

**Readopt with amendment He-M 505, effective 8-26-15 (Document #10916), to read as follows:**

PART He-M 505 ESTABLISHMENT AND OPERATION OF AREA AGENCIES

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

He-M 505.01 Purpose. The purpose of these rules is to define the procedures and criteria for the establishment, designation, and redesignation of area agencies, and to define their role and responsibilities.

He-M 505.02 Definitions. The words and phrases used in these rules shall mean the following, except where a different meaning is clearly intended from the context:

(a) “Acquired brain disorder” means a disruption in brain functioning that:

- (1) Is not congenital or caused by birth trauma;
- (2) Presents a severe and life-long disabling condition which significantly impairs a person’s ability to function in society;
- (3) Occurs prior to age 60;
- (4) Is attributable to one or more of the following reasons:
  - a. External trauma to the brain as a result of:
    1. A motor vehicle incident;
    2. A fall;
    3. An assault; or
    4. Another related traumatic incident or occurrence;
  - b. Anoxic or hypoxic injury to the brain such as from:
    1. Cardiopulmonary arrest;
    2. Carbon monoxide poisoning;
    3. Airway obstruction;
    4. Hemorrhage; or
    5. Near drowning;
  - c. Infectious diseases such as encephalitis and meningitis;
  - d. Brain tumor;
  - e. Intracranial surgery;
  - f. Cerebrovascular disruption such as a stroke;
  - g. Toxic exposure; or
  - h. Other neurological disorders such as Huntington’s disease or multiple sclerosis which predominantly affect the central nervous system; and

(5) Is manifested by one or more of the following:

- a. Significant decline in cognitive functioning and ability; or
- b. Deterioration in:
  1. Personality;
  2. Impulse control;
  3. Judgment;
  4. Modulation of mood; or
  5. Awareness of deficits;

(b) “Applicant group” means a group of area citizens that has submitted the required materials to the bureau for consideration for designation as an area agency;

(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.”;

(d) “Area agency” means “area agency” as defined in RSA 171-A:2, I-b;

(e) “Area board” means “area board” as defined in RSA 171-A:2, I-c, namely “the governing body or board of directors of an area agency.”;

(f) “Area plan” means a document prepared by the area agency that outlines that agency’s goals, objectives, and activities pursuant to He-M 505.04(p) and RSA 171-A:18;

(g) “Bureau” means the bureau of developmental services of the department of health and human services;

(h) "Bureau administrator" means the chief administrator of the bureau of developmental services;

(i) “Commissioner” means the commissioner of the department of health and human services, or their designee;

(j) “Conditional redesignation” means a written ruling by the commissioner pursuant to He-M 505.10 that an area agency has partially complied with the redesignation criteria listed in He-M 505.09 and that continued designation is contingent upon fulfilling the requirements established by He-M 505;

(k) “Critical incident” means an alleged, suspected, or actual occurrence of:

- (1) Abuse, including physical, sexual, verbal, and psychological abuse;
- (2) Neglect;
- (3) Exploitation;
- (4) Serious injury;
- (5) Death other than by natural causes; and

(6) Other events that threaten the health or safety of an individual such as hospitalizations, administration of the wrong medication, failure to administer medication, or use of restraints or behavioral interventions that are not included in an approved behavior change program;

(l) “Designation” means a written ruling by the commissioner that an applicant group has been determined to be in compliance with the eligibility requirements set forth in He-M 505.06 and has been approved as the area agency for the area;

(m) “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 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.”;

(n) “Financial management services” means fiscal intermediary services available to individuals who elect to direct and manage their services, pursuant to He-M 524 and He-M 525;

(o) “Generic services” means services available to the general population that are not specifically designed for individuals;

(p) “Governance review” means an announced review to monitor annual compliance of area agency operations including, but not limited to, services, programs, functions, and finances, whether operated directly by the area agency or through contracts with persons or organizations;

(q) “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;

(r) “Individual” means a person who has a developmental disability or acquired brain disorder;

(s) “Integrated activity” means personal interaction between persons with and without developmental disabilities or acquired brain disorders that occurs within community settings;

(t) “Integrated setting” means a setting where the majority of persons are without developmental disabilities and the primary activity is neither bureau-funded nor designed primarily for individuals;

(u) “Interim designation” means a written ruling by the commissioner pursuant to He-M 505.06 (e)(8) that an applicant group or other organization has been approved as the interim area agency until a final designation is made by the commissioner;

(v) “Mission” means the stated goals of the service system as established by the bureau or area agencies;

(w) “Problematic sexual behavior” means non-consensual touching or attempting to touch another person’s body in a sexualized manner, unsolicited sexualized statements, public exposure, and illegal sexual conduct whether in person or online;

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

(y) “Provider agency” means an agency or an independent provider that is established to provide services to individuals;

(z) “Region” means, when followed by a Roman numeral, the area agency in the area corresponding to the identified numeral;

(aa) “Registry” means the list maintained in the department’s electronic database which itemizes identified service needs for individuals in the following 5 years;

(ab) “Sentinel event” means an unexpected occurrence involving death or serious physical or psychological injury, or risk thereof. Serious injury specifically includes loss of limb or function. Categories of reportable sentinel events are individual-centered events, in which the individual is either a victim or perpetrator, including, but are not limited to:

(1) Any sudden, unanticipated, or accidental death, not including homicide or suicide, and not related to the natural course of an individual’s illness or underlying condition;

