 - (2) Review the results of the criminal records check in accordance with (c) below;
 - (3) Verify the qualifications of all applicants prior to employment; and
 - (4) Verify that the applicant is not on the List of Excluded Individuals/Entities, maintained by the U.S. Department of Health and Human Services Office of Inspector General.
- (c) Unless a waiver is granted in accordance with He-P 812.10 and (d) below, the licensee shall not make a final offer of employment for any position if the individual:
- (1) Has been convicted of any felony in this or any other state;
 - (2) Has been convicted for sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation;
 - (3) Has had a finding by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation of any person; or
 - (4) Otherwise poses a threat to the health, safety or well-being of patients.
- (d) The department shall grant a waiver of (c) above if, after reviewing the underlying circumstances, it determines that the person does not pose a threat to the health, safety or well-being of patients.
- (e) The waiver in (d) above shall be permanent unless additional convictions or findings under (c)(1)-(4) above occur.
- (f) The licensee shall notify the department when the employee requiring a waiver in (d) above is no longer employed.
- (g) The department shall review the information in (c) above and notify the licensee that the individual can no longer be employed if, after investigation, it determines that the individual poses a threat to the health, safety or well-being of a patient.
- (h) All personnel shall:
- (1) Meet the educational and physical qualifications of the position as listed in their job description;
 - (2) Not have been convicted of, nor be permitted to maintain their employment if they have been convicted of, a felony, sexual assault, other violent crime, assault, fraud, abuse, neglect or

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- exploitation of any person in this or any other state by a court of law or had a complaint investigation for abuse, neglect, or exploitation adjudicated and founded by the department unless a waiver has been granted by the department;
- (3) Be licensed, registered or certified as required by state statute and as applicable;
 - (4) Receive an orientation within the first 3 days of work or prior to the assumption of duties that includes:
 - a. The ASC's policies on rights and responsibilities and complaint procedures as required by RSA 151:20;
 - b. The duties and responsibilities, policies procedures and guidelines, of the position they were hired for;
 - c. The ASC's infection prevention program;
 - d. The ASC's fire, evacuation and emergency plans which outline the responsibilities of personnel in an emergency; and
 - e. Mandatory reporting requirements for abuse or neglect such as those found in RSA 161-F and RSA 169-C:29;
 - (5) Complete a mandatory annual in-service education, which includes a review of the ASC's:
 - a. Policies and procedures on patient rights and responsibilities and abuse or neglect;
 - b. Infection prevention; and
 - c. Education program on fire and emergency procedures; and
 - (6) Sign a statement at the time the initial offer of employment is made and then annually thereafter, stating that they:
 - a. Do not have a felony conviction in this or any other state;
 - b. Have not been convicted of a sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation or pose a threat to the health, safety or well-being of a patient; and
 - c. Have not had a finding by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation of any person.
- (i) Prior to having contact with patients, personnel shall:
- (1) Submit to the licensee proof of a physical examination or a health screening conducted not more than 12 months prior to employment which shall include at a minimum the following:
 - a. The name of the examinee;
 - b. The date of the examination;
 - c. Whether or not the examinee has a contagious illness or any other illness that would affect the examinee's ability to perform their job duties;
 - d. Results of a 2-step tuberculosis (TB) test, Mantoux method or other method approved by the Centers for Disease Control (CDC); and

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- e. The dated signature of the licensed health practitioner;
- (2) Be allowed to work while waiting for the results of the second step of the TB test when the results of the first step are negative for TB; and
- (3) Comply with the requirements of the “Centers for Disease Control Guidelines for Preventing the Transmission of Tuberculosis in Health Facilities Settings” (2005 edition) if the person has either a positive TB test, or has had direct contact or potential for occupational exposure to M. tuberculosis through shared air space with persons with infectious tuberculosis.
- (j) Personnel shall have a symptomatology screen or a TB test if they have direct contact with patients who have a history of TB or a positive skin test.
- (k) Current, separate and complete personnel files shall be maintained and stored in a secure and confidential manner.
- (l) The personnel file shall include the following:
 - (1) A completed application for employment or a resume, including:
 - a. Identification data; and
 - b. The education and work experience of the employee;
 - (2) A signed statement acknowledging the receipt of the ASC’s policy setting forth the patient’s rights and responsibilities, and acknowledging training and implementation of the policy as required by RSA 151:20;
 - (3) A job description signed by the individual that identifies the:
 - a. Position title;
 - b. Qualifications and experience; and
 - c. Duties required by the position;
 - (4) Record of satisfactory completion of the orientation program required by (h)(4) above and any required annual continuing education, if any;
 - (5) A copy of each current New Hampshire license, registration or certification in health care field and CPR certification, if applicable;
 - (6) Documentation that the required physical examination or health screening and TB test results or radiology reports of chest x-rays, if required, have been completed by the appropriate health professionals;
 - (7) Documentation of annual in-service education as required by (h)(5) above;
 - (8) The statement signed at the time the initial offer of employment is made and then annually thereafter, as required by (h)(6) above;
 - (9) Documentation of the criminal records check; and
 - (10) Documentation that the individual is not on the List of Excluded Individuals/Entities, maintained by the U.S. Department of Health and Human Services Office of Inspector General.

