

LAWS REGARDING THE APPOINTMENT AND AUTHORITY OF LOCAL HEALTH OFFICIALS

APPOINTMENT OF HEALTH OFFICERS (RSA 128:1)

State law defines the process by which local health officers are appointed. The Board of Selectmen in a town recommends an individual for appointment to the Commissioner of the Department of Health and Human Services (DHHS), Division of Public Health Services (DPHS). The Commissioner then appoints the health officer based on that recommendation. The Commissioner has the sole legal authority to appoint town health officers. Identification cards, certificates and letters of appointment are issued by the DPHS. If there are any questions about a term of office, please contact the DPHS Health Officer Liaison.

According to State of New Hampshire law (RSA 128:1), a recommendation must be submitted to the Commissioner within 15 days of notification by the Department. If a recommendation is not made, then the Commissioner may appoint a health officer.

TERM OF OFFICE (RSA 128:4)

The town health officer shall hold office for 3 years or until a successor is appointed. An individual currently serving as health officer can be reappointed, and there is no legal limit on the number of times a health officer may be reappointed.

REMOVAL FROM OFFICE (RSA 128:4)

The Commissioner may remove a health officer for cause, after notification and a hearing, and may fill the vacancy in such office by appointment as provided in RSA 128:1.

If the selectmen would like to remove a health officer, they may request the health officer resign. If the health officer refuses to resign, the removal of the health officer may be managed as a local personnel matter, or, at the request of the town officials, may be brought for review to the Commissioner. The Commissioner has the authority to determine when there is adequate cause to remove the health officer.

RESIDENCE (RSA 128:2):

The health officer must be a resident of the State of New Hampshire.

HEALTH OFFICERS FOR SEVERAL TOWNS (RSA 128:6):

An individual can serve as the health officer of more than one town. This individual would be recommended by the Board of Selectmen of each town and appointed by the Commissioner as the health officer in each town.

DEPUTY HEALTH OFFICERS (RSA 128:6a) and ASSISTANTS (RSA 147:5)

Health officers have the authority to appoint a deputy health officer. The appointment of a deputy health officer, under RSA 128:6a, is subject to the approval of the Board of Selectmen and the Commissioner of the DHHS. Health officers also have the legal authority to employ assistants as necessary to carry out their responsibilities under RSA 147:5. Deputy health officers are empowered to enforce public health laws and make sanitary investigations as directed by the health officer or requested by the Commissioner or their designee.

Forms to appoint a deputy health officer are available from the Health Officer Liaison.

The term of office of deputy health officers is determined by each town and is established by the procedures and policies of each town. For administrative and security purposes the DPHS issues an ID to and processes appointments for deputy health officers for a term concurrent with the health officer.

LIABILITY: (RSA 31:105)

31:105 Indemnification for Damages. –

A city, town, county, village district or precinct, school district, chartered public school, school administrative unit, or any other municipal corporation or political subdivision may by a vote of the governing body indemnify and save harmless for loss or damage occurring after said vote any person employed by it and any member or officer of its governing board, administrative staff or agencies including but not limited to selectmen, school board members, chartered public school trustees, city councilors and aldermen, town and city managers, regional planning commissioners, town and city health officers, overseers of public welfare, and superintendents of schools from personal financial loss and expense including reasonable legal fees and costs, if any, arising out of any claim, demand, suit, or judgment by reason of negligence or other act resulting in accidental injury to a person or accidental damage to or destruction of property if the indemnified person at the time of the accident resulting in the injury, damage, or destruction was acting in the scope of employment or office.

Effective January 1st 2011, HB 1524, health officers are now indemnified by the state of New Hampshire with the passage of this law as a local ordinance in their community.

BOARD OF HEALTH (RSA 128:3)

The health officer and the Board of Selectmen constitute the local Board of Health. The health officer is the secretary and executive officer of the Board of Health. The role of the board is to take cognizance of the public and environmental health of the town and to pass local health ordinances as allowed in RSA 147:1.

CITIES:

The governing body of a city has the sole authority to appoint a health officer. The NH DHHS is not involved in the appointment of city health officers.

Cities have the authority to enact health codes; the governing body also has the authority to promulgate bylaws and ordinances (RSA 47:17). These bylaws and ordinances may be more stringent than those established by a state statute, unless the state statute preempts local

governments from adopting a different, more stringent standard. City ordinances may not be more lenient than a state statute.

LOCAL REGULATIONS (RSA 147:1)

Town health officers have the authority to promulgate regulations for the prevention and removal of public health nuisances. They also have the authority to make other regulations relating to public and environmental health, as in their judgment are necessary to protect public health and safety. Such local regulations must be approved by the Board of Selectmen, recorded by the town clerk, and published in a local newspaper, or have copies of the regulation posted in two or more public places within the town. State law does not require such regulations be brought before the annual meeting of the town.

Local regulations are typically used to clarify situations and create equity in applicability. Any person violating a local regulation is guilty of a violation.

In accordance with RSA 147:1, III, health officers shall forward, when issued, copies of all regulations made by them to the Health Officer Liaison.

ENTRY (RSA 128:5, RSA 147:14)

At the time of this publication the law regarding entry onto private property was being amended. Local health officers should seek legal advice regarding current law and requirements for entry onto private property. Relevant laws include RSA 128:5-a regarding investigation of sanitary conditions and entry onto private property without the consent of the owner (RSA 128:5-a). In addition, see RSA 147:14(a), regarding allows a health officer to enter “*any land*” to inspect a private septic system. However, a health officer should always make every possible attempt to gain the permission of the property owner before entering private property.

The authority to enter private property without the consent of the owner for the investigation of sanitary conditions does not include the right to enter into the living quarters (the home) located on the property. In order to conduct an inspection in a person’s living quarters without the owner’s consent, a health officer must obtain an Administrative Inspection Warrant (see below).

INVESTIGATIONS AND COMPLAINTS (RSA 147:3, RSA 595-B)

Town health officers shall inquire into all nuisances and other causes of danger to the public health. Whenever a health officer knows or has cause to suspect that any nuisance or other thing injurious to the public health is in any building, vessel or enclosure, he/she may obtain an Administrative Inspection Warrant. Pursuant to RSA 595-B, an inspection warrant is a written court order that allows a health officer to conduct any inspection, testing or sampling required or specifically authorized by state law or administrative rule, or municipal ordinance, code or regulation.

The applicable inspection warrant form NHJB-2326-D is available at the court clerk’s office and no longer available at the General Court website.

PROCEDURES FOR WARRANT UNDER RSA 595-B:5

Inspection pursuant to a warrant issued under RSA 595-B shall not be made between 6 P.M. and 8 A.M., unless specifically authorized by the court issuing the warrant. The health officer requesting a warrant must show that authority is needed to effectuate the purpose of the law, rule, code, ordinance or regulation being enforced. *Entry by force* shall only be made when facts are shown sufficient to suggest that a violation of a state/local law, rule ordinance, or code exists and presents an immediate threat to public health and safety or when facts are shown which establish that reasonable attempts to serve a previous warrant have been unsuccessful.

In conducting an inspection, depending on the situation, it is recommended to inform the owner/occupant in advance, or, on arriving at the property, to attempt to speak with the occupant(s) to explain your purpose. The goal is to obtain the support and cooperation of the owner(s)/occupant (s). It is always recommended to obtain legal support through your municipal attorney or the Local Government Center when considering this process, as there are additional requirements of RSA 595-B that must be followed.