(2) Permanent loss of function, not related to the natural course of an individual’s illness or underlying condition, resulting from such causes including but not limited to:

a. A medication error;

b. An unauthorized departure or abduction from a facility providing care; or

c. A delay or failure to provide requested or medically necessary services due to waitlists, availability, insurance coverage, or resource limits;

(3) Homicide;

(4) Suicide;

(5) Suicide attempt, such as self-injurious behavior with a non-fatal outcome, with explicit or implicit evidence that the person intended to die and medical intervention was needed;

(6) Rape or any other sexual assault;

(7) Serious physical injury;

(8) Serious psychological injury that jeopardizes the person’s health that is associated with the planning and delivery of care;

(9) Injuries due to physical or mechanical restraints; and

(10) High profile or high risk event, such as:

a. Media coverage; and

b. Police involvement leading to an arrest;

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

(ad) “Service coordinator” means a provider who meets the criteria in He-M 503 or He-M 522 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.

He-M 505.03 Role and Responsibilities of the Area Agency.

(a) The primary responsibility of an area agency, designated in accordance with He-M 505, shall be to plan, establish, or maintain comprehensive service access and delivery for all individuals who are residing in the area, in accordance with RSA 171-A and the rules promulgated thereunder, by:

- (1) Maintaining a current contract with the department to serve as an area agency;
- (2) Managing and providing family support services in accordance with He-M 519;
- (3) Managing and providing family centered early supports and services in accordance with He-M 510;
- (4) Providing or supporting the arrangement of financial management services for individuals who choose to direct and manage their waiver services;
- (5) Managing and completing intake and eligibility activities for individuals in order to determine access to the developmental services system in accordance with He-M 503 and He-M 522 and to facilitate and assist individuals in applying for and maintaining Medicaid benefits;
- (6) Developing and managing initial service planning and access to supports for individuals found to be eligible for services pursuant He-M 503, He-M 522, or He-M 524;
- (7) Providing oversight and management of the provider network by:
  - a. Coordinating and monitoring the provider network to support the needs of the catchment region as outlined in the agency’s area plan, developed pursuant to He-M 505.04 (p);
  - b. Communicating relevant service delivery system updates to provider agencies and provide training as needed;
  - c. Monitoring current service capacity using data from the bureau to identify risk and solutions;
  - d. Reporting to the bureau quarterly, the results from monitoring in c. above and follow up on actions taken pursuant to f. below, to support provider network management;
  - e. Promoting the establishment of new provider agencies to increase service capacity as determined by the bureau based on the data provided in d. above; and

f. Providing follow-up to the bureau on actions taken in accordance with e. above;

(8) Providing information, education, and referrals to the service delivery system, as defined in RSA 171-A:2, XVI, by:

a. Providing objective information and assistance that empowers people to make informed decisions about their services and supports; and

b. Networking and partnering with community organizations with the goal of supporting inclusive community life, leveraging natural resources, services, and supports, and in improving the community's understanding of the service delivery system;

(9) Managing registry documentation by:

a. Assisting individuals in the determination of and documentation of need for services to be provided, pursuant to He-M 503, within 5 years from the date of initial eligibility; and

b. Reviewing and updating the registry as early as practicable anytime a need for services in the next 5 years is identified;

(10) Submitting level of care submissions to the bureau in accordance with He-M 517 and He-M 524 for initial level of care determinations as well as level of care determinations for transfers between home and community based services waivers;

(11) Initiating waiver services in accordance with He-M 503, He-M 522, and He-M 524 including:

a. Facilitating the scheduling of an individual's initial supports intensity scale assessment for individuals who do not have a service coordinator;

b. Providing resources to an individual regarding service coordination agencies so the individual can select a service coordination provider; and

c. Following bureau approval of level of care in accordance with He-M 503.05, submission of the individual's selection in accordance with b. above to NH Easy for provider review and acceptance;

(12) Maintaining and updating records in the electronic database NH Easy at <https://nheasy.nh.gov/#/> ;

(13) Completing service utilization and quality oversight by:

a. Managing service agreement development through monthly monitoring of annual service agreement renewals;

b. Reviewing service agreements quarterly and communicating any identified needs to applicable service provider agencies;

c. Managing and overseeing submission of out-of-state service provision requests to the bureau;

d. Monitoring provision of services as prescribed in the service agreement by:

1. Completing annual service and post-payment audits using a tool provided by the bureau within 60 days of request by the bureau; and
2. Providing results of the audits completed in accordance with (1) above to include raw data, aggregated data, and analysis of findings;

e. Assessing annual satisfaction with quality of services, and reviewing and continuously improving quality of services by:

1. Soliciting feedback from individuals and families within the agency's geographic region; and
2. Providing results of the feedback received in accordance with (1) above to include raw data, aggregated data, and analysis of findings;

f. Completing inquiry and review at the request of the bureau related to service concerns, complaints, or grievances;

g. Ensuring training and education dissemination related to identified trends of sentinel events, restraint and seclusion, and mortality. Area agencies shall ensure that at least one training per state fiscal year quarter is offered and provided to those who register;

h. Collaborating with the community mental health center that serves the region to support coordinated service planning and delivery for individuals accessing or wishing to access services from both service systems; and

i. Collaborating with the regional public health network that serves the region to support emergency planning processes in order to develop and execute response and recovery plans;

(14) Increasing access to employment by:

- a. Acting on employment trends, as identified by the bureau; and
- b. Participating in the employment leadership committee pursuant to He-M 518;

(15) Providing critical incident management by:

- a. Collecting restraint and seclusion data and providing such data to the bureau quarterly with analysis of findings on a tool approved by the bureau;
- b. Finalizing mortality notifications and reviews received from provider agencies and submitting these reviews to the bureau;
- c. Finalizing sentinel event reports and submitting these reports to the bureau;
- d. Reviewing reports of incidents to determine if a sentinel event report is needed;

- e. Monitoring follow-up related to findings from formal complaint investigations conducted pursuant to He-M 202;
- f. Providing coordination, logistical support, and subject matter expertise to service coordinators regarding crisis mitigation situations;
- g. Providing crisis data to the bureau quarterly with analysis of any observed findings on a tool approved by the bureau;
- h. Ensuring area agency availability 24/7 in order to provide critical incident coordination, logistical support, and subject matter expertise;
- i. Completing expedited intake and eligibility supports to individuals who are experiencing a critical incident but have not sought eligibility for services through the developmental services system; and
- j. Facilitating strategy development and coordination meetings in collaboration with the bureau;

(16) Monitoring, maintaining, safeguarding, and promoting human rights by:

- a. Maintaining and facilitating a human rights committee, whose duties pursuant to RSA 171-A:17 for all individuals working with the committee, shall be;
  - 1. Monitoring and approving all positive behavior change programs created pursuant to He-M 310.11;
  - 2. Ensuring emergency physical restraint shall only be approved for safely responding to situations in which the individual presents with an imminent credible risk of significant harm to self or others by staff who are trained and certified in recognized intervention modalities;
  - 3. Evaluating the treatment and habilitation provided to individuals;
  - 4. Regularly monitoring the implementation of individual service agreements;
  - 5. Monitoring the use of restrictive or intrusive interventions designed to address challenging behavior pursuant to He-M 310.11; and
  - 6. Promoting advocacy programs on behalf of individuals;
- b. Offering and providing to those who register, 2 trainings per year on advocacy and individual rights;
- c. Maintaining and distributing a list of current advocacy groups within the catchment area; and
- d. Completing informal investigations pursuant to He-M 202.05;

(17) Managing catchment region risk by:



a. Coordinating and facilitating a local risk management committee whose duties shall be:

1. Reviewing and analyzing referrals from service coordinators related to violent aggression, problematic sexual behavior, or fire-setting behaviors;
2. Making assessment or evaluation referral recommendations to service coordinators for individuals exhibiting behaviors including but not limited to violent aggression, problematic sexual behaviors, or fire-setting behaviors;
3. Reviewing assessment and evaluation results completed for individuals for whom a referral was submitted in accordance with 2. above to determine whether a need is identified for a plan to manage risk;
4. Providing consultation to service coordinators in identifying providers to create plans to manage risk who have expertise in the areas identified in 1. above;
5. Reviewing plans to manage risk created when a recommendation for such a plan was made pursuant to 4 above to ensure it appropriately applies assessment or evaluation recommendations received pursuant to 3. above;
6. Participating in committees and other groups related to risk management including, but not limited to, statewide risk management committees, and communities of practice to determine application of assessment or evaluation recommendations received pursuant to 2. above;
7. Reviewing documentation from service coordinators and provider agencies on an ongoing basis to determine the impact of such data relative to management of risk for an individual and related plans; and
8. Ensuring that plans to manage risk created when a recommendation for such a plan was made pursuant to 4 above are reviewed regularly with individuals and their treatment team to consider ongoing appropriateness and, in the event that potential changes are indicated, seeking additional consultation with providers qualified to conduct and author assessments, whether they created the initial plans or are new, to discuss opportunities for modification of restrictions by sharing data regarding the individual's progress in treatment. Such considerations shall be made through reassessment or through a consultative review of other documentation and updated data related to the individual's progress;
9. Offering recommendations to the area agency for training for the service system;
10. Offering recommendations, as applicable, to service coordinators for individual-specific training needs;
11. Conducting training related to risk management activities, as requested by the area agency;
12. Ensuring that provider agencies and providers are trained in risk management plans;

13. Ensuring that relevant area agency personnel, provider agencies, and providers receive recommendations for clinically specialized trainings, based on assessed needs of the individuals supported, that enable these personnel to successfully complete risk management activities; and

14. Ensuring monthly representation in the statewide risk management committees; and

b. Collaborate with all area agencies to co-facilitate and convene a statewide risk management committee;

(18) Managing Health Risk Screening Tool (HRST) IntellectAbility accounts and data at <https://nhbds.hrstapp.com/> by:

a. Providing administrative support for HRST account management; and

b. Completing a clinical review for individuals with a score greater than or equal to 3;

(19) Managing New Hampshire Easy (NH Easy) accounts and data by:

a. Ensuring that appropriate staff receive and maintain access to NH Easy in order to carry out duties;

b. Ensuring that the area agency's NH Easy account remains in good standing; and

c. Notifying NH Easy support of any noted system issues;

(20) Completing the request for the funding of a public guardian if the individual does not have a service coordinator;

(21) Participating in medication administration planning by:

a. Attending the state medication committee meeting as defined in He-M 1201.11;

b. Reviewing the 6-month medication error reports described in He-M 1201.11(c)-(e);  
and

c. Offering and providing to those who register, training to provider agencies and providers about medication administration trends as determined by the state medication committee and confirmed by the bureau;

(22) Completing information gathering via survey by:

- a. Disseminating and coordinating the annual national core indicator satisfaction surveys;
- b. Reviewing survey results to identify areas of quality improvement; and
- c. In partnership with the bureau, distributing and reviewing survey results to ensure continuous quality improvement of the service delivery system;

(23) Maintaining records pursuant to He-M 503, He-M 510, He-M 517, He-M 519, and He-M 522, as applicable; and

(24) Managing transitions between regions.

