

Readopt with amendment He-M 521, effective 5-22-09 (Document # 9475), cited and to read as follows:

CHAPTER He-M 500 DEVELOPMENTAL SERVICES

PART He-M 521 CERTIFICATION OF RESIDENTIAL SERVICES OR COMBINED RESIDENTIAL AND COMMUNITY PARTICIPATION SERVICES PROVIDED IN THE FAMILY HOME

Statutory Authority: RSA 171-A:3; 18, IV; 137-K:3

He-M 521.01 Purpose. The purpose of these rules is to provide minimum standards for residential services or combined community participation and residential services for individuals with developmental disabilities or acquired brain disorders who reside in their families' homes. These rules shall not apply to individuals who receive services under He-M 524, in-home supports.

He-M 521.02 Definitions.

(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; and
- (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; and
- 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) "Area agency" means "area agency" as defined under RSA 171-A:2, I-b.

(c) "Bureau" means the bureau of developmental services of the department of health and human services.

(d) "Bureau administrator" means the chief administrator of the bureau of developmental services.

(e) "Commissioner" means the commissioner of the department of health and human services or his or her designee.

(f) "Day services" means services that include supports for individuals to participate in community activities such as volunteer work, paid employment, or recreation.

(g) "Department" means the New Hampshire department of health and human services.

(h) "Developmental disability" means "developmental disability" as defined under 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 an 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."

(i) “Family” means a group of 2 or more persons related by ancestry, marriage, or other legal arrangement that has at least one member who has a developmental disability.

(j) “Guardian” means a person appointed pursuant to RSA 464-A or a parent of an individual under the age of 18 whose parental rights have not been terminated or limited by law in such a way as to remove the person’s right to make decisions pursuant to RSA 171-A on behalf of the individual..

(k) “Individual” means a person with a developmental disability or acquired brain disorder who is eligible to receive services pursuant to He-M 503 or He-M 522.

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

(m) “Provider agency” means an area agency or another entity under contract with an area agency to provide services.

(n) “Representative” means:

- (1) The parent or guardian of an individual under the age of 18;
- (2) The guardian of an individual 18 or over; or
- (3) A person who has power of attorney for the individual.

(o) “Service” means any paid assistance to an individual in meeting his or her own needs provided through the area agency.

(p) “Service agreement” means a written agreement between an individual or his or her guardian or representative and an area agency that is prepared in accordance with He-M 503 or He-M 522 and that describes the services that an individual will receive and constitutes an individual service agreement as defined in RSA 171-A:2,X.

(q) “Service coordinator” means a person who is chosen or approved by an individual and his or her guardian or representative to organize, facilitate and document service planning and to negotiate and monitor the provision of the individual’s services.

(r) “Staff” means a person employed by an area agency or provider agency.

He-M 521.03 Services.

(a) All services shall be specifically tailored to the competencies, interests, preferences, needs, and lifestyle of the individual served.

(b) Services shall include assistance and instruction to improve and maintain an individual’s skills in basic daily living, personal development, and community activities, such as, but not limited to:

- (1) Making personal choices;
- (2) Promoting and maintaining safety;
- (3) Enhancing communication;
- (4) Participating in community activities;

- (5) Developing and maintaining personal relationships;
- (6) Finding and maintaining employment;
- (7) Pursuing avocations in areas of personal interest;
- (8) Improving and maintaining social skills;
- (9) Achieving and maintaining physical well-being;
- (10) Improving and/or maintaining mobility and physical functioning;
- (11) Shopping and managing money;
- (12) Attending to personal hygiene and appearance;
- (13) Doing household chores;
- (14) Participating in meal preparation;
- (15) Accessing and using assistive technology;
- (16) Accessing and using transportation; and
- (17) Other similar services as indicated in the individual's service agreement.

He-M 521.04 Eligibility.

(a) Any individual who resides at home with his or her family shall be eligible for services identified in He-M 521.03, except as provided in (b) below.

(b) An individual who resides in a foster home licensed by the division of children, youth, and families shall not be eligible for services identified in He-M 521.03.

He-M 521.05 Administrative Requirements.

