New Hampshire
NHDDQC
Developmental Services Quality Council

June27, 2023

Erica Ross-Skianes Via Email: Erica.M.Ross-Skianes@dhhs.nh.gov
Program Planner III
Office of Client and Legal Services
New Hampshire Department of Health and Human Services
105 Pleasant Street
Concord, NH 03301

Re: PART He-M 522 ELIGIBILITY AND THE PROCESS OF PROVIDING SERVICES FOR INDIVIDUALS WITH AN ACQUIRED BRAIN DISORDER

Dear Ms. Ross-Skianes,

Thank you for the opportunity to provide comments on the He-M 522 rules during the informal comment process. The Council appreciates this opportunity to share our thoughts and concerns early in this process.

These comments build on comments submitted on recent rules impacting people with developmental disabilities and additional issues identified by Council members.

Overview

We encourage the Bureau to develop information for people with acquired brain disorders and their families about the content of this rule in plain language and to distribute it widely. We've attempted to add this note in specific sections, but it should be included throughout the document.

It is important that this information is accessible to people with disabilities in as many places as possible, including on the BDS website, area agency websites, provider websites and in offices.

He-M 522.02 Definitions

We believe that it is important to retain the definition of assistive technology in order to explicitly state that assistive technology includes evaluations, goods and services.

He-M 522.06 Determination of Eligibility for Medicaid Home- and Community-based Care Services.

(d) If the bureau determines the individual is not eligible for services under He-M 522.03 (b), the notice shall include the specific legal and factual basis for the determination, including a specific citation to the applicable law or department rule and the bureau shall advise the individual, guardian, or representative in writing of the appeal rights under He-M 517.09.

The Council suggested that this provision also specify that the notice be written in plain language.

He-M 522.07 Periodic Review of Eligibility.

(a) If there is reason to believe that the individual's level of cognitive functioning or adaptive behavior has changed and the person no longer has an acquired brain disorder as defined in He-M 522.02(a), or a need for services pursuant to He-M 517.03(a)(4)(b)., the area agency shall notify the individual receiving services, or the representative or guardian if the individual has one, and arrange for a reassessment of eligibility. The individual, representative, or guardian shall have the right to submit additional evaluations, letters, or other information regarding continued eligibility which shall be considered by the area agency or department prior to issuing a decision.

The Council suggests that the rule specifies that the individual be notified in all circumstances and that the rule also allows for notification of an individual's supporter.

(c) In each instance where the reassessment leads to a denial of eligibility, the area agency shall in writing;

This notice should be written in plain language.

He-M 522.08 Service Guarantees.

(a) All services shall:

(1) Be voluntary;

(2) Be provided only after the informed consent of the individual, guardian, or representative;

(3) Comply with the rights of the individual established under He-M 310; and

(4) Maximize as much as possible the individual's ability to determine and direct the services they he or she will receive within the limitations of federal and state laws and rules.

The language in red at the end of Section 4 does not comply with RSA 171A:13 Service Guarantees. – Every developmentally disabled client has a right to adequate and humane habilitation and treatment including such psychological, medical, vocational, social, educational or rehabilitative services as his condition requires to bring about an improvement in condition within the limits of modern knowledge. This language should be removed.

(2) Meet the individual's needs in life skills to promote independent living adult basic education:

a. Including educational activities with the purpose of assisting the individual in attaining or enhancing community living skills or adaptive skill development to assist the individual in residing in the most appropriate setting for his or her needs; and

b. Not including post-secondary education regardless of whether it leads to a degree;

The Council is concerned about this restriction on post-secondary education. While we recognize that much post-secondary education could be funded by vocational rehabilitation, we do not understand why this rule is so restrictive. With the recent establishment of programs like UNH4U, post secondary education for individuals with disabilities is even more likely. We recommend that this restriction be removed.

(f) The area agency shall notify each individuals, annually, that they have a right to choose their service coordinator.

In reality, this notification is often done as part of the quarterly or annual service plan meeting. While we recognize this is an opportunity to directly address any concerns, service coordinators should also notify individuals in writing in plain language about this right and how they can obtain a different service coordinator or service coordination agency.

(j) An area agency shall ensure that the service coordinator creates service agreements for all individuals for whom funding for medicaid home- and community-based care services is available pursuant to He-M 517.

It is unclear what the area agencies are supposed to do if this is not happening. What power will they have to ensure compliance with this requirement?

(h) Provider agencies shall inform individuals and applicants of their rights under these rules in clearly understandable language and form.

The Council supports this requirement that individuals and applicants are notified of their rights in plain language.

(i) For individuals who require a positive behavior plan, emergency physical restraint shall only be approved for safely responding to situations in which the individual presents with imminent credible risk of significant harm to self or others by providers who are trained and certified in recognized intervention modalities.

The Council supports this limitation on the use of restraint.

He-M 522.09 Service Coordination.

(6) Monitor quality of services provided;

The Council suggests that the rule should specify what actions service coordinators are expected to take if they determine that services are not of high quality. This is very important to a high quality service system.

(13) Participate in risk management activities by:

a. Participating in and presenting to committees and other groups related to risk management including, but not limited to, local human rights committees, statewide and local risk management committees, and community of practice to determine application of assessment recommendations received;

b. Ensuring participation in risk management training activities; and

c. Ensuring participation in clinically specialized trainings that enable successful completion of and participation in risk management activities.

This section is not clear. What are these activities? Are the service coordinators expected to participate in risk management training activities themselves or make sure that the individual or provider does so? The Council has the same questions about Section c.

(d) A service coordinator shall not:

(2) Have a felony conviction;

We encourage the state to look closely at these requirements and whether a single felony conviction, particularly many years ago, should serve as a reason to restrict someone's ability to work as a service coordinator. As we understand it, the state registry for abuse and neglect only tracks people for 7 years. We encourage the state to look closely at the prohibition on a felony conviction to determine if exceptions to this restriction are appropriate.