(b) Failure of a provider agency to comply with the requirements in He-M 504 with respect to providing an area agency with necessary information or participating in activities in order for an area agency to carry out its responsibilities in (a) above shall not be considered noncompliance by an area agency.

(c) In instances of a provider agency failure as reflected in (b) above, the area agency shall notify the bureau within 15 days.

(d) For items (a)(4)–(24), Medicaid administrative reimbursement may be claimed by the designated and contracted area agency for activities completed each month on behalf of individuals in the area who are eligible for or seeking eligibility for Medicaid.

(e) Pursuant to RSA 171-A:18, I, the area agency shall be the primary recipient of these funds provided by the bureau for use in establishing, operating, and administering supports and services and coordinating these with existing generic services on behalf of individuals in the area. The area agency may receive funds from sources other than the bureau to assist it in carrying out its responsibilities.

(f) In order to collect Medicaid administrative reimbursement, pursuant to (d) above, the area agency shall:

- (1) Ensure that records are maintained to support that the services in (a)(4)–(24) above were provided in the manner that was claimed;
- (2) Ensure that records pursuant to (1) above are made available to the bureau or any state or federal auditing entity; and
- (3) Provide information regarding services, supports, and costs, as requested by the department not less than every 5 years.

(g) When possible, the area agency shall utilize community based, integrated services, rather than establish separate services for people with developmental disabilities or acquired brain disorders.

#### He-M 505.04 Governance and Composition of the Area Agency Board.

(a) Each area agency board shall establish policies and procedures for the governance and administration of the area agency and those policies and procedures shall:

- (1) Be developed to ensure efficient and effective operation of the local service delivery system;
  - (2) Be developed to adhere to the requirements of state and federal funding sources, the area plans, and the rules and contracts established by the department; and
  - (3) Be developed to ensure that the area agency avoids any conflict of interest and any appearance of conflict of interest in its business relationships.
- (b) The department shall assist area agencies in the establishment and provision of services through contract establishment, contract monitoring, consultation, technical assistance, guidance regarding service reviews, staff and board training, coordination with other service systems, and other means.
- (c) The area agency shall be incorporated and have an established plan for governance in accordance with He-M 505.04 (d)-(p) below.
- (d) The area agency board shall have responsibility for the entire management and control of the property and affairs of the corporation and have the powers usually vested in the board of directors of a not-for-profit corporation, except as regulated herein. This shall be stated in a set of bylaws maintained and updated by the area board.
- (e) The area board shall include in its articles of incorporation and its bylaws a statement that, in the event of dissolution of the area agency or in the event that the agency is no longer designated as an area agency, disposal of all debts and obligations shall be provided for.
- (f) Each area agency board shall include in its bylaws:
- (1) A provision requiring rotation of area board membership so that 1/4 of the members' terms expire each year. Said rotation shall not result in all terms of individuals, guardians, or family members expiring in the same year;
  - (2) A provision that the maximum consecutive period during which a board member may serve as an officer of the board shall not exceed 6 years; and
  - (3) A procedure by which inactive members are removed from the area board.
- (g) The size and composition of the area agency board shall be as follows:
- (1) In all cases, the board of directors shall be composed of an uneven number of persons;
  - (2) The number of persons serving as members shall be no fewer than 9 and no more than 25;
  - (3) Individuals, guardians, and family members shall comprise at least 1/3 of the membership of the area agency board;
  - (4) Members shall be representative of the agency's individuals supported, their family members, and the entire area; and
  - (5) Membership shall be open to persons who reside in the area except for those excluded as follows:
    - a. Persons or the spouses of persons who are under financial contract with the area agency or any organization that is a subsidiary or affiliate of the area agency shall not be eligible for membership on the area board;

- b. Employees or the spouses of employees of agencies that are under financial contract with the area agency shall not be eligible for membership on the area board;
- c. Employees or the spouses of employees of the area agency shall not be eligible for membership on the area board;
- d. Employees of the New Hampshire department of health and human services or their spouses shall not be eligible for membership on the area board; and
- e. Volunteer board members or the spouses of volunteer board members of agencies or programs under contract with the area agency shall be eligible for membership on the area board but shall comprise no more than 1/3 of the board.

(h) All area agency board members shall participate in at least one nationally recognized person-centered thinking training when they begin their first term of board membership and every 5 years thereafter.

(i) The area board shall fill vacancies by soliciting interested persons to submit applications to the area board. Such solicitation shall be by conducting public meetings, placing public announcements in local media, and by any other means.

(j) Pursuant to RSA 171-A:18, III, the area board shall appoint an executive director of the area agency. The executive director shall serve at the pleasure of the area board and as a full-time employee of the agency.

(k) The executive director shall be selected, employed, and supervised by the area board in accordance with a published job description and a competitive application procedure pursuant to the area agency's personnel policies.

(l) The executive director shall have the following experience qualifications, at a minimum:

- (1) Five years of administrative experience in human services; and
- (2) Four years of experience in developmental services programs, which may be done all or in part in the above administrative capacity.

(m) The executive director shall demonstrate extensive knowledge of all aspects of the fields of developmental disabilities and acquired brain disorders, including knowledge of:

- (1) Administration;
- (2) Planning;
- (3) Community networking;
- (4) Business management; and
- (5) Financial and social resources.

