

PART He-M 503 ELIGIBILITY AND THE PROCESS OF PROVIDING SERVICES

Statutory Authority: RSA 171-A:3; 18, IV

Readopt with amendment He-M 503.01 through He-M 503.11, effective 7-25-15 (Document #10900), to read as follows:

He-M 503.01 Purpose. The purpose of these rules is to establish standards and procedures for the determination of eligibility, the development of service agreements, and the provision and monitoring of services which maximize the ability and informed decision-making authority of individuals with developmental disabilities and which promote the individual's personal development, independence, and quality of life in a manner that is determined by the individual.

He-M 503.02 Definitions.

(a) "Amendment" means any change to the personal profile, provider agency, or provision of services, including the amount, scope, type, frequency, or duration, within a service agreement.

(b) "Applicant" means any person who requests services under RSA 171-A.

(c) "Area" means "area" as defined in RSA 171-A:2, I-a, namely, "a geographic region established by rules adopted by the commissioner for the purpose of providing services to developmentally disabled persons." This term includes "region".

(d) "Area agency" means "area agency" as defined in RSA 171-A:2, I-b.

(e) "Area agency director" means that person who is appointed as executive director or acting executive director of an area agency by the area agency's board of directors.

(f) "Assistive technology" means technology designed to be utilized in an "assistive technology device" as defined in 29 U.S.C. section 3002(4) or "assistive technology service" as defined in 29 U.S.C. section 3002(5).

(g) "Autism," also called "autism spectrum disorder" means a developmental disorder of brain function that presents with:

(1) Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history:

- a. Deficits in social-emotional reciprocity;
- b. Deficits in nonverbal communicative behaviors used for social interaction; and
- c. Deficits in developing, maintaining, and understanding relationships;

(2) Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least 2 of the following, currently or by history:

- a. Stereotyped or repetitive motor movements, use of objects, or speech;
- b. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior;
- c. Highly restricted, fixated interests that are abnormal in intensity or focus; or

d. Hyper- or hyporeactivity to sensory input or unusual interests in sensory aspects of the environment;

(3) Symptoms that are present in the early developmental period, but might not become fully manifested until social demands exceed limited capacities, or might be masked by learned strategies in later life;

(4) Symptoms that cause clinically significant impairment in social, occupational, or other important areas of current functioning; and

(5) Disturbances that are not better explained by intellectual disability or global developmental delay.

(h) “Bureau” means the bureau of developmental services of the department of health and human services.

(i) “Bureau administrator” means the chief administrator of the bureau of developmental services.

(j) “Cerebral palsy” means a condition resulting from brain damage occurring in utero or during infancy or childhood and characterized by permanent motor impairment that constitutes a severe disability to such individual’s ability to function normally in society.

(k) “Commissioner” means the commissioner of the department of health and human services or their designee.

(l) “Comprehensive risk assessment” means an evaluation administered pursuant to He-M 503.09(m)(11) using evidence-based tools to evaluate an individual’s behaviors and determine the potential risks to the individual or others posed by said behaviors.

(m) “Conditional eligibility” means a category of eligibility where a person under the age of 22 is determined to have a developmental disability only provisionally because either the diagnostic information is inconclusive or it cannot yet be determined whether the disability will continue indefinitely.

(n) “Days” means calendar days unless otherwise specified.

(o) “Department” means the New Hampshire department of health and human services.

(p) “Developmental disability” means “developmental disability” as defined in RSA 171-A:2, V, namely, “a disability:

(a) Which is attributable to an intellectual disability, cerebral palsy, epilepsy, autism, or a specific learning disability, or any other condition of an individual found to be closely related to an intellectual disability as it refers to general intellectual functioning or impairment in adaptive behavior or requires treatment similar to that required for persons with an intellectual disability; and

(b) Which originates before such individual attains age 22, has continued or can be expected to continue indefinitely, and constitutes a severe disability to such individual’s ability to function normally in society.”

(q) “Epilepsy” means a neurological condition characterized by recurrent seizures which might be accompanied by loss of consciousness, convulsive movements, or disturbances of feeling, thought, or behavior and constitutes a severe disability to such individual’s ability to function normally in society.

(r) “Guardian” means a person appointed pursuant to RSA 463 or RSA 464-A or the parent of an individual under the age of 18 whose parental rights have not been terminated or limited by law.

(s) “Health Risk Screening Tool (HRST)” means the 2015 edition of the Health Risk Screening Tool, available as noted in Appendix A, which is a web-based rating instrument used for performing health risk screenings on individuals in order to:

- (1) Determine an individual’s vulnerability regarding potential health risks; and
- (2) Enable the early identification of health issues and monitoring of health needs.

(t) “Home and community-based waiver services (“waiver services”) ” means the services defined and funded pursuant to New Hampshire’s agreement with the federal government, known as the Developmental Disabilities Waiver, pursuant to the authority of section 1915(c) of the Social Security Act which allows the federal funding of long-term care services in non-institutional settings for persons who are developmentally disabled.

(u) “Individual” means a person who has a developmental disability.

(v) “Informed consent” means a decision made voluntarily by an individual or applicant for services or, where appropriate, such person's legal guardian or representative, after all relevant information necessary to making the choice has been provided, when the person understands that they are free to choose or refuse any available alternative, when the person clearly indicates or expresses their choice, and when the choice is free from all coercion.

(w) “Intellectual disability” means “intellectual disability” as defined in RSA 171-A:2, XI-a, namely, “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period. A person with an intellectual disability may be considered mentally ill provided that no person with an intellectual disability shall be considered mentally ill solely by virtue of his or her intellectual disability.”

(x) “Local education agency (LEA)” means “local education agency” as defined in 34 CFR 300.28. This term includes “school district” as defined in Ed 1102.03(n).

(y) “Participant directed and managed services” means a method of service delivery provided pursuant to He-M 525.

(z) “Person-centered service planning” is an individual-directed, positive approach to the planning and coordination of a person’s services and other supports based on the individual’s aspirations, needs, preferences, and goals.

(aa) “Personal profile” means a narrative description that includes a personal statement from the individual and those who know them best that summarizes the individual’s strengths and capacities, communication and learning style, challenges, needs, interests, and any health concerns, as well as the individual’s hopes and dreams.

(ab) “Provider” means a person receiving any form of remuneration for the provision of services to an individual.

(ac) “Provider agency” means an agency or an independent provider that is established to provide services to individuals and meets the criteria in He-M 504.

(ad) “Representative” means:

- (1) The parent or guardian of an individual under the age of 18;
- (2) The guardian of an individual 18 or over; or
- (3) A person who has power of attorney for the individual.

(ae) “Service” means any paid assistance to an individual in meeting their own needs provided through the developmental services system.

(af) “Service agreement” means a written agreement between the individual, guardian, or representative and provider agencies that is prepared as a result of the person-centered service planning process and that describes the services that an individual will receive and constitutes an individual service agreement as defined in RSA 171-A:2, X and developed pursuant to He-M 503.10.

(ag) “Service coordination agency” means a provider agency providing service coordination services to individuals, that meets the criteria in He-M 504.

(ah) “Service coordinator” means a provider who meets the criteria in He-M 503.08 (b) and(c) and is chosen by an individual and their guardian or representative to organize, facilitate and document service planning and to negotiate and monitor the provision of the individual’s services.

(ai) “Service planning meeting” means a gathering of 2 or more people, one of whom is the individual who receives services unless they choose not to attend, called to develop, review, add to, delete from, or otherwise change a service agreement.