(e) A service coordinator who provides, or is employed by the provider agency that also provides direct services to the individual, shall be determined the only willing and qualified provider and permitted to provide service coordination and direct service if the following criteria are met:

(1) The community in which the provider agency is located is designated as rural pursuant to the department's division of public health services;

The Council is concerned about the only willing and qualified provider exception overall. When this was discussed in 2019, members expressed concern about these proposed requirements. Members offered a number of suggestions to address this issue and ensure choice for people with disabilities.

Please share which area agencies will qualify under the exceptions outlined.

(2) There is a lack of another qualified provider agency located within, or willing to located within, a twenty-mile radius or thirty minute travel time of the provider agency that can provide the services required;

The Council is concerned about this language. What does it mean to be located within a 20 mile or thirty minute radius? Why is this necessary? We believe that it is critical that service coordinators meet regularly in person with the person with disabilities, but this does not require that the service coordinator live within 20 miles or a 30 minute radius. If it's to make sure that some meetings occur in person then that should be articulated in the rule. This does not ensure that in person meetings will happen. With modern technology, other work could be done virtually.

(3) There are less than ten individuals who receive HCBS waiver services in the town or city in which the provider agency is located;

This also seems like an artificial construct. Are you requiring that there are less than 10 individuals where the provider is located, not where the individual receiving the exception is located? Why is the limit 10?

(i) The documentation required in (e)(1-4) shall only be required with the initial request made by a provider agency. Subsequent requests shall not require the described documentation provided that the provider agency certifies that there have been no changes to the original documentation submitted.

We are concerned that the requirements of the provider's plan to develop or recruit additional service coordination agencies is only required at the initial application. How will the Bureau ensure that provider agencies are actually implementing this plan. At minimum, a yearly report on progress and additional barriers should be required.

Additionally in the COI workgroup, members suggested only grandfathering people who use a conflicted case manager and restricting new individuals to use this exception. We also suggested setting a time limit on this section of the rule to ensure that this exception ends in a reasonable time. We encourage the state to explore all of these options to limit these conflicts now and on an ongoing basis.

He-M 522.10 Service Planning for Individuals Eligible for Medicaid Home- and Community-based Care Services.

(c) In instances when an individual has been determined eligible pursuant to He-M 522.05(d), and declines services available pursuant to He-M 522.03(a) and home and community based waiver services, the area agency shall assign a service coordinator within 30 days.

This requirement is confusing. Why is the service coordinator assigned? The individual with the disability should be able to select their own service coordinator.

(g) The person-centered service planning process shall include a discussion regarding whether or not there is a need for a limited or full guardianship, conservatorship, representative payee for Social Security benefits, durable power of attorney, durable power of attorney for healthcare, supported-decision making, or other less restrictive alternatives to guardianship. The discussion and any recommendations shall be incorporated into the service agreement.

The Council supports the inclusion of supported decision making and other less restrictive alternatives to guardianship.

(m) All service planning shall occur through a person-centered planning process that:

This should read “person-centered service planning process” to describe this process more accurately. This section of the rule and the rule in its entirety must articulate the differences between a person-centered service plan and a person-centered plan, as the Council has proposed for the developmental disabilities system.

b. Ensuring that plans created pursuant to He-M 505 are reviewed with evaluators to consider ongoing appropriateness and opportunities for modification of restrictions following initiation of risk management related strategies. Such considerations may be made through reassessment or through a consultative review of other documentation and updated data related to the individual’s progress.

The Council supports this addition.

(21) h. Includes a statement of the individual’s and guardian’s satisfaction with services;

This statement is confusing. The Council is not sure that asking one question at a meeting is the best way to measure true satisfaction with services or service quality.

(un) The service coordinator, or designee, shall be responsible for monitoring services identified in the service agreement pursuant to He-M 522.11 and for assessing individual, guardian, or representative satisfaction at least annually for basic service agreements and quarterly for expanded service agreements.

As noted previously, it is important that service coordinators be empowered to take action id services are not of high quality or otherwise meeting the needs of the person with the acquired brain injury. In reading this rule, it is not clear what the service coordinator is expected to do if problems are identified.

He-M 522.11 Service Agreements for Individuals Eligible for Medicaid Home- and Community-based Care Services.

(10) Guardianship and representative payee information;

We suggest the following revision:

Guardianship, supporter and/or representative payee information if applicable;

He-M 522.17 Challenges and Appeals.

(c) The following actions shall be subject to the notification requirements of (d) below:

(1) Adverse eligibility actions under He-M 522.05(d) and (ml), He-M 522.06(a), and He-M 522.07(b);

(2) Proposed service agreements or service agreement amendments if the individual, guardian, or representative disapproves pursuant to He-M 522.11(g); and

(3) A determination to terminate services under He-M 522.156(e).

The Council is concerned about the failure to notify individuals with acquired brain injuries about their right to appeal. We suggest the following language to replace the language in italics above.

Individuals or their legal representatives and service coordinators shall be provided with a written document explaining the right to appeal any determination, action, or inaction of a provider or provider agency.

He M 522.18 Waivers.

As noted in previous rules comments, the Council recommends that information about any current waivers be available on the provider's website. This could include all waivers received, trended data on specific rules waivers and information about efforts to come into compliance with the waivered rule. The rules should also set specific timelines for the Bureau to respond to waiver requests, ideally within 72 hours.

Thank you for the opportunity to provide these comments.

Sincerely,

Stephanie Patrick

Stephanie Patrick, Council Chair

Isadora Rodriguez-Legendre, Council Vice-Chair