(n) The executive director's performance shall be evaluated annually by the area board to ensure that services are provided in accordance with the agency mission, area plan, contract provisions, and mission as well as federal and state laws and rules.

(o) Pursuant to RSA 171-A:18, V, the area agency board shall prepare and submit to the department an area plan for the provision of programs and services to individuals in the area for a 5-year period that coincides with the redesignation cycle identified in Table 505-2.

(p) The area plan shall:

(1) Clearly identify the extent to which the area agency has involved its individuals and families, the area family support council established pursuant to RSA 126-G:4, the general public residing in the area, and generic service agencies in the planning and provision of services for individuals;

(2) Demonstrate that services and supports for which the agency is responsible, as outlined in He-M 505.03(a), are intended to establish and maintain a comprehensive service delivery system that is:

a. Based on the nature and extent of the service needs of individuals and their care-giving families;

b. Consistent with RSA 171-A and the agency's and bureau's mission statements and priorities;

c. Responsive to the priorities of the individuals and families in the area agency's catchment region; and

d. Free from conflict in accordance with 42 CFR 441.301;

(3) Be submitted to the bureau administrator for approval pursuant to (q) below; and

(4) Be reviewed by the area board every 2 years and may be amended by the area board at any time, with such amendments submitted to the bureau administrator for approval if:

a. The area board proposes to change, discontinue, or expand services to individuals and their care-giving families; or

b. Amendment is necessary to reflect changes in area-wide individual and family needs, legislation, or area demographics, vendors, or funding.

(q) The bureau administrator, commissioner, or the commissioner's designee shall review area plans and amendments to area plans submitted for approval pursuant to (p)(3) and (4) above and approve those plans or amendments that are determined to comply with the agency mission and department rules and other applicable state and federal laws, regulations, and rules.

(r) The area agency shall utilize all applicable federal, third party, and other public and private sources of funds to carry out its mission and responsibilities.

(s) The area agency shall not enter any merger, sale, affiliation, or other substantial change in its corporate identity without the prior approval of the bureau administrator, with notice being provided to the bureau no less than 6 months before the change.

(t) The bureau administrator shall review any proposed merger, sale, affiliation, or other substantial change in the corporate identity of an area agency.

(u) The bureau administrator shall assess the potential impact on the developmental services system stability and approve such proposed changes if they determine that the developmental services system

stability can be maintained adequately by the resulting organization’s compliance with department rules and other applicable state and federal laws, regulations, and rules, and that such changes are in the best interest of individuals residing in the area.

(v) The services, programs, and functions for which the area agency is responsible to oversee may be provided directly by the area agency or the area agency may, pursuant to RSA 171-A:18, II, enter into agreements with persons and organizations for the provision of designated services. The area agency shall not delegate its financial management responsibility to any person or organization.

(w) An area agency planning to enter into agreements pursuant to He-M 505.04 (v) shall:

(1) Obtain written permission from the commissioner pursuant to RSA 171-A:18; and

(2) Include in said notice a description of services to be provided, payment schedules, and reporting requirements, and assurances that the participants in the agreements agree to comply with all pertinent state and federal requirements.

(x) The area agency shall be responsible and accountable for all area agency services, programs, and functions whether administered directly by the area agency or provided under contracts with persons or organizations.

(y) Monitoring and evaluation of all area agency services, whether administered directly or by contract, shall be conducted by the area agency with its findings and any remedial action taken reported to the area agency board.

(z) Area agency services, programs, and functions shall be operated in compliance with applicable state and federal laws and rules and contract requirements established by the department and comply with the goals and priorities of the approved area plan.

(aa) The department shall conduct annual governance reviews, announced or unannounced reviews of area agencies, and audit area agencies at least every 5 years, including all or part of any services, programs, functions, finances, operations, or contract requirements of the area agency, whether operated directly by the area agency or through contracts with persons or organizations.

(ab) The results of the review conducted in accordance with He-M 505.04(aa) above, and any resulting trends in performance, shall be considered during the redesignation process.

He-M 505.05 Designation of Area Boundaries. Areas designated for the purpose of providing services to individuals shall be the developmental services areas specified in table 505-1, which sets forth the numerical designation of the areas and lists towns by area:

Table 505-1, INCORPORATED TOWNS AND CITIES BY AREA

Area I

Albany	Easton	Lisbon	Stark
Bartlett	Eaton	Littleton	Stewartstown
Benton	Effingham	Lyman	Stratford
Berlin	Errol	Madison	Sugar Hill
Bethlehem	Franconia	Milan	Tamworth
Brookfield	Freedom	Monroe	Tuftonboro
Carroll	Gorham	Moultonborough	Wakefield

Chatham	Hart's Location	Northumberland	Warren
Clarksville	Haverhill	Ossipee	Waterville Valley
Colebrook	Jackson	Piermont	Whitefield
Columbia	Jefferson	Pittsburg	Wolfeboro
Conway	Lancaster	Randolph	Woodstock
Dalton	Landaff	Sandwich	
Dummer	Lincoln	Shelburne	

Area II

Acworth	Dorchester	Langdon	Orford
Canaan	Enfield	Lebanon	Plainfield
Charlestown	Goshen	Lempster	Springfield
Claremont	Grafton	Lyme	Sunapee
Cornish	Grantham	Newport	Unity
Croydon	Hanover	Orange	Washington

Area III

Alexandria	Bristol	Groton	Plymouth
Alton	Campton	Hebron	Rumney
Ashland	Center Harbor	Holderness	Sanbornton
Barnstead	Ellsworth	Laconia	Thornton
Belmont	Gilford	Meredith	Tilton
Bridgewater	Gilmanton	New Hampton	Wentworth