(aj) “Specific learning disability” means a chronic condition of presumed neurological origin that selectively interferes with the development, integration, or demonstration of verbal or non-verbal abilities, and constitutes a severe disability to such individual’s ability to function normally in society. The term includes such conditions as perceptual handicaps, brain injury, dyslexia, and developmental aphasia. The term does not include individuals who have learning problems which are primarily the result of visual, hearing, or motor handicaps, intellectual disability, emotional disturbance, or environmental, cultural, or economic disadvantage.

(ak) “State of residence” means state of residence as defined in 42 CFR 435.403.

(al) “Supported decision-making” means “supported-decision making” as defined in RSA 464-D: 4, VI.

(am) “Supports Intensity Scale-Adult Version ® (SIS-A ®)” means the 2023 edition of the Supports Intensity Scale, available as noted in Appendix A, which is an assessment tool intended to assist in service planning by measuring the individual’s support needs in the areas of home living, community living, lifelong learning, employment, health and safety, social activities, and protection and advocacy. The tool uses a formal rating scale to identify the type of supports needed, frequency of supports needed, and daily support time.

(an) “Termination” means the cessation of a service by an area agency director with or without the informed consent of the individual or their guardian or representative.

(ao) “Withdrawal” means the choice of an individual or their guardian to discontinue that individual’s participation in a service.

He-M 503.03 Eligibility for Services.

(a) Pursuant to RSA 171-A, and as referenced in He-M 503.02 (ak) and (o), any person whose state of residence is New Hampshire and who has a developmental disability shall be eligible for services as described in (b) through (h) below.

(b) Individuals who meet the requirements of (a) above, shall be eligible under He-M 503 to receive the following services:

- (1) Service coordination;
- (2) Family support services pursuant to He-M 519;
- (3) Respite services pursuant to He-M 513; and
- (4) Other applicable services available pursuant to He-M 500 that are needed as determined in accordance with He-M 503.05, except those that are the legal responsibility of the local education agency (LEA) pursuant to the Interagency Agreement in accordance with RSA 186-C:7-a, the department's division for children, youth and families (DCYF), or another state agency to provide.

(c) Individuals described in (a) above shall also be eligible for home and community-based waiver services if they meet the requirements of He-M 517.03.

(d) Individuals described in (a), from birth through 21 who have not graduated or exited the school system and who live at home shall be eligible for in-home support services if the requirements of He-M 524.03 are met.

(e) Individuals described in (a) above who are under age 3 shall also be eligible for family-centered early supports and services if the requirements of He-M 510.06 are met.

(f) An applicant under the age of 18 who has a developmental disability cited in He-M 503.02 (o) at the time of application shall be found conditionally eligible for services if either the diagnostic information is inconclusive or it cannot be determined whether the disability will continue indefinitely.

(g) When the eligibility of an individual has been determined to be conditional, the eligibility for services shall be periodically reviewed pursuant to He-M 503.06 so that the area agency can reach a conclusive decision before the individual turns age 18.

He-M 503.04 Application for Services.

(a) Application for services shall be made by:

- (1) The applicant;
- (2) A guardian of an applicant under the age of 18;
- (3) A guardian of an applicant age 18 or over if a guardian of the person has been appointed by the probate court per RSA 464-A; or
- (4) A representative of the applicant authorized to make such application.

(b) An application for services shall be made in writing to the area agency in the applicant's region of residence.

(c) An area agency shall explain the eligibility process and offer assistance to the applicant, guardian, or representative in making application for services.

(d) The area agency shall inform the applicant, guardian, or representative of its roles and responsibilities and provide information about:

- (1) The types of evaluations, assessments, and screenings needed to assist in development of the service agreement;
- (2) Eligibility determination;
- (3) Service coordination;
- (4) Service agreement development and review;
- (5) Services provided by the area agency and the assistance available to identify the services that are needed;
- (6) Service provision;
- (7) Service monitoring; and
- (8) Advocacy supports.

(e) To aid in the provision of comprehensive, efficient, and coordinated services, the area agency shall undertake a review of the public and private benefits and resources that are available to the applicant and inform the applicant of all such benefits and resources.

(f) To receive services beyond age 3, the eligibility of a child served in family-centered early supports and services shall be determined by the area agency pursuant to He-M 503.03 and He-M 503.05 prior to the date the child turns age 3, without the need of the family reapplying for services. The eligibility determination process shall be initiated by the area agency at least 90 days prior to the child's third birthday.

(g) An area agency shall request each applicant to authorize the release of information to permit the area agency to access relevant current and historical records and information for determination of eligibility pursuant to He-M 503.03 regarding the applicant's:

- (1) Developmental disabilities;
- (2) Personal, family, social, educational, psychological, and medical status; and
- (3) Functional abilities, interests, and aptitudes.

(h) Authorization to release information shall specify:

- (1) The name of the applicant and the information to be released;
- (2) The name of the person or organization being authorized to release the information;
- (3) The name of the person or organization to whom the information is to be released; and

- (4) The time period for which the authorization is given, which shall not exceed one year.

He-M 503.05 Determination of Eligibility.

(a) To determine the existence of an applicant's developmental disability, the area agency shall perform a comprehensive screening evaluation consisting of:

- (1) Reviewing available information, including, but not limited to:

- a. Birth, developmental, and educational histories;
- b. Current physical, intellectual, cognitive, and behavioral evaluations;
- c. An age-appropriate standardized functional assessment; and
- d. As applicable, additional specialty medical, health, or clinical evaluations, such as communication, functional behavior, psychological, or psychopharmacological assessments, assistive technology, and personal safety or comprehensive risk assessments; and

- (2) Gathering additional information and performing the additional evaluations among those listed in (1) above that are necessary to complete the determination, if the information available is not adequate to make a determination of eligibility.

(b) The results of the comprehensive screening evaluation pursuant to (a) above and any other information concerning the applicant's disability shall be the basis for determination of eligibility pursuant to He-M 503.03 and assist in the identification of needs and provision of services.

(c) To the extent possible, the area agency shall utilize generic resources to pay for an applicant's comprehensive screening evaluation. Such resources shall, with the applicant's consent, include private and public insurance.

(d) An area agency shall review the information it has received regarding an applicant and, within 15 business days after the receipt of the completed application, make and communicate one of the following decisions on the eligibility of the applicant in accordance with He-M 503.03 to the applicant, guardian, or representative:

- (1) Eligible;
- (2) Conditionally eligible pursuant to He-M 503.02(1); or
- (3) Ineligible.

(e) If an area agency determines additional information is necessary in order to make a determination in accordance with (d) above, a communication detailing the additional information necessary shall be provided to the applicant, guardian, or representative, and the application shall not be determined complete until all necessary information has been received by the area agency.

(f) In cases where the information on eligibility is inconclusive, the area agency may consult with the bureau regarding determination of eligibility prior to making a decision in accordance with (d) above.

- (g) Decisions by the bureau in (f) above shall be made within 5 business days.

(h) In instances where consultations in (f) above would cause the area agency's decision pursuant to (d) above to exceed 15 business days, an additional 7 business days shall be allowed to make such decision.

(i) A written denial of eligibility pursuant to (d)(3) above, shall describe the specific legal and factual basis for the denial, including specific citation of the applicable law or department rule, and advise the applicant of the appeal rights under He-M 503.16.

(j) Following denial of eligibility, the applicant, guardian, or representative, as applicable, may reapply for services if new information regarding the diagnosis, age of onset, or severity of the disability becomes available.

(k) Communication of approval or conditional eligibility in accordance with (d)(1) or (2) above shall include a contact person at the area agency.

