

**RELEVANT STATE STANDARDS OF CARE AND SERVICES AND
PROCESSES TO ENSURE STANDARDS ARE MET¹**

I. STATE STANDARDS OF CARE AND SERVICES

Excerpts From RSA 171-A

“**171-A:1 Purpose and Policy.** – The purpose of this chapter is to enable [DHHS] to establish, maintain, implement and coordinate a comprehensive service delivery system for developmentally disabled persons. The policy of this state is that persons with developmental disabilities and their families be provided services that emphasize community living and programs to support individuals and families, beginning with early intervention, and that such services and programs shall be based [in part] on the following:

- V. **Services based on individual choice, satisfaction, safety, and positive outcomes.**
- I. **Services provided by competent, appropriately trained and compensated staff.**

171-A:4 State Service Delivery System. – The department shall maintain a state service delivery system for the care, habilitation, rehabilitation, treatment and training of developmentally disabled persons. **Such service delivery system shall be under the supervision of the commissioner.**

171-A: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.**

171-A:18 Area Agency Responsibilities and Operations. I. *** Each area agency ... shall be the primary recipient of funds that may be dispensed by the commissioner for use in establishing, operating or administering such programs and services. The programs and services for which an area agency is responsible include, but are not limited to, diagnosis and evaluation, service coordination,

¹ Bold in text signifies added emphasis.

community living arrangements, employment and day services, and programs designed to enhance personal and social competence.

Excerpts from Regulations Issued Pursuant to RSA 171-A²

Excerpts from He-M 503 Eligibility and the Process of Providing Services Regulations

He-M 503.08 Service Guarantees on Services for Which Funds Are Available

- (b) All services shall be designed to:
- (1) Promote the individual's personal development and quality of life in a manner that is **determined by the individual**;
 - (2) Meet the individual's needs in **personal care**, employment, adult education and leisure activities;
 - (3) Promote the individual's **health and safety**;
 - (4) **Promote the individual's right to freedom from abuse, neglect and exploitation.**

He-M 503.09 Service Coordination

- (b) The service coordinator shall:
- (1) **Advocate on behalf of individuals for services to be provided in accordance with He-M 503.08 (b)**;
 - (4) **Monitor** and document services provided to the individual;
 - (5) Ensure continuity and **quality** of services provided;
 - (7) **Determine and implement necessary action...when health or safety issues have arisen**;

He-M 503.11(f)(1) & 503.02(T) Most individuals and all individuals (receiving residential services) in or out of the family home shall have a service agreement which shall include (among other things):

- A statement of the individual's need for guardianship, if any
- A "personal profile" to include--
 - (1) A personal statement from the individual and those who know him or her best that summarizes the individual's strengths and capacities, communication and learning

² Unless otherwise noted each section was in effect as is or substantially so for all deaths reported in this paper.

style, **challenges, needs, interests, and any health concerns**, as well as the individual's hopes and dreams;

- (2) A personal history **covering significant life events**, relationships, living arrangements, **health**, and use of assistive technology, and **results of evaluations which contribute to an understanding of the person's needs**;
- (3) A review of the past year that:
 - a. Summarizes the individual's:
 - (i) **Challenging issues or behavior**;
 - (ii) **Safety considerations during the year**;
 - b. Identifies the **individual's health needs**;
 - c. **Identifies the individual's safety needs**;
 - d. **Identifies any follow-up action needed on concerns and the persons responsible for the follow-up**; and

Excerpts from He-M 310 Rights of Persons Receiving Developmental Services in the Community

He-M 310.05 Personal Rights.

- (a) Persons who are applicants for services or individuals who are receiving services from provider agencies **shall be treated with dignity and respect at all times.**
- (b) Individuals shall be free from abuse, neglect, and exploitation including, at a minimum, the following...[f]reedom from any emotional, physical, or sexual abuse or neglect...

Excerpts from He-M 505 Establishment and Operation of Area Agencies

He-M 505.03 Role and Responsibility of the Area Agency

- (a) The primary responsibility of the area agency shall be to plan, establish, and **maintain** comprehensive service delivery system for individuals who are residing in the area. The area agency shall plan and provide these services according to rules promulgated by the commissioner.
- (d) Services provided by, or arranged through, an area agency shall:
 - (3) Meet the individual's needs in **personal care**, employment and leisure activities;
 - (4) **Protect the individual's right to freedom from abuse, neglect and exploitation**;
 - (5) **Promote the individual's health and safety**;
- (w) The area agency shall be responsible for assuring that appropriate services are provided in accordance with RSA 171-A and the regulations promulgated there under, including the following:

- (5) **Monitoring and safeguarding of rights; and**

Excerpts from He-M 1001 Certification Standards for Community Residences

He-M 1001.03 Administrative Requirements

(o)(3) The community residence shall have: **An integrated fire alarm system with a detector in each bedroom and on each level of the home including basement and attic, if the attic is used as living or storage space...**

He-M 1001.04 Qualifications for Service Providers

(c) Prior to delivering services to an individual, a prospective provider shall have received **orientation** in the following areas:

- (1) Rights as set forth in He-M 202 and He-M 310;
- (2) **The specific health-related requirements of each individual, including:**
 - a. **All current medical conditions, medical history, routine, and emergency protocols; and**
 - b. **Any special nutrition, dietary, hydration, elimination, or ambulation needs;**
- (3) **Any specific communication needs;**
- (4) **An overview of developmental disabilities or acquired brain disorders, or both, as appropriate, including the local and state service delivery system;**
- (5) **Any behavioral supports required of individuals served; and**
- (6) **Any assistance individuals need to evacuate the residence in the case of emergency.**

(d) Staff with no prior experience providing services directly to individuals shall not provide these services without direct oversight and support during the first 16 hours of providing services.

(e) **Within the first 6 months** of employment, each provider agency shall ensure that staff working in a community residence are **trained** in the following:

- (1) Everyday health including personal hygiene, oral health, and mental health;
- (2) The elements that contribute to quality of life for individuals...;
- (3) Strategies to help individuals to learn useful skills;

- (4) Behavioral support; and
- (5) Consumer choice, empowerment, and self-advocacy.

He-M 1001.05 Individual Services

(b) A community residence shall offer services that include assistance and instruction to improve and maintain an individual's skills in basic daily living, personal development, and community activities such as, but not limited to

(6) Achieving and maintaining physical Well-being...

(c) The number of providers working in a community residence shall be sufficient to:

(1) Meet the needs of the individuals living therein, as identified in each individual's service agreement; and

(2) Provide the services required by He-M 1001.05.

He-M 1001.06 Health and Safety.

(a) The residence administrator shall arrange for an annual health assessment of each individual by a physician or other licensed practitioner for the purpose of evaluating health status and making recommendations regarding strategies for promoting and/or maintaining optimal health.

(b) The residence administrator shall, in conjunction with the service coordinator, have arrangements to access medical services at all times, including emergency services. The residence shall have a written plan that specifies the procedures to be followed in medical emergencies.

(d) Providers having personal knowledge of an emergency as described in (c) above shall notify the individual's service coordinator immediately, and in writing within 24 hours.

(i) In any case of known or suspected neglect, abuse, or exploitation, the provider aware of the situation shall:

(1) Follow procedures as outlined in He-M 310, rights of persons receiving developmental services in the community, and any other applicable rules relative to rights protection procedures; and

(2) Report the situation to the division of children, youth, and families in accordance with RSA 169-C:29 and/or the bureau of elderly and adult services as required by RSA 161-F:42-57, as applicable.

(k) A provider shall have the following responsibilities with respect to an individual's food and fluids:

- (1) The individual's preferences and requirements shall be taken into account;
- (2) Varied and nutritionally balanced meals, including adequate fluids, shall be provided in the morning, at midday, and in the evening, unless other arrangements for meals have been made;
- (3) Information regarding the signs and symptoms of dehydration specific to the individual shall be requested and retained;**
- (6) If an individual requires specific methods or techniques for maintaining adequate nutrition and/or hydration, as determined by a licensed practitioner, such methods or techniques shall be implemented and documented in the individual's clinical record...**
- (m) Prior to providing services, a community residence shall develop an emergency evacuation plan that indicates the location of all evacuation routes and exits and provides for the safe evacuation of all persons within 3 minutes;**
- (o) Upon moving to a new community residence, each individual shall be oriented to evacuation procedures by the provider.**
- (p) Within 5 business days of an individual's moving into a community residence or a change in residential provider, a service coordinator and licensed nurse shall visit the individual in the home to determine if the transition has resulted in adverse changes in the health or behavioral status of the individual.**
- (r) If negative changes are noted, a service coordinator shall develop a remediation plan and include it within the individual's record.
- (s) Within 5 days of an individual's moving into a community residence, the provider shall:**
 - (1) Conduct a fire evacuation drill to assess the individual's ability to evacuate the residence in less than 3 minutes; and**
 - (2) Based on the drill, complete and document a fire safety assessment that includes the following individual risk factors:**
 - a. Response to alarm;**
 - b. Response to instruction;**
 - c. Vision and hearing difficulties;**
 - d. Impaired judgment;**
 - e. Mobility problems; and**

f. Resistance to evacuation.