Area IV

Allenstown	Danbury	Hopkinton	Sutton
Andover	Deering	Loudon	Warner
Boscawen	Dunbarton	Newbury	Weare
Bow	Epsom	New London	Webster
Bradford	Franklin	Northfield	Wilmot
Canterbury	Henniker	Pembroke	Windsor
Chichester	Hill	Pittsfield	
Concord	Hillsborough	Salisbury	

Area V

Alstead	Greenville	Nelson	Surry
Antrim	Hancock	New Ipswich	Swanzey
Bennington	Harrisville	Peterborough	Temple
Chesterfield	Hinsdale	Richmond	Troy
Dublin	Jaffrey	Rindge	Walpole
Fitzwilliam	Keene	Roxbury	Westmoreland
Francestown	Lyndeborough	Sharon	Winchester
Gilsum	Marlborough	Stoddard	
Greenfield	Marlow	Sullivan	

Area VI



Amherst	Hudson	Merrimack	Nashua
Brookline	Litchfield	Milford	Wilton
Hollis	Mason	Mont Vernon	

Area VII

Auburn	Candia	Hooksett	Manchester
Bedford	Goffstown	Londonderry	New Boston

Area VIII

Brentwood	Greenland	Newfields	Portsmouth
Deerfield	Hampton	Newington	Raymond
East Kingston	Hampton Falls	Newmarket	Rye
Epping	Kensington	North Hampton	Seabrook
Exeter	Kingston	Northwood	South Hampton
Fremont	New Castle	Nottingham	Stratham

Area IX

Barrington	Lee	New Durham	Strafford
Dover	Madbury	Rochester	
Durham	Middleton	Rollinsford	
Farmington	Milton	Somersworth	

Area X

Atkinson	Derry	Pelham	Sandown
Chester	Hampstead	Plaistow	Windham
Danville	Newton	Salem	

He-M 505.06 Area Agency Designation Procedures and Criteria.

(a) The bureau shall initiate the area agency designation process by publishing a notice in a newspaper or newspapers of area-wide distribution to convey information about:

- (1) The role and responsibilities of the area agency;
- (2) Membership on the area board; and
- (3) The area agency application and designation process, including the closing date for submission of application materials required by (c) below.

(b) Existing boards of private, non-profit agencies, including community mental health programs approved pursuant to RSA 135-C:10, may apply for designation as an area agency provided that the requirements under RSA 171-A:18, He-M 505.04(g), and (d) below have been met.

(c) An applicant group shall submit the following area agency application materials to the bureau:

- (1) The name of the applicant group's contact person;

- (2) Written assurances of adherence to these rules and applicable federal and state laws and rules;
  - (3) A personal data summary for each member of the applicant group, which shall:
    - a. Contain information documenting the person's experience and knowledge as required by (d) below; and
    - b. Demonstrate that the person is not excluded from board membership pursuant to He-M 505.04(g)(5);
  - (4) A description of the unmet service needs of individuals and how the applicant group proposes to meet those service needs; and
  - (5) A written proposal which shall include a line item budget and a description of all services to be provided.
- (d) The members of the applicant group shall collectively demonstrate, through the submission of personal data summaries as required in (c)(3) above, experience in development and provision of services as well as knowledge of the fiscal, legal, and management issues of services and of the needs and abilities of individuals. The members of the applicant group shall have a demonstrated commitment to community-based, individual -directed services and have the capacity to meet the needs of individuals and families.
- (e) The designation process shall be as follows:
- (1) The commissioner shall solicit and consider comments from individuals, their families, and other stakeholders, such as local human services, educational, or advocacy organizations, in the area as to the ability of the applicant group(s) to carry out its responsibilities as stated in He-M 505.03 and He-M 505.04;
  - (2) The commissioner shall review the materials submitted by each applicant group as specified in (c) above and such information as is obtained from comments as provided in (e) (1) above;
  - (3) The commissioner shall select for site review the applicant group(s) that appear to be able to comply with all applicable state and federal laws and rules;
  - (4) The applicant group that is determined to be able to best comply with applicable deferral and state laws and rules shall receive designation as the area agency within 75 days following the date of the application deadline by the commissioner;
  - (5) Designation shall be for a 5-year term, unless revoked or suspended pursuant to He-M 505.07 or He-M 505.08 or unless an agency applies for redesignation in accordance with He-M 505.09;
  - (6) The commissioner shall notify each applicant group that does not receive designation of the reason why the applicant group was not designated;
  - (7) If there is no applicant group selected for designation in the area, the commissioner shall notify each applicant group and request that a second submission of application materials occur within 30 days following notification by the commissioner;
  - (8) If no applicant group in the area receives designation following the second submission of area agency application materials, the commissioner shall reinstate the application procedure for designation of an area agency and either appoint an interim area agency to operate in the

area or designate department staff to temporarily operate area agency services until a new area agency can be designated; and

(9) An applicant group denied designation by the commissioner shall have the right to appeal pursuant to He-M 505.12.

(f) An agency that has had its status as an area agency revoked in accordance with He-M 505.07, shall not be eligible to apply for designation as a successor area agency for 5 years following the date of the revocation.

(g) In cases where 2 or more areas are consolidated as a result of amendment of He-M 505.05, the commissioner shall select one area agency as the designated area agency for the new consolidated area using the criteria identified in He-M 505.09 (f)-(g). The area agency selected shall be one of the area agencies previously designated to serve the areas being consolidated.

