

Adopt Plc 400 to read as follows:

CHAPTER Plc 400 INSPECTIONS

Statutory Authority: RSA 310:6, II

PART Plc 401 PURPOSE; APPLICABILITY; AUTHORITY

Plc 401.01 Purpose. The purpose of this chapter is to establish uniform procedures for conducting inspections of regulated places of business that are routine or that are conducted in connection with license applications, by inspectors representing the office of professional licensure and certification (OPLC).

Plc 401.02 Applicability. Unless otherwise limited in a specific part or section, these rules shall apply to inspections that are routine or licensing-related at premises at which the practice of a regulated profession is or will be undertaken or at which activities are or will be undertaken that are necessary to support the practice of a regulated profession.

PART Plc 402 DEFINITIONS

Plc 402.01 “Applicable law” means the state and federal statute(s), rules, standing orders, and case law, if any, that apply to regulate a profession in New Hampshire.

Plc 402.02 “Applicant/licensee” means the individual who has applied for a license or who holds a license, as applicable to the type of inspection. The term includes the authorized representative of an applicant or licensee that is an entity.

Plc 402.03 “Board” means “board” as defined in RSA 310:2, I(a), namely “a board, council, commission, committee, or other regulatory body with jurisdiction over professions listed in paragraph II.” The term includes the executive director if the board is advisory or if there is no board, such as for ophthalmic dispensing.

Plc 402.04 “Deficiency” means an instance of noncompliance with an applicable requirement.

Plc 402.05 “Executive director” means the executive director of the OPLC or designee.

Plc 402.06 “Inspection assignment coordinator (IAC)” means any individual designated by the executive director to assign inspectors to conduct inspections.

Plc 402.07 “Inspection checklist” means a list of the specific items and conditions to be inspected, together with the standard to be met by each, as established in rule by the board having jurisdiction.

Plc 402.08 “Inspection report” means a report prepared by an inspector that contains:

- (a) The name and location of the regulated place of business inspected;
- (b) The name of the individual responsible for the regulated place of business and that individual’s license number, if any;
- (c) The inspection checklist used for the inspection;
- (d) The name of the inspector who conducted the inspection;
- (e) The date(s) the inspection was conducted; and
- (f) Any additional analysis needed to establish whether the regulated place of business passed or failed the inspection.

Plc 402.09 “Inspection” means an examination of the conditions and records at a regulated place of business to determine compliance with applicable law.

Plc 402.10 “Inspector” means an individual designated by the executive director via the IAC to conduct an inspection.

Plc 402.11 “License” means “license” as defined in RSA 541-A:1, VIII, namely “the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law.” The term includes temporary, conditional, initial, and renewal licenses, certifications, and registrations, and any form of approval for apprentices.

Plc 402.12 “Licensing bureau” means the organizational unit within the OPLC’s division of licensing and board administration that is responsible for accepting and processing license applications.

Plc 402.13 “Practice act” means the statute(s) that confers authority on the executive director or on a board to regulate a specific profession.

Plc 402.14 “Regulated place of business” means any location at which a regulated profession is or will be practiced or at which activities necessary to support the practice of a regulated profession are or will be conducted.

Plc 402.15 “Regulated profession” means an occupation or profession listed in RSA 310:2, II, for which a license is required to be obtained from the OPLC prior to engaging in the occupation or profession in New Hampshire.

Plc 402.16 “Routine inspection” means an inspection conducted as part of the ordinary oversight of a regulated profession. The term does not include any inspection or investigation undertaken based on a complaint or other indication of potential misconduct.

Plc 402.17 “Working day” means any Monday through Friday, excluding days on which state offices are closed in observance of holidays.

PART Plc 403 INSPECTION PROCEDURES FOR ALL TYPES OF INSPECTIONS

Plc 403.01 Purpose and Applicability. The purpose of this part is to establish procedures and requirements that apply to any of the inspection types covered in Plc 404 through Plc 406.

Plc 403.02 Presentation of Credentials. Upon arriving at the regulated place of business to be inspected, the inspector shall present credentials that identify the inspector as an employee, representative, or official of the OPLC to the applicant/licensee and to the individual in charge of the regulated place of business if other than the applicant/licensee.

Plc 403.03 Applicant/Licensee Response Obligations.

(a) Upon being presented with the inspector’s credentials, the applicant/licensee or other person in charge of the regulated place of business shall allow the inspector to:

- (1) Enter and inspect the regulated place of business, including storage and other ancillary areas, provided that if the regulated place of business is within a private residence, only those areas used when engaging in the regulated profession shall be inspected;
- (2) Gather information about such existing conditions and procedures as are identified in applicable law, including by photographs or video recording, or both; and
- (3) Examine records identified in applicable law that pertain to the practice of the regulated profession.

