



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

He-M 310, Rights of Persons Receiving Developmental Services or Acquired Brain Disorder Services in the Community

http://www.gencourt.state.nh.us/rules/state_agencies/he-m300.html

HCBS Standard: 42 CFR § 441.301(c)(4): Home and Community–Based Settings. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:

CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH’s Joint Legislative Committee on Administrative Rules
(i) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including	<p>Compliant as evidenced by 310.06(a)(7)(c)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(7) The right to services in a setting that is:</p> <p style="padding-left: 40px;">c. Integrated in, and supportive of full access of individuals to, the greater community,</p> <p>and 310.06(d)</p> <p>(d) Whenever possible, individuals shall be served in generic, integrated settings rather than specialized programs for persons with developmental disabilities or acquired brain disorders.</p>	
1. opportunities to seek employment and work in competitive integrated settings,	<p>Compliant as evidenced by 310.06(a)(7)(c)(1)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(7) The right to services in a setting that is:</p> <p style="padding-left: 40px;">c. Integrated in, and supportive of full access of individuals to, the greater community, including opportunities to:</p> <p style="padding-left: 80px;">1. Seek employment and work in competitive integrated settings;</p>	



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2. engage in community life,	<p>Compliant as evidenced by 310.06(a)(7)(c)(2)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(7) The right to services in a setting that is:</p> <p style="padding-left: 40px;">c. Integrated in, and supportive of full access of individuals to, the greater community, including opportunities to:</p> <p style="padding-left: 80px;">2. Engage in community life;</p>	
3. control personal resources,	<p>Compliant as evidenced by 310.06(a)(7)(c)(4)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(7) The right to services in a setting that is:</p> <p style="padding-left: 40px;">c. Integrated in, and supportive of full access of individuals to, the greater community, including opportunities to:</p> <p style="padding-left: 80px;">4. Control personal resources;</p>	
4. and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	<p>Compliant as evidenced by 310.06(a)(3)(a)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(3) The right to receive services in his or her community:</p> <p style="padding-left: 40px;">a. To the same degree of access as persons not receiving services;</p>	
(ii) 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.	<p>Compliant as evidenced by 310.06(a)(7)(b) & 7(c)(6)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(7) The right to services in a setting that is:</p>	



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	<p>b. Chosen by the individual or his or her representative from among options that are identified in the service agreement and include non-disability specific settings;</p> <p>(7) The right to services in a setting that is:</p> <p>c. Integrated in, and supportive of full access of individuals to, the greater community, including opportunities to:</p> <p>6. Live in a private unit in a residential setting, based on the resources available for room and board;</p>	
The setting options are identified and documented in the person-centered service plan	<p>Compliant as evidenced by 310.06(a)(4)(m)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(4) The right to a person-centered planning process that:</p> <p>m. Records the alternative home and community based settings that were considered by the individual;</p>	
and are based on the individual's needs, preferences	<p>Compliant as evidenced by 310.06(a)(7)(a)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(7) The right to services in a setting that is:</p> <p>a. Based on the individual's needs and preferences;</p>	
and, for residential settings, resources available for room and board.	<p>Compliant as evidenced by 310.06(a)(7)(c)(6)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(7) The right to services in a setting that is:</p>	



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	<p>c. Integrated in, and supportive of full access of individuals to, the greater community, including opportunities to:</p> <p style="padding-left: 40px;">6. Live in a private unit in a residential setting, based on the resources available for room and board;</p>	
(iii) Ensures an individual's rights of	Compliant as evidenced by 310.05(c) (c) Individuals shall have the right to privacy.	
1. privacy,		
2. dignity and respect,	Compliant as evidenced by 310.05(a) (a) Persons who are applicants for services or individuals who are receiving services from provider agencies shall be treated with dignity and respect at all times.	
3. and freedom from coercion	Compliant as evidenced by 310.05(d) (d) Individuals shall have the right to be free from coercion.	
and restraint.	<p>Currently the regulation has a modification process for residential services only, and this right is identified in the Service Rights section, so the regulation is Partially Compliant as evidenced by 310.06(a)(17)(a-b)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(17) The right to freedom from restraint including:</p>	<p>Remediation: NH will revise <u>He-M 310, Rights of Persons Receiving Developmental Services or Acquired Brain Disorder Services in the Community</u> to include a modification section for all services provided, that outlines the CMS criteria for when an expectation is modified.</p>



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	<p>a. For individuals under the age of 18, the right to limitations on the use of restraint pursuant to RSA 126-U; and</p> <p>b. The right to be free from seclusion and physical, mechanical or pharmacological restraint except that in cases of emergency such as the occurrence or serious threat of extreme violence, personal injury, or attempted suicide where no less restrictive alternative would be effective:</p> <ol style="list-style-type: none"> 1. Such means of restraint as are authorized by a prescribing practitioner and approved by a human rights committee pursuant to RSA 171-A:17, II(c), may be used as part of a treatment plan to which the individual or individual's guardian or representative, if any, has consented, having made an informed decision to do so; and 2. The minimum necessary degree of restraint may also be used: <ol style="list-style-type: none"> (i) In an emergency to prevent harm to the individual or others or prevent substantial damage to property; (ii) As part of a behavior change program that limits an individual's rights and is approved by a human rights committee pursuant to RSA 171-A:17, II, (c); or (iii) When the person is involuntarily admitted in 	



