

Notice Number _____

Rule Number He-M 310

<p>1. Agency Name & Address:</p> <p>Department of Health and Human Services Bureau of Developmental Services 129 Pleasant Street Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 171-A:11, IV, RSA 171-A:12, I, and RSA 171-A:14, V; RSA 137-K:3, IV</u></p> <p>3. Federal Authority: <u>42 CFR 441.301</u></p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u>X</u></p>
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5. Short Title: **Rights of Persons Receiving Developmental Services or Acquired Brain Disorder Services in the Community**

6. (a) Summary of what the rule says and of any proposed amendments:

He-M 310 specifies the rights of applicants for service or persons who have been found eligible for developmental disability or acquired brain disorder services and who are being served in the community or in a state-operated designated receiving facility.

The Department of Health and Human Services (Department) is proposing to readopt with amendment He-M 310. The proposed amendments include:

- **Updating He-M 310.02 on definitions by:**
 - **Adding the terms “resident”, “restraint”, and “seclusion”;** and
 - **Amending the terms “coercion”, “individual”, “provider agency”, and “service agreement”;**
- **Updating He-M 310.04 on fundamental rights by moving the requirements of a behavior change program to a new section, and clarifying that those requirements are applicable to all rights, not just fundamental;**
- **Updating He-M 310.05 on personal rights by updating the term “area agency” to “provider agency” in (f)(2);**
- **Updating He-M 310.06 on service rights by:**
 - **Adding the right to have medications refilled in a timely manner and to avoid medication expiration, to be free from seclusion, and to choose with whom to interact; and**
 - **More accurately reflecting the responsibilities of area agencies and provider agencies;**
- **Updating He-M 310.09 on rights of individuals in community residences by:**
 - **Removing the exceptions to the right to free and private communication with others to comply with the requirements of 42 CFR 441.301;**
 - **Adding the right to a residency agreement; and**
 - **Adding the requirement that any modification be reviewed and approved by the humans rights committee of the individual’s area agency;**

- Adding a new section He-M 310.10 on a residency agreement, entitling individuals living in a community residence the right to a residency agreement, in order to comply with 42 CFR 441.301(c)(4)(vi)(A);
- Adding a new section He-M 310.11 on a behavior change program; and
- Adding a new section He-M 310.12 on rights of individuals in an agency residence to appeal termination to provide rights to appeal a notice to vacate an agency residence.

6. (b) Brief description of the groups affected:

He-M 310 affects applicants for services or persons who have been found eligible for services under He-M 503.03 or He-M 522.03 and who are being served in the community or in a state-operated designated receiving facility.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

RULE	STATUTE
He M 310.01	RSA 171-A:8; 11, 12, 13; 14; 15; 29; 137-K:3, IV
He M 310.02	RSA 171-A:8; 11, 12, 13; 14; 15; 29
He M 310.03	RSA 171-A:15; 137-K:3, IV
He M 310.04	RSA 171-A:14, I; 137-K:3, IV
He M 310.05	RSA 171-A:14; 29; 137-K:3, IV
He M 310.06	RSA 171-A:11, 12, 13; 137-K:3, IV, 42 CFR 441.301(c)(1)
He M 310.07	RSA 171-A:8; 137-K:3, IV
He M 310.08	RSA 171-A:8; 137-K:3, IV
He M 310.09	RSA 171-A:14, II, III, IV; 29; 137-K:3, IV; 42 CFR 441.301(c)(4)(vi)(F)
He M 310.10	42 CFR 441.301(c)(4)(vi)(A)
He-M 310.11	RSA 171-A:17
He-M 310.12	42 CFR 441.301(c)(4)(vi)(A)

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Allyson Raadmae** Title: **Administrator- Administrative Rules Unit**
 Address: **Dept. of Health and Human Services** Phone #: **(603) 271-9604**
Administrative Rules Unit Fax#: **(603) 271-5590**
129 Pleasant Street, 2nd Floor E-mail: Allyson.E.Raadmae@dhhs.nh.gov
Concord, NH 03301

TTY/TDD Access: Relay NH 1-800-735-2964
or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:
<https://www.dhhs.nh.gov/doing-business-dhhs/legal-services/administrative-rules/nh-administrative-rules-public-comment>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, January 19, 2023**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Wednesday, January 11, 2023 at 12:00pm**

Place: **[DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH](#)**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 22:222 , dated November 28, 2022

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost between the proposed rules and the existing rules. Not applicable with respect to He-M 310.10 and He-M 310.11, as these are new rules.

2. Cite the Federal mandate. Identify the impact on state funds:

42 CFR 441.301 mandates certain components of the proposed rule, however the Department of Health and Human Services states these components will have no fiscal impact.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

The Department states that, with the addition of new section He-M 310.12 and the appeal rights of individuals in agency residence, there may be indeterminable administrative costs to the Department's Administrative Appeals Unit.

B. To State citizens and political subdivisions:

The addition of new section He-M 310.12 and the appeal rights of individuals in agency residence may result in indeterminable administrative costs to residents.

C. To independently owned businesses:

The addition of new section He-M 310.12 and the appeal rights of individuals in agency residence may result in indeterminable administrative costs to agency residences.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rule modifies an existing program or responsibility, but does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.

