

Division of Long Term Supports and Services BDS- Corrective Action Plan

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Home and Community Based Services 1915 (c) Waivers

Within broad Federal guidelines, States can develop home and community-based services waivers (HCBS Waivers) to meet the needs of people who prefer to get long-term care services and supports in their home or community, rather than in an institutional setting.

Nearly all States and DC offer services through HCBS Waivers. States can operate as many HCBS Waivers as they want. Source: Medicaid.Gov

New Hampshire's Department of Health and Human Services, through the Division of Long Term Supports and Services, manages 4 1915 (c) HCBS waivers.

Each waiver is located on the NH, Bureau of Developmental Services Website:

<https://www.dhhs.nh.gov/dcbcs/bds/hcbs-waiver.htm>



Corrective Action Plan

The Focus of today will be on the Corrective Action Plan (CAP) that the Bureau of Developmental Services is under for 3 of its Home and Community Based 1915 (c) Waivers.

Focus Areas of the CAP are:

- Conflict of Interest;
- Direct Bill



NH's 1915 (c) HCBS Waivers

- The Choices for Independence (CFI) waiver is not part of the CAP.
- Across the 3 Developmental Services 1915 (c) waivers, for SFY 19, the budget is approximately just under \$300M total funds
- The match is 50/50- for Developmental Services waivers, it is Federal Funds/General Funds
- Waiver services can supplement, but not duplicate Medicaid State Plan Services.
- If the service is available on the State Plan, one cannot access that service through the waiver.
- Waivers are renewed every 5 years.



NH's 1915 (c) HCBS Waivers

- By offering services through a 1915 (c) waiver, as mentioned previously, the state is “waiving,” that services be provided in an institutional setting.
- “Home and Community Based” means just what it states- services provided at either or both one’s home or one’s own community, not be segregated and not be institutional “like.”
- 1915 (c) waivers must be budget neutral. They cannot cost more than institutional care.



In Home Support Waiver

To be eligible for the In Home Support Waiver (IHS):

- Eligible under He-M 503 for Area Agency Services;
- Meet the criteria for eligibility under He-M 524;
- Meet ICF/ID (Intermediate Care Facility for Individuals with Intellectual Disabilities) Level of Care;
- Be eligible and maintain NH Medicaid;
- Parents must be willing to direct the services; and
- Must be living at home with their natural family.

418 children are currently served on this waiver.



Developmental Disabilities Waiver (DD Waiver)

- Be eligible under He-M 503;
- Be eligible for and maintain NH Medicaid;
- Meet the ICF/ID level of care;
- Services are voluntary;
- There is no guarantee for services, is not an entitlement;
- Waiting List;
 - Agencies manage a Projected Services Need List (PSNL) and Wait List, which BDS has access to and uses to as part of the budget development process within DHHS.
- Limited services 0-21; those are the responsibility of other entities.
- Currently there are 4,638 people served on this waiver.



Acquired Brain Disorder Services (ABD)

- Be eligible under He-M 522;
- Be eligible for and maintain NH Medicaid;
- Must meet the Nursing Facility level of care;
- Injury must have occurred after the age of 21 and before the age of 60;
- Services are voluntary;
- There is no guarantee for services, is not an entitlement;
- Currently do not have a Waiting List.

- Currently there are 250 people served on this waiver



Corrective Action Plan

In the fall of 2016, NH was notified that the NH Service Delivery System is not in compliance with 2014 CMS regulations in the following areas:

- Conflict of Interest (COI)- the direct service provider cannot also be the provider that develops and maintains the Person Centered Plan. The Case Management agency cannot provide both case management and direct service to the same person.
- Direct Bill- An direct service provider agency must have the opportunity to directly bill the state Medicaid Agency.

NH has until August 31, 2021 to be in compliance.