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

(n) An individual with a waiver from the department referenced in (m) above shall sign the statement required by (l)(8) to cover the period of time since the waiver was granted.

Source. #9727-A, eff 6-18-10

He-P 812.18 Required Services.

(a) ASCs shall determine the scope of surgical services that shall be performed in the surgical suite.

(b) The ASC shall determine the types of anesthesia to be utilized for each type of surgical procedure based on what is allowed in the Outpatient Surgical Facilities chapter of the American Institute of Architects "Guidelines for Design and Construction of Health Care Facilities," 2010 edition, and the specific classification of operating rooms described in He-P 812.24(ae). Once determined, the ASC shall assure its availability in the surgical suite. Flammable anesthetics shall not be used in an ASC.

(c) The ASC shall ensure the availability of sufficient personnel, with the required skills and experience, to provide the services in (a) above.

(d) The licensee shall have a policy governing CPR training and use.

(e) The ASC shall have a surgical suite, which shall be a separate unit, physically set apart from all other departments.

(f) The surgical suite shall contain the following:

(1) At least one operating room equipped for general operating use within the scope of surgical services determined by the ASC in accordance with (a) above;

(2) Facilities for sterilization, scrubbing and clean-up, separate from the operating room;

(3) Clean, sterile, soiled or decontamination rooms which shall be separate and distinct from each other;

(4) Appropriate storage space for sterile supplies, instruments, anesthesia and medications;

(5) Emergency lighting;

(6) Ventilation, including air exchanges, humidity and temperature controls, which shall meet the requirements of the Outpatient Surgical Facilities chapter of the American Institute of Architects "Guidelines for Design and Construction of Health Care Facilities," 2010 edition, and/or the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 170-2008 "Ventilation of Health Care Facilities" as adopted by the commissioner of the department of safety under Saf-C 6000 as part of NFPA 101; and

(7) Space routinely used for administering inhalation anesthesia and inhalation analgesia, which shall be served by a scavenging system to vent waste gases.

(g) The ASC shall have appropriately certified or licensed supervisory personnel present during the procedures being performed.

(h) No operation shall be performed until:

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- (1) The patient has had a physical examination and medical history completed;
- (2) Any indicated laboratory and x-ray examinations have been completed; and
- (3) The preoperative diagnosis has been recorded in the patient's record.

(i) The ASC shall complete discharge planning on all patients admitted to the ASC including the provision of verbal and written instructions to the patient, and/or personal representative, agent or guardian as applicable.

(j) Discharge planning shall include, as applicable:

- (1) The patient's medication needs upon discharge;
- (2) The need for medical equipment, special diets, or potential food-drug interactions; and
- (3) The need for home health services upon discharge.

(k) The ASC shall have a procedure for the immediate transfer to a hospital, of patients requiring emergency medical care beyond the capabilities of the ASC.

Source. #9727-A, eff 6-18-10

He-P 812.19 Patient Records.

(a) A patient record shall be maintained for each patient accepted for treatment by the facility.

(b) Patient records shall be:

- (1) Current and maintained in detail based on services rendered to the patient; and
- (2) Signed, either written or electronically, by all individuals providing care and treatment.

(c) Patient records shall include at a minimum:

(1) Identification data including the patient's:

- a. Name;
- b. Home address;
- c. Telephone number;
- d. Emergency contact address and telephone number;
- e. Date of birth; and
- f. Guardian or agent as applicable;

(2) A signed acknowledgment of receipt of the patients' bill of rights by the patient, guardian, or agent;

(3) A written or electronic record of a health examination by a licensed practitioner;

(4) All medical orders;

(5) Documentation of all services provided including signed notes by:

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- a. Nursing personnel;
- b. Physicians; or
- c. Other health professionals authorized by ASC policy; and

(6) Laboratory, x-rays or results of other diagnostic tests.

