



November 5, 2024

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Dept. of Health and Human Services  
Administrative Rules Unit  
129 Pleasant Street, 2nd Floor Concord, NH 03301

Re: PART He-M 1001 CERTIFICATION STANDARDS FOR DEVELOPMENTAL SERVICES COMMUNITY RESIDENCES

Dear Ms. Raadmae,

On July 27, 2023, the NH Developmental Services Quality Council submitted comments on the He-M 1001 rule. These comments were developed after a series of meetings of the Quality Council's Rules Committee and full membership. These comments repeated and built on comments submitted in May 2018 previously.

Thank you for incorporating some of the feedback from the QC in the draft He-M 1001 rule released on October 1, 2024.

We remain concerned that the following issues were not addressed. We continue to think that these issues are important and we are providing additional reasoning for the inclusion of these changes below in blue. Issues addressed by the Bureau are struck through below.

Please note that these comments only address those raised previously by the Council as there was not sufficient time for the Council to review and comment on any additional changes during the short formal comment period.

### Overview

Original Comment: 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.

### Members

#### Emily Manire, Chair

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#### Lisa Steadman, Vice Chair

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#### Louis Esposito

*ABLE NH*

#### Stephanie Patrick

*Disability Rights Center - NH*

#### Kelly Ehrhart

*At-Large Member*

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**Additional Comment:** The Council continues to strongly believe that rules must be accessible to people with disabilities and hopes that BDS will prioritize this work for all rules, not only the He-M 310 rule regarding rights.

**Original Comment:** 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
- a focus on person centered planning training, including the use of person centered planning to develop and direct services.

**Additional Comment:** As discussed at numerous meetings over the last year, the Council continues to be very concerned that personal choice is prioritized in residential settings governed by the He-M 1001 rule. While He-M 503 outlines rules regarding service planning, the responsibility to prioritize personal choice is not solely the responsibility of service coordinators. It must be a priority in all settings.

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

#### He-M 1001.02 Definitions

~~**Original Comment:** (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.*

~~Original Comment: 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** or legal guardian(s) indicating agreement with the employment and date signed;*

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

~~Additional Comment: The Council continues to believe in the importance of obtaining the consent of the individual receiving services whenever possible and encourages the Bureau to rewrite this provision and others to clarify that this consent must be obtained whenever possible, even if the individual has a legal guardian.~~

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

~~Original Comment: 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.*

Original Comment: 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.

Additional Comment: It is unclear why the Bureau believes that fire safety plans are not important for all residents with disabilities, not only those who cannot evacuate in 3 minutes or less. Evacuation plans are not sufficient.

Fire safety plans are an important part of emergency management for all people, especially people with disabilities and we strongly encourage BDS to expand this rule. As noted in [Civilian Fire Fatalities in Residential Buildings \(2017-2019\)](https://www.usfa.fema.gov/statistics/reports/who-fire-impacts/civilian-fire-fatalities-residential-buildings-v21i3.html) available at <https://www.usfa.fema.gov/statistics/reports/who-fire-impacts/civilian-fire-fatalities-residential-buildings-v21i3.html>, "Physical disability was the second leading human factor contributing to fatalities in residential buildings (30%)"

Residential service providers must have and practice safety plans for all residents including during both waking and sleeping hours and with staff working all shifts using all the criteria for evaluation and personal safety assessment as outlined in the current rule. We believe all these criteria are important.

#### 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

~~Original Comment: 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;*

Original Comment: 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.

*Additional Comment: Is there any way for a provider to remediate the issue and retain certification? Perhaps this would be clearer if the first instance of 'any reported' were removed and the second instance of 'reported' changed to 'recorded' to indicate that the claim was founded. We suggest 'if' could be emboldened.*

*(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;*

Original Comment: 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.

[Additional Comment: The Council continues to believe that clarification of this section \(and all other rules using the same language\) is needed.](#)

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;*

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

[Additional Comment: See above.](#)

He-M 1001.19 Waivers.

Original Comment: 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.

[Additional Comment: The Council continues to believe that a one-page document on the types of situations that are eligible for a waiver would be helpful and that it is important to make general data on waivers available to the public, if not on the provider websites, then in a central location. While waiver requests may contain confidential information, it is important that the public knows the number of waivers and specific rules waived for each residential facility. It is also important to know if the residential provider is making efforts to come into compliance for all waivers of rules impacting health, safety or the quality of services.](#)

Thank you for the opportunity to provide these comments.

Sincerely,



Stephanie Patrick, Rules Committee Chair