



Lori A. Weaver  
Interim Commissioner

Melissa.A.Hardy  
Director

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
***DIVISION OF LONG TERM SUPPORTS AND SERVICES***

105 PLEASANT STREET, CONCORD, NH 03301  
603-271-5034 1-800-852-3345 Ext. 5034  
Fax: 603-271-5166 TDD Access: 1-800-735-2964  
[www.dhhs.nh.gov](http://www.dhhs.nh.gov)

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**Only Willing and Qualified Provider**

It is the policy of the New Hampshire Department of Health and Human Services, Bureau of Developmental Services (BDS) that services shall be conflict free, in accordance with 42 CFR 431.301 (c) (1) (vi) and He-M 517.03 (b) in which services shall be denied through the Home and Community-Based Services (HCBS) waiver if the provision of services are offered by the same agency. Failure to comply with this federal requirement will result in the loss of federal financial participation (FFP).

BDS recognizes that there are instances in which, to ensure quality and access to services, an individual may receive case management and direct service from the same organization. Per the regulation, “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, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS.”

New Hampshire has identified the following criteria as consideration for the “Only Willing and Qualified Provider” exemption:

- Rural Exemption and
- Lack of another qualified provider

**Rural Exemption:** For a community to be considered rural, it must be designated as such by the NH Department of Health and Human Services, Division of Public Health Services (DPHS). The DPHS, Office of Rural Health and Primary Care created a definition based on the New Hampshire Public Health Regions. The 13 Public Health Regions include all of New Hampshire’s cities and towns. A Public Health Region is considered either rural or non-rural based on population density.

**Lack of another qualified provider:** In addition to the geographic classification the agency must demonstrate that there:

- Is not another qualified provider located and/or willing to locate within a twenty-mile radius/30-minute travel time that can provide services requested and required; and
- Are less than 10 people who receive HCBS 1915 (c) waiver services in the town/city.

If an agency discovers that it meets the criteria for “only willing and qualified provider” in a given geographic area, it must submit a waiver request and any relevant documentation to BDS in accordance with the following process:

**Process:**

The agency shall request approval from BDS, using the attached exemption request form.

1. The individual/guardian shall be in agreement that the same organization will provide both case management and direct service.
  - Even if the organization meets the rural exemption, the agency shall have documentation that choice was explored and it was verified that the agency is the only willing and qualified provider, if applicable, including documentation that the provider selection process was implemented. This will be documented in the Individual Service Agreement (ISA).
  - The agency shall have documentation that resolution of barriers to separation of case management and direct service were attempted and that there is a firewall policy in place.
  - The agency shall develop a plan to develop and/or recruit independent providers.
2. The agency shall ensure that there is a separation of functions within the organization as follows:
  - Administrative separation between those doing assessments, service planning, and those delivering direct services. Please provide at a minimum:
    - Organizational Chart for these functions.
  - Case Management and Direct Services are located in different departments within the organization, are in different physical locations within the organization, and report to different (and equal) organizational leadership. Please provide, at a minimum:
    - Organizational Chart, with names, for Case Management and Direct Services, including the Executive Leadership structure as it relates to these functions; and
    - Office plan, indicating where the functions named above are located within the organization.

- The Direct Services department shall not develop or have any influence on developing the client’s plan of care within the Case Management Department as demonstrated by including the following, as a minimum.
  - Agency policies that outline:
    - a. Provider Selection Process, demonstrating how the agency makes information available regarding all qualified providers;
    - b. Choice in service delivery options;
    - c. Cultural Competency; and
    - d. Dispute Resolution Process.
  - Documentation of:
    - a. Case Management Orientation and Training that outlines, at a minimum: The Case Manager’s role as a neutral facilitator of the team process, how to offer choice, how to continually assess and offer choice, and how to assist individuals, families, and guardians in the choice process;
    - b. Agency plans to increase provider capacity in the region to meet its responsibility to maintain a comprehensive service delivery system.
    - c. How the agency ensures all consumers, their families, and guardians have accurate and accessible information on qualified providers (website, provider directory, brochures, etc.); and
    - d. How the agency monitors that choice is given to consumers, families and guardians.

For organizations requesting an exemption, the above documentation shall be provided once, with the first exemption request and annually thereafter during the Governance Audit.

Subsequent exemption requests shall not require the above documentation be attached, as long as the agency certifies there have not been any changes.

Approvals will not exceed one year. If a request receives approval, it will be subject to ongoing monitoring by BDS to ensure that all firewalls remain in place and any conflict is mitigated.

Annually, BDS will review and analyze the number of conflicted situations regionally and statewide to ensure the number does not increase from the baseline.