He-M 505.07 Revocation of Designation.

(a) The bureau administrator shall monitor:

(1) The contract requirements, services, programs, and functions provided by the area agency to assure that area agency services are operated in accordance with the department rules and other applicable statutes, and federal laws, regulations, and rules, contract provisions, and mission statement, and the area plan in accordance with 505.04 (o)-(p); and

(2) The fiscal integrity, in accordance with contract requirements, of the area agencies.

(b) In the event that the bureau administrator determines that the area agency is not providing such services programs, supports, and functions in accordance with said laws, rules, contract, plan, mission, or that the area agency has not maintained fiscal integrity pursuant to contract requirements, the bureau administrator shall send a written notice to the area agency and area board specifying the nature of the deficiencies and the remedial action that is requested.

(c) Notices issued pursuant to (b) above shall specify when the remedial action shall be completed.

(d) In the event that the commissioner determines that the area agency has not complied with the remedial action requested pursuant to (b) above, the commissioner shall revoke the area agency's designation.

(e) The commissioner shall issue written notice of revocation that specifies the reasons for the decision and its effective date. The effective date of the decision shall be at least 90 days from the date of said revocation notice.

(f) An area agency may request a revocation hearing in accordance with He-M 505.12.

(g) In the event that the decision to revoke designation is upheld following a revocation hearing, the commissioner shall initiate the process to select a successor area agency according to He-M 505.06.

He-M 505.08 Suspension.

(a) If the commissioner finds at any time that the health, safety, or welfare of individuals or the public is endangered by the continued operation of services by an area agency, the commissioner shall order the immediate suspension of the area agency’s designation.

(b) The commissioner or their designee shall conduct a hearing on the suspension within 10 days of its issue. Such a hearing shall be conducted pursuant to RSA 541-A:31-36 and He-C 200, except as provided in (f) below.

(c) The department shall send a notice to the area agency specifying the reasons for the suspension and the time and place of the hearing scheduled pursuant to (b) above.

(d) Within 10 days of the hearing, the commissioner shall either revoke or reinstate the area agency’s designation.

(e) The area agency may appeal the commissioner’s decision to a court of competent jurisdiction.

(f) In the event that the area agency waives its right to a hearing on a decision to suspend designation, or that such decision is upheld following a hearing, the commissioner shall initiate the process to designate a successor area agency pursuant to He-M 505.06.

He-M 505.09 Redesignation.

(a) Each area agency shall notify the bureau administrator of its intent to be redesignated every 5 years, in accordance with Table 505-2.

(b) Submission of notification of the area agency’s intention to be redesignated shall cause the area agency’s current designation to be effective until the bureau administrator issues a decision pursuant to (i) below.

(c) If an area agency’s current designation is due to expire earlier than the scheduled redesignation in Table 505-2, the current designation shall be extended to remain effective until the scheduled redesignation review is completed.

(d) Area agencies shall submit a comprehensive self-assessment with the notification of intent to be redesignated, to outline the area agency’s performance, within 180 days, but not less than 150 days, prior to the expiration of its current redesignation according to Table 505-2 below:

Table 505-2, Redesignation Schedule

2024 and 2029	2025 and 2030	2026 and 2031	2027 and 2032	2028 and 2033
Region II	Region III	Region VII	Region IV	Region I
Region V	Region VI	Region X	Region IX	Region VIII

(e) The bureau administrator shall review the agency’s self-assessment, department materials, and feedback from provider agencies, providers, individuals, family members, area citizens, advocacy and self-advocacy groups, and community groups regarding the area agency’s past performance and current ability to coordinate access to a comprehensive service delivery system.

(f) The bureau administrator shall consider the area agency’s past and current performance in providing services, programs, and functions to individuals and their families, including reviewing results and trends identified from the annual governance reviews conducted pursuant to He-M 505.04(aa).

(g) An area agency shall be considered successful and operating efficiently when it annually:

- (1) Demonstrates, through its services, programs, and functions, a commitment to a mission that embraces and emphasizes active community membership and inclusion for persons with disabilities;
- (2) Demonstrates, through multiple means, its commitment to individual rights, health promotion, and safety;
- (3) Provides individuals and families with information and supports to design and direct their services in accordance with their needs, preferences, and capacities and to decide who will provide them;
- (4) Involves those who use its services in area planning, system design, and development;
- (5) Assesses and continuously improves the quality of its services, and ensures that the recipients of services are satisfied with the services that they receive;
- (6) Demonstrates, through its board of directors and management team, effective governance, administration, and oversight of the area agency staff, provider agencies, and, if applicable, subcontract agencies;
- (7) Is fiscally sound, manages resources effectively to support its mission, and utilizes generic community resources and proactive supports in assisting people;
- (8) Complies, along with its subcontractors, if applicable, with all contract requirements and state and federal requirements; and
- (9) Achieves the goals identified in its area plan and implements the recommendations made in its previous redesignation report from the department, if applicable.

(h) Approval of an area agency's request for redesignation shall be granted if, based on the following information, the area agency is found to be in compliance with (f)(1)-(9) above:

- (1) Materials collected as part of the redesignation process, which shall include, at a minimum, the following:
  - a. Comments solicited from individuals, family members, area citizens, provider agencies, providers, advocacy and self-advocacy groups, and community groups demonstrating the area agency's ability to coordinate access to comprehensive services and provide leadership in addressing the needs of individuals within its catchment region; and
  - b. Information to demonstrate that the area agency has complied with the requirements of He-M 202 with respect to implementation of recommendations; and
- (2) Other available documents which shall demonstrate:
  - a. Compliance with all department rules and other applicable statutes and federal laws, regulations, and rules, and contract requirements;
  - <sup>e</sup>
  - b. The results of the annual governance reviews and any other announced or unannounced reviews;

c. Compliance with performing and documenting Medicaid administration functions and claiming in accordance with 505.03; and

d. Corrective action taken in response to any department's quality assurance review.