(a) Once a family expresses interest regarding He-M 521 services but before services are provided under He-M 521, the area agency shall:

- (1) Ensure that the proposed service arrangement:
 - a. Meets the individual's expressed interests, preferences, needs, and lifestyle;
 - b. Is consistent with the goals and services identified in the individual's service agreement; and
 - c. Meets the individual's environmental and personal safety needs; and
- (2) Explain and discuss the following with the individual, guardian, representative, and family members:
 - a. Area agency oversight of services provided under He-M 521;

- b. If applicable, the process of having staff or providers coming into the home environment;
- c. If the individual is taking medication, the supports available or needed to administer the medication safely;
- d. That modifications might be necessary in the service agreement if and when the individual's needs or preferences change;
- e. If applicable, receiving payments for the provision of services;
- f. If applicable, the relationship between the area agency and the family member as a provider or subcontractor;
- g. The requirements regarding certification of services, including, for all people who are being considered for a position of staff or provider:
 - 1. Performing criminal background checks; and
 - 2. Checking the state registry of abuse, neglect, and exploitation reports as established by RSA 161-F:49; and
- h. The conditions warranting the suspension or revocation of certification.

(b) In those situations where a family member is to be reimbursed as a provider or subcontractor, the area agency or provider agency shall, in consultation with the individual, guardian, representative, and family, develop a contract that:

- (1) Identifies the responsibilities of the area agency, provider agency, if applicable, and the family member as a provider or subcontractor;
- (2) Describes the provision of supports needed to administer medication safely;
- (3) Includes provision for time off and identifying the area agency or provider agency responsibility in assisting the family to secure substitute providers when the family member is the provider;
- (4) Includes a provision for either party to dissolve the contract with notice;
- (5) Allows for review and revision as deemed necessary by either party; and
- (6) Is signed by all parties.

(c) When services are being provided under He-M 521, the area agency shall:

- (1) Have, at a minimum, quarterly contacts with the family to provide information and support to ensure that services are provided in accordance with the service agreement and He-M 521; and
- (2) Ensure that the service arrangement is in compliance with He-M 503.10 or He-M 522.

He-M 521.06 Medication Administration. When an individual living with his or her family is in need of medication administration, such administration shall:

(a) Comply with He-M 1201 when administered by area agency, provider agency staff, home providers, or other providers contracted by the area agency;

(b) Comply with Nur 404 when a nurse identified in Nur 404.04 delegates the task of medication administration to providers who are neither family members nor under contract with an area agency or provider agency, except in situations where the individuals are living with their families and receiving respite arranged by the family; or

(c) When performed by family members paid under He-M 521, include discussion between the area agency or provider agency and the family about any concerns the family might have regarding medication administration.

He-M 521.07 Quality Assessment.

(a) An area agency shall monitor services provided pursuant to He-M 521.

(b) All services shall be monitored by a service coordinator, who:

- (1) Meets the criteria in He-M 503.08 9(e)-(f);
- (2) Is an area agency service coordinator, family support coordinator or any other area agency or provider agency employee;
- (3) Is a member of the individual's family;
- (4) Is a friend of the individual; or
- (5) Another person chosen to represent the individual.

(c) On at least a monthly basis, the service coordinator shall visit or have verbal contact with the individual or persons responsible for services to review progress on achieving the goals in the service agreement, inquire about other service needs, and document such visit or contact.

(d) The service coordinator shall visit the individual at home and contact the guardian or representative, if any, at least quarterly, or more frequently if so specified in the individual's service agreement, to determine and document whether services:

- (1) Match the interests, needs, preferences and lifestyle of the individual;
- (2) Meet with the individual's satisfaction;
- (3) Meet the individual's environmental and personal safety needs; and
- (4) Meet the terms of the service agreement; and

(e) If applicable, reviews of medication administration related activities shall be conducted as required in He-M 1202.09(b) and (c).