(d) Patient records shall be available to the professional staff and health care workers and any other person authorized by law or rule to review such records.

(e) Patient records shall be retained, accessible and stored in locked containers, cabinets, rooms or supervised areas.

(f) ASC policy shall determine the method by which release of information from patient records shall occur.

(g) Patient records shall be safeguarded against loss or unauthorized use by implementation of appropriate use, handling and storage procedures.

(h) Patient records shall be retained 7 years after the discharge of a patient. In the case of minors, patient records shall be retained until at least one year after reaching age 18, but in no case shall they be retained for less than 7 years after discharge.

(i) The ASC shall arrange for the storage of and access to medical records for 7 years in the event the ASC ceases operation.

(j) Electronic records shall be maintained according to current HIPAA regulations at 45 CFR Parts 160 and 164.

Source. #9727-A, eff 6-18-10

He-P 812.20 Infection Control.

(a) The licensee shall develop and implement an infection control program that educates and provides procedures for the prevention, control and investigation of infectious and communicable diseases.

(b) The infection control program shall include documentation procedures for:

- (1) Proper hand washing techniques;
- (2) The utilization of standard precautions, as specified by the United States Centers for Disease Control and Prevention “2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings,” June 2007;
- (3) The management of patients with infectious or contagious diseases or illnesses;
- (4) The handling, transport and disposal of those items identified as infectious waste in Env-Sw 103.28;
- (5) Reporting of infectious and communicable diseases as required by He-P 301;
- (6) Evaluating and revising the infection control program in accordance with current CDC recommended actions;
- (7) Maintenance of a sanitary physical environment; and

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- (8) Infection control policies specific to each department.
- (c) The infection control education program shall:
 - (1) Be completed by all personnel on an annual basis; and
 - (2) Address the:
 - a. Cause of infections;
 - b. Effect of infections;
 - c. Transmission of infections; and
 - d. Prevention and containment of infections.
- (d) Personnel infected with a disease or illness transmissible through food, saliva or droplets, shall not provide direct care in any capacity until they are no longer contagious.
- (e) Personnel infected with scabies or lice shall not provide direct care to patients until such time as they are no longer infected.
- (f) Pursuant to RSA 141-C:1, employees with a newly positive Mantoux tuberculosis skin test or a diagnosis of suspected active pulmonary or laryngeal tuberculosis shall be excluded from the workplace until a diagnosis of tuberculosis is excluded or until the employee is receiving tuberculosis treatment and has been determined to be noninfectious by a licensed practitioner.
- (g) Employees with an open wound who provide direct care in any capacity shall cover the wound at all times by an impermeable, durable, tight-fitting bandage.
- (h) The licensee shall immunize all consenting personnel for influenza in accordance with RSA 151:9-b and report immunization data to the department's immunization program.
- (i) The ASC shall have available space, supplies and equipment for proper handling of suspected or actual infectious conditions.
- (j) The ASC shall require that licensed practitioners evaluate all patients at risk for an infection or communicable disease to ensure the detection or presence of same.
- (k) The ASC administrator shall appoint an infection control officer who:
 - (1) Shall receive reports of communicable and infectious diseases; and
 - (2) Shall report to the director of the division of public health services all diseases for which reporting is required under RSA 141-C.
- (l) The ASC shall have a policy requiring employees to make a report to the infection control officer if the employee suspects that they, another employee or patient has a communicable disease.
- (m) The ASC shall identify, track, and report infections, as required by RSA 151:33 and He-P 309.

Source. #9727-A, eff 6-18-10; amd by #10079, eff 1-26-12

He-P 812.21 Quality Assessment and Performance Improvement.

- (a) The ASC shall establish an interdisciplinary quality assessment and performance improvement committee which:

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- (1) Shall meet at least quarterly to evaluate quality assessment and performance improvement activities; and
 - (2) Shall make recommendations to the governing body to improve the quality of care.
- (b) Quality assessment and performance improvement activities shall include:
- (1) Review of patterns and trends of activities which affect the quality of care;
 - (2) Ensuring that quality control logs for preventive maintenance and safety checks are maintained for all equipment according to manufacturer's recommendations and/or code requirements;
 - (3) Monitoring and evaluation of the quality of patient care and patient care services in the ASC which shall include:
 - a. Monitoring of medication use and review of pharmacy activity in the ASC;
 - b. Review of patient record quality;
 - c. Review of blood use in the ASC, as applicable; and
 - d. Review of other functions such as risk management, infection control, disaster planning, ASC safety and utilization review; and
 - (4) Reviewing and making recommendations for improvement in areas such as:
 - a. Infection surveillance;
 - b. Morbidity;
 - c. Mortality;
 - d. Monitoring of personnel quality control practices in each service; and
 - e. Adverse events in accordance with He-P 802.15.