CHAPTER He-M 300 RIGHTS

Readopt with amendment He-M 310, effective 4-25-15 (Document #10821), to read as follows:

PART He-M 310 RIGHTS OF PERSONS RECEIVING DEVELOPMENTAL SERVICES OR ACQUIRED BRAIN DISORDER SERVICES IN THE COMMUNITY

Statutory Authority: RSA 171-A:3; 171-A:14, V; 126-A:16, III; 137-K:3, IV

He-M 310.01 Purpose. The purpose of these rules is to define the rights of applicants for service or persons who have been found eligible for services under He-M 503.03 or He-M 522.03 and who are being served in the community or in a state-operated designated receiving facility. Individuals might have additional rights under RSA 151:21, patients' bill of rights for residents of health care facilities.

He-M 310.02 Definitions. The words and phrases used in this part shall have the following meanings:

(a) "Abuse" means an act or omission by an employee, consultant, or volunteer of a provider agency which is not accidental and harms or threatens to harm an individual's physical, mental or emotional health or safety and includes emotional abuse, physical abuse, and sexual abuse.

(b) "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;

(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; or
- 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.

(c) “Applicant” means any person who requests services pursuant to He-M 503.04 or He-M 522.04.

(d) “Area agency” means “area agency” as defined in RSA 171-A:2, I-b.

(e) “Attorney” means a member of the New Hampshire Bar Association retained, employed, or appointed by a court to represent an individual.

(f) “Coercion” means an act by an employee, contractor, consultant, or volunteer of a ~~n-area~~ [provider](#) agency which is designed to compel an individual to act in clear opposition to the preference of the individual, excluding requirements otherwise prescribed by law or rule.

(g) “Community residence” means either an agency residence as defined in He-M 1001.02 (b) or family residence as defined in He-M 1001.02 (p) exclusive of any independent living arrangement that:

- (1) Provides residential services for at least one person with a developmental disability, in accordance with He-M 503, or acquired brain disorder in accordance with He-M 522;
- (2) Provides services and supervision for an individual on a daily and ongoing basis, both in the home and in the community, unless the individual’s service agreement states that the individual may be without supervision for specified periods of time;
- (3) Serves individuals whose services are funded by the department; and
- (4) Is certified pursuant to He-M 1001.

(h) “Designated receiving facility (DRF)” means a residential treatment program designated by the commissioner pursuant to RSA 171-A:20 and He-M 526 to provide care, custody, and treatment to persons involuntarily admitted to the state developmental services system.

(i) "Developmental disability" means "developmental disability" as defined in 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."

(j) "Emotional abuse" means:

(1) The misuse of power, authority or both;

(2) Verbal harassment; or

(3) Unreasonable confinement which results or could result in the mental anguish or emotional distress of an individual.

(k) "Exploitation" means the use of an individual's person or property for another's profit or advantage or breach of a fiduciary relationship through improper use of an individual's person or property including situations where a person obtains money, property, or services from an individual through undue influence, harassment, deception, or fraud.

(l) "Guardian" means a person appointed under RSA 463 or RSA 464-A or who is 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.

(m) "Habilitation" means "habilitation" as defined in RSA 171-A:2, IX, namely, "the process by which program personnel assist clients to acquire and maintain those life skills which enable them to cope more effectively with the demands of their own persons and of their environment, to be economically self-sufficient and to raise the level of their physical, mental and social efficiency. Habilitation includes but is not limited to programs of formal, structured education and treatment."

(n) "Individual" means a person who has a developmental disability as defined in (i) above or an acquired brain disorder as defined in (b) above, ~~and receives services from an area agency.~~

(o) "Individual treatment plan" means, for an individual receiving treatment pursuant to RSA 171-B:12, a plan developed by the individual's treatment team to address the individual's clinical needs and the behavior or condition which creates a potential danger for others.

(p) "Informed decision" means a choice made voluntarily by an individual receiving services or an applicant for services or, where appropriate, such person's legal guardian or representative, after all relevant information necessary to making the choice has been provided, when:

(1) The person understands that he or she is free to choose or refuse any available alternative;

(2) The person clearly indicates or expresses his or her choice; and

(3) The choice is free from all coercion.

(q) "Intellectual disability" means "intellectual disability" as defined in RSA 171-A:2, XI-a, namely, "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period. A person with an intellectual disability may be considered mentally ill provided that no person with an intellectual disability shall be considered mentally ill solely by virtue of his or her intellectual disability."

(r) "Neglect" means an act or omission which results or could result in the deprivation of essential services necessary to maintain the minimum mental, emotional, or physical health of an individual.

(s) "Parent" means the father or mother of an individual under the age of 18 whose parental rights have not been terminated or limited by law.

(t) "Physical abuse" means the use of physical force which results or could result in physical injury to an individual.

(u) "Prescribing practitioner" means a licensed professional with prescriptive authority, including the following:

- (1) Physician;
- (2) Advance practice registered nurse (APRN);
- (3) Dentist;
- (4) Physician's assistant;
- (5) Optometrist; and
- (6) Podiatrist.

(v) "Provider agency" means an ~~area agency or an~~ entity ~~under contract with an area agency~~ that is ~~responsible for~~ providing services to individuals.

(w) "Resident" means an individual who lives in a community residence.