1915(c) HCBS Waiver COI Regulations

Published in the Federal Register January 16, 2014:

“Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community- Based Services (HCBS) Waivers”

Centers for Medicare and Medicaid (CMS) rules: 42 CFR 431.301(c)(1)(vi)



Conflict of Interest

Before 2014, conflict of interest under the 1915(c) waivers was guidance, *now it is in rules*

Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual **must not provide case management or develop the person-centered service plan...**

§ 441.301(c)(1)(vi)



When there is a conflict of interest, a state must:

- Demonstrate to CMS that the only willing and qualified case manager is also, or affiliated with, a direct service provider (*which is not the case in NH-and no state has used this exception yet, including SD and WY!!*)
- Provide full disclosure to participants and assurances that participants are supported in exercising their right of free choice in providers.
- Describe individual dispute resolution process.
- Assure that entities separate case management and service provision (must have different staff).
- Assure that entities provide case management and services *only* with the express approval of the state.
- Provide direct oversight and periodic evaluation of safeguards.



When there is a conflict of interest, a state must:

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If a state employs this exception it must guarantee the independence of this function(s) within the provider entity.. *We also will not permit states to circumvent these requirements by adopting state or local policies that suppress enrollment of any qualified and willing provider.”*



Exemptions- Only Willing and Qualified Provider

CMS may allow the following reasons for requesting an Exemption:

- Rural Barriers
- Cultural; and/or
- Linguistic barriers

If in instance of an exemption, CMS will require that states develop "firewall" policies, for example, separating staff that perform assessments and develop person-centered service plans from those that provide any of the services in the plan; and meaningful and accessible procedures for individuals and representatives to appeal to the state.



NH is not alone....

- CMS is serious about conflict of interest
- If *we* are serious about protecting individuals' choice of supports this is an opportunity to reform our systems
- The exception is really that and CMS seems to be holding firm in their expectations *and* very rural states have shown they do not need the exception (SD, WY)
- AK, CO, KS, KY, ME, MO, MS, ND, OH, RI, SC, SD, VA, WY



NH System Related to COI

- Currently many of the Area Agencies provide both service coordination and direct services to the same individual.
- This is due to the structure of how the service system has developed over the last 35 years.
- At the end of calendar year 2017, not including self directed services, approximately 50% of the services provided statewide did not have a conflict of interest between case management and direct services.
- The remaining 50% will be the focus of our work moving forward.



Direct Bill

- States must allow all providers the option to direct bill the State Medicaid Agency.
- A provider is not required to bill Medicaid directly, but must have this option.
- Any reassignment of Medicaid payments must be voluntary on the part of the provider.
- The State cannot mandate reassignment.

NH currently only allows the Area Agencies to bill Medicaid.



Current NH Structure Related to Direct Bill

- The Area Agencies provide the Organized Health Care Delivery System (DAADS) function.
- The OHCDS is a function that bills for services under the State's Medicaid plan or waiver.
- Services may be furnished under the auspices of an OHCDS when the services are furnished by individuals who meet the State's provider qualifications.
- To be recognized as an OHCDS, the entity must first be a system that is organized for the purpose of delivering health care.
- To meet this test, the entity must furnish at least one Medicaid - covered waiver or State plan service itself. The entity may, of course, furnish more than one service, covered by Medicaid.
- While they can still serve this function, a provider cannot be mandated to be paid through the Area Agency.



Area Agencies

Region 1 – Northern Human Services

Phone: 603.447.3347 / Website: www.northernhs.org

Region 2 – Pathways of the River Valley

Phone: 603.542.8706 / Website: www.pathwaysnh.org

Region 3 – Lakes Region Community Services

Phone: 603.524.8811 / Website: www.lrcs.org

Region 4: Community Bridges

Phone: 603.225.4153 / Website: www.communitybridgesnh.org

Region 5: Monadnock Developmental Services, Inc.

Phone: 603.352.1304 / Website: www.mds-nh.org

Region 6: Gateways Community Services

Phone: 603.882.6333 / Website: www.gatewayscs.org

Region 7: The Moore Center

Phone: 603.206.2742 / Website: www.moorecenter.org

Region 8: One Sky Community Services, Inc.