Source. #9727-A, eff 6-18-10

He-P 812.22 Sanitation.

- (a) The licensee shall maintain a clean, safe and sanitary environment throughout the licensed ASC premises.
- (b) The furniture, floors, ceilings, walls, and fixtures shall be clean, sanitary and in good repair.
- (c) A supply of potable water shall be available for human consumption.
- (d) A supply of hot and cold running water shall be available at all times and precautions such as temperature regulation shall be taken to prevent a scalding injury to the patients.
- (e) Hot water shall be of a high enough temperature to ensure sanitation when used for laundry, as required in the American Institute of Architects "Guidelines for the Design and Construction of Health Care Facilities," 2010 edition, and summarized as follows:

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- (1) 105–120 degrees Fahrenheit for clinical areas, representing the minimum and maximum allowable temperatures; and
 - (2) 160 degrees Fahrenheit for laundry by steam jet or separate booster heater, unless a proven processes which allows cleaning and disinfection of linen with decreased water temperatures is used which meets the designed water temperatures specified by the manufacturer.
- (f) All patient bathing and toileting facilities shall be cleaned and disinfected to prevent illness or contamination.
- (g) Cleaning solutions, compounds and substances considered hazardous or toxic materials, as defined in RSA 147-A:2, VII, shall be distinctly labeled and legibly marked so as to identify the contents and stored in a place separate from food, medications and program supplies.
- (h) Toxic materials shall not be used in a way that contaminates food, equipment or utensils or in any way other than in full compliance with the manufacturer’s labeling.
- (i) Solid waste, garbage and trash shall be stored in a manner to make it inaccessible to insects, rodents, and outdoor animals.
- (j) In-house trash and garbage receptacles shall be emptied in a timely manner and lined, or cleaned and disinfected after emptying.
- (k) The following requirements shall be met for laundry services:
- (1) Clean linen shall be stored in a clean area and separated from soiled linens at all times;
 - (2) Soiled materials, linens and clothing shall be transported in a laundry bag, sack or container and washed in a sanitizing solution used in accordance with the manufacturer’s recommendations; and
 - (3) Soiled linens and clothing which are considered contaminated with infectious waste under Env-Sw 103.28 shall be handled as infectious waste.
- (l) Laundry rooms and bathrooms shall have non-porous floors.
- (m) Clean supplies shall be stored in dust-free and moisture-free storage areas.
- (n) Any ASC that has its own water supply and whose water has been tested and has failed to meet the acceptable levels identified in this section, or as required by the department of environmental services, shall notify the department upon receipt of notice of a failed water test.

Source. #9727-A, eff 6-18-10

He-P 812.23 Pharmacy and Medications.

- (a) Medications shall be administered only by a person licensed to do so by the state of NH.
- (b) An emergency drug cart shall be maintained by a licensed nurse or physician, including being inventoried, in accordance with the written policy of the ASC.
- (c) All medications shall be stored in a clean, well-organized cabinet or closet which shall be locked when not in use.
- (d) Appropriate security provisions shall be made for medications requiring refrigeration.

(e) Security provisions such as locked drawers shall be made for individual physician samples if no central storage location is established.

(f) Schedule I and II drugs scheduled in accordance with RSA 318-B:1-a shall be stored in a locked compartment within the locked medicine cabinet or closet.

(g) Disposal of outdated medications and controlled drugs shall be in accordance with state and local ordinances and the provisions of RSA 318-B and Ph 707.

Source. #9727-A, eff 6-18-10

He-P 812.24 Physical Environment.

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

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

(1) Maintain a temperature of at least 55 degrees Fahrenheit during the day if patient(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.