(x) "Restraint" means:

(1) Any manual method, physical or mechanical device, material, or equipment that immobilizes an individual or reduces the ability of an individual to move his or her arms, legs, head, or other body parts freely but does not include devices, such as orthopedically prescribed devices, or other methods that involve the physical holding of an individual, if necessary, for the purpose of:

a. Protecting the individual from falling out of bed; or

b. Permitting the individual to participate in activities without the risk of physical harm;
or

(2) Any drug or medication when it:

a. Is used as a restriction to manage an individual's behavior or restrict the individual's freedom of movement; and

b. Is not a standard treatment or dosage for the individual’s diagnosis, in that its overall effect reduces an individual’s ability to effectively or appropriately interact; or

(3) “Restraint” as defined in RSA 126-U:1, IV as applied to a person who has not reached 18 years of age, or who is otherwise a child as defined by RSA 126-U:1, I.

(yw) “Representative” means:

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

(z) “Seclusion” means

(1) For an individual who is 18 or older:

a. Is placed alone in a room or area from which the individual is physically prevented, by lock or person, from leaving; and

b. Cannot or will not make an informed decision to agree to such confinement; or

(2) “Seclusion” as defined in RSA 126-U:1, V-a as applied to a person who has not reached 18 years of age, or who is otherwise a child as defined by RSA 126-U:1, I.

(aa*) “Service” means any evaluation, training, counseling, therapy, habilitation, service coordination, or other type of assistance provided by a provider agency.

(aby) “Sexual abuse” means contact or interaction of a sexual nature between an individual and an employee of or a consultant or volunteer for a provider agency.

(acz) “Service agreement” means a written agreement between the individual, ~~or his or her~~ guardian, or representative and provider(s) ~~the area agency~~ that is prepared as a result of the person-centered planning process and describes the services that an individual will receive and constitutes an individual service agreement as defined in RSA 171-A:2, X.

(adaa) “Treatment” means medical care provided by a prescribing practitioner.

He-M 310.03 Notice of Rights of Individuals and Applicants.

(a) Provider agencies shall inform individuals and applicants of their rights under these rules in clearly understandable language and form, both verbally and in writing, on an annual basis.

(b) The notification of rights required pursuant to (a) above shall include, at a minimum, the following measures:

- (1) Provider agencies shall inform applicants for services of their rights to evaluations and access to treatment and other services;

- (2) Provider agencies shall provide meaningful and understandable information about rights to individuals who are minors or who have been adjudicated incapacitated as well as to their parents, guardians, representatives, or attorneys;
 - (3) Provider agencies shall provide information outlining the process of how to file a complaint pursuant to He-M 202;
 - (4) Provider agencies shall advise individuals or their guardians or representatives of individuals' rights upon initial participation in any service, upon any change in provider agency or community residence, and at least once a year after initial participation;
 - (5) Every provider agency shall post a notice of the rights set forth in these rules, as follows:
 - a. The notice shall be posted continuously and conspicuously; and
 - b. The notice shall be presented in clearly understandable language and form; and
 - (6) Each provider agency and community residence shall have on the premises complete copies of rules pertaining to rights of individuals which are available for individuals, guardians, representatives, and staff to review.
- (c) Each provider agency shall document, as indicated by signature of the individual or his or her parent, guardian, or representative, notifications of rights in individuals' records.

He-M 310.04 Fundamental Rights.

(a) Any person receiving services for a developmental disability or acquired brain disorder shall be entitled to any legal right to which all citizens are entitled regardless of that person's admission to the developmental services system, except as provided by RSA 171-B.

(b) The legal rights protected shall include, at a minimum:

(1) The right to freedom of religious preference and practice, the right to be free from engaging in any religious activity, and the right to receive reasonable assistance in attending places of worship;

(2) The right to register to vote, if eligible, in public elections and, as provided in 42 U.S.C. § 1973aa-6, the right to receive assistance from the person of his or her choice in registering to vote and in voting;

(3) The following civil rights, unless a court has determined that an individual is legally incapacitated pursuant to RSA 464-A and a guardian or representative has been appointed to make certain decisions or a behavior change program, as described in ~~(c) below~~ He-M 310.11, exists that limits an individual's rights and is approved by a human rights committee pursuant to RSA 171-A:17, II(c):

- a. The right to manage affairs;
- b. The right to contract;
- c. The right to hold professional, occupational, or motor vehicle driver's licenses;
- d. The right to marry or to obtain a divorce;

- e. The right to make a will; and
 - f. The right to exercise any other civil right;
- (4) The right to not be discriminated against in any manner because of race, color, sex, religion, national origin, age, disability, marital status, sexual orientation or degree of disability as provided in state and federal laws, title VII of the civil rights act of 1964, section 504 of the rehabilitation act of 1973, the age discrimination act of 1975, the Americans with Disabilities Act of 1990, and the provisions of certain block grants, including:
- a. Access to auxiliary aids needed by the individual;
 - b. Services which are accessible to individuals of limited English proficiency; and
 - c. Service locations that are accessible and meet the individuals physical, sensory, intellectual, or emotional needs; and
- (5) The right to legal remedies including the right to petition for and receive the benefits of a writ of habeas corpus and to seek any other remedy provided by law.

~~(c) A behavior change program shall be a written plan, protocol, or procedure that:~~

~~(1) Outlines strategies including:~~

- ~~a. Physical environment modifications;~~
- ~~b. Restrictive strategies;~~
- ~~c. Use of monitoring devices; or~~
- ~~d. Other strategies for altering behavior; and~~

~~(2) Is approved by an area agency human rights committee pursuant to RSA 171-A:17, II(c).~~

~~(c)~~ The legal rights of a person involuntarily admitted in accordance with RSA 171-B may be limited to the extent necessary to prevent harm to the individual or others, unless the individual is committed to the secure psychiatric unit of the New Hampshire state prison.

