

New Hampshire



July 27, 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 507 COMMUNITY PARTICIPATION SERVICES

Dear Ms. Ross-Skianes,

Thank you for the opportunity to provide comments on the He-M 507 rules during the informal comment process. The Council appreciates this opportunity to share our thoughts and concerns early in this process.

As you may know, the Council submitted comments on the He-M 507 rules in September 2021. These comments echo and build on those previously and cover additional issues identified by Council members.

Overview

In addition to the specific comments on He-M 507 below, the Quality Council wants to encourage BDS to provide additional support to people with disabilities and families to understand the regulations and regulatory process. Simple changes like adding the title/topic when a rule references another rule would help with ease of understanding.

We also encourage BDS to develop or support the development of a guide to the regulatory process in plain language to be shared widely with people with disabilities and their families. We are pleased that BDS is developing a process to develop plain language versions of rules and look forward to learning more as the process develops.

It is critical that these rules and all rules governing developmental services consider the needs of all individuals receiving services including people with low and high support needs, to ensure that people with the highest needs or unique needs are able to access supports. Many community based services including community participation services are not universally designed.

The Quality Council appreciates the removal references to he/him and she/her. Rules should reflect gender neutral language.

Stephanie Patrick, Chair
Disability Rights Center - NH

Isadora Rodriguez-
Legendre, Vice Chair
*NH Council on
Developmental Disabilities*

Members

Ellen McCahon
Community Support Network, Inc

Rich Crocker
Area Agency Board Member

Donna Corriveau
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Carrie Duran
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Adrienne Evans
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Private Provider Network

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Ann Sanok
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Cathy Spinney
Area Agency Board Member

Lisa Steadman
Family Support Council Member

Mary St. Jacques
Institute on Disability

Sarah Tollefsen
ABLE NH

507.01 Purpose

(a): The Council recommends adding “including education and training” after “vocational skills”

(d) Promote personal choice and control in all aspects of the individual’s life and services, including the involvement of the individual, to the extent they are able, in the selection, hiring, training, and ongoing evaluation of their primary staff and in determining the quality of services; and

The Council recommends further clarity regarding the expectation with people with disabilities have choice or control over the hiring of support staff persons who work for provider agencies. Whenever possible, the person with disabilities should provide input, but the ultimate decision must be made by the agency. However, it is important that people with disabilities are involved in the evaluation of all their staff and in determining the quality of services provided. This should not be optional.

507.02 Definitions

b. Acquired Brain Disorder: The Council is concerned that the rules require that the acquired brain disorder must “Occur prior to age 60”. We would appreciate more information about why individuals who meet the other criteria cannot be served if their brain injury occurs after age 60? What alternative services are available to people who are 60 and older? We strongly believe that community participation services should be provided to as many people as possible as they enable individuals with acquired brain injuries and other disabilities to remain at home for as long as possible.

c. Basic living skills: The definition should be expanded to allow for activities to improve the life of the person with disabilities. Not all participants will be able to acquire, improve or maintain independence, but they can still benefit from support in basic living skills and should be able to access them. In addition, the definition should include training as a way to provide support and it should be clear that basic living skills activities are available regardless of the individual’s living arrangement.

x. Service coordinator-The Council recommends removing the clause “approved by” as people with disabilities and their legal guardians must select their service coordinator. It is not appropriate for someone else to make the selection. Also, as noted in the Quality Council’s comments on other rules, the Council does not believe that the provisions to address conflict of interests for service coordinators are sufficient.

In addition, we recommend that definitions of community, community based and exclusively be added to this rule so there is no confusion about these important aspects of community participation. We are not sure that the definition of sheltered workshop is necessary.

507.03 Service Principles

As noted above, the Council is concerned about personal development goals, particularly as articulated in (a)(4). For many people with disabilities, sustaining progress made is a significant goal in itself. We are concerned that individuals are encouraged to develop plans with unachievable goals that set them up for failure. We recognize that training should emphasize improvements, but goals for basic living skills must also value sustaining progress.

(b) Community participation services shall be primarily provided in community settings outside of the home where the individual lives.

(c) Services in (b) above shall not be provided exclusively in settings outside of the home where the individual lives.

The Council believes that integrated community participation services are important for robust lives for people with disabilities. It is critical that the state support providers to adapt and develop new ways to ensure access to the community for people with disabilities, in alignment with each individual's person centered plan. Community participation services could be provided in the home of a friend; they should not be required to be provided only in a public space. The most important thing is that services align with a true person centered plan as outlined in previous correspondence from the Council.