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

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

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

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

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

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

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

a. They shall be chimney or vent connected;

b. They shall take air for combustion directly from outside; and

c. They shall be designed and installed to provide for complete separation of the combustion system from the atmosphere of the occupied area; and

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

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

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

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- (h) Screens shall be provided for doors and windows that are left open to the outside.
- (i) Doors that are self-closing and remain closed when not in use shall be exempt from the requirement in (h) above.
- (j) The ASC shall have a telephone to which the patients have access.
- (k) Toilet and bathing facilities shall be provided to meet patient needs in relation to the number, acuity, and gender of the patients.
- (l) Separate toilet facilities with hand washing sinks shall be provided for personnel and visitors.
- (m) All toilets shall be vented out-of-doors.
- (n) Each bathroom shall be equipped with:
 - (1) Soap dispensers;
 - (2) Paper towels or a hand-drying device providing heated air; and
 - (3) Hot and cold running water.
- (o) All showers and tubs shall have slip resistant floors and surfaces which are intact, easily cleanable, and impervious to water.
- (p) All bathroom and closet door latches or locks shall be designed for easy opening from the inside and outside in an emergency.
- (q) The ASC shall comply with all state and local codes and ordinances for:
 - (1) Zoning;
 - (2) Building;
 - (3) Health;
 - (4) Fire;
 - (5) Waste disposal; and
 - (6) Water.
- (r) The ASC shall be accessible at all times of the year.
- (s) The ASC shall provide housekeeping and maintenance adequate to protect patients, personnel and the public.
- (t) Reasonable precautions, such as repair of holes and caulking of pipe channels, shall be taken to prevent the entrance of rodents and vermin.
- (u) Doors shall be of such width as to permit removal of a patient in a bed.
- (v) Ventilation shall be provided throughout the entire ASC and, whenever necessary, mechanical means such as fans shall be provided to remove excessive heat, moisture, objectionable odors, dust, or explosive or toxic gases.

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(w) There shall be a back-up generator system to provide emergency power pursuant to the following, as adopted by the commissioner of the department of safety in Saf-C 6000:

- (1) The Electrical Systems chapter of NFPA 99, Health Care Facilities Code; and
- (2) The Standard for Emergency and Standby Power Systems, NFPA 110.

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

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

(z) Any locking mechanism utilized by the facility on egress doors shall comply with the Ambulatory Health Care Occupancy Chapter of NFPA 101 as adopted by the commissioner of the department of safety under Saf-C 6000.

(aa) The ASC shall maintain a system for sterilization of equipment and supplies as follows:

- (1) The sterilization system shall be checked for effective sterilization in accordance with the manufacturer's recommendation; and
- (2) The results of these quality control tests shall be documented.

(ab) The ASC shall have a storage room for clean/sterile supplies, including packs, which meets the following requirements:

- (1) There shall be provisions for ventilation, humidity, and temperature control;
- (2) Sterile supplies and equipment shall not be mixed with unsterile supplies; and
- (3) Sterile supplies shall be stored in dustproof and moisture free, labeled containers or cupboards.

(ac) Signs shall be provided at all entrances to restricted areas and shall clearly indicate that surgical attire is required.

(ad) The ASC shall be divided into 3 designated areas, unrestricted, semi-restricted, and restricted, which are defined by the physical activities performed in each area and by the Outpatient Surgical Facilities chapter of the American Institute of Architects "Guidelines for Design and Construction of Health Care Facilities," 2010 edition.

(ae) The size of the operating rooms (OR) shall depend on the level of care and equipment offered, as follows:

- (1) Class A ORs, which are minor surgical procedure rooms, shall:
 - a. Have a minimum floor area of 150 square feet;
 - b. Be located in the restricted corridors of the surgical suite or in an unrestricted corridor adjacent to the surgical suite;
 - c. Permit minor surgical procedures performed under topical and local infiltration blocks with or without oral or intramuscular preoperative sedation; and

d. Not permit spinal, epidural axillary, stellate ganglion blocks, regional blocks such as interscalene, supraclavicular, infraclavicular and intravenous regional anesthesia;

(2) Class B ORs, which are intermediate surgical procedure rooms, shall:

- a. Have a minimum floor area of 250 square feet exclusive of vestibule and fixed casework;
- b. Be located within the restricted corridors of surgical suites; and
- c. Provide for minor or major surgical procedures performed in conjunction with oral or intravenous sedation or under analgesic or dissociative drugs; and

(3) Class C ORs, which are major surgical procedure rooms, shall:

- a. Have a minimum clear area of 400 square feet exclusive of vestibule and fixed casework;
- b. Be located within the restricted corridors of the surgical suite; and
- c. Provide for major surgical procedures that require general or regional block anesthesia and support of vital bodily functions.

