



**New Hampshire's Response to CMS
Regarding February 2017 Feedback of NH's Systemic Assessment
May 2017**

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Below please find the state's response to the feedback given regarding the Systemic Assessment submitted to CMS as part of New Hampshire's Statewide Transition Plan.

Please include the following information in the STP for initial approval. The state does not need to submit the STP for public notice after making these technical changes.

Public Notice

1. Please confirm that the updated STP and complete attachments were posted on the state's website on February 5, 2016 when the public comment period began (page 139). Please also provide evidence that the public notice was provided in a non-electronic form.

Response: The state confirms that it posted its updated and complete attachments on the state's website prior to the notice of public hearings. Notice of the public hearings was posted in two statewide newspapers on February 5, 2016. Please see pages 6 and 7.

Systemic Assessment

2. To help inform the state's work, we are attaching examples of two strong state systemic assessments that may be helpful as you continue to refine the STP.

Response: Thank you for the information.

3. Please ensure each systemic assessment crosswalk includes the excerpted regulation, policy, licensing or other state standard language that identifies whether the state is compliant, partially compliant, silent or non-compliant with each federal requirement.

Response: A crosswalk has been completed identifying compliance, partial compliance, silence or non-compliance for each of the requirements for the three waivers. The crosswalks include remediation steps, as necessary. Specific information can be found in documents C and D.

4. Please ensure each systemic assessment crosswalk is complete and each state standard is labeled with a compliance level (compliant, partially compliant, silent or non-compliant) for each federal requirement.

Response: The state has updated its crosswalks to include the requested information.

5. Please ensure all instances of state standards requiring remediation due to silence or non-compliance contains the language the state is planning to use to amend the state standards in order to come into compliance with the federal rule.

Response: The state has updated its crosswalks to include the proposed language that will be submitted to New Hampshire's Joint Legislative Committee on Administrative Rules.



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6. The state has indicated in several places in the systemic assessment crosswalks that a legal review will be conducted to determine whether any changes are necessary to comply with the federal requirements. Please note that the results of all legal reviews of state standards against the federal requirements will need to be included in the systemic assessment before the state can receive initial approval.
- a. For example, the state indicates that a legal review of state rule He-P 807 will be conducted to determine whether any changes are necessary to comply with the federal requirement that the setting facilitates individual choice regarding services and supports, and who provides them (Attachment F-2). Please provide the results of this analysis, as well as the remediation language, if needed.

Response: In consultation with the DHHS legal team, it was determined that the overarching regulation outlining rights and their protections is He-M 310, Rights of Persons Receiving Developmental Services or Acquired Brain Disorder Services in the Community. The updated crosswalk identifies the remediation steps necessary to ensure full compliance.

7. Please confirm that the state will communicate to provider owned or controlled non-residential settings that the experiences of individuals receiving Medicaid HCBS in these settings must be consistent with those individuals not receiving Medicaid HCBS, for example the same access to food and visitors. Please include this information in each of the systemic assessment crosswalks.

Response: Training regarding HCBS expectations include that participants have the same experiences as citizens not receiving Medicaid HCBS regardless of the type of setting. Please see crosswalks for details specific to each waiver.

8. Does the state have any waiver participants residing in foster care settings? If so, were the pertinent state standards related to foster care settings reviewed and/or remediated for compliance with the federal requirements?

Response: There are participants in adult foster care settings under the DD, ABD and CFI waivers. The pertinent regulations were reviewed as outlined in Response # 3 and the accompanying crosswalks.

9. Please ensure the state has assessed its state standards correctly against the federal requirement providing for access to food at any time. Please see the below examples:
- b. State rule He-M 1001.06(k) (attachment F-1) is not consistent with the federal requirement as it states that access to food may be restricted if a licensed practitioner deems it necessary and the legal guardian consents to the restriction. Please ensure that any restrictions on access to food are addressed through the person-centered planning process. Please include this information in the systemic assessment.

Response: Revisions to He-M 310, Rights of Persons Receiving Developmental Services or Acquired Brain Disorder Services in the Community, have been drafted and will be



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presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions include a section specific to modifications and the requirements for those to occur, including documentation in the person-centered plan (Service Agreement).

- c. He-E 801.24 (attachment G-2) is accurately classified as non-compliant. However, the state's proposed amendment to He-E 801.24, does not remedy the non-compliance because it addresses only meals (time, place, location, alternative meal) and does not require the setting to provide access to food at any time. Please ensure individuals can access food at any time. Please explain how this will be remediated in the STP.

Response: Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions include the expectation of food being accessible at any time unless an appropriate modification has been implemented.

- 10. Please ensure the state has assessed its state standards correctly against the federal requirement providing for access to visitors at any time. Please see the below examples:

- d. State rule He-M 310-09(a)(3)c (attachment F-1) is not consistent with the federal requirement because it permits settings to impose "reasonable restrictions on the number and time of visits . . ." Please ensure that the state standards indicate that any restrictions on visitors is handled through the person-centered planning process. Please provide a state standard showing compliance or explain how the state will remediate this issue.