He-M 521.08 Documentation. Individual records shall:

- (a) Be maintained by the provider or staff; and
- (b) Include:

- (1) The service agreement;
- (2) Provider or staff progress notes written at least monthly, or more frequently if so specified in the service agreement, including the dates services are provided and reports on progress toward achieving desired outcomes;
- (3) For community participation services, a weekly personal schedule or calendar that:
 - a. Identifies the days, times, and locations of the individual's community activities such as recreation or paid or volunteer work; or
 - b. Includes brief, daily notations that document responses to people and activities and any changes in the individual's schedule; and
- (4) Any other documentation required by the area agency.

He-M 521.09 Certification.

(a) Residential services and combined residential and community participation services provided under He-M 521 shall be certified by the bureau.

(b) To initiate the certification process, the area agency shall:

- (1) Review the service arrangement and documentation to confirm that all applicable requirements identified in He-M 521.05 and He-M 521.06 are being met; and
- (2) At least 30 days prior to the start of services, forward to the bureau:
 - a. The individual's service agreement and proposed budget; and
 - b. The area agency's recommendation for certification.

(c) To renew certification of services under He-M 521, the area agency shall:

- (1) Review the service arrangement and documentation to confirm that all applicable requirements identified in He-M 521.05 through He-M 521.08 are being met; and
- (2) At least 30 days prior to the expiration of the current services, forward to the bureau:
 - a. The individual's service agreement and budget; and
 - b. The area agency's recommendation for recertification.

(d) Within 14 days of receiving the area agency recommendation pursuant to (b) or (c) above, the bureau shall issue a certification if the applicable requirements are being met.

(e) All certifications granted by the bureau under (d) above shall be effective for no more than 24 months.

He-M 521.10 Denial and Revocation of Certification.

(a) In the event of the denial or revocation of certification of services pursuant to (c) below, the individual's service coordinator shall assist him or her to continue receiving alternative services that meet his or her needs.

(b) The bureau shall deny an application for certification or revoke certification of services, following written notice pursuant to (d) below and opportunity for a hearing pursuant to He-C 200, due to:

- (1) Failure of a staff member, provider, provider agency, or area agency to comply with He-M 521 or any other applicable rule adopted by the department;
- (2) Hiring of persons below the age of 18 as staff or providers;
- (3) Submission of materially false or misleading information to the department or failure to provide information requested by the department and required pursuant to He-M 521;
- (4) The staff, provider, provider agency, or area agency preventing or interfering with any review or investigation by the department;
- (5) The staff, provider, provider agency, or area agency failing to provide required documents to the department;
- (6) Any reported abuse, neglect, or exploitation of an individual by a provider, staff member, or person living in an individual's residence, if
 - a. Such abuse, neglect, or exploitation is reported on the state registry of abuse, neglect, and exploitation in accordance with RSA 161:F-49;
 - b. Such person(s) continues to have contact with the individual; and
 - c. Such finding has not been overturned on appeal, been annulled, or received a waiver pursuant to He-M 521.14;
- (7) Failure by a provider agency or area agency to perform criminal background checks on all persons paid to provide services under He-M 521 who begin to provide such services on or after the effective date of He-M 521, or any person living in an individual's residence;
- (8) A misdemeanor conviction of any staff or provider or any person living in an individual's residence that involves:
 - a. Physical or sexual assault;
 - b. Violence or exploitation;
 - c. Child pornography;
 - d. Threatening or reckless conduct;
 - e. Theft;
 - f. Driving under the influence of drugs or alcohol; or
 - g. Any other conduct that represents evidence of behavior that could endanger the well-being of an individual;

(9) A felony conviction of any staff or provider or any person living in an individual's residence;
or

(10) Evidence that any provider or staff working directly with individuals has an illness or behavior that, as evidenced by the documentation obtained and the observations made by the department, would endanger the well-being of the individuals or impair the ability of the provider or staff to comply with department rules.

(c) If the department determines that services meet any of the criteria for denial or revocation listed in (b)(1)-(10) above, the department shall deny or revoke the certification of the services.

(d) Certification shall be denied or revoked upon the written notice by the department to the family and provider, provider agency, or area agency stating the specific rule(s) with which the service does not comply.