(af) Ceiling finishes in semirestricted areas, such as airborne infection isolation rooms, protective environment rooms, clean corridors, central sterile supply spaces, specialized radiographic rooms, and minor surgical procedure rooms, shall be smooth, scrubbable, nonabsorptive, nonperforated, capable of withstanding cleaning with chemicals, and without crevices that can harbor mold and bacterial growth.

(ag) If lay-in ceiling is provided in semirestricted areas, it shall be gasketed or clipped down to prevent the passage of particles from the cavity above the ceiling plane into the semirestricted environment. Perforated, tegular, serrated cut, or highly textured tiles shall not be permitted.

(ah) Ceiling finishes in restricted areas such as operating rooms shall be monolithic, scrubbable, and capable of withstanding chemicals. Cracks or perforations in these ceilings shall not be permitted.

Source. #9727-A, eff 6-18-10

He-P 812.25 Life Safety and Fire Safety Procedures.

(a) The ASC administrator or designee shall appoint a safety committee to include representatives from administration, clinical services and support services.

(b) The safety committee shall:

(1) Appoint a safety officer who shall:

- a. Inspect the ASC at least semi-annually to assure that all safety precautions are met; and
- b. Report to the safety committee any findings noted during the inspections;

(2) Develop or approve written policies and procedures covering all matters of safety and fire protection and an emergency response plan, including:

- a. The emergency procedures required by the emergency response plan shall include, but are not limited to, evacuation routes, emergency notification numbers and emergency instructions and shall be posted in locations accessible to personnel and visitors;
- b. The ASC fire safety plan shall provide for the following:

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1. Use of alarms;
2. Transmission of alarm 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; and
9. Extinguishment of the fire;

c. Ensuring that the fire safety and evacuation plans are available to all supervisory personnel;

d. Ensuring that all employees receive in-service annual training to clarify their responsibilities in carrying out the emergency plan; and

e. Ensuring that the required plan shall be readily available at all times in the telephone operator's location or at the security center; and

(3) Conduct fire drills, including the transmission of a fire alarm signal and simulation of emergency fire situation, as follows:

a. Recovery and operating room patients shall not be required to be moved during drills to safety areas or to the exterior of the building; and

b. Drills shall be conducted quarterly on each shift to familiarize ASC personnel with the signals and emergency action required under varied conditions.

(c) The emergency plan required by (b)(2) above shall be approved and signed by the local fire chief.

(d) The ASC shall notify the department and local fire department when a required sprinkler or fire alarm system is out of service for more than 4 hours in a 24-hour period. The ASC shall be evacuated or an approved dedicated fire watch shall be provided for all parties left unprotected by the shutdown until the sprinkler or alarm system has been returned to service.

(e) The ASC shall notify the department when the emergency power has been utilized for 6 or more hours due to power outage.

(f) Provisions shall be made for the medical gas(es) used in the facility. Adequate space for supply and storage, including space for serve cylinders, shall be provided. Protection of this area shall meet NFPA 101 and NFPA 99 Health Care Facilities Code, as adopted in Saf-C 6000 by the commissioner of the department of safety.

(g) If piped medical gas is used, the installation, testing, and certification of nonflammable medical gas and air systems shall comply with the requirements of NFPA 99, as adopted in Saf-C 6000 by the commissioner of the department of safety.

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(h) Where the functional program requires, central clinical vacuum system installations shall be in accordance with NFPA 99, as adopted in Saf-C 6000 by the commissioner of the department of safety.

(i) If there is an incident including, but not limited to, fire, toxic fumes including smoke, flooding, and power outage, which requires the evacuation of the ASC all or in part, the ASC shall immediately notify the department by phone, once the incident has been stabilized. Within 72 hours of the incident, the ASC shall submit a written report which gives further details of the incident and the action taken.

Source. #9727-A, eff 6-18-10

APPENDIX

Rule	Specific State or Federal Statutes the Rule Implements
He-P 812.01 – He-P 812.03	RSA 151:9,I(a)(b)
He-P 812.04 – He-P 812.07	RSA 151:2,I and II and RSA 151:9,I
He-P 812.08	RSA 151:9,I(a)
He-P 812.09	RSA 151:9,I(e) and RSA 151:6-a
He-P 812.10	RSA 151:9,I(a) and (b)
He-P 812.11	RSA 151:9,I(e) and RSA 151:6
He-P 812.12	RSA 151:9,I(f)(g)(l)(m)
He-P 812.13	RSA 151:9,I(f)(h)(l)
He-P 812.14 – He-P 812.25	RSA 151:9,I(a)