We recommend further clarity of this section.

507.4 Covered Services

In Section a, the Council recommends adding that "services shall be provided in the least restrictive environment possible".

In Section(b), the Council recommends adding the following (in bold).

The following services shall be covered:

(1) Instruction and assistance to learn, improve, or maintain:

- a. Social and safety skills in different community settings;*
- b. Decision-making regarding choice of and participation in community activities;*
- c. Life skills as applied to community-based activities, such as purchasing items and managing personal funds;*
- d. Good nutrition and healthy lifestyle;*
- e. Communication skills and abilities including non-verbal communication;***
- f. Self-advocacy and rights and responsibilities as citizens; and*
- g. Any other skill identified by the individual or guardian during service planning and related to the individual's participation in, or contribution to, his or her community;*

Many individuals can benefit from skill building related to verbal and non-verbal communication and the Council recommends that this is added.

(5) Supports related to enabling the individual to explore, and participate in, a wide variety of community activities and experiences in settings that are available to the general public;

This is a very important part of community participation services. The Council is concerned that the Department is not complying with this requirement in recent policy changes regarding access to community activities which are available to the general public. The state must continue to support participation in community activities which are available to the general public as this is critical to true community integration. The Council does not believe that this is happening now.

507.05 Non-covered Services

In Section (a)(4), the language regarding noncovered services for children who are in school should be updated to reflect the responsibility of this program to provide services to individuals who are under 21, including those who are still in school.

The Council is also concerned with the addition of both “(5) Post-secondary education regardless of whether it leads to a degree; and (6) Private tutoring.” While we understand that services which can be funded by vocational rehabilitation are, we believe that the state should allow for the possibility that some post-secondary education and private tutoring services will be needed, as outlined in an individual’s person centered plan.

In Section B, the Council does not believe that the 120 day restriction on covered services is reasonable. Services must be individualized, and each individual’s circumstances are different. Some individuals may need additional services, particularly related to employment. People with disabilities often need ongoing support for retraining, jobs change, supervisor changes etc. Others may need intermittent help or check ins to maintain employment.

507.06 Certification

In Section c, the Council recommends removing the address. Rules and policies should allow for multiple options for submission including by email or other electronic transmission.

507.07 Operating Requirements

While not specifically addressed here, the Council believes that people with disabilities and families must be fully informed about rights and choices over time. We are concerned that the discussion of rights is actually just a box that is checked, sometime in advance of any meeting or discussion. The state must ensure there is a robust discussion of rights each year and more frequently if needed.

In Section B, the Council recommends that a discussion of employment and volunteer opportunities occurs each year with every person who is receiving services, not just those receiving community participation services. Many individuals with disabilities can work or volunteer even if their access to the community is limited. If not appropriate here, please ensure that HeM 503 clearly requires an annual discussion of volunteer and employment goals and opportunities.

The Council recommends that Section F be expanded to provide additional protections for people with disabilities in terms of termination of services.

507.08 Organization and Administration

In Section (B)(2), the Council recommend that the rule outlines a process in which the person with the disability and family can have more input and influence in emergency planning for the individual(s) with disabilities. At minimum, policies regarding emergency planning must consider individual needs and desires of the person with disabilities. People with disabilities and supporters must develop strategies for emergencies in advance of the emergency, not once the emergency is happening. They must understand their provider’s emergency plan as a whole and the individualized plan to keep them safe. If this is not the appropriate place, this requirement must be included somewhere in the DD rules.

In Section (B)(2), the Council recommends that any policy regarding individual rights also include details regarding how the provider will communicate rights to people with disabilities in ways that are appropriate for them.

In Sections c.– f, the Council recommend that people with disabilities are informed and can influence how their personal information is stored and retained. Individuals with disabilities must be informed of how to request a copy of their records.

In addition, the Council recommends that the policies of area agencies and service providers which guide decisions for people with disabilities are made available to the public on the provider’s website and by request. The Council recognizes that personnel policies and administrative policies may not be appropriate to be shared with the public but people with disabilities and families must have access to policies that are being used to guide decisions about eligibility, services and other decisions directly impacting people with disabilities.