(b) The applicant/licensee or other person in charge shall assist the inspector to obtain access to all areas of the regulated place of business as provided pursuant to (a)(1), above, and with making copies, if and as requested.

(c) Under no circumstances shall any inspector be required to sign a waiver or confidentiality agreement as a condition of entering and inspecting the premises.

Plc 403.04 Refusal to Allow Inspection.

(a) If the applicant/licensee or other person in charge refuses to allow the inspector to enter and inspect the premises without good cause as described in (b), below, the inspector shall:

(1) Inform the individual of the obligation to allow the inspection;

(2) Advise the individual that:

a. If the inspection is a required part of a licensing process, the applicable rules require the application to be denied if the inspection is not completed; and

b. If the inspection is not related to a license application but is a routine inspection, the refusal to allow the inspection will result in a complaint being filed against the licensee for uncooperative behavior; and

(3) Request again to be allowed to enter and inspect the regulated place of business.

(b) Good cause to refuse to allow an inspector to enter and inspect the regulated place of business shall be limited to conditions being present that render the premises unsafe for human occupation, such as a gas leak or fire, or the presence of someone with a highly contagious medical condition.

(c) If an inspector is refused entry, the inspector shall document the date and time of the refusal and the identity of the individual who refused to allow entry.

(d) If the individual denying entry is claiming that the premises are unsafe for human occupation, the inspector also shall:

(1) Document the specific condition(s) that have caused the premises to be unsafe; and

(2) Provide assistance in notifying emergency response personnel if such assistance is needed.

Plc 403.05 Information To Be Made Available. All inspection checklists shall be made available on the OPLC website at www.oplc.nh.gov.

PART Plc 404 INSPECTIONS REQUIRED FOR INITIAL LICENSURE

Plc 404.01 Purpose and Applicability. The purpose of this part is to establish procedures and requirements that apply to inspections that are required as part of the process of obtaining an initial license.

Plc 404.02 Scheduling the Inspection; Timely Completion Required.

(a) Upon being notified by the licensing bureau that a complete application has been received for which an inspection is required, the IAC shall assign an inspector to the matter, who shall:

(1) Notify the applicant of the date and time of the inspection; and

(2) Provide the applicant with information regarding the inspection, including:

a. Identification of the rules adopted by the board that establish the requirements for the inspection;

- b. What the inspector will need access to and what will be inspected, in the form of a link to the posted inspection checklist to be used by the inspector; and
- c. Contact information for the inspector who is expected to conduct the inspection.

(b) If the applicant cannot be available at the scheduled date and time due to circumstances beyond the applicant's control, the applicant shall request the inspection to be rescheduled by sending an email to CustomerSupport@opl.nh.gov with the words "NEED TO RESCHEDULE INSPECTION" in the subject line.

(c) The applicant shall make all reasonable efforts, meaning all efforts that are rational and not extreme or excessive, to allow the inspection to be completed within 30 days of the initial contact to schedule the inspection, provided that in all cases, the applicant shall allow the inspection to be completed within 50 days of the initial contact to schedule the inspection.

(d) If an inspection cannot be completed within 50 days of the initial contact to schedule the inspection due to the applicant's lack of cooperation or other conduct that prevents the inspection from being initiated and completed, the inspector shall inform the licensing bureau that the regulated place of business has failed the inspection on that basis.

Plc 404.03 Conducting the Inspection.

(a) The inspector shall conduct the inspection at the scheduled date and time, provided that if circumstances beyond the control of the inspector cause the inspector to not be able to conduct the inspection at the scheduled date and time, the inspector shall immediately contact the applicant to reschedule. The inspection shall be conducted within 5 working days, provided that if the applicant cannot be available due to circumstances beyond the control of the applicant, the inspection shall be scheduled as soon thereafter as is practicable.

(b) If the inspector arrives at the regulated place of business to be inspected at the scheduled date and time and the applicant is not present for reasons that are within the applicant's control or the premises are otherwise not accessible by the inspector for other than good cause as provided in Plc 403.04(b), then the premises shall be deemed to have failed the inspection.

(c) While conducting the inspection, the inspector shall use the inspection checklist that has been developed for the specific profession to ensure that no items are missed and that any deficiencies identified are based on the board's established requirements.

Plc 404.04 Completion of Inspection Checklist and Inspection Report.

(a) The inspector shall complete, sign, and date the inspection checklist prior to leaving the regulated place of business.

(b) The applicant shall sign and date the inspection checklist to acknowledge its completion.

(c) The signature required by (b), above, shall not be construed to indicate that the applicant agrees with the inspection checklist.

(d) Within 3 working days of completing the inspection, the inspector shall:

(1) Complete any analysis needed to establish whether the regulated place of business passed or failed the inspection, and send a copy of the completed report to the applicant's designated email address;

(2) Inform the licensing bureau of the results of the inspection; and

- (3) Ensure that a copy or scan of the inspection report is retained in the applicant's file in a format that is available to the public via the license lookup web site available via <https://forms.nh.gov/licenseverification/>.