Response: Revisions to He-M 310, Rights of Persons Receiving Developmental Services or Acquired Brain Disorder Services in the Community, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions include a section specific to modifications and the requirements for those to occur, including documentation in the person-centered plan (Service Agreement). See crosswalk for specific details.

- e. RSA 151:21, XVIII, (Attachment F-2), is not consistent with the federal requirement because it limits visits without restriction to "the patient's parents, if a minor, or spouse, or next of kin, or a personal representative, if an adult, visit the facility, without restriction, if the patient is considered terminally ill by the physician responsible for the patient's care." Please ensure that any restrictions on visitors is handled through the person-centered planning process. Please provide a state standard showing compliance or explain how the state will remediate this issue.

Response: Earlier in RSA 151, specifically, RSA 151: 21, XII, it states, "*The patient shall be free to communicate with, associate with, and meet privately with anyone, including family and resident groups, unless to do so would infringe other patients. The patient may send and receive unopened personal mail. The patient has the right to have regular access to the unmonitored use of a telephone.*" This section of the law is clear that there are no limits to visits. Section XVIII reinforces this. Through the state's review process, we will ensure that settings have policies and practices that reinforce this expectation.



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Any modifications to visits will be documented in the participant's person-centered plan.

- f. State rule He-E 801.24 (Attachment G-1) is labeled as non-compliant. However, the state's proposed amendment does not remedy the non-compliance because it permits a setting to have a policy that prohibits visitors if they are "infringing on the rights of other residents." Please ensure that any restrictions on visitors are handled through the person-centered planning process. Please explain how the state will remediate this issue.

Response: Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk, including a modification process and use of the person-centered planning document.

11. Please ensure the state has provided the appropriate remediation for the federal requirement ensuring individuals have setting options that include non-disability specific options and the choice of a private unit.

- a. For example, the state's remediation language for this federal requirement in Attachment G-3 does not address this.

Response: Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk.

12. Please ensure the state has provided the appropriate remediation for the federal requirement that settings facilitate individual choice regarding services and who provides them.

- a. For example, the state's remediation language for this federal requirement in Attachment G-3 does not indicate individuals have choice regarding services and who provides them.

Response: Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk.

13. State rule He-E 801.24 (attachment G-1) is listed as non-compliant with the federal requirement that individuals have privacy and access to units with lockable doors, with only appropriate staff having access to the keys. However, the state's proposed amendment does not remedy the non-compliance because it does not require settings to limit the distribution of keys to individuals' rooms to "appropriate staff." Please include this remediation language in the crosswalk. In addition, the proposed amendment conditions the individual's right to a lockable door on consistency with the "New Hampshire fire safety regulations." Please describe why fire safety regulations would impinge on an individual's right to a lockable door.

Response: Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk.



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In a follow up conversation with the state's Office of Legal and Regulatory Services and the state's Fire Marshall's office, it was clarified that there are no fire safety issues that would prevent a participant from having a lockable door as long as the individual is able to evacuate the premises in timely manner in the event of a fire.

14. State rule He-E 813.04(c) (attachment G-1) is non-compliant with the federal requirement that settings ensure an individual's right to privacy, dignity and respect and freedom from coercion and restraint. However, the state's proposed remediation language does not remedy the non-compliance because it does not require an adult family care residence to ensure an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint. Please explain how the state will remediate this in the STP.

Response: Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk.

15. The federal requirement of physical accessibility applies to all provider owned or controlled settings, including non-residential settings. Please clarify where this is included in the state's existing standards, or alternatively please include how the state will address this issue in the STP.

Response: Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk.

16. CMS agrees that state He-M 310.06(a)(4) (attachment F-2) is non-compliant with the federal requirement that settings must facilitate individual choice regarding services and supports and who provides them. However, the State's proposed amendment for the federal requirement includes the phrase "where possible." Please remove this language.

Response: New Hampshire was in error when identifying He-M 310.06(a)(4) as the reference for the facilitation of individual choice regarding services and supports and who provides them. He-M 310.06(a)(4), the reference used, speaks to the person-centered planning process and the participant/representative's role. The updated crosswalk identifies that New Hampshire is compliant as outlined in He-M 310.06(a)(11). See the updated crosswalk for further detail.

17. In attachments G-1-5 for the federal requirement that the setting is integrated in and supports full access of individuals receiving Medicaid HCBS 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 individuals not receiving Medicaid HCBS, the state's remediation language does not sufficiently portray the setting's responsibility to address each of these areas.

Response: Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk.



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18. Please ensure the state has assessed all of the state regulations or other state standards related to assisted living residences and adult day settings for their compliance level with the federal requirements and is reflected in the systemic assessment crosswalks.

Response: Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk.

19. Please number the pages in the attachments.

Response: The pages have been numbered.