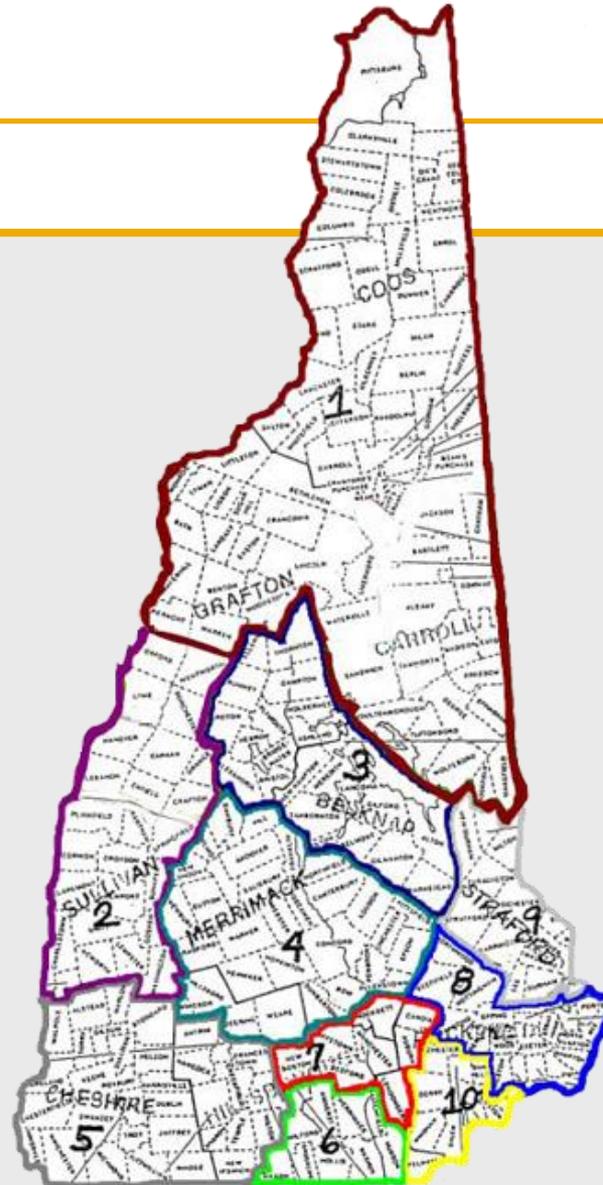
Phone: 603.436.6111 / Website: www.oneskyservices.org

Region 9: Community Partners

Phone: 603.516.9300 / Website: www.communitypartnersnh.org

Region 10: Community Crossroads

Phone: 603.893.1299 / Website: www.communitycrossroadsnh.org



Delivery System

Providers	Type of Provider	Delivery System
<ul style="list-style-type: none"> • Are organized through a regional system of 10 nonprofit 501 (c) (3) organizations called Area Agencies (AA) • Area Agencies are designated by the State of New Hampshire in accordance with RSA 171-A and He-M 505. Area Agencies are responsible to serve as lead agencies to plan, provide, and oversee services in their community. 	<ul style="list-style-type: none"> • Area Agencies • Exercise local control; governed by a local Board of Directors • One-third of board membership must be consumers of BDS services 	<ul style="list-style-type: none"> • BDS has a public/private partnership with local, nonprofit agencies • AAs provide services directly and/or through a subcontract service provision • All services are community based • In 1991, NH was the first state in the nation to close it's institution for people with developmental disabilities • Only 13 other states and the District of Columbia do not have an institution for individuals with developmental disabilities



Developmental Services 2018

- ★ - Northern Human Services
- ★ - PathWays of the River Valley
- ★ - Lakes Region Community Services
- ★ - Community Bridges
- ★ - Monadnock Developmental Services, Inc
- ★ - Gateways Community Services, Inc
- ★ - Moore Center Services, Inc
- ★ - One Sky Community Services
- ★ - Community Partners
- ★ - Community Crossroads