(t) The fire safety assessment shall indicate

- (1) The staff or provider to individual ratio during both sleep and non-sleep hours;
- (2) The name and phone number of agency back-up in the event of an emergency; and
- (3) The date completed and signature of the person documenting the individual's risk factors

(u) For each individual unable to evacuate his or her residence within 3 minutes, a fire safety plan shall be developed and approved by the individual or guardian, provider, 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**

(v) Evacuation drills shall

- (1) Be held at varied times of the day;
- (2) Involve all persons in the home at the time of the drill;
- (3) For community residences of 4 or more individuals, comply with He-P 814.23 (k); and
- (4) For community residences of 3 or fewer individuals, include transmission of the alarm signal unless doing so would register as a false alarm to the fire department or alarm company;

(x) If a community residence for 3 or fewer individuals has been evacuated in 3 minutes or less during each of 6 consecutive monthly drills, one of which has been a sleep-time drill, the residence shall thereafter conduct a drill at least once quarterly, with one drill per year to be during sleep hours.

(y) If a community residence serves 4 or more individuals, the residence shall conduct monthly drills, with at least 3 drills per year to be held during sleep hours.

(z) A community residence that has a complete sprinkler system and fire alarm system that immediately notifies the local fire department shall be exempt from the requirement to complete a fire drill in less than 3 minutes if documentation is provided that such systems are in compliance with local fire codes.

(aa) If a new individual moves into a community residence for 3 or fewer individuals, the community residence shall:

(1) Conduct monthly drills until all individuals have evacuated the residence in 3 minutes or less for 3 consecutive monthly drills; and

(2) Thereafter conduct a drill at least once quarterly, with one drill per year to be during sleep hours.

(ab) For any individual receiving less than 24-hour supervision, a personal safety assessment pursuant to (ac) below shall be completed.

(ac) The personal safety assessment shall identify an individual's ability to demonstrate the following safety skills:

(6) Maintain a safe home...

(ad) The individual's team, including the individual, shall develop a personal safety plan if the personal safety assessment determines that the individual needs assistance to respond appropriately to the situations outlined in (ac) above

(ae) A personal safety plan shall:

(1) Identify the supports necessary for an individual to respond to each of the contingencies listed in (ac) above;

(2) Indicate who will provide the needed supports;

(3) Describe how the supports will be activated in an emergency;

(4) Indicate approval of the individual or legal guardian, and provider, residential coordinator, and service coordinator;

(5) Be reviewed by the provider at the time of the individual's service agreement; and

(6) Be revised whenever there is a change in the individual's residence or ability to respond to the contingencies listed in the plan.

(af) The individual or his or her guardian shall approve the personal safety plan prior to the individual being without supervision for specified periods of time. Any revisions to the plan shall require the individual's or guardian's prior approval.

He-M 1001.07 Behavioral Support.

(a) If an individual is demonstrating behaviors that are harmful to self or others, the residence administrator shall notify the service coordinator. In collaboration with others supporting the individual, the service coordinator shall facilitate the planning,

implementation, and monitoring of any behavioral change program determined necessary.

(b) A behavioral change program or any form of restrictive strategy shall only be implemented by a community residence when such has been approved in writing by the individual, his or her guardian, the individual's team, and the area agency's human rights committee, established pursuant RSA 171-A:17.

(c) A provider agency shall have written policies and procedures which address behavioral supports. These policies and procedures shall be directed toward maximizing the growth and development of the individual by incorporating a hierarchy of methods that emphasize positive approaches to behavioral support.

(d) Behavioral support policies and procedures shall:

(1) Address the following concepts:

- a. Behavior is a form of communication and efforts should be made to understand its purpose;
- b. There are different learning styles, skills, and motivations of individuals;
- c. Relationships, environments, and personal histories have an impact on effecting behavioral change; and
- d. Intentional and unintentional responses to behavior, such as ignoring, redirecting, and reinforcing, affect behavior;

(2) Include the following behavior change strategies:

- a. Preventing behavioral difficulties by adjusting the environment, responses to the individual's behavior, or both;
- b. Creating opportunities for meaningful participation in daily life, such as employment;
- c. Teaching mutual respect within relationships; and
- d. Redirecting and de-escalating behaviors that are harmful to self or others;

(3) Outline training requirements for providers using the program; and

(4) Indicate the mechanism to be used to monitor the implementation of any behavior change program and gauge its effectiveness.

Excerpts from He-M 521 Certification of Residential Services, Combined Residential and Day Services, or Self-Directed Day Services Provided in the Family Home³

He-M 521.05(a)(1)(c) Administrative Requirements.

³ Applicable to JH's and others in "He-M 521 homes."

Once a family expresses interest regarding He-M 521 services, but before services are provided under He-M 521, the area agency shall [e]nsure that the proposed service arrangement meets the individual's **environmental and personal safety needs**; and

He-M 521.07(b)(3) Quality Assessment. An area agency shall monitor services provided pursuant to He-M 521 as follows: The service coordinator or a designated area agency staff shall visit the individual at home and contact the guardian, if any, at least quarterly, or more frequently if so specified in the individual's service agreement, to determine and document whether services [m]eet the **individual's environmental and personal safety needs**...