(e) Any certificate holder aggrieved by the denial or revocation of the certification may request an adjudicative proceeding in accordance with He-M 521.12 and the denial or revocation shall not become final until the period for requesting an adjudicative proceeding has expired or, if the certificate holder requests an adjudicative proceeding, until such time as the administrative appeals unit issues a decision upholding the department's action.

(f) Pending compliance with all requirements for certification specified in the written notice made pursuant to (d) above, a provider, provider agency, or area agency shall not provide additional services if a notice of revocation has been issued concerning a violation that presents potential danger to the health or safety of the individuals being served.

He-M 521.11 Immediate Suspension of Certification.

(a) In the event that a violation poses an immediate and serious threat to the health or safety of an individual, the bureau administrator shall suspend a service's certification immediately upon issuance of written notice specifying the reasons for the action.

(b) The bureau administrator or his or her designee shall schedule and hold a hearing within 10 working days of the suspension for the purpose of determining whether to revoke or reinstate the certification. The hearing shall provide opportunity for the provider, provider agency, or area agency whose certification has been suspended to demonstrate that it has been, or is, in compliance with the specified requirements.

He-M 521.12 Appeals.

(a) Pursuant to He-C 200, an individual, guardian, or representative may within 30 business days of the area agency decision, she or he may choose to file a formal appeal. Any determination, action, or inaction by an area agency may be appealed by an individual, guardian, or representative.

(b) An applicant for certification, provider, provider agency, or area agency may request a hearing regarding a proposed revocation or denial of certification, except as provided in He-M 521.11 above.

(c) Appeals shall be submitted, in writing, to the bureau administrator in care of the department's office of client and legal services within 10 days following the date of the notification of denial or revocation of certification. An exception shall be that appeals may be filed verbally if the individual is unable to convey the appeal in writing.

(d) The bureau administrator shall immediately forward the appeal to the department's administrative appeals unit which shall assign a presiding officer to conduct a hearing or independent review, as provided in He-C 200. The burden shall be as provided by He-C 203.14.

(e) If a hearing is requested, the following actions shall occur:

(1) Services and payments shall be continued as a consequence of an appeal for a hearing until a decision has been made; and

(2) If the bureau's decision is upheld, funding shall cease 60 days from the date of the denial letter or 30 days from the hearing decision, whichever is later.

He-M 521.13 Payment.

(a) In order to receive funding under He-M 521, services shall be certified by the bureau in accordance with He-M 521.09.

(b) Community-based care providers shall submit claims for covered community-based care services on to:

Xerox Provider Services
ATTN: Claims Administration
P.O. Box 2003
Concord, NH 03302-2003

(c) Payment for community-based care services shall only be made if prior authorization has been obtained from the bureau.

(d) Requests for prior authorization shall be made in writing to:

Xerox Provider Services ATTN: Claims Administration
PO Box 2003
Concord, NH 03302-2003

(e) For those individuals whose net income exceeds the appropriate standard of need, Medicaid claims payment will reflect a reduction in reimbursement equal to the cost of care amount..

(f) In those situations where cost of care is subtracted from the Medicaid billings, the area agency shall recover the cost from individuals unless they qualify for Medicaid for employed adults with disabilities (MEAD) pursuant to He-W 641.03.

(g) Payment for services shall not be available to any service provider who:

(1) Is a person under age 18; or

(2) Is the spouse of an individual receiving services.

He-M 521.14 Waivers.

(a) An area agency, provider agency, individual, guardian, representative, or provider may request a waiver of specific procedures outlined in He-M 521 by completing and submitting the form titled "NH Bureau of Developmental Services Waiver Request" (September 2013 edition). The area agency shall submit the request in writing to the bureau administrator.

(b) A completed waiver request form shall be signed by:

(1) The individual, guardian(s), or representative(s) indicating agreement with the request; and

(2) The area agency’s executive director or designee recommending approval of the waiver.

(c) A waiver request shall be submitted to:

Department of Health and Human Services
 Office of Client and Legal 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 his or her 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 a specific duration not to exceed 5 years except as in (h) below.

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

(i) 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

<u>Rule</u>	<u>Statute:</u>
He-M 521.01 - 521.14	RSA 171-A:4; 18, I and II