Map #	Vendor / Organization	City/Town
1	North Country Independent Living	N. Conway
2	Becket Family of Services	Orford
3	NeuroRestorative	Standish, ME
4	C.O.R.E. Vocational Services	Gilmanston IW
5	Brock Children's Home, LLC	Pittsfield
6	Farmsteads of New England, Inc.	Hillsborough
7	The Institute of Professional Practice, Inc.	Concord
8	Great Bay Services	Dover
9	Living Innovations	Dover
10	Independent Services Network, Inc.	Manchester
11	LifeShare Management Group, LLC	Manchester
12	Chesco Inc	Keene
13	Residential Resources, Inc.	Keene
14	Southwestern Community Services, Inc.	Keene
15	Plowshare Farm	Greenfield
16	Crotched Mountain Foundation	Greenfield
17	Monadnock Worksource	Peterborough
18	Tobias Community, Inc.	Temple
19	The PLUS Company	Nashua

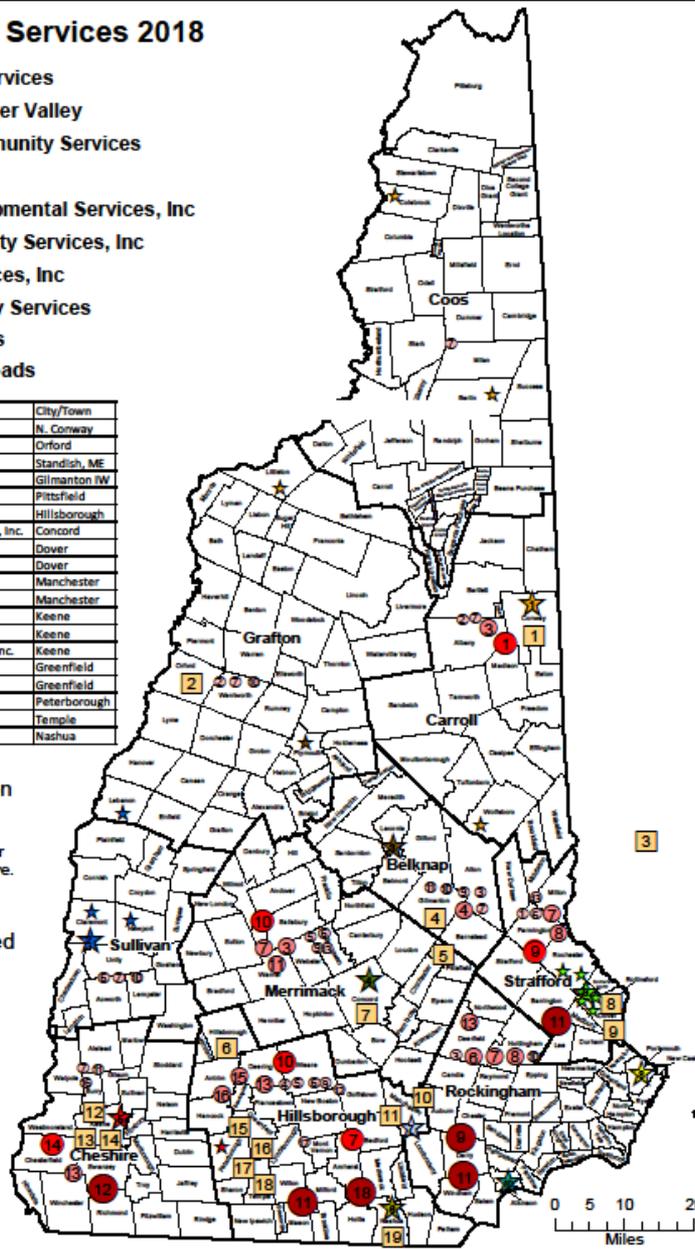
□ - Vendor Location

The number in each square corresponds with the vendor map number indicated above.

Number of Clients Served

- - 10 or Less
- - 11 - 25
- - 26 - 50
- - 51 +

The number in each circle corresponds with the vendor map number indicated above.