(l) Preliminary planning to determine the services needed shall occur with the individual and guardian, or representative at the time of intake or during subsequent discussions. Preliminary evaluations shall be completed and preliminary recommendations for services shall be made within 21 days of a completed application for service.

(m) Within 3 days of the determination of an applicant's eligibility under He-M 503.05 (d)(1) or (2), an area agency shall review 1915(c) of the Social Security Act, home and community-based waiver services with the individual, guardian, or representative in order to make a decision.

(n) If the individual, guardian, or representative is interested in pursuing home and community-based waiver services within the next 12 months, within 5 business days of the individual's decision pursuant to (m) above, the area agency shall submit an application for waiver level of care eligibility pursuant to He-M 517.03 to the bureau.

(o) The bureau shall review an application submitted pursuant to (n) above and make a decision within 15 business days of receipt of the application.

(p) Within 3 days of the decision, the bureau shall communicate the decision to the area agency and the individual, guardian, or representative in writing.

(q) If the bureau determines the individual is not eligible for services in He-M 517, the notice shall include the specific legal and factual basis for the determination, including a specific citation to the applicable law or department rule, and the bureau shall advise the individual, guardian, or representative in writing of the appeal rights under He-M 517.09.

(r) If there is not sufficient information to determine the individual's level of care, a request for additional information shall be sent by the bureau to the submitting entity to allow an additional 10 days to provide information sufficient to determine level of care.

(s) If information to determine is not provided, the bureau shall deny the level of care application, however, if new information becomes available after such denial, a new application may be submitted.

(t) Pursuant to RSA 171-A:6, IV, in an emergency situation, temporary service arrangements may be made prior to the completion of the evaluation in (a) above if the bureau administrator, or designee, first determines that the individual meets one of the following:

- (1) Is a victim of abuse or neglect pursuant to He-E 700;

- (2) Is abandoned and homeless;
- (3) Is without a caregiver due to death or incapacitation;
- (4) Is at significant risk of physical or psychological harm due to decline in their medical or behavioral status; or
- (5) Is presenting a significant risk to community safety.

(u) The determination of eligibility by one area agency, pursuant to He-M 503.05(d), shall be accepted by every other area agency in the state.

He-M 503.06 Periodic Review of Conditional Eligibility.

(a) Subsequent to finding an individual to be conditionally eligible for services pursuant to He-M 503.03 (f), the area agency shall render a definitive decision on eligibility before the individual reaches the age of 18.

(b) To determine whether the applicant is eligible, the area agency shall, at minimum, arrange for reevaluations:

- (1) Anytime during the ages of 7 through 9;
- (2) Anytime during the ages of 12 through 14; and
- (3) Not later than the individual's 18th birthday.

(c) If any of the reevaluations pursuant to (b) above, or any other information obtained subsequent to finding an applicant conditionally eligible, demonstrates to the area agency that a person is eligible for services pursuant to He-M 503.03 (a), any subsequent required reevaluations to determine eligibility shall not be performed.

(d) If the results of any of the reevaluations, or any other information obtained subsequent to finding an applicant conditionally eligible, demonstrate to the area agency that the applicant's disability will continue indefinitely or the diagnosis is conclusive as defined in He-M 503.02 (o), the area agency shall determine them eligible for services and so inform the applicant, guardian, or representative in writing.

(e) If the results of any of the reevaluations demonstrate that the applicant does not meet the criteria as defined in He-M 503.02 (o), the area agency shall inform the applicant, guardian, or representative in writing no more than 3 business days from the determination of ineligibility and phase out services over the 12 months following the date of notice. The phase plan shall be outlined through a service agreement.

(f) In each instance where the reevaluation leads to a denial of eligibility, the area agency shall, in writing:

- (1) Inform the applicant, guardian, or representative of the determination;
- (2) Describe the specific legal and factual basis for the denial, including specific citation of the applicable law or department rule; and
- (3) Advise the applicant of the appeal rights under He-M 503.16.

(g) An applicant, guardian, or representative may appeal a denial of eligibility based on the reevaluation pursuant to He-M 503.16 and He-C 200.

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, He-M 310, and federal laws and rules; and
- (4) Maximize as much as possible the individual's ability to determine and direct the services they will receive, in accordance with federal and state laws and rules.

(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 life skills to promote independent living:
 - a. Including educational activities with the purpose of assisting the individual in attaining or enhancing community living skills, or adaptive skill development to assist the individual in residing in the most appropriate setting for their needs; and
 - b. Not including post-secondary education, regardless of whether it leads to a degree, or private tutoring;
- (3) Promote the individual's health and safety within the bounds of reasonable risk;
- (4) Protect the individual's right to freedom from abuse, neglect, and exploitation;
- (5) Increase the individual's participation in a variety of integrated activities and settings;
- (6) Provide opportunities for the individual to exercise personal choice, independence, and autonomy within the bounds of reasonable risks;
- (7) Enhance the individual's ability to perform personally meaningful or functional activities;
- (8) Assist the individual to acquire and maintain life skills, such as, managing a personal budget, participating in meal preparation, or traveling safely in the community, including accessing community transportation;
- (9) Be provided in such a way that the individual is seen as a valued, contributing member of their community; and
- (10) Meet the individual's needs in accordance with He-M 503.09(m).

(c) The environment or setting in which an individual receives services shall be the least restrictive, most integrated setting that promotes that individual's:

- (1) Freedom of movement;

- (2) Ability to make informed decisions;
- (3) Self-determination;
- (4) Participation in the community in accordance with 42 CFR 441.301; and
- (5) Rights in accordance with He-M 310,.

(d) An individual, guardian, or representative may select any available provider that is qualified pursuant to He-M 504, to deliver one or more of the services identified in the individual's service agreement. All provider agencies and providers shall comply with the administrative rules and terms of the waiver when applicable, pertaining to the service(s) offered and meet the provisions specified within the individual's service agreement.

(e) The area agency shall notify each individual, annually, that they have a right to choose their service coordinator who meets the requirements in He-M 503.08(a).

(f) No one shall be denied an opportunity for services on the basis of the severity of their developmental disability.

(g) An area agency shall monitor timeliness of the completion of annual service agreements by the service coordinator for all individuals, with the exception of those individuals or families who request only information and referral.

(h) Area agencies and provider agencies shall inform individuals and applicants of their rights under these rules in clearly understandable language and form.

(i) For individuals who require a positive behavior plan, emergency physical restraint shall only be approved for safely responding to situations in which the individual presents with imminent credible risk of significant harm to self or others by providers who are trained and certified in recognized intervention modalities.

He-M 503.08 Service Coordination.

(a) The service coordinator shall be a person chosen by the individual, guardian, or representative who meets the criteria in He-M 504, He-M 506, and He-M 503.08 (b)-(c) below.