He-M 310.05 Personal Rights.

(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.

(b) Individuals shall be free from abuse, neglect, and exploitation including, at a minimum, the following:

- (1) Freedom from any emotional, physical, or sexual abuse or neglect;
- (2) Freedom from the intentional use of physical force except the minimum force necessary to prevent harm to the individual or others or substantial damage to property or when a behavior change program exists that limits an individual's rights and is approved by a human rights committee pursuant to RSA 171-A:17, II(c); and
- (3) Freedom from personal or financial exploitation.

- (c) Individuals shall have the right to privacy.
- (d) Individuals shall have the right to be free from coercion.
- (e) Any individual who uses or has used provider agency services shall have the right to confidentiality of all information and records.
- (f) At a minimum, provider agencies shall adhere to the following confidentiality requirements:
 - (1) Material safeguarded shall include any information with respect to an individual or through which an individual can be identified such as:
 - a. Names;
 - b. Photographic and video images;
 - c. Addresses;
 - d. Diagnoses and evaluative data;
 - e. Medical and clinical records;
 - f. Service agreements; and
 - g. Whether a person is using or has used a provider agency's services;
 - (2) Provider agency staff may disclose to the chief of police in the community in which the individual resides, or any law enforcement officer, as safety and security of the individual and others require, or the individual's legal counsel that an individual is served by a provider agency n-area agency if that individual is a victim of a crime, has been charged with a misdemeanor or felony, or is involuntarily admitted in accordance with RSA 171-B;
 - (3) The individual and guardian or representative shall be informed that clinical information shall be released to the third party payor to the extent necessary to substantiate charges for services;
 - (4) If the individual, guardian, or representative wishes to bear the cost of services privately rather than allow the release of information to third party payors, the individual shall be personally responsible for the full cost of such services;
 - (5) All employees, consultants, and volunteers of provider agencies shall be informed so as to know and understand confidentiality and comply with confidentiality statutes and rules;
 - (6) Separate, individual records shall be maintained when group treatment methods are employed and joint records of treatment activity that identify participants shall not be maintained;
 - (7) No provider agency shall photograph, fingerprint, or record any individual by audio or visual equipment unless the individual, guardian, or representative has consented following an informed decision, nor allow any third party to photograph, fingerprint, or record any individual by audio or visual equipment unless the individual, guardian, or representative has consented following an informed decision, except if such monitoring or recording is part of a treatment program for a person committed in accordance with RSA 171-B;

- (8) These rules shall not affect the obligation of provider agencies to release information as required by:
- a. RSA 161-F:56, protective services to adults;
 - b. RSA 169-C:29, report of child abuse;
 - c. RSA 631:6, report of injury caused by criminal act;
 - d. He-M 202.07 (j); or
 - e. Other law; and
- (9) Statements made by individuals to physicians licensed pursuant to RSA 329, psychologists licensed pursuant to RSA 329-B, or persons licensed pursuant to RSA 330-A or to those who work under their supervision, may be disclosed for the purpose of commitment hearings.
- (g) Access to records shall be as follows:
- (1) Information pertaining to an individual shall be released to the individual and guardian or representative upon request including all information provided by third parties except that which was provided prior to May 1982, under an agreement that the information would not be disclosed;
 - (2) A provider agency service coordinator or nurse shall be present at a record review if:
 - a. There is a reasonable concern that an individual will experience a harmful effect as a result of reviewing his or her record, or reasonable concern that the security of the record is at risk; and
 - b. The determination that a. above applies has been made on an individual, case-by-case basis and the reasons for the determination have been documented in writing;
 - (3) Information shall be released to any person or organization that has obtained the written consent of the individual, guardian, or representative;
 - (4) Information shall be released to the department and funding, licensing, and accrediting agencies by provider agencies under RSA 171-A as necessary for:
 - a. Determining eligibility for funding;
 - b. Assisting in accrediting or licensing decisions;
 - c. Delivering appropriate services to individuals;
 - d. Monitoring and evaluating service delivery; and
 - e. Planning future service delivery;
 - (5) Provider agencies shall not include or release confidential information in an individual's record which pertains to other individuals;