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(iv) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities,	<p align="center">accordance with RSA 171-B.</p> <p>Compliant as evidenced by 310.06(a), (7)(a), (c)(3) and (12)(a-b)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(7) The right to services in a setting that is:</p> <ul style="list-style-type: none"> a. Based on the individual's needs and preferences; c. Integrated in, and supportive of full access of individuals to, the greater community, including opportunities to: <ul style="list-style-type: none"> 3. Control schedules and activities; <p>(12) The right to services which promote independence including services which shall be directed toward:</p> <ul style="list-style-type: none"> a. Eliminating or reducing the individual's need for continued services; and b. Promoting the ability of the individuals to function at their highest capacity and as independently as possible; 	
physical environment, and	<p>Compliant as evidenced by 310.06(a)(7)(b)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(7) The right to services in a setting that is:</p> <ul style="list-style-type: none"> b. Chosen by the individual or his or her 	



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	representative from among options that are identified in the service agreement and include non-disability specific settings;	
with whom to interact.	Currently, this expectation is identified for residential services only. The regulation is Silent for non-residential settings.	Remediation: He-M 310 will be revised to include this requirement under <u>He-M 310.05, Personal Rights</u> to ensure that it applies to both non-residential and residential settings.
	Currently this expectation does not include a modification process for limits on access to telephones, and having visitors. The regulation is Partially Compliant for residential settings as evidenced by 310.09(a)(3)(a-d): (a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights: (3) The right to freely and privately communicate with others, including: a. The right to send and receive unopened and uncensored written and electronic correspondence;	
	b. The right to have reasonable access to telephones and to be allowed to make and to receive telephone calls except that community residences may require an individual to reimburse them for the cost of any long distance calls made by the individual;	Remediation: Any limits to the expectation of access to phone would be included in a participant's person centered planning (Service Agreement)



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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
		document and would follow the modification expectations.
	<p>c. The right to receive and to refuse to receive visitors except that community residences may impose reasonable restrictions on the number and time of visits in order to ensure effective provision of services except that community residences may impose reasonable restrictions on the number and time of visits in order to ensure effective provision of services; and</p>	<p>Remediation: Any modifications to the expectation of having visitors would be included in a participant's person centered planning (Service Agreement) document.</p>
	<p>d. The right to engage in social, recreational, and religious activities including the provision of regular opportunities for individuals to engage in such activities;</p>	
(v) Facilitates individual choice regarding services and supports, and who provides them.	<p>Compliant as evidenced by 310.06(a)(11) (a) Individuals shall have the right to adequate and humane service and treatment, including: (11) The right to voluntary participation in services, as decided by the individual or his or her representative, including the right to seek changes in services or provider agency at any time or to withdraw from any form of service or from a provider agency, unless the person is involuntarily admitted in accordance with RSA 171-B;</p>	



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In a provider-owned or controlled residential setting, in addition to the qualities at §441.301(c)(4)(i) through (v), the following additional conditions must be met:

CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	Currently the regulation does not include any language regarding a lease or tenancy agreement so the regulation is Silent	Remediation: Develop a lease or residency agreement for HCBS participants that meets the CMS requirements.
(B) Each individual has privacy in their sleeping or living unit:	Compliant as evidenced by 310.09(a)(4): (a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights: (4) The right to privacy in the individual's sleeping or living unit	
(1) Units have entrance doors lockable	Compliant as evidenced by 310.09(a)(4)(b):	



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by the individual, with only appropriate staff having keys to doors.	(a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights:	
	(4) The right to privacy in the individual's sleeping or living unit, including the following: b. The right to entrance doors lockable by the individual with only appropriate staff having keys to doors;	
(2) Individuals sharing units have a choice of roommates in that setting	Compliant as evidenced by 310.09(a)(5)(f) (a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights: (5) The right to individual choice, including the following: f. The right to choose one's roommate when bedrooms are shared;	
(3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement	Compliant as evidenced by 310.09(a)(5)(g) (a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights: (5) The right to individual choice, including the following: g. The right to furnish and decorate one's sleeping or living unit within the limits of the lease or other agreement;	
(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	Compliant as evidenced by 310.09(a)(5)(h) (a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights: (5) The right to individual choice, including the following: h. The freedom and support to control one's own activities and schedules, and to access food at any time;	



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(D) Individuals are able to have visitors of their choosing at any time.	Compliant as evidenced by 310.09(a)(4)(c) (a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights: (4) The right to privacy in the individual's sleeping or living unit, including the following: c. The right to receive visitors of one's choosing at any time;	
(E) The setting is physically accessible to the individual	Compliant as evidenced by 310.09(a)(2) (a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights: (2) The right to settings that are physically accessible to the individual;	
(F) Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:	Compliant as evidenced by 310.09(h)(i)(1-6) (h) Any modification to (a) (4) or (5) above shall be supported by a specific assessed need and documentation described in (i) below. (i) A provider agency shall only make modifications pursuant to (h) above by documenting in the service agreement the following:	
(1) Identify a specific and individualized assessed need.	(1) The specific and individualized assessed need and a description of the condition that is directly proportionate to the need;	



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(2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.	(2) Positive interventions and supports used prior to any modification to the service agreement;	
(3) Document less intrusive methods of meeting the need that have been tried but did not work.	(3) Less intrusive methods of meeting the need that have been tried unsuccessfully;	
(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.	(1) The specific and individualized assessed need and a description of the condition that is directly proportionate to the need;	
(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification. (6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.	(4) A method for the regular collection and review of data to measure the ongoing effectiveness of the modification, and established timelines for periodic reviews to determine whether the modification is still necessary or can be terminated;	
(7) Include the informed consent of the individual.	(5) Informed consent of the individual, guardian, or representative; and	
(8) Include an assurance that interventions and supports will cause no harm to the individual.	(6) An assurance that the interventions and supports will not cause harm to the individual.	