(b) The service coordinator shall:

- (1) Advocate on behalf of individuals for services to be provided in accordance with the service guarantees in He-M 503.07 (b);
- (2) Coordinate the service planning process in accordance with He-M 503.07, He-M 503.09, and He-M 503.10;
- (3) Describe to the individual, guardian, or representative service delivery options including participant directed and managed services;
- (4) Monitor and document services provided to the individual in accordance with He-M 503.10 below and He-M 517 for home and community-based waiver services;
- (5) Ensure continuity and quality of services provided in the amount, scope, frequency, and duration as outlined in the service agreement;

- (6) Monitor and document quality of services provided in accordance with He-M 503.10 below and He-M 517 for home and community-based waiver services;
- (7) Provide crisis and critical incident coordination and planning;
- (8) Ensure that service documentation is maintained pursuant to He-M 503.10 (c) and (l)(2)-(3) and He-M 517 for home and community-based waiver services;
- (9) Determine and implement necessary action and document resolution when goals are not being addressed, support services are not being provided in accordance with the service agreement, or when health or safety issues have arisen;
- (10) Convene person-centered service planning meetings at least annually and whenever:
 - a. The individual, guardian, or representative is not satisfied with the services received;
 - b. There is no progress on the goals after follow-up interventions;
 - c. The individual's needs change;
 - d. There is a need for a new provider agency; or
 - e. The individual, guardian, or representative requests a meeting;
- (11) Document service coordination visits and contacts pursuant to He-M 503.09 (u) and He-M 503.10 (l) (2)-(4);
- (12) No less than 45 days in advance of the annual person-centered service planning meeting:
 - a. Ensure that all needed evaluations, screenings, or assessments, such as the SIS-A ®, HRST, assistive technology evaluation, comprehensive risk assessments, positive behavior plans, and other clinical or health evaluations are updated and, if necessary, performed and that information from said evaluations, screenings, and assessments is discussed and shared with the individual, guardian, or representative;
 - b. Identify risk factors and plans to minimize them;
 - c. Assess the individual's interest in, or satisfaction with, employment; and
 - d. Discuss and assess the individual's progress on goals and preparing for the development of new goals to be included in the new service agreement;
- (13) Assist the individual, guardian, or representative to maintain the individual's public benefits; and
- (14) Participate in risk management activities by:
 - a. Making referrals to the applicable area agency's local risk management committee for individual's exhibiting behaviors including but not limited to violent aggression, problematic sexual behaviors, or fire-setting behaviors for evaluations or planning activities initially and ongoing;
 - b. Participating in and presenting to committees and other groups related to risk management including, but not limited to, local human rights committees, statewide and

local risk management committees, and community of practice to determine application of assessment recommendations received;

c. Attending risk management training activities; and

d. Attending clinically specialized trainings, based on assessed needs of the individuals supported, that enable successful completion of and participation in risk management activities.

(c) A service coordinator shall not:

- (1) Be a guardian or representative of the individual whose services they are coordinating; or
- (2) Have a conflict of interest concerning the individual, such as providing, or being employed by the provider agency that also provides other direct services to the individual, except in accordance with He-M 503.08(d) and (e) below.

(d) A provider agency that provides direct services to the individual and seeks to also provide service coordination, shall be determined the only willing and qualified service coordination agency and permitted to provide service coordination and direct services if the following criteria are met:

- (1) There is a lack of another qualified service coordination agency willing to provide services to the individual as outlined in their service agreement;
- (2) The individual, guardian, or representative agrees that the same agency shall provide both service coordination and direct services;
- (3) The agency ensures that service coordination and direct services are located in different departments and different physical locations within the organization, and report to separate and equal organizational leadership; and
- (4) The direct services department shall not develop or have any influence on developing the individual's service agreement.

(e) A provider agency requesting determination to serve as the only willing and qualified service coordination agency in accordance with (d) above shall complete and submit the form entitled "NH Bureau of Developmental Services Exemption Request" (December 2023) along with the following documentation:

- (1) Documentation that the criteria outlined in He-M 503.08(d)(1) through (4) above has been met;
- (2) Such agency's plan to develop or recruit service coordination agencies;
- (3) Documentation of service coordinator orientation and training that outlines the role of the service coordinator as a neutral facilitator and how to offer choice to individuals;
- (4) Documentation of how such agency ensures all individuals, guardians, and representatives have accurate and accessible information relative to service providers; and
- (5) Documentation to demonstrate how such agency monitors that choice is given to individuals, guardians, and representatives.

(f) Upon review of the form submitted pursuant to (e) above, the bureau shall approve such a request if all the requirements are met.

(g) The approval of being the only willing and qualified service coordination agency shall be for one year.

(h) After approval of an initial exemption request, the agency in (e) above shall resubmit to the department a “NH Bureau of Developmental Services Exemption Request” form (December 2023) annually.

(i) The documentation required in (e)(1)-(4) shall only be required with the initial request.

(j) Subsequent requests shall not require the described documentation provided that the only willing and qualified service coordination agency certifies that there have been no changes to the original documentation submitted.

(k) Once an only willing and qualified service coordination agency request has been approved in accordance with (f) or (j) above, the bureau shall conduct ongoing quarterly monitoring regarding the criteria in (d)(1) above.

He-M 503.09 Service Planning.

(a) Preliminary planning for services shall be done in accordance with He-M 503.05(1).

(b) Within 15 days of an individual’s eligibility or conditional eligibility pursuant to He-M 503.05(d) or level of care approval pursuant to He-M 503.05(o), for those for whom an application for home and community-based waiver services has been submitted pursuant to He-M 503.05(n), the area agency shall assist the individual, guardian, or representative with resources to select a service coordinator.

(c) In instances when an individual has been determined eligible pursuant to He-M 503.05(d), and declines services available pursuant to He-M 503.05(1) and (m), the area agency shall assign a service coordinator within 30 days.

(d) In instances when a service coordinator has been assigned pursuant to (c) above, the service coordinator shall, at minimum, contact the individual annually to discuss ongoing needs and determine if service planning is desired.

(e) The service coordinator shall hold an initial person-centered service 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 selection of and acceptance by, a service coordination agency.

(f) The service coordinator shall document that they have maximized the extent to which an individual participates in and directs their person-centered service planning process by:

(1) Explaining to the individual the person-centered service 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 their rights and responsibilities pursuant to He-M 310;

(3) Eliciting information from the individual regarding their goals, personal preferences, and service needs, including any health concerns, that shall be a focus of person-centered service planning meetings;

(4) Determining with the individual issues to be discussed during all person-centered service planning meetings; and

(5) 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.

(g) The person-centered service 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 from the team shall be incorporated into the service agreement.

(h) Service coordinators shall facilitate service planning to develop service agreements in accordance with He-M 503.10. Service agreements shall be prepared initially according to the timeframe specified in He-M 503.10 (c) and annually thereafter, as required by He-M 503.08 (b)(10).

(i) The individual, guardian, or representative may determine the following elements of the person-centered service planning process:

- (1) The number and length of meetings;
- (2) The location, date, and time of meetings;
- (3) The meeting participants; and
- (4) Topics to be discussed.

(j) Copies of relevant evaluations and reports shall be sent to the individual and guardian at least 5 business days before person-centered service planning meetings.

(k) If people who provide services to the individual are not selected by the individual to participate in a person-centered service planning meeting, and the individual determines that the provider would have information beneficial to service planning, the service coordinator shall contact such persons prior to the meeting so that their input can be considered.

(l) The service coordinator shall contact all persons who have been identified to provide a service to the individual and confirm arrangements for providing such services.