- (6) Provider agencies shall include within the records of an individual any supplemental information provided by the individual, guardian, or representative either clarifying or rebutting information deemed by the individual to be inaccurate;
 - (7) An attorney appointed by a court to represent an individual shall have access to all records and information pertaining to that individual;
 - (8) Legal counsel for the department shall have access to all relevant records and information pertaining to an individual when such records and information are necessary because the individual:
 - a. Is the subject of an involuntary commitment hearing;
 - b. Is the subject of a guardianship proceeding; or
 - c. Has instituted legal action against the state in regard to services provided by the developmental services system;
 - (9) In cases where an individual, or an attorney or other advocate who represents the individual, after review of the record, requests copies of the record, such copies shall be made available free of charge for the first 25 pages and for not more than 25 cents per page thereafter;
 - (10) Information regarding the medical treatment of an individual shall be released to law enforcement officials or health facility personnel if necessary to address an emergency situation involving danger to the individual's health or safety, but only specific information necessary to the relief of the emergency may be released without the individual's, guardian's, or representative's consent; and
 - (11) In accordance with RSA 329:31, RSA 329-B:29, and RSA 330-A:35, when an individual has made a serious threat of physical violence against a clearly identified or reasonably identifiable victim or victims, or a serious threat of substantial damage to real property, the following shall be obligated to make reasonable efforts to disclose the threat to the third party or law enforcement officials:
 - a. Physicians licensed pursuant to RSA 329;
 - b. Psychologists licensed pursuant to RSA 329-B; and
 - c. Persons licensed pursuant to RSA 330-A and those who work under their supervision.
- (h) Individuals and guardians or representatives shall have the right to complain about any alleged violation of a right afforded by these rules or by any state or federal law or rule or the unreasonable restriction of a legal, personal, or treatment right of a person involuntarily admitted in accordance with RSA 171-B, or any other matter.
- (i) Any person shall have the right to complain or bring a grievance on behalf of an individual or a group of individuals. The rules governing procedures for protection of rights of individuals, He-M 202, shall apply to such complaints and grievances.
- (j) An individual shall have the right to a hearing pursuant to RSA 171-A and He-C 200 when a recommendation is made to provide service for that individual in any residential setting that restricts in any way the liberty or informed decisions of the individual. The individual shall have a right to

representation by legal counsel, except that persons involuntarily admitted pursuant to RSA 171-B may only challenge that admission in accordance with procedures set forth in RSA 171-B.

(k) The personal rights of a person involuntarily admitted in accordance with RSA 171-B shall be restricted where safety or security requires such limitation.

He-M 310.06 Service Rights.

(a) Individuals shall have the right to adequate and humane service and treatment, including:

(1) The right of access to services including:

- a. The right to evaluation to determine the type of services needed and which provider agencies are most suited to provide those services;
- b. The right to receive necessary services when those services are available, subject to the admission and eligibility policies and standards of each provider agency; and
- c. The right to receive services without regard to race, color, age, religion, sex, marital status, national origin, severity of disability, sexual orientation or inability to pay;

(2) The right to quality services including services provided in accordance with licensing requirements and rules adopted by the department in He-M 200-1300 and other applicable rules of state agencies and services provided in keeping with generally accepted clinical and professional standards applicable to the individuals' disabilities and services;

(3) The right to receive services in his or her community:

- a. To the same degree of access as persons not receiving services;
- b. That will promote the individual's full community participation; and
- c. Except as limited by individual treatment plans for individuals involuntarily admitted in accordance with RSA 171-B;

(4) The right to a person-centered planning process that:

- a. Is directed by the individual or representative, if applicable;
- b. Is intended to identify the strengths, capacities, preferences, needs and desired outcomes of the individual;
- c. Includes participants freely chosen by the individual as important contributors;
- d. Provides information and support to assist the individual to direct the process and to make informed choices and decisions;
- e. Reflects cultural considerations of the individual and is conducted in clearly understandable language and form;
- f. Occurs at times and location of convenience to the individual;
- g. Includes strategies for solving conflict or disagreement within the process;

- h. Offers informed choices to the individual or representative, if applicable, regarding services and supports;
 - i. Involves the family or other participants in enabling and assisting the individual to identify and access a personalized mix of paid and non-paid services and supports that will assist him or her to achieve personally defined outcomes in the most integrated setting appropriate to the needs of the individual;
 - j. Includes identification of the individual's planning goals to achieve personal outcomes in collaboration with those whom the individual has identified;
 - k. Results in a service agreement that identifies personally defined outcomes and training supports, therapies, treatments, and other services the individual is to receive to achieve those outcomes;
 - l. Includes a method for the individual to request amendments to the agreement; and
 - m. Records the alternative home and community based settings that were considered by the individual;
- (5) The right to a service agreement developed, reviewed, and revised in accordance with He-M 503;
- (6) The right to services in accordance with the time frame set in the service agreement;
- (7) The right to services in a setting that is:
- a. Based on the individual's needs and preferences;
 - 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; and
 - c. Integrated in, and supportive of full access of individuals to, the greater community, including opportunities to:
 - 1. Seek employment and work in competitive integrated settings;
 - 2. Engage in community life;
 - 3. Control schedules and activities;
 - 4. Control personal resources;
 - 5. Receive services in the community to the same degree of access as the general population; and
 - 6. Live in a private unit in a residential setting, based on the resources available for room and board;
- (8) The right to be informed of all significant risks, benefits, side effects, and alternative treatment and services and to give consent to any treatment, behavior change program, service, or referral following an informed decision, except when action is necessary to prevent harm to the individual or others or prevent substantial damage to property or where otherwise provided by law, such that:

- a. Whenever it is possible, the consent shall be given in writing; and
 - b. In all other cases, evidence of consent shall be documented by the provider agency and shall be witnessed by at least one person;
- (9) The right to refuse to participate in any form of experimental treatment or in any research or have one's representative refuse on the individual's behalf;
- (10) The right to be fully informed of one's own diagnosis and prognosis;
- (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;
- (12) The right to services which promote independence including services which shall be directed toward:
- 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;
- (13) The right to receive medical care and treatment, [including ensuring medications are refilled in a timely manner and avoid expiration](#);
- (14) The right to refuse medications and treatment, except emergency treatment that is:
- a. Necessary to prevent harm to the individual or others or prevent substantial damage to property; or
 - b. In accordance with a behavior change program that limits an individual's rights and is approved by a human rights committee;
- (15) The right to consultation and second opinion, including;
- a. At the individual's own expense, the consultative services of:
 1. Private physicians;
 2. Psychologists;
 3. Dentists; and
 4. Other health practitioners;
 - b. Granting such health practitioners reasonable access to the individual by provider agencies; and
 - c. Allowing such health practitioners to make recommendations to provider agencies regarding the services and treatment provided;
- (16) The right to choose, or have one's representative choose, one or more of the following persons to be present at any person-centered planning meeting or other service planning meeting requiring the individual's participation and informed decision-making:

- a. Guardian;
- b. Representative;
- c. Attorney;
- d. Family member;
- e. Friend;
- f. Direct support staff;
- g. Advocate;
- h. Consultant; or
- i. Other person the individual requests; ~~and~~

(17) The right to freedom from restraint including:

a. For individuals under the age of 18, the right to limitations on the use of restraint and seclusion pursuant to RSA 126-U; and

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:

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:

(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 accordance with RSA 171-B; ~~and-~~

(18) The right to choose with whom to interact.

(b) Applicants shall have the right to evaluation to determine an applicant's eligibility for services and the type of services needed and to determine which provider agencies are most suited to provide the services needed.

(c) Provider agencies shall, whenever possible, maximize the decision-making authority of the individual.

(d) Whenever possible, individuals shall be served in generic, integrated settings rather than specialized programs for persons with developmental disabilities or acquired brain disorders.

(e) Provider agencies may restrict access by individuals to various locations to:

- (1) Ensure the privacy or safety of the individuals;
- (2) Achieve other necessary objectives contained in the service agreement; or
- (3) Comply with provisions of law and orders of court.

(f) These rules shall not require any licensed professional to administer treatment contrary to such professional's clinical judgment.

(g) The service rights of a person involuntarily admitted in accordance with RSA 171-B may be restricted where safety or security requires such limitation.

(h) For individuals who have a guardian or representative, the following provisions shall apply:

(1) The provider agency shall ensure that the guardian or representative and all persons involved in the provision of services are made aware of the individual's needs, views, preferences and aspirations;

(2) The provider agency shall comply with decisions made by the guardian or representative within the legitimate scope of his or her authority;

(3) A guardian or representative is only allowed to make decisions that are within the scope of his or her powers pursuant to RSA 464-A:25, RSA 463:12, or RSA 137-J:5 and as modified by the court, or as otherwise allowed by law;

(4) The area agency and provider agencies shall ~~request-obtain~~ a copy of the guardianship order or power of attorney from the guardian or representative and keep the order in the individual's record;

~~(5) Provider agencies shall obtain a copy of the guardianship order or power of attorney from the area agency and keep the order in the individual's record at the provider agency;~~

~~(56)~~ If any issues arise relative to the provision of services and supports which are outside the scope of the guardian's or representative's decision-making authority as set forth in the guardianship order or power of attorney, the individual's choice and preference relative to those issues shall prevail unless the guardian's or representative's authority is expanded by the court to include those issues;

~~(67)~~ An area agency-provider agency shall take such steps as are necessary to prevent a guardian or representative from exceeding the decision-making authority granted by the court or acting in a manner that does not further the best interests of the individual, including:

- a. Reviewing with the guardian or representative the limits on his or her decision-making authority; and
- b. If necessary, bringing the matter to the attention of the court that appointed the guardian; and

(78) In the event that there is a dispute between the ~~area agency~~ provider agency and the guardian or representative, the ~~area agency~~ provider agency shall inform the guardian or representative of his or her right to take either or both of the following actions:

- a. Appeal the matter pursuant to He-M 202 and He-C 200; or
- b. Bring the dispute to the attention of the probate court that appointed the guardian.

He-M 310.07 Termination of Services.

- (a) Except as provided in (g) below, an individual's services shall not be terminated unless:
 - (1) Such termination is deemed in the best interest of the individual;
 - (2) The individual can function independently without such service;
 - (3) The individual has received optimal benefit from the service;
 - (4) The individual or representative refuses to pay for the services that he or she is receiving despite having the financial resources to do so; or
 - (5) The individual or representative refuses to apply for benefits that could cover the cost of the services that he or she is receiving despite the fact that the individual is or might be eligible for such benefits.
- (b) Provider agencies shall only terminate services to individuals in accordance with RSA 171-A:8.
- (c) Prior to any termination of service, the provider agency shall give the individual 30 days' notice.
- (d) The notice shall:
 - (1) Be in writing;
 - (2) Contain the reasons for the termination;
 - (3) Contain the effective date of the termination; and
 - (4) Explain that the individual, guardian, or representative has the right to appeal the termination in accordance with He-M 202 and He-C 200.
- (e) Services shall be continued while an administrative appeal under He-M 202 or He-C 200 is pending.
- (f) In every instance of termination, the area agency shall recommend appropriate services or be responsible for contacting the individual in accordance with RSA 171-A:8, II.
- (g) Services to persons involuntarily admitted in accordance with RSA 171-B shall not be terminated except as provided in RSA 171-A:8, V.

He-M 310.08 Suspension of Services.

(a) A provider agency shall not suspend services to an individual unless the individual and guardian or representative have prior written notice of the specific behaviors and conduct for which suspension is imposed.

