



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

**He-E 801, Choices for Independence Program**

[http://www.gencourt.state.nh.us/rules/state\\_agencies/he-e800.html](http://www.gencourt.state.nh.us/rules/state_agencies/he-e800.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	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read “Participants will be offered the choice of settings, including settings that are 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.”
1. opportunities to seek employment and work in competitive integrated settings,	<b>Silent</b>	See above
2. engage in community life,	<b>Silent</b>	See above
3. control personal resources,	<b>Silent</b>	See above
4. and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	<b>Silent</b>	See above



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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
(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.	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read “Participants will select settings from options including non-disability specific settings and an option for a private unit in a residential setting.”
The setting options are identified and documented in the person-centered service plan	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read “setting options will be identified and documented in the person-centered service plan and will be based on the individual’s needs and preferences, and for residential settings, resources available for room and board.”
and are based on the individual's needs, preferences	<b>Silent</b>	See above
and, for residential settings, resources available for room and board.	<b>Silent</b>	See above
(iii) Ensures an individual's rights of 1. privacy,	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read “all settings will ensure the individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.”
2. dignity and respect,	<b>Silent</b>	See above
3. and freedom from coercion	<b>Silent</b>	See above
and restraint.	<b>Silent</b>	See above



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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
(iv) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities,	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read “optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.”
physical environment, and	<b>Silent</b>	See above
with whom to interact.	<b>Silent</b>	See above
(v) Facilitates individual choice regarding services and supports, and who provides them.	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read “facilitates individual choice regarding services and supports, and who provides them.”



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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:

<b>CMS expectation</b>	<b>Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)</b>	<b>Remediation language proposed by DHHS, to be submitted to NH’s Joint Legislative Committee on Administrative Rules</b>
<p>(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.</p>	<p><b>Silent</b></p>	<p><b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read “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.”</p>
<p>(B) Each individual has privacy in their sleeping or living unit:</p>	<p><b>Silent</b></p>	<p><b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read “Each individual has privacy in their sleeping or living unit: Units have entrance doors lockable by</p>



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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
		the individual, with only appropriate staff having keys to doors. Individuals sharing units have a choice of roommates in that setting. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement."
(1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	<b>Silent</b>	See above
(2) Individuals sharing units have a choice of roommates in that setting	<b>Silent</b>	See above
(3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement	<b>Silent</b>	See above
(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read "individuals have the freedom and support to control their own schedules and activities, and have access to food at any time."
(D) Individuals are able to have visitors of their choosing at any time.	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read "individuals are able to have visitors of their choosing at any time."
(E) The setting is physically accessible to the individual	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read "the setting is physically accessible to the



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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
<p>(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:</p>	<p><b>Silent</b></p>	<p>individual.”</p> <p><b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read “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:</p> <ul style="list-style-type: none"> <li>(1) Identify a specific and individualized assessed need.</li> <li>(2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.</li> <li>(3) Document less intrusive methods of meeting the need that have been tried but did not work.</li> <li>(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.</li> <li>(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.</li> <li>(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</li> </ul>



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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
		(7) Include the informed consent of the individual. (8) Include an assurance that interventions and supports will cause no harm to the individual."
(1) Identify a specific and individualized assessed need.	<b>Silent</b>	See above
(2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.	<b>Silent</b>	See above
(3) Document less intrusive methods of meeting the need that have been tried but did not work.	<b>Silent</b>	See above
(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.	<b>Silent</b>	See above
(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.	<b>Silent</b>	See above
(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.	<b>Silent</b>	See above



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(7) Include the informed consent of the individual.	<b>Silent</b>	See above
(8) Include an assurance that interventions and supports will cause no harm to the individual.	<b>Silent</b>	See above