II. SYSTEMS AND PROCESSES TO ENSURE THAT STANDARDS ARE MET⁴

While there are (or should be) a number of processes and components to assure that the above and other standards are met, especially in a system where services are community based and dispersed statewide, of particular relevance to the issues in this paper are:

1. **Recruiting, selecting, and properly training staff** at the direct support/provider levels as well as supervisory and clinical/programmatic levels.
2. **Having individual assessment (evaluation) capacity and ensuring an adequate individual service plan development and implementation process** to determine the needs of each individual and the supports and strategies needed to meet them in the essential domains of life, e.g. quality of life, health, safety, and promotion of independence.
3. **Proactive Quality Assurance/Enhancement Process** that ensures compliance with minimum requirements and adherence to higher quality standards. While it is commonly and quite correctly said that ensuring quality is everyone's job, under a state and area agency supervised system, the state and the area agencies have the responsibility to ensure that each client is afforded services that meet quality and other standards. Subsystems or processes that are required include:
 - a. Proactive systems such as:

⁴ The processes to determine that standards are met and individuals are receiving quality services are required by law and professional standards. See e.g. and generally (a) 42 CFR §441.302 and DHHS' §1915 (c) HCBS Waiver to CMS, 6/1/06, and especially Appendices A and C-H. at <https://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/itemdetail.asp?filterType=dual>, data&filterValue=New Hampshire&filterByDID=2&sortByDID=2&sortOrder=ascending&itemID=CMS1216469&intNumPerPage=10; and (b) Cite to Council on Quality and Leadership. Call into Tammi Watkins 850-384-33344 or twatkins@the council.org Indicators 2a-e, pp. 9-11; 3e, pp. 13,15; 5a, 5c, 5e, pp.19-21; 6b, pp.23-24; 7a,7b,7d,p.25, and 8b, pp.29-30.

- (1) Licensing and certification
- (2) Service coordination monitoring
- (3) State and Area Agency periodic (or as needed) reviews through review of data, interviews, program evaluation, or on-sites that reliably and accurately determine whether standards are met and individuals are receiving services in accordance with their needs and their service agreements in a cost effective manner.
- (4) Corrective action mechanisms or feedback loops in each of the above processes to ensure that when deficiencies are cited or improvements are determined to be needed, they are promptly and effectively made.

b. Incident Specific or Post Hoc Review. Somewhat overlapping mechanisms include:

- (i) Effective complaint or grievance procedures when persons believe their individual rights have been violated by a restriction, an incident, condition, alleged abuse or neglect, action or decision by a provider, staff, or even policy
- (ii) Mandatory reporting requirements of abuse, neglect or exploitation both internally within an organization and externally to health and human service organizations charged with investigating e.g. BEAS, DCYF, BDS, and Area Agencies as well as law enforcement, (see v below.)
- (iii) Incident or sentinel review process for serious or unusual incidents at appropriate levels to ensure that the incidents are not repeated and appropriate corrective action is taken.
- (iv) External investigations (by DHHS) of incident or conditions of a more serious nature such as abuse, neglect, exploitation, use of restraint, seclusion, etc. or licensing or certification violations
- (v) While not part of the DHHS system, where appropriate, investigation by law enforcement or fire safety officials when warranted.
- (vi) For deaths, mortality reviews and investigations, when there is reason to believe the death may have been caused by abuse or neglect, unusual or suspicious circumstances, or suicide.

c. There is often overlap between these processes, e.g. an internal incident review may look at the same incident that is subject to an external investigation. An external investigation by DHHS officials may be looking at some of the same issues a DHHS licensing or re-designation review or an AA service coordinator may be reviewing in his/her monitoring visits. Some overlap is inevitable, and even necessary, as there are different purposes for

each type of review. In fact good systems build in redundancy because of what is at stake - - the health and welfare of vulnerable individuals,

d. Another aspect of the standard QA system, and specifically related to transparency and accountability is the accessibility or dissemination of reports, reviews, investigations, trends etc. to policy makers, managers and administrators, individuals, families, other stakeholders and the public in general. As stated in the Guiding Principles of the Developmental Services Quality Council, established by legislation in 2009:

The purpose of an effective and total quality assurance system is to:

A. Provide information to HHS and other funders and policy makers, Area Agencies (AAs), providers, this Council, family support, other advisory groups, and others on whether standards are being met or improvements are needed and being made.

B. Promote continuous improvements beyond legal requirements.

C. Provide individuals and families with information about service providers so they can make informed decisions.