(i) The bureau administrator shall issue a report redesignating or conditionally redesignating an area agency.

(j) An area agency shall respond to any corrective action request included in a letter of redesignation.

He-M 505.10 Conditional Redesignation.

(a) If the area agency fails to meet the redesignation criteria specified in He-M 505.09, the commissioner shall redesignate the area agency on a conditional basis for a period of time not to exceed 180 days.

(b) The commissioner shall specify, in writing, conditions and time frames that shall be met by the area agency in order to be eligible for redesignation.

(c) Department staff designated by the bureau administrator shall review and issue a report regarding the area agency's progress toward compliance with the conditions identified pursuant to He-M 505.10 (b).

(d) At least 2 weeks prior to the expiration of the conditional redesignation, the commissioner shall:

(1) Approve the application for redesignation, effective as of the date of conditional redesignation, if all conditions have been met within the required time frame; or

(2) Deny the application for redesignation if all conditions have not been met within the required time frame.

(e) Any corrective action not fully completed at the time an application for redesignation is approved in accordance with (d)(1) above shall be incorporated in the next area plan developed by the area agency after the redesignation review.

He-M 505.11 Denial of Redesignation.

(a) In those cases where the commissioner denies an application for redesignation, the commissioner shall notify the area agency in writing of the decision.

(b) Such a notice described in (a) above, shall specify the reasons for the decision and its effective date.

(c) The effective date of the decision shall be at least 90 days from the date of the notice of denial.

(d) The area agency shall have 20 days following the date of the notice to request a hearing on the denial in accordance with He-M 505.12.

(e) In the event that a hearing request is not made or the denial is upheld following a hearing, the commissioner shall initiate the process to designate a successor area agency as outlined in He-M 505.06.

He-M 505.12 Hearings.

(a) An area agency may request a hearing regarding a denial of designation or redesignation or revocation of designation.

(b) A request for hearing shall be submitted to the commissioner in writing within 20 days following the date of the notification of denial or revocation.

(c) The commissioner or their designee shall conduct a hearing in accordance with the procedures set forth in He-C 200 within 30 days of receipt of a request.

(d) Within 10 days of the hearing, the commissioner shall grant or deny an application for designation or redesignation or revoke or reinstate an area agency's designation.

(e) The area agency may appeal the commissioner's decision to a court of competent jurisdiction.

He-M 505.13 Designation of Successor Area Agency.

(a) If the commissioner or designee upholds the denial of designation or redesignation, suspension of designation, or revocation, the commissioner shall initiate the process described in He-M 505.06 to designate a successor area agency.

(b) Pursuant to RSA 171-A:18, VII, the department shall assume all or any part of the responsibilities of the area agency at any time during which an area agency is not designated.

(c) Following the revocation of an area agency's designation, the department shall operate the services directly, enter a contract with the agency for provision of certain services, or enter into contracts with other area agencies to ensure the needs of individuals are met by service providers that have the capacity to provide high quality services pending the selection of a successor area agency.

He-M 505.14 Waivers.

(a) An applicant, area agency, provider agency, individual, guardian, or provider may request a waiver of specific procedures outlined in He-M 505 by completing and submitting the form titled "NH Bureau of Developmental Services Waiver Request" (October 2023) in accordance with (b) and (c) below.

(b) A completed waiver request form shall be signed by the individual or guardian, if applicable, and the area 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](mailto: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) and (j) below.

(h) Those waivers which relate to other issues relative to the health, safety, or welfare of individuals that require periodic reassessment shall be effective for the current designation period only.

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

(j) A requesting entity may request a renewal of a waiver from the bureau. Such request shall be made at least 90 days prior to the expiration of a current waiver.

**APPENDIX**

<b>RULE</b>	<b>SPECIFIC STATE STATUTES OR FEDERAL REGULATIONS WHICH THE RULE IMPLEMENTS</b>
He-M 505.01	RSA 171-A:18; I, II; IV
He-M 505.02	RSA 171-A:18; I, II; IV
He-M 505.03	RSA 171-A:18; I, II; IV; 42 CFR 441.301; 42 CFR 447.10
He-M 505.04	RSA 171-A:18; I, III; IV; V, VI
He-M 505.05	RSA 171-A:18, I, II; IV
He-M 505.06 (Specific paragraphs implementing specific statutes are listed below)	RSA 171-A:18; I, II; IV
He-M 505.06(a)-(e)(3), (e)(5)-(8)	RSA 171-A:18; I, II; IV
He-M 505.06(e)(8)	RSA 171-A:18; VII
He-M 505.06 (e)(4), (f) & (g)	RSA 171-A:18; I, II; IV
He-M 505.07	RSA 171-A:18; I, II; IV
He-M 505.08	RSA 171-A:18; I, II; IV
He-M 505.09	RSA 171-A:18; I, II; IV
He-M 505.10	RSA 171-A:18; I, II; IV
He-M 505.11	RSA 171-A:18; I, II; IV
He-M 505.12	RSA 171-A:18; I, II; IV
He-M 505.13	RSA 171-A:18; I, II; IV
He-M 505.14	RSA 171-A:18; I, II; IV