(m) All service planning shall occur through a person-centered service planning process that:

- (1) Maximizes the decision-making of the individual;
- (2) Is directed by the individual or the individual's guardian or representative, if applicable;
- (3) Facilitates personal choice by providing information and support to assist the individual to direct the process, including information describing:
 - a. The array of services and provider agencies available; and
 - b. Options regarding self-direction of services;

- (4) Includes participants freely chosen by the individual;
- (5) Reflects cultural considerations of the individual and is conducted in clearly understandable language and form;
- (6) Occurs at times and a location of convenience to the individual, guardian, or representative;
- (7) Includes strategies for solving conflict or disagreement within the process, including clear conflict of interest guidelines for all planning participants;
- (8) Is consistent with an individual's rights to privacy, dignity, respect, and freedom from coercion and restraint;
- (9) Includes the process for the individual, guardian, or representative to request amendments to the service agreement;
- (10) Records the alternative home- and community-based settings that were considered by the individual, guardian, or representative;
- (11) Includes information related to risk by:
 - a. Incorporating information obtained through a comprehensive risk assessment, which shall be administered:
 1. Initially, at the beginning of service planning, or as needed to each individual with a history of, or exhibiting signs of, behaviors that pose a potentially serious likelihood of danger to self or others, or a serious threat of substantial damage to real property, such as, but not limited to, the following:
 - (i) Problematic sexual behavior;
 - (ii) Violent aggression;
 - (iii) Fire-setting behaviors; or
 - (iv) Other similar violent or dangerous behaviors or events;
 2. Prior to any significant change in the level of the individual's treatment or supervision;
 3. At any time an individual who previously has not had a comprehensive risk assessment begins to engage in behaviors referenced in 1. above; and
 4. By an evaluator with specialized experience, training, and expertise in the treatment of the types of behaviors referenced in 1. above;
 - b. Ensuring that plans created pursuant to He-M 505 are reviewed with evaluators to consider ongoing appropriateness and opportunities for modification of restrictions following initiation of risk management related strategies. Such considerations may be made through reassessment or through a consultative review of other documentation and updated data related to the individual's progress;
 - c. Ensuring documentation of activities and progress in treatment relative to management of risk for an individual to help inform development of person-centered service plans;

- d. Making referrals for individuals associated with high-risk incidents to participate in evaluations or planning activities initially and ongoing;
 - e. Processing and analyzing incidents related to violent aggression, problematic sexual behavior, or fire-setting behaviors; and
 - f. Making referrals for individuals associated with high-risk incidents to evaluations or planning activities initially and ongoing;
- (12) Includes information from specialty medical and health assessments and clinical assessments as needed, including, at a minimum, communication, assistive technology, and functional behavior assessments, as applicable;
- (13) Includes strategies to address co-occurring severe mental illness or behavioral challenges which are interfering with the person's functioning, including positive behavior plans or other strategies based on functional behavior or other evaluations or referrals to behavioral health services;
- (14) Provides the individual with information regarding the services and provider agencies available to enable the individual to make informed decisions as to whom they would like to provide services;
- (15) Includes individualized backup plans and strategies;
- (16) Includes strategies for solving disagreements;
- (17) Uses a strengths-based approach to identify the positive attributes of the individual;
- (18) Includes the provision of auxiliary aids and services when needed for effective communication, including low literacy materials and interpreters;
- (19) Addresses the individual's concerns about current or contemplated guardianship or other legal assignment of rights;
- (20) Explores housing and employment in integrated settings, and develops plans consistent with the individual's goals and preferences;
- (21) Includes a review of the past year that:
- a. Includes the individual's:
 - 1. Personal achievements;
 - 2. Relationships;
 - 3. Degree of community involvement;
 - 4. Challenging issues or behavior;
 - 5. Health status and any changes in health; and
 - 6. Safety considerations during the year;

- b. Addresses the previous year's goals with level of success and, if applicable, identifies any obstacles encountered;
- c. Identifies the individual's personal goals and the supports that will aid in achieving their goals;
- d. Identifies the type and amount of services the individual receives and the support services provided under each service category;
- e. Identifies the individual's health needs;
- f. Identifies the individual's safety needs;
- g. Identifies any follow-up action needed on concerns and the persons responsible for the follow-up; and
- h. Includes a statement of the individual's and guardian's satisfaction with services;

(22) Includes the individual's paid employment and volunteer positions, as applicable;

(23) Considers historical information about the individual's experiences; and

(24) Includes a discussion of the need for assistive technology that could be utilized to support all services and activities identified in the proposed service agreement without regard to the individual's current use of assistive technology.

(n) The information outlined in (m)(1)-(24) above shall be entered into the service agreement outlined in He-M 503.10 when the individual, guardian, or planning team determine that such information is necessary for successful participation in the services and supports outlined in the service agreement.

(o) All planning for home and community-based waiver services shall include information from the following assessments:

(1) The American Association on Intellectual and Developmental Disabilities', "SIS-A ®", (2023 edition), available as noted in Appendix A, for individuals aged 16 or older, which shall be administered:

- a. Initially, within 60 days of the determination of eligibility for waiver services pursuant to He-M 503.05(o) for each individual;
- b. For individual's receiving In Home Supports home and community-based waiver services within 60 days of when the individual reaches age 16;
- c. Upon a significant change as defined under SIS-A ® protocols;
- d. Five years following each prior administration; and
- e. To individuals who have moved to New Hampshire and are requesting home and community-based waiver services in the next 12 months. If the individual has previously had a SIS-A ® completed in another state within the last 5 years, however, then they may provide the out-of-state SIS-A ® results in place of taking a new SIS-A ®; and

(2) Information obtained through the HRST (2015 edition), available as noted in Appendix A, which shall be administered:

a. Initially, upon determination of eligibility for waiver services pursuant to He-M 503.05(o) or He-M 524 for each individual; and

b. Annually or upon significant change in an individual's status; and

(3) For residential services, includes information from personal safety assessments pursuant to He-M 1001.

(p) In order to develop or revise a service agreement to the satisfaction of the individual, guardian, or representative, the person-centered service planning process shall consist of periodic and ongoing discussions regarding elements identified in He-M 503.07(b) that:

(1) Include the individual and other persons involved in their life;

(2) Are facilitated by a service coordinator; and

(3) Are focused on the individual's abilities, health, interests, and achievements.

(q) Service agreements shall be reviewed by the service coordinator with the individual, guardian, or representative at least once during the first 6 months of service and as needed. The annual review required by He-M 503.08 (b)(10) shall include a service planning meeting.

(r) Pursuant to RSA 171-A:11, the reviews required in (q) above shall include, at a minimum, the following:

(1) A thorough clinical examination including an annual health assessment;

(2) An assessment of the individual's capacity to make informed decisions; and

(3) Consideration of less restrictive alternatives for service.

(s) The individual, guardian, or representative may request, in writing, a delay in an initial or annual service agreement planning meeting. The area agency and provider agencies shall honor this request.

(t) In the event an individual, guardian, or representative requests an extension of the service agreement meeting, the extension shall be documented and not exceed 60 days after the expiration of the current service agreement.

(u) The service coordinator shall be responsible for monitoring services identified in the service agreement pursuant to He-M 503.10(l) and for assessing individual, family, or guardian satisfaction at least annually for non-waiver services and quarterly for waiver services.

(v) If an individual has a residency agreement and there is notification of intended termination, the service coordinator shall convene a person-centered service planning meeting as follows:

(1) Within 10 days of receipt of notification of the intended termination; or

(2) Within 24 hours of receipt of the notification if the intended termination is within 72 hours due to the threat of serious bodily injury by or to the resident.

(w) An area agency, service coordinator, provider agency, provider, individual, guardian, or representative shall have the authority to request a person-centered service planning meeting at any time.

(x) Service agreement amendments may be proposed at any time.

(y) If the individual, guardian, or provider agency disapproves of the service agreement, or a service agreement amendment, the dispute shall be resolved:

(1) Through informal discussions between the individual, guardian, or representative and service coordinator;

(2) By reconvening a person-centered service planning meeting; or

(3) By the individual, guardian, or representative filing an appeal to the bureau pursuant to He-C 200.

