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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 506- Staff Qualifications

Dear Ms. Ross-Skianes,

Thank you for the opportunity to provide comments on the He-M 506 rules during the informal comment process. The Council received the draft rule for informal comment on January 17, 2024, and is pleased to submit this feedback to you which was approved by the Quality Council on February 21, 2024.

Overview

As shared in previous comments, 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 supported the development of a plain language version of the He-M 310's and hope this expands to other rules.

He-M 506.03 Minimum Staff Qualifications.

The Council is very concerned about how providers and staff are defined and used throughout this rule. Traditionally, enhanced family care providers are considered and paid as independent contractors, but it seems that they would be considered providers under this rule. The new expectations regarding supervision, evaluation and staff development for providers may create difficulties in maintaining the "independent contractor" status of these providers under the US Department of Labor rules to distinguish employees from independent contractors. This will create significant additional costs to the system and burdens for agencies and the enhanced family care providers in a system that is in need of more providers, not less.

The Council strongly encourages the Department to look further into the definitions of provider and staff in this rule and other rules for the DD system to avoid any unintended consequences of this change to enhanced family care

providers and others currently employed and paid as independent contractors. Agency staff and these providers must be involved in these discussions, which should also include people with disabilities and families when appropriate.

The Council is also concerned about the burden and cost of required tuberculosis testing. A TB test requires at least two appointments with a medical professional to administer the test and read it. The test cannot be done at the end of the week as it must be read on a specific day. A positive test can lead to hundreds of dollars of x-rays and missed work. The Council understands the need to prevent communicable diseases but encourages BDS to look more broadly at whether a TB test should be required. If the requirement is retained, we encourage BDS to examine how the requirement impacts our limited pool of DSP staff, particularly staff from other countries where TB vaccinations are common. .

He-M 506.05 Staff Development Requirements.

- (a) Each provider and staff person employed by a provider agency shall participate in the writing and implementation of an individual staff development plan with their his or her supervisor at least annually.

As noted above, the Council is concerned that these requirements and those regarding the staff development plan will apply to providers who are independent contractors.

- (f) All provider agency staff, providers, and contractors Staff hired after March of 2025 shall participate in an in a person-centered thinking program and demonstrate competencies within the first 3 months of employment.

The Council supports this requirement as we strongly believe that additional training on person-centered thinking will improve New Hampshire's service delivery system. We encourage BDS to develop and provide additional guidance on how individuals can demonstrate competencies.

- (g) Prior to working directly with an individual, staff shall be trained in and, pursuant to (l) below, demonstrate an understanding of the following information regarding the individual:

- (1) Personal profile;
- (2) Goals;
- (3) Specific health-related requirements, including:
 - a. All current medical conditions, medical history, and routine and emergency protocols;
 - b. Any special nutrition, hydration, elimination, personal hygiene, oral health or ambulation needs; and

c. Any special, cognitive, mental health or behavioral needs;

(4) Information the person with the disability believes would be helpful to the service provision process which may include information provided by family, guardian, supporters, friends or others;

(5) Emergency contact information;

(6) Safety plan;

(7) Behavior or risk management plan;

(8) HRST information pertinent to supporting the individual;

(9) SIS information pertinent to supporting the individual;

(10) Any other information needed to ensure the individual's health and safety needs are understood; and

(11) Any information in the service agreement not specified in (1)-(10) above.

The Council believes that it is important that the person receiving services defines what is important to them and recommends the above edit to (g)(4). While the perspective of the parent who is not the legal guardian, may also be important, the person with the disability must make the decisions. They should also be encouraged to invite friends and others to provide input if they want to do so. As a reminder, this can and should be incorporated into person-centered planning.

(h) Staff with no prior experience providing services directly to individuals shall be assigned to work with an experienced staff member, for not less than 16 hours during their orientation, if they have had no prior experience of providing services to individuals.

The Council does not believe that 16 hours of training for individuals who have no prior experience is sufficient. We recommend 40 hours of training for individuals with no prior experience and 16 hours of training for individuals with previous experience providing services to individuals.

The Council recommends adding "Communication, including styles, preferences and methods" to the list of required training topics.

Finally, it is important that people with disabilities and family members provide input into the required training and types of training provided. People with disabilities should participate as much as possible in the trainings provided. The Council strongly believes that staff training is more meaningful and useful when people with disabilities and family members are involved.

He-M 506.06 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