- The first compliance date was July 1, 2018
- CMS then agreed to January 1, 2019
- Last spring, CMS agreed to a compliance date of August 31, 2021



So Now What???



NH Corrective Action Plan

- NH has a comprehensive CAP:

<https://www.dhhs.nh.gov/dcbcs/bds/hcbs-waiver.htm>

Major Areas the CAP covers:

Quality

Technology

Process

Rates

Capacity

Direct Bill

Regulatory



NH Corrective Action Plan

- NH has formed a Stakeholder Advisory Group
- NH has multiple workgroups, with a total of at least 85 different participants.
- NH has significant Stakeholder Engagement at all levels of the planning

<https://www.dhhs.nh.gov/dcbcs/bds/documents/stakeholderlist.pdf>

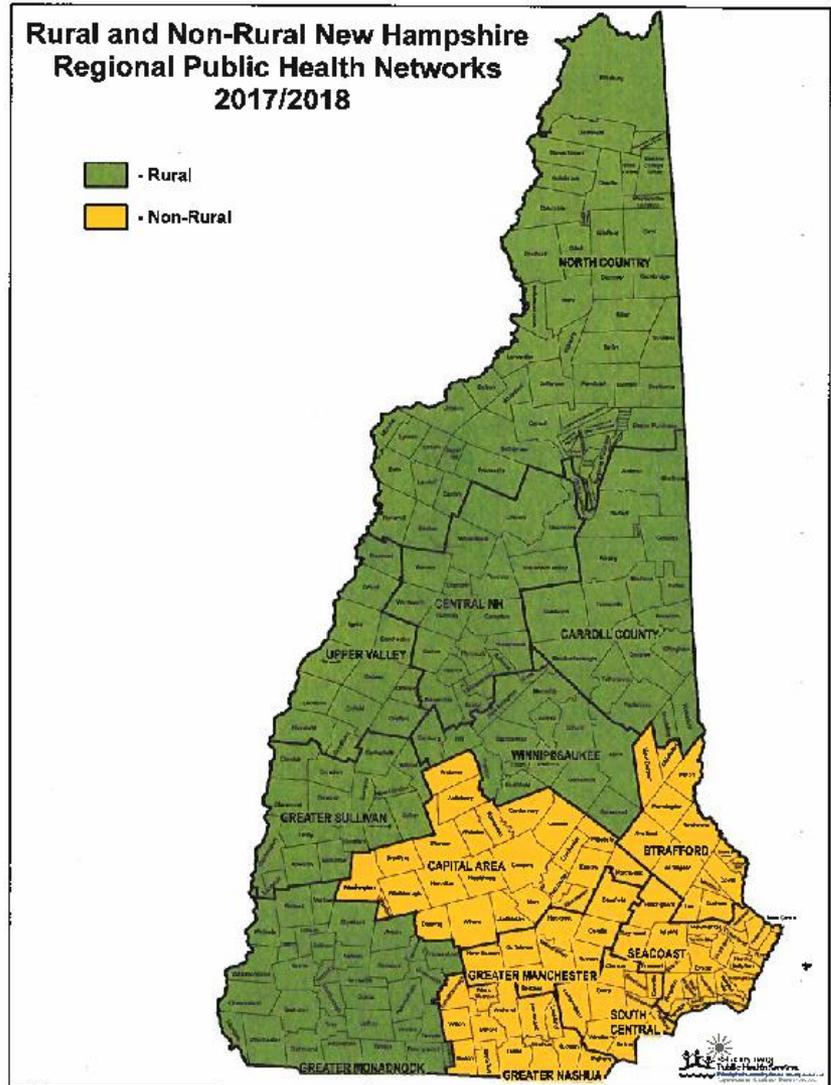


- BDS has sent letters to individuals and families regarding the CAP
- BDS has developed and released Frequently Asked Questions
- Each Area Agency has submitted a preliminary plan for compliance
- NH has developed the Only Willing and Qualified Provider Policy
- BDS has met with many agencies regarding preliminary plans.
- BDS will be having regular meetings with Area Agencies regarding compliance.
- NH is working towards moving the self directed services (Children's Waiver and approximately 25% of the DD waiver) into a different model.