He-M 503.10 Service Agreements.

(a) The service coordinator shall create service agreements for all individuals in accordance with (b)-(f) below.

(b) All service agreements shall:

(1) Be understandable to the individual, guardian, or representative and all provider agencies and providers responsible for service provision;

(2) At a minimum, be written in plain language and in a manner accessible to individuals with disabilities and persons who have limited proficiency in English;

(3) Be finalized and agreed to in writing by the individual, guardian, or representative and signed by all provider agencies responsible for the implementation of the service agreement;

(4) Be entered into the electronic platform, IntellectAbility at <https://nhbds.hrstapp.com/> , and then NH Easy at <https://nheasy.nh.gov/#/> , when IntellectAbility sunsets; and

(5) Be distributed to the individual, guardian or representative, area agency, and all provider agencies and providers who are responsible for the implementation or monitoring of the service agreement.

(c) Within 14 days of the initial person-centered service planning meeting pursuant to He-M 503.09 (e), the service coordinator shall develop a service agreement that includes, but is not limited to, the following:

(1) A statement of the nature of the specific strengths, interests, capacities, disabilities, and specific needs of the individual;

(2) A description of intermediate and long-range habilitation and treatment goals chosen by the individual and their guardian with a projected timetable for their attainment;

(3) A statement of specific services to be provided and the amount, scope, frequency, and duration of each service;

(4) Specification of the provider agencies to furnish each service identified in the service agreement;

- (5) Criteria for transfer to less restrictive settings for habilitation, including criteria for termination of service, and a projected date for termination of service;
- (6) Demographic information;
- (7) A personal profile;
- (8) The specific services to be furnished based on the support needs identified in (1) above and how the services selected will support the individual's goals;
- (9) Guardianship, supported decision-making, and representative payee information;
- (10) Service documentation requirements sufficient to track outcomes;
- (11) Identification of the persons and entities responsible for monitoring the services in the service agreement;
- (12) Documentation that all settings where the individual receives services meet the criteria of 42 CFR 441.301, are chosen by the individual or representative, and support full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as people not receiving services;
- (13) Documentation that the setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting, and that the settings options are identified and based on the individual's needs, and preferences;
- (14) Documentation that any restriction on the right of an individual is justified by:
 - a. An identified specific and individualized need that the modification is based on;
 - b. The positive interventions and supports used prior to any modifications to the individual's rights;
 - c. The less intrusive methods of meeting the need that were tried but did not work;
 - d. A clear description of the condition that is directly proportionate to the specific assessed need;
 - e. The regular collection and review of data to measure the ongoing effectiveness of the modification;
 - f. Established time limits for periodic reviews of the necessity of the modification;
 - g. The informed consent of the individual, guardian, or representative; and
 - h. An assurance that the modification will not cause harm to the individual;
- (15) Services needed but not currently available; and
- (16) If applicable, risk factors and the measures required to be in place to minimize them, including backup plans and strategies.

(d) For individuals receiving waiver services, the information provided below shall be added to the service agreement:

- (1) The specific waiver services to be provided including the amount, scope, frequency, and duration;
- (2) The results of the SIS-A ® and the HRST;
- (3) Service documentation requirements sufficient to describe progress on goals and the services received; and
- (4) If applicable, reporting mechanisms under self-directed services regarding budget updates and individual and guardian satisfaction with services.

(e) For individuals who reside in a provider owned or controlled residential setting, the service agreement shall document any modifications of the individual's rights in said setting to:

- (1) Privacy in their sleeping or living unit, including doors lockable by the individual with only appropriate providers having keys to doors as needed;
- (2) Freedom and support to control their own schedule and activities;
- (3) Access to food at any time;
- (4) Having visitors of their choosing at any time; and
- (5) Freedom to furnish and decorate sleeping or living units.

(f) A provider agency shall only make modifications pursuant to (e) above by documenting in the service agreement the following:

- (1) An identified specific and individualized assessed need that the modifications are based on;
- (2) The positive interventions and supports used prior to any modifications to the service agreement;
- (3) The less intrusive methods of meeting the need that have been tried but did not work;
- (4) A clear description of the condition that is directly proportionate to the specific assessed need;
- (5) The regular collection and review of data to measure the ongoing effectiveness of the modification;
- (6) Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;
- (7) The informed consent of the individual or representative; and
- (8) An assurance that the interventions and support will not cause harm to the individual.

(g) Within 5 business days of completion of a service agreement, or service agreement amendment, the service coordinator shall provide the individual and guardian, or representative the following:

- (1) The service agreement, signed by the service coordinator, and all provider agencies identified in the service agreement;
- (2) The name, address, email, and phone number of all provider agencies; and
- (3) A description of the procedures for challenging the proposed service agreement pursuant to He-M 503.16 for those situations where the individual, guardian, or representative disapproves of the service agreement.

(h) The individual, guardian, or representative shall have 10 business days from the date of receipt of the service agreement, or the service agreement amendment, to respond in writing, indicating approval or disapproval of the service agreement or amendment. Unless otherwise arranged between the individual, guardian, or representative and the service coordinator, failure to respond within the time allowed shall constitute approval of the service agreement or amendment.

(i) When a service agreement has been approved by the individual, guardian, or representative and service coordinator, the services shall be implemented and monitored as follows:

- (1) A person responsible for implementing any part of a service agreement, shall collect and record information about services provided and how they have impacted progress on the individual's goals, in a timeframe outlined in the service agreement or, at a minimum, monthly;
- (2) On at least a monthly basis, the service coordinator shall visit or have verbal or written contact, as determined by the individual or persons responsible for implementing a service agreement, and document these contacts;
- (3) The service coordinator shall visit the individual 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:
 - a. Whether services match the interests and needs of the individual;
 - b. Individual and guardian satisfaction with services; and
 - c. Progress on the goals in the expanded service agreement; and
- (4) If the individual receives services under He-M 1001, or residential services under He-M 521, He-M 524, or He-M 525, all of the service coordinator's quarterly visits with the individual shall be in the home where the individual resides.

He-M 503.11 Record Requirements for Area Agencies and Provider Agencies.

(a) Area agencies, service coordinators, and other provider agencies, or their designees shall maintain a separate record for each individual who receives services and ensure the confidentiality of information pertaining to the individual, including:

- (1) Maintaining the confidentiality of any personal data in the records;
- (2) Storing and disposing of records in a manner that preserves confidentiality; and
- (3) Obtaining a release of information pursuant to He-M 503.04 (h) prior to release of any part of a record to a third party.

(b) An individual's record shall include, as applicable:

- (1) Personal and identifying information including the individual's:
 - a. Name;
 - b. Address;
 - c. Date of birth; and
 - d. Telephone number;
- (2) All information used to determine eligibility for services pursuant to He-M 503.05 and He-M 503.06;
- (3) Information about the individual that would be essential in case of an emergency, including:
 - a. Name, address, and telephone number of legal guardian, representative, or next of kin or other person to be notified;
 - b. Name, address, and telephone number of current providers; and
 - c. Medical information as applicable, including:
 1. Diagnosis(es);
 2. Health history;
 3. Allergies;
 4. Do not resuscitate (DNR) orders, as appropriate;
 5. Advance directives, as determined by the individual;
 6. Current medications; and
 7. Any correspondence related to medical information relevant to the individual;
- (4) A copy of the individual's current service agreement;
- (5) Copies of all service agreement amendments;
- (6) Progress notes on goals and support services provided as identified in the service agreement;
- (7) All service coordination contact notes and quarterly assessments pursuant to He-M 503.10(i)(2)-(4);
- (8) Copies of evaluations and reviews by providers and professionals;
- (9) Copies of correspondence within the past year with the individual and guardian, area agency, provider agencies, providers, physicians, attorneys, state and federal agencies, family members, and others in the individual's life;
- (10) Other correspondence or memoranda concerning any significant events in the individual's life;
- (11) Information about transfer or termination of services, as appropriate; and

(12) Proof that the individual was given choice of provider agencies.