507.09 Oversight and Quality Improvement

Section (c)(8), “The community participation services director and service coordinator shall determine whether the following criteria are being met and, if not, take appropriate action:” including “Individuals, and guardians if applicable, are satisfied with services”. The Council is concerned about how this is verified and recommends addition specifics regarding the assessment of satisfaction. This should include requiring multiple ways to provide feedback: mail, phone to a designated person, email, web form, NCI survey. Anonymous feedback must be considered. It should specify that people with disabilities can call their service coordinator at any time to request a meeting if dissatisfied with services. Finally, this process must be published on the service providers website and shared with families at each service planning meeting.

In addition, the community participation services director and service coordinator must make sure that people with disabilities are informed about formal and informal appeals processes if they do not agree with a decision.

507.10 Staff and Provider Qualifications.

(g) Except as allowed in (h)-(i) below, the provider agency shall not hire a person:

(1) Who has a:

a. Felony conviction; or

b. Any misdemeanor conviction involving:

1. Physical or sexual assault;

2. Violence;

3. Exploitation;

4. Child pornography;

5. *Threatening or reckless conduct;*
6. *Theft;*
7. *Driving under the influence of drugs or alcohol; or*
8. *Any other conduct that represents evidence of behavior that could endanger the well being of an individual;...*

If there are misdemeanor offences which would not require a waiver from BDS, they should be specified to make sure the standard in section 8 is being applied

(k) All personnel hired in accordance with (h) and (i) above shall sign a statement annually, which is maintained in the personnel file, stating that since the time of hire they:

- (1) Have not been convicted of a felony or misdemeanor in this or any other state, and*
- (2) 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.*

We believe that all employees must sign an annual statement that they have not had a conviction or finding over the last year. It's important that BDS makes sure this requirement applies to everyone, including people who have received a waiver for either of these things in the past.

(l) In instances when obtaining the checks required in (f)(1)-(6) would delay a provider agency's ability to have the person in (b) begin to provide community participation services a provider, the provider agency may obtain a self-attestation from the person to attest that they have not:

- (1) Committed a felony or misdemeanor in this or any other state; and*
- (2) 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.*

The Council is concerned that allowing a person to work with a person with disabilities alone after the completion of only a self attestation is too liberal. We support the idea of allowing a person to start working, particularly to start training, prior to the completion of the required checks, but believe these individuals should work with someone else whose checks have been completed.

507.11 Staff and Provider Training

In Section (b) (1), the Council recommend that the timeframe for "shadowing" during orientation be more specific (e.g. during the first 30 days of hire) prior to working with any individual with disabilities independently. Shadowing should be a minimum of 2 day and required for all new hires.

In addition, shadowing of family member should be allowable to meet this requirement if they are providing direct care services even if they are not paid.

In terms of training requirements, the Council recommends that BDS set standards for training, develop expectations regarding the achievement of measurable competencies and ensures consistency of training for service providers across the service delivery system. In addition, the Council believes that service providers should regularly assess the outcomes of training provided and

opportunities for improvement, including gathering feedback from people being trained and people with disabilities who are being served.

In addition, the rule should specify that additional training will be provided when needed to support the specific needs of the person with disabilities including communication needs via ASL or other means of communication.

In Section (2)(b)(2-6), the Council recommends that service providers must include input from people with disabilities families in training topics provided to staff, both globally and for specific trainings. This includes training related to independence, choice, improved skills, addressing challenging behavior and health and safety practices as these can be very specific to the individual.

In Section (6), the Council believes there is a need for more training in these areas specifically with individuals with disabilities and better alignment of these trainings between area agencies.

He-M 507.13(a)(4)

(4) An applicant, provider, provider agency, or community participation services staff or contractor has an illness or behavior that, as evidenced by the documentation obtained or the observations made by the department, would endanger the well-being of the individuals or impair the ability of the provider agency to comply with department rules and the provider agency failed to take appropriate action to address and respond;

Again we noted in other reviews that this language seems unclear as to what "illness or behavior" would, if left unaddressed, rise to the level of the department denying or revoking a Certification.

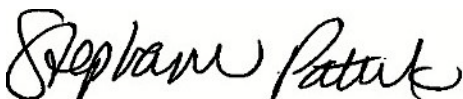
507.17 Waivers

The Council believes that people with disabilities and families could benefit from additional information regarding waivers, including what is and is not in statute and therefore eligible for a waiver. The Council suggests a one-page document with this information.

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 waived 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, Council Chair

Isadora Rodriguez-Legendre, Council Vice-Chair