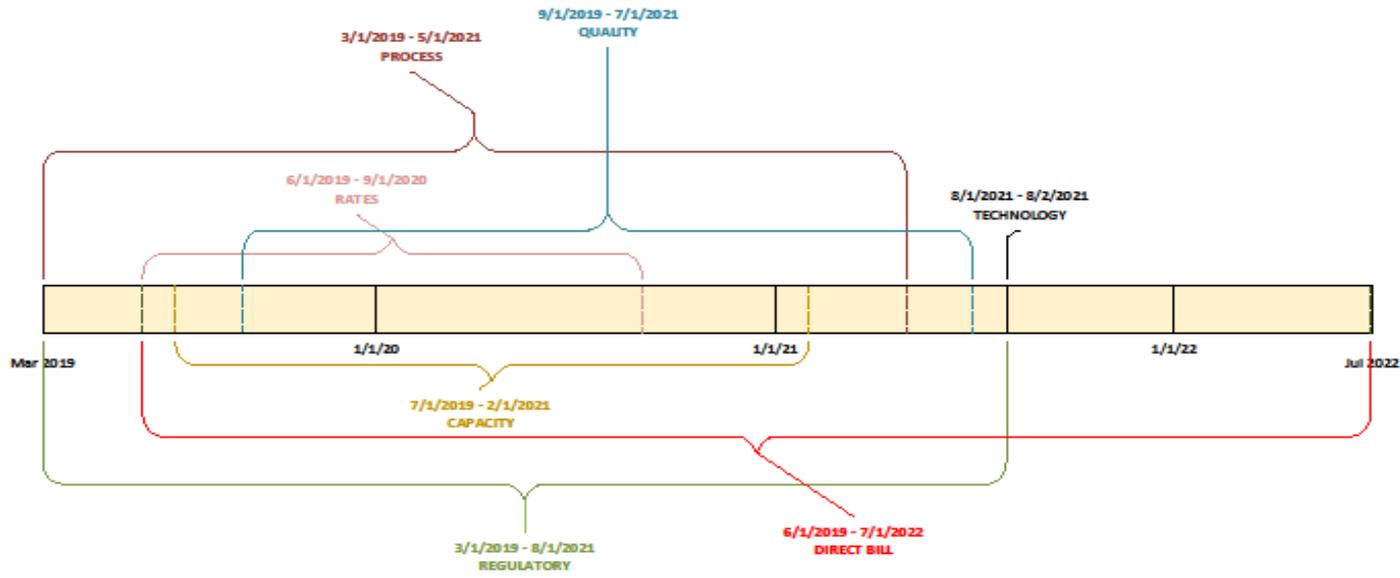
NH CAP

- NH developed an Only Willing and Qualified Provider Policy.
- NH has put forward legislation to enable providers to direct bill, amending RSA 171-A.
- NH has met with Area Agencies to break down the steps in a workable model.



Timeline- CAP

BDS Conflict of Interest March 1, 2019 – July1, 2022



The timelines were developed by the State of New Hampshire Department of Health & Human Services, Bureau of Developmental Services, for planning purposes only & may be revised as the project progresses



What does this mean for you???



1915 (c) Waiver Services

- With the exception of services that are participant managed, on or before August 31, 2021, the agency that provides Case Management cannot also be the provider of direct services to the same individual.
- Agencies are being advised to begin this separation for all new people that begin waiver services, to reduce disruption later on.
- Each agency is handling this differently and communicating directly with individuals and families that may be impacted.
- If your family member already has different agencies providing direct services and case management (as over 50% already do), there will not be a change.



1915 (c) Waiver Services

And if we say “no, we refuse to have a separation, we like how it is now” - what happens?

- By accepting federal funds, NH must adhere to the regulations set forth by CMS. Failing to do so, puts the federal dollars for services at risk.