(c) All entries made into an individual record shall be legible and dated and have the author identified by name and position.

(d) In addition to the documentation requirements identified in He-M 503, each area agency, service coordinator, provider agency, and provider shall comply with all applicable documentation requirements of other department rules.

(e) Each billing entity shall:

(1) Retain records supporting each Medicaid bill for a period of not less than 6 years; and

(2) Retain an individual's social history, medical history, evaluations, and any court-related documentation for a period of not less than 6 years after termination of services.

Repeal He-M 503.12, effective 7-25-15 (Document #10900), as follows:

~~He M 503.12 Record Requirements for Provider Agencies.~~

~~(a) Provider agencies shall maintain a separate record for each individual who receives services and ensure the confidentiality of information pertaining to the individual, including:~~

~~(1) Maintaining the confidentiality of any personal data in the records;~~

~~(2) Storing and disposing of records in a manner that preserves confidentiality; and~~

~~(3) Obtaining a release of information pursuant to He-M 503.04 (h) prior to release of any part of a record to a third party.~~

~~(b) An individual's record shall include:~~

~~(1) Personal and identifying information including the individual's:~~

~~a. Name;~~

~~b. Address;~~

~~c. Date of birth; and~~

~~d. Telephone number;~~

~~(2) Information about the individual that would be essential in case of an emergency, including:~~

~~a. Name, address, and telephone number of legal guardian or next of kin or other person to be notified;~~

~~b. Name, address, and telephone number of current service providers; and~~

~~c. Medical information, including:~~

~~1. Diagnosis(es);~~

~~2. Health history;~~

- ~~3. Current medications;~~
- ~~4. Allergies;~~
- ~~5. Do not resuscitate (DNR) orders, as appropriate; and~~
- ~~6. Advance directives, as determined by the individual;~~

- ~~(3) A copy of the individual's current service agreement;~~
- ~~(4) Copies of all service agreement amendments;~~
- ~~(5) Progress notes on goals and support services provided as identified in the service agreement;~~
- ~~(6) Copies of evaluations and reviews by providers and professionals that are relevant to the individual's current needs;~~
- ~~(7) Copies of correspondence within the past year with the individual and guardian, service providers, physicians, attorneys, state and federal agencies, family members and others in the individual's life;~~
- ~~(8) Any correspondence involving the individual and the provider agency; and~~
- ~~(9) Information about transfer or termination of services, as appropriate.~~

~~(c) All entries made into an individual record shall be legible, dated and have the author identified by name and position.~~

~~(d) In addition to the documentation requirements identified in He-M 503, each provider agency shall comply with all applicable documentation requirements of other bureau rules.~~

~~(e) Each provider agency shall:~~

- ~~(1) Retain records supporting each Medicaid bill for a period of not less than 6 years; and~~
- ~~(2) Retain an individual's social history, medical history, evaluations and any court related documentation for a period of not less than 6 years after termination of services.~~

Readopt with amendment and renumber He-M 503.13 through He-M 503.18, effective 7-25-15 (Document #10900), as He-M 503.12 through He-M 503.17 to read as follows:

He-M 503.12 Service Funding.

(a) Pursuant to RSA 171-A:1-a, I, services shall be funded in such a manner that:

- (1) For individuals in school and already eligible for services from the area agencies, funds shall be allocated to them 90 days prior to their graduating or exiting the school system or earlier so that any new or modified services needed are available and provided upon such school graduation or exit;
- (2) For newly found eligible adults, the period between the time of completion of a service agreement and the allocation by the department of the funds needed to carry out the services required by the service agreement shall not exceed 90 days; and

(3) For individuals already receiving services who experience significant life changes, such as a significant change in their medical conditions, the period of time for initiation of new services shall not exceed 90 days from the amendment of the service agreement except by mutual agreement between the area agency and the individual specifying a time limited extension.

(b) Service funding needs for (a)(1)-(2) shall be documented by the area agency into NH Easy at <https://nheasy.nh.gov/#/>.

(c) Service funding needs for (a)(3) shall be documented by the service coordinator into NH Easy at <https://nheasy.nh.gov/#/>.

(d) The bureau shall make the final determination on the cost effectiveness of proposed services for all funding requests.

He-M 503.13 Transfers Across Regions.

(a) If an individual, guardian, or representative plans to relocate where the individual lives and wishes to transfer the individual's area agency affiliation to that region, the individual, guardian, or representative shall notify, in writing, the area agency in the current region and the area agency in the proposed region that the individual is moving and wishes to transfer services to that region.

(b) The current area agency shall send to the proposed area agency all information contained within the individual's file as outlined in He-M 503.11.

(c) Service coordinators shall assist with the coordination when an individual transfers so that benefits obtained from third party resources such as Medicaid, community mental health center services, and the division of vocational rehabilitation services shall not be lost or delayed during the transition from one region to another.

He-M 503.14 Termination of Services.

(a) If termination of services is being considered by the area agency, service coordinator, individual, guardian, representative, or provider agency, then the service coordinator shall meet with either the individual or their guardian or representative, or both to discuss the reasons for the recommended termination.

(b) Any recommendation for termination shall be made in writing to the area agency director and be based on one or both of the following:

- (1) The individual can function without such service; or
- (2) Services are no longer necessary because they have been replaced by other supports or services.

(c) Within 10 business days of receipt of a recommendation for termination of services, an area agency director shall call a meeting with the service coordinator, either the individual or their guardian or representative, if applicable, and the provider agencies to be convened to review the request. The purpose of the meeting shall be to determine if the criteria listed in (b) above applies to the individual.

(d) Based on the information presented and determinations made at the meeting, the service coordinator shall prepare a written report for the area agency director which sets forth one of the following:

- (1) A statement of concurrence with the recommendation for termination;

- (2) A recommendation for continuance; or
- (3) Changes to the individual's service agreement.

(e) The area agency director shall make the final decision regarding termination based on the criteria listed in (b) above.

(f) If a decision is made to terminate services pursuant to (b) above, the area agency director shall send a termination notice to the individual, guardian, or representative at least 30 days prior to the proposed termination date. Services may be terminated sooner than 30 days with the consent of the individual, guardian, or representative. The individual, guardian, or representative may appeal the termination decision in accordance with He-C 200.

(g) In each termination notice the area agency shall provide information on the reason for termination, the right to appeal, and the process for appealing the decision, including the names, addresses, and phone numbers of the office of client and legal services of the bureau and advocacy organizations, such as the Disability Rights Center-NH, which the individual, guardian, or representative may contact for assistance in appealing the decision.

(h) An individual whose services have been terminated may request resumption of services if they believe that the reasons for the termination of services no longer apply. Such a request shall be made by the individual, guardian, or representative, in writing, to the area agency director.

(i) Upon request of the individual, guardian, or representative, the area agency director shall resume services to the individual if the criteria in (b) above no longer apply and if funding is available.

He-M 503.15 Voluntary Withdrawal from Services.

(a) An individual, guardian, or representative may withdraw voluntarily from any service(s) at any time, except as provided by RSA 171-B.

