



January 19, 2023

Erica Ross-Skianes  
Program Planner III  
Office of Client and Legal Services  
New Hampshire Department of Health and Human Services  
105 Pleasant Street  
Concord, NH 03301

Via Email: Erica.M.Ross-Skianes@dhhs.nh.gov

Re: He-M 503, ELIGIBILITY AND THE PROCESS OF PROVIDING SERVICES

Dear Ms. Ross-Skianes,  
Thank you for the opportunity to provide comments on the He-M 503 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 503 rules in September 2021. These comments build on those previously and additional issues identified by Council members.

#### Overview

It is critical that all notices and other written documents for or used by participants and family members be provided in plain language. We've attempted to add this note in specific sections, but it should be included throughout the document.

We also encourage the Bureau to use gender neutral language throughout the rule, to use them instead of his and her.

The rule must clearly define who is responsible for crisis services. The system must ensure that the rates paid to this provider are adequate to fund 24 hour on call services, even if the services are rarely used. If the rule does not specify this, we are concerned that no one will take responsibility and this could create confusion for individuals with disabilities and families who are already in a crisis.

#### He-M 503.02 Definitions.

Assistive technology - We believe that this definition should remain in the rule. It is important that all users understand the breath of assistive technology including both devices and services.

Person centered planning – We strongly encourage the Bureau to further define person center planning and set some basic standards that must be met for a planning meeting to be considered person centered planning. At this point, it appears that person centered planning and service planning are used interchangeably by some people, furthering confusion and lessening the use of true person centered planning.

The Council is hoping to develop a definition and standards and would be happy to share this with the department.

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*

Carrie Duran  
*Family Support Council Member*

Adrienne Evans  
*NH Council on ASD Member*

Krysten Evans  
*Advocates Building Lasting Equality  
NH*

Jessica Gorton  
*Bureau of Developmental Services*

Karen Hatch  
*Family Support Council Member*

Emily Manire  
*Private Provider Network*

Tammy Mills  
*People First of New Hampshire*

Deb Opramolla  
*Family Support Council Member*

Jim Piet  
*NH Council on  
Developmental Disabilities*

Liz Prior  
*Brain Injury Association of NH*

Isadora Rodriguez-Legendre  
*NH Council on  
Developmental Disabilities*

Cathy Spinney  
*Area Agency Board Member*

Mary St. Jacques  
*Institute on Disability*

Termination – The definition of termination should include cessation of service by service provider

He-M 503.07 Service Guarantees.

*(a) Except as provided by RSA 171-B, 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 RSA 171-A:13-14 and He-M 310; and*
- (4) Facilitate as much as possible the individual's ability to determine and direct the services he or she will receive **within the limitations of federal 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.

Also, we suggest changing “facilitate” in Section 4 to “prioritize”.

In Section b, we are concerned that you are deleting #2. Services should be designed to meet an individual’s needs in personal care, employment and therapeutic recreation.

- (2) Meet the individual's needs in personal care, employment, and leisure activities;*

In Sections G and I, notifications should be provided in plain language.

He-M 503.08 Service Coordination.

- (6) Monitor quality of services provided;*

We encourage more specifics about the role of the service coordinator to monitor the quality of services. This is vague. What authority will the service coordinator have? What will the service coordinator be expected to do if the services are not of high quality?

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 503.09 Service Planning.

*(cb) The service coordinator shall hold an initial service person-centered planning meeting to determine the individual's goals and service needs in meeting those goals with the individual, the individual's guardian or representative, and any other person chosen by the individual within 15 business days of the determination selection of, and acceptance by, a service coordination entity.*

It is unrealistic to hold a true person-centered planning meeting in 15 business days of the determination of eligibility. We understand the need to develop an initial service plan quickly but once again, this is not a person-centered plan. The timeline to complete a person-centered plan must be longer.

*(d) The service coordinator shall document that he or she has, as applicable, maximized the extent to which an individual participates in and directs his or her person-centered planning process by:*

It is impossible to complete a person-centered plan without the participation of the individual. Once again, this language must be changed. There may be circumstances when the service coordinator must complete a service plan without the participation of the individual but this is not a person centered plan.

- (1) Explaining to the individual the person-centered planning process and providing the information and support necessary to ensure that the individual directs the process to the maximum extent possible;*
- (2) Explaining to the individual his or her rights and responsibilities pursuant to He-M 310.*
- (4) Eliciting information from the individual regarding his or her goals, personal preferences and service needs, including any health concerns, that shall be a focus of service planning meetings;*
- (5) Determining with the individual issues to be discussed during all service planning meetings; and*
- (6) Explaining to the individual the limits of the decision-making authority of the guardian, if applicable, and the individual's right to make all other decisions related to services.*

We suggest that the state outline the principles of person-centered planning in this section and distinguish them from the requirements of a service planning meeting. Both are critical but are fundamentally different.

*(e) The pPerson-centered 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.*

We are pleased that alternatives to guardianship will be discussed.

503.09 (d)(13): We are concerned about the current risk assessment process and planning. Risk assessments must be done in a manner that continues to value individual choice and freedoms. The timeframe for consideration past incidents must be defined or some criteria articulated to ensure that historical incidents don't overly impact current rights and opportunities.

Risk assessments should be re-done at a frequency that allows for the capture of more current levels of risk and that are using evidence-based tools for determining actual risk.

#### He-M 503.10 Service Agreements.

*(6) Be distributed to the individual, guardian, or representative and all providers who are responsible for the implementation or monitoring of the service agreement.*

We suggest adding the requirement that this information be provided in plain language.

#### He-M 503.134 Transfers Across Regions

Consider adding a timeframe in which the completion of transfer occurs.

#### He-M 503.167 Challenges and Appeals.

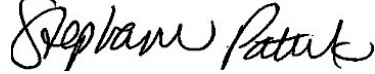
The written notice requirements do not reflect federal Medicaid notice requirements. Federal Medicaid regulations require written notice for any "termination, suspension of, or reduction in covered benefits and

services”. State regulations give DD participants the right to appeal any “determination, action, or inaction by an area agency”. However, providing written notice of this right is only required in a limited number of circumstances. As a result, many actions that significantly impact a participant’s services go unchallenged. For example, if a participant’s budget is reduced, the current regulations do not require an area agency to notify the participant of their right to appeal. The state regulations must be amended to reflect federal Medicaid notice requirements more accurately.

In addition, the notice referenced in Section d must be provided in plain language.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Patrick". The signature is written in a cursive, flowing style.

Stephanie Patrick, Council Chair