(b) Prior written notice shall be given through the service agreement process or through written provider agency policies which are explained to the individual and guardian or representative upon admission.

(c) Upon suspension, the provider agency shall give the individual and guardian or representative written notice containing the following:

- (1) The reason for the suspension;
- (2) The length of the suspension; and
- (3) An explanation of the right to appeal in accordance with He-M 202 and He-C 200.

(d) The maximum length of a suspension shall be 5 service days. However, should an individual, guardian, or representative choose to exercise the right to appeal, the individual shall be suspended for no longer than one service day pending resolution of the appeal.

(e) Services to persons involuntarily admitted under RSA 171-B shall not be suspended.

He-M 310.09 Rights of Individuals in Community Residences.

(a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights:

- (1) The right to a safe, sanitary and humane living environment;
- (2) The right to settings that are physically accessible to the individual;
- (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 reasonable numbers of 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;~~
 - 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;~~ and
 - d. The right to engage in social, recreational, and religious activities including the provision of regular opportunities for individuals to engage in such activities;
- (4) The right to privacy in the individual's sleeping or living unit, including the following:
 - a. The right to courtesies such as knocking on closed doors before entering and ensuring privacy for telephone calls, electronic communications, and visits;

- b. The right to entrance doors lockable by the individual with only appropriate staff having keys to doors;
- c. The right to receive visitors of one's choosing at any time;
- d. The right to opportunities for personal interaction in a private setting except that any conduct or activity which is illegal shall be prohibited;
- e. The right to receive personal care in private; and
- f. The right to be free from searches of their persons and possessions except in accordance with applicable constitutional and legal standards;

(5) The right to individual choice, including the following:

- a. The right to keep and wear their own clothes;
- b. The right to reasonable space for personal possessions;
- c. The right to keep and to read materials of their own choosing;
- d. The right to keep and spend their own money;
- e. The right to be compensated for any work performed and the right not to work, except that:
 - 1. Individuals may be required to perform personal housekeeping tasks within the individual's own immediate living area and equitably shared housekeeping tasks within the common areas of the community residence, without compensation; and
 - 2. Individuals may perform vocational learning tasks or work required for the operation or maintenance of a community residence, if the work is consistent with their service agreements and the individual is compensated for work performed according to laws, rules, and regulations set by the state and federal governments;
- f. The right to be choose one's roommate when bedrooms are shared;
- g. The right to furnish and decorate one's sleeping or living unit within the limits of the lease or other agreement; and
- h. The freedom and support to control one's own activities and schedules, and to access food at any time; ~~and~~

(6) The right to a residency agreement in accordance with He-M 310.10; and

(7) The right to be reimbursed for the loss of any money held in safekeeping by the community residence.

(b) In community residences serving persons involuntarily admitted in accordance with RSA 171-B, restrictions on a person's communication, privacy, and personal choice may be imposed if necessary for the person's treatment if consistent with the individual treatment plan or the residence's policies.

(c) Nothing in He-M 310.09 shall require a community residence to have policies governing the behavior of the residents.

(d) Individuals and guardians or representatives shall have the right to be informed in writing of any house policies prior to admission to the community residence.

(e) Residents shall have the right to participate in the development and modification of any house policies. Residents shall formally review the house policies at least annually.

(f) House policies shall be in conformity with He-M 310.

(g) House policies shall be periodically reviewed for compliance with He-M 310 in connection with [area agency provider](#) and department site visits.

(h) Any modification to (a) (4), ~~(5)~~, or (6) above shall be supported by a specific assessed need and documentation described in (i) below, and be reviewed and approved by the human rights committee of the individual's area agency.

(i) A provider agency shall only make modifications pursuant to (h) above by documenting in the service agreement the following:

- (1) The specific and individualized assessed need and a description of the condition that is directly proportionate to the need;
- (2) Positive interventions and supports used prior to any modification to the service agreement;
- (3) Less intrusive methods of meeting the need that have been tried unsuccessfully;
- (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;
- (5) Informed consent of the individual, guardian, or representative; and
- (6) An assurance that the interventions and supports will not cause harm to the individual.

He-M 310.10 Residency Agreement.

(a) Individuals living in community residences shall enter into a residency agreement with the provider in accordance with (b)-(d) below.

(b) The individual/resident, legal guardian, if applicable, and provider shall complete the "New Hampshire Residency Agreement" (XXXX 2023) outlining the following:

(1) The resident's right to:

- a. Privacy in his or her sleeping and living unit;
- b. Lockable doors to his or her sleeping or living unit with only appropriate staff having keys;
- c. The ability to have visitors of his or her choosing at any time;
- d. The choice of furnishings and decorations in his or her sleeping or living unit;
- e. The choice of roommate, if bedrooms are shared;

f. Have access to food at any time;

g. An inventory of personal property valued at \$ 25.00 or greater, as well as any item of sentimental value to him/her , that will occur on the day of move-in and will be updated quarterly to ensure accuracy; and

h. Modifications of his or her rights in a. through g. above, pursuant to He-M 310.09(h) and (i);

(2) The responsibilities as a resident to include:

a. Maintaining cleanliness of his or her sleeping or living unit and shared living spaces; and

be. Reviewing and signing a complete inventory of personal property valued at \$ 25.00 or greater, -as well as any item of sentimental value to him/her on the day of move-in, quarterly, to ensure accuracy, and the day of departure of the residence;

(3) The responsibilities as a provider to include:

a. Maintaining a safe residential environment;

b. Always treating the resident with dignity and respect;

c. Implementing the resident's approved individual service agreement;

d. Providing services in accordance with all applicable state regulations, and the contract with the provider agency; and

e. Assisting, as necessary, the resident to develop and maintain an inventory of personal property, valued at \$25.00 or more, as well as any item of sentimental value to the resident and ensuring that upon termination of this agreement, the resident receives all personal property on the most recent inventory.