(b) The administrator of the service from which withdrawal is made shall notify the area agency in writing of the withdrawal and so indicate in the individual's record.

(c) If any provider determines that withdrawal from a service might constitute abuse, neglect, or exploitation on the part of a guardian or representative, the provider or service coordinator shall report such abuse, neglect, or exploitation as required by law.

(d) If an individual does not have a guardian or representative and their service coordinator or any other person believes that the individual is not making an informed decision to withdraw from services and might suffer harm as a result of abuse, neglect, or exploitation, the area agency shall pursue the least restrictive protective means including, as appropriate, guardianship to address the situation.

(e) An individual who has withdrawn from services may request resumption of services at any time. Such a request shall be made by the individual, guardian, or representative, in writing, to the area agency director.

(f) Upon request of the individual, guardian, or representative, the area agency director shall resume services to the individual if funding is available.

He-M 503.16 Challenges and Appeals.

(a) Any determination, action, or inaction by the bureau, a service coordination agency, provider agency, or area agency may be appealed by an individual, guardian, or representative.

(b) An individual, guardian, or representative may choose to pursue formal or informal resolution to resolve any disagreement with the bureau, a service coordination agency, provider agency, or an area agency. If informal resolution is sought, at any time during the process or within 30 business days of the bureau, service coordination agency, provider agency, or area agency decision, the individual may choose to file a formal appeal pursuant to (e)-(g) below. All formal appeals shall be filed within 30 days of the bureau, area agency, provider agency, or service coordination agency determination, action, or inaction.

(c) The following actions shall be subject to the notification requirements of (d) below:

- (1) Adverse eligibility actions under He-M 503.05(i) and (q) and He-M 503.06(e) and (f);
- (2) Proposed service agreements or service agreement amendments if the individual, guardian, or representative disapproves pursuant to He-M 503.10(h); and
- (3) A determination to terminate services under He-M 503.14(f).

(d) The bureau, area agency, provider agency, or service coordination agency, as applicable, shall provide written notice to the applicant, individual, and guardian or representative of the actions specified in (c) above, including:

- (1) The specific rules that support, or the federal or state law that requires, the action;
- (2) Notice of the individual's right to appeal in accordance with He-C 200 within 30 business days and the process for filing an appeal, including the contact information to initiate the appeal with the bureau's administrator;
- (3) Notice of the individual's continued right to services pending appeal, when applicable, pursuant to (g) below;
- (4) Notice of the right to have representation with an appeal by:
 - a. Legal counsel;
 - b. A relative;
 - c. A friend; or
 - d. Another spokesperson;
- (5) Notice that neither the area agency, provider agency, service coordination agency, nor the bureau is responsible for the cost of representation; and
- (6) Notice of organizations with their addresses and phone numbers that might be available to provide pro bono or reduced fee legal assistance and advocacy, including the Disability Rights Center-NH.

(e) Appeals shall be forwarded, in writing, to the bureau administrator in care of the department's office of client and legal services. An exception shall be that appeals may be filed verbally if the individual is unable to convey the appeal in writing.

(f) The bureau administrator shall immediately forward the appeal to the department's administrative appeals unit which shall assign a presiding officer to conduct a hearing, as provided in He-C 200. The burden shall be as provided by He-C 204.12.

- (g) If a hearing is requested, the following actions shall occur:
- (1) For current recipients, services and payments shall be continued as a consequence of an appeal for a hearing until a decision has been made; and
 - (2) If the bureau, service coordination agency, provider agency, or area agency decision is upheld:
 - a. Benefits shall cease 60 days from the date of the denial letter or 30 days from the hearing decision, whichever is later; or
 - b. In the instance of termination of services, services shall cease one year after the initial decision to terminate services or 30 days from the hearing decision, whichever is later.

He-M 503.17 Waivers.

(a) An applicant, area agency, service coordination agency, provider agency, individual, guardian, representative, or provider may request a waiver of specific procedures outlined in He-M 503 by completing and submitting the form titled “NH Bureau of Developmental Services Waiver Request” (October 2023). The request shall be sent in writing to the bureau administrator.

(b) A completed waiver request form shall be signed by:

- (1) The individual, guardian, or representative indicating agreement with the request; and
- (2) If applicable, the area agency, service coordination agency, or provider agency’s executive director or designee recommending approval of the waiver.

(c) A waiver request shall be submitted to the department via:

- (1) Email at bds@dhhs.nh.gov; or
- (2) By mail to:

Bureau of Developmental Services
Hugh J. Gallen State Office Park
105 Pleasant Street, Main Building
Concord, NH 03301

(d) No provision or procedure prescribed by statute shall be waived.

(e) The request for a waiver shall be granted by the commissioner or their designee within 30 days if the alternative proposed by the requesting entity meets the objective or intent of the rule and it:

- (1) Does not negatively impact the health or safety of the individual(s); and
- (2) Does not affect the quality of services to individuals.

(f) Upon receipt of approval of a waiver request, the requesting entity’s subsequent compliance with the alternative provisions or procedures approved in the waiver shall be considered compliance with the rule for which waiver was sought.

(g) Waivers shall be granted in writing for the minimum period necessary to accommodate the waiver request, with a specific duration not to exceed 5 years except as in (h)-(i) below.

(h) Any waiver shall end with the closure of the related program or service.

(i) A requesting entity may request a renewal of a waiver from the bureau. Such request shall be made at least 30 days prior to the expiration of a current waiver.

APPENDIX A: Incorporation by Reference Information

Rule	Title	Publisher; How to Obtain; and Cost
He-M 503.02(r), He-M 503.08(b)(12)a., and He-M 503.09(o)(2)	Health Risk Screening Tool (HRST) (2015 edition)	<p>Publisher: IntellectAbility</p> <p>Cost: 1–100 consumers = \$699.00 each; 1–200 consumers = \$899.00 each; 1–1000 consumers = \$999.00 each</p> <p>The incorporated document is available at https://replacingrisk.com/</p>
He-M 503.02(am), He-M 503.08(b)(12)a., and He-M 503.09(o)(1) intro, c., and e.	Supports Intensity Scale-Adult Version (SIS-A) (2023 edition)	<p>Publisher: American Association on Intellectual and Developmental Disabilities (AAIDD)</p> <p>Cost: \$115</p> <p>The incorporated document is available at: https://www.aidd.org/sis</p>

APPENDIX B

RULE	SPECIFIC STATE STATUTES WHICH THE RULE IMPLEMENTS
He-M 503.01	RSA 171-A:4-8; 11-13; 18, I
He-M 503.02	RSA 171-A:4-8; 11-13; 18, I
He-M 503.03	RSA 171-A:4
He-M 503.04	RSA 171-A:5; 6, I
He-M 503.05	RSA 171-A:6, II, III, IV
He-M 503.06	RSA 171-A:6, II; 11
He-M 503.07	RSA 171-A:13; 14
He-M 503.08	RSA 171-A:11, I-II; 18; I
He-M 503.09	RSA 171-A:11; 12; 42 CFR § 441.301(c)(1)
He-M 503.10	RSA 171-A:11; 12; 42 CFR §441.301(c)(2) & (c)(4)
He-M 503.11	RSA 171-A:11; 12; 18, I
He-M 503.12	RSA 171-A:1-a
He-M 503.13	RSA 171-A:6,I
He-M 503.14	RSA 171-A:8
He-M 503.15	RSA 171-A:7
He-M 503.16	RSA 171-A:6, V
He-M 503.17	RSA 171-A:3; 541-A:22, IV