



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 1001 CERTIFICATION STANDARDS FOR DEVELOPMENTAL SERVICES COMMUNITY RESIDENCES

Dear Ms. Ross-Skianes,

Thank you for the opportunity to provide comments on the He-M 1001 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 1001 rules in May 2018. These comments repeat and build on those previously and cover additional issues identified by Council members.

### Overview

In addition to the specific comments on He-M 1001 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.

The Quality Council recommends adding language that reiterates that personal choice should be provided in the same way in group homes and other structured settings as in home settings. This must include:

- more opportunities for input from individuals with developmental disabilities and their families
- more education and training related to, as well as enforcement of, the right to personal choice in all settings, and

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  
*Direct Support Professional  
Member*

Carrie Duran  
*Family Support Council Member*

Adrienne Evans  
*NH Council on ASD Member*

Jessica Gorton  
*Bureau of Developmental Services*

Karen Hatch  
*Family Support Council Member*

Emily Manire  
*Private Provider Network*

Tammy Mills  
*People First of New Hampshire*

Jim Piet  
*NH Council on  
Developmental Disabilities*

Lauren Ramsey  
*Brain Injury Association of NH*

Ann Sanok  
*Area Agency Board Member*

Cathy Spinney  
*Area Agency Board Member*

Lisa Steadman  
*Family Support Council Member*

Mary St. Jacques  
*Institute on Disability*

Sarah Tollefsen  
*ABLE NH*

- a focus on person centered planning training, including the use of person center planning to develop and direct services.

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

#### He-M 1001.02 Definitions

(ab) Supervision: The Council recommends additional work on this definition as it is not easy to understand as written. In addition, the individual with disabilities should be involved in the approval of a provider, not just their legal guardian.

#### He-M 1001.03 Administrative Requirements.

*(g) Prior to working with any individual in a community residence, the provider agency, with the consent of the person and all household members, as appropriate, shall:*

*(1) Obtain at least 2 references for the person;*

*(2) Submit the person's name for review against the registry of founded reports of abuse, neglect, and exploitation to ensure that the person is not on the registry pursuant to RSA 169-C:35, and submit the person's name against such registry every 2 years after hire;*

*(3) Complete a criminal records check, no more than 30 days prior to the home opening, to ensure that the person and all adult household members, excluding individuals, have no history of fraud, felony, or misdemeanor conviction;*

*a. If a person's primary residence is out of state, complete a criminal records check for their state of residence;*

*b. If a person has resided in New Hampshire for less than one year, complete a criminal records check for their previous state of residence;*

*(4) Complete a motor vehicles record check to ensure that the potential provider has a valid driver's license; and*

*(h) In instances when obtaining the checks required in (g) (2)-(4) would delay a provider agency's ability to have a provider, staff or contractor begin providing services, the provider agency may obtain a self-attestation from the prospective provider, staff or contractor 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.*

*(i) Self-attestations obtained in accordance with (h) above shall be accepted while the provider agency is awaiting the results of the checks required in (g) (2)-(4) above, but not be valid for more than 90 days. Individual and guardian approval must be obtained if a provider, staff or contractor will work directly with an individual and not under the supervision of a provider, staff or contractor with completed checks.*

The Council recommends that regular criminal and driving checks be completed every two years for all individuals who are or may be working directly with people with disabilities. The Council also recommends that DCYF checks be completed as part of the initial and ongoing background check process.

In Section (3)(b), the Council recommends clarification that background checks in all states where the individual has lived in the past year must clarify that criminal records checks are completed for all the places the individual has lived in the past year.

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.

*(o)(10) Signature of the individual(s) ~~and~~ of legal guardian(s) indicating agreement with the employment and date signed;*

The Council recommends that the signature or other consent of the individual receiving services is obtained whenever possible.

*(x) An individual's rights in accordance with He-M 310.09 shall be protected.*

The Council recommends that the rule clarifies that all the rights outlined in He-M 310 shall be protected including the rights in He-M 310.09.

#### He-M 1001.06 Health and Safety.

*(u) For each individual unable to evacuate their his or her residence within 3 minutes, a fire safety plan shall be developed and approved by the individual or guardian, provider, service coordinator, and residential administrator that identifies:*

- (1) The cause(s) for such inability;*
- (2) The specific assistance needed by the individual and to be furnished by the provider; and*
- (3) A training approach to reduce the evacuation time to 3 minutes or less.*

The Council recommends that fire safety plans be completed for all individuals in community residences, not just those who are unable to evacuate in three minutes or less. There are two critical components of all fire safety plans. First, plans must identify who will assist the individual to evacuate if needed and how. Second, the plans must identify what support or training will be provided to the individual if they are unable to evacuate in a timely manner without assistance. It is also important that the person with the disabilities and others who they choose are involved in emergency planning as they may have information that should be considered.

#### He-M 1001.08 Individual Records.

*(c) Each individual's record shall include:*

- (6) Medical information including:*

- a. The names, addresses, and telephone numbers of the individual's physician, dentist, therapists, and any other licensed practitioners;*
- b. Medical orders;*
- c. Medical history;*
- d. The dates of medical testing, to include, but not be limited to, colonoscopies, mammograms, pap smears, PSA tests, bone density tests, dental work, and eye exams;*
- e. A copy of the nurse-trainer assessment and approval for medication self-administration as required by He-M 1201.05, if applicable;*
- f. A copy of the annual physical of the individual pursuant to He-M 1001.06 (a);*
- g. Known allergies, if any;*
- h. A copy of the individual's DNR order, if applicable;*
- i. Health Risk Screening Tool (HRST) monthly data tracker information;*
- j. Other pertinent medical information; and*
- k. A medication log completed at the residence pursuant to He M 1201.08 for all current medications; and*
- l. Any correspondence involving the individual and the provider agency*

The Council recommends clarifying "l" above to specify the correspondence that must be included in the medical record. It is important to maintain records that contain important information, but it may not be realistic to maintain every piece of correspondence including emails and text messages.

He-M 1001.15 Denial of Certification.

*(a) The department shall deny an application for certification, following written notice pursuant to (b) below and opportunity for a hearing pursuant to He-C 200, due to any of the following reasons:*

*(1) Any reported abuse, neglect, or exploitation of an individual by an applicant, residence administrator, provider, staff member, or person living in a community residence, if:*

*a. Such abuse, neglect, or exploitation is reported on the state registry of abuse, neglect, and exploitation in accordance with RSA 161:F-49 or RSA 169-C:35;*

This section is confusing. Does this apply to situations where a provider is operating under a temporary certificate and an incident of abuse, neglect or exploitation is reported? As we understand the process, incidents of abuse, neglect or exploitation are reported on the state are reported on the registries when they are founded. If a provider takes immediate action to terminate the staff person, we are not sure that the denial of an application for certification should be required.

(4) (4) *An applicant, provider, staff member, or person living in the community residence 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 community residence to comply with department rules and the provider agency failed to take appropriate action to address and respond;*

The Council suggests further clarification as to what illnesses or behaviors may be included. We support the inclusion of the provision that holds provider agencies accountable if they fail to take appropriate action.

He-M-1001.16 Revocation of Certification.

(7) *The certificate holder or a staff member or person living in the community residence 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 community residence to comply with department rules and the provider agency failed to take appropriate action to address and respond;*

The Council's comments above also apply to this section.

He-M 1001.19 Waivers.

As outlined in previous comments, 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