Plc 404.05 Follow-Up to Failed Inspection.

(a) If the regulated place of business fails the inspection due to not meeting the requirements established by the board for the applicable profession, the applicant shall correct the deficiencies within the time frame agreed to by the applicant and the inspector, not to exceed 14 days, and then:

- (1) Request a reinspection and pay a new inspection fee, if the inspection fee is separate from the application processing and licensing fee for the license; or
- (2) Submit a new application for licensure, if the inspection fee is part of the application processing and licensing fee for the license.

(b) If the regulated place of business fails the inspection as provided in Plc 404.02(d), the applicant shall file a new license application if they still desire to obtain a license.

PART Plc 405 INSPECTIONS REQUIRED FOR RENEWAL OF LICENSURE - RESERVED

PART Plc 406 PROCEDURES FOR ROUTINE INSPECTIONS

Plc 406.01 Purpose and Applicability.

(a) The purpose of this part is to establish procedures and requirements that apply to routine inspections, which are a vital component of ensuring that public health and safety are being protected.

(b) This part shall apply to all regulated professions.

Plc 406.02 Conduct of Routine Inspections.

(a) All routine inspections shall be:

- (1) Unannounced, unless the inspector determines that prior notification and coordination with the licensee is needed to ensure that the inspector will be able to access the regulated place of business; and
- (2) Conducted in accordance with Plc 403.

(b) If the inspector has contacted the licensee to arrange a date and time for the inspection and the licensee is not present at the scheduled date and time for reasons that are within the licensee's control, or the premises are otherwise not accessible by the inspector for other than good cause as provided in Plc 403.04(b), then the premises shall be deemed to have failed the inspection.

(c) The inspector shall use the inspection checklist that has been developed for the specific profession to ensure that no items are missed and that any deficiencies identified are based on the board's established requirements.

Plc 406.03 Completion of Inspection Checklist and Inspection Report.

(a) The inspector shall complete, sign, and date the inspection checklist prior to leaving the regulated place of business.

(b) The licensee shall sign and date the inspection checklist to acknowledge its completion.

(c) The signature required by (b), above, shall not be construed to indicate that the licensee agrees with the inspection checklist.

- (d) Within 3 working days of completing the inspection, the inspector shall:
- (1) Complete any analysis is needed to establish whether the regulated place of business passed or failed the inspection, and send a copy of the completed report to the licensee's designated email address; and
 - (2) Ensure that a copy of the inspection report is retained in the applicant's file in a format that is available to the public via the license lookup web site available via <https://forms.nh.gov/licenseverification/>.

Plc 406.04 Follow-Up to Failed Inspection.

(a) If the regulated place of business fails the inspection due to not meeting the requirements established by the board for the applicable profession, the licensee shall correct the deficiencies within the time frame agreed to by the licensee and the inspector, not to exceed 14 days except as provided in (b), below, and then:

- (1) Send such information, including photographs, as is necessary to prove that the deficiencies have been corrected, or arrange for a virtual inspection, if doing so will be sufficient proof that the deficiencies have been corrected; or
- (2) Request a reinspection and pay a new inspection fee, if the corrections cannot be proven by submitting photographs or other information or by a virtual inspection.

(b) If the inspector and the licensee agree that some or all of the deficiencies cannot be corrected within 14 days, then:

- (1) The inspector and the licensee shall discuss the actions that need to be taken and the time frames that are reasonable for taking the actions; and
- (2) The licensee shall submit a plan in writing to the inspector within 14 days that identifies, for each deficiency that requires more time to be corrected, the following:
 - a. Each action the licensee shall take towards correcting the deficiency; and
 - b. The date by which the action shall be completed.

(c) If the licensee submits a plan pursuant to (b), above, then:

- (1) The inspector shall approve the plan if the inspector agrees that:
 - a. The actions to be taken are reasonably expected to correct the deficiencies; and
 - b. The date by which all deficiencies will be corrected is reasonable based on the nature and extent of work that is needed;
- (2) The licensee shall implement the plan; and
- (3) The licensee shall contact the inspector when all deficiencies have been corrected to arrange an in-person or virtual inspection.

(d) The inspector shall file a complaint against the licensee if:

- (1) The licensee does not correct the violations and prove the violations have been corrected within the time frame agreed to pursuant to (a), above;
- (2) The licensee does not submit a plan if required pursuant to (b), above;

- (3) The licensee submits a plan but does not implement the plan as required by (c), above; or
- (4) The regulated place of business failed the inspection as provided in Plc 406.02(b).

APPENDIX A: STATE STATUTE(S) IMPLEMENTED

Rules	State Statute(s) Implemented
Plc 400	RSA 310:6, II