(c) If the provider chooses to end the residency agreement:

(1) The provider shall notify the resident, legal guardian, if applicable, and service coordinator in writing of the intended termination of the residency agreement, and the reason(s) therefor, at least 90 calendar days before the proposed termination date of the residency agreement;

(2) The resident or legal guardian, if applicable, shall have the right to request a team meeting to discuss whether the provider would reconsider the notice;

(3) Upon receipt of the notice required in a. above, the service coordinator shall convene a team meeting within 10 calendar days to develop a transition plan for the resident in order to ensure an appropriate transition to an alternative residence;

(4) In cases where the behavior of the resident poses a serious threat of bodily harm to the provider or others living in the residence, or substantial damage to the residence or property,

the provider shall notify the resident, legal guardian, if applicable, and the service coordinator of the situation and provide 72 hours' notice before the proposed termination date;

(5) Upon receipt of notification in (4) above, the service coordinator, or designee, shall immediately convene a team meeting within 24 hours to determine the appropriate course of action to ensure the residents health and safety, and that the resident has access to an alternative safe residence;

(6) In an agency residence, if the resident fails to vacate the residence by the termination date, the provider shall issue a notice to the resident or legal guardian if applicable, for the resident to vacate the residence within 3 days, and include the rights of the resident to appeal the notice in accordance with He-M 310.12 below; and

(7) In the absence of the conditions for termination provided in (4) above, an agency residence shall only terminate the residency agreement for the following reasons:

a. If the termination is necessary for the resident's welfare and the resident's needs can no longer be met at the agency residence;

b. The agency resident ceases to operate; or

c. Other good cause, which need not be based on the action or inaction of the resident including, but not limited to any legitimate business or economic reasons.

(d) If the resident chooses to end the residency agreement:

(1) The resident or legal guardian if applicable, will notify the provider and service coordinator in writing of the intended termination of residency agreement 90 calendar days prior to the proposed termination date;

(2) In cases where the behavior of the provider poses a serious threat of bodily harm to the resident or others living in the residence, or substantial damage to the residence or property, the resident or legal guardian, if applicable, shall notify the service coordinator of the situation and the resident, legal guardian, or service coordinator shall provide 72 hours' notice before the proposed termination date; and

(3) Upon receipt of notification in (2) above, the service coordinator, or designee, shall immediately convene a team meeting, in accordance with the requirements of He-M 503, within 24 hours to determine the appropriate course of action to ensure the residents health and safety, and that the resident has access to an alternative safe residence and ensure that the complaint procedure in He-M 202 is initiated.

(e) The residency agreement shall be renewed on an annual basis, at the time of the annual service agreement.

(f) The resident or provider may request a team meeting at any time to discuss the terms of the residency agreement.

(g) Upon termination of the residency agreement, the resident shall be entitled to all personal property as reflected on the most current inventory of the resident's property.

He-M 310.11 Behavior Change Program.

(a) Unless an individual is subject to a commitment order pursuant to RSA 171-B, and unless otherwise specified in this rule, an individual's rights may not be restricted and no interventions designed to address challenging behavior unless the requirements of (b) through (e) below are met.

(b) A behavior change program shall be a written plan, protocol, or procedure that outlines strategies including:

(1) Physical environment modifications;

(2) Restrictive strategies;

(3) Use of monitoring devices; or

(4) Other strategies for altering behavior.

(c) An individual, guardian, or representative shall agree to the terms of a behavior change program.

(d) A behavior change program approved by the individual, guardian, or representative shall also be approved by an area agency human rights committee pursuant to RSA 171-A:17, II(c) prior to implementation.

(e) A behavior change program shall be reviewed at least annually at the service agreement planning meeting.

He-M 310.12 Rights of Individuals in Agency Residence to Appeal Termination.

(a) A notice to vacate the residence provided in accordance with He-M 310.10 (c)(7) shall include the following:

(1) The specific reason(s) for the termination in accordance with He-M 310.10 (c)(4) or (c)(7)a. or c.;

(2) Notice of the resident's right to appeal pursuant to He-C 200 within 5 business days, and the process for filing an appeal, including the contact information to initiate the appeal with the Administrative Appeals Unit;

(3) Notice of the resident's right to continued services pending appeal, when applicable, pursuant to (d) below;

(4) Notice of the right to have legal representation of the resident's choosing at an appeal;

(5) Notice that resident is responsible for the costs of legal representation; and

(6) Notice of organizations with their addresses and phone numbers that might be available to provide pro bono or reduced fee legal assistance and advocacy, including Disability Rights Center – NH.

(b) Appeals shall be forwarded to the department's administrative appeals unit, which shall assign a presiding officer to conduct a hearing in accordance with He-C 200, within 10 calendar days of receipt of the appeal.

(c) The burden of proof shall be on the provider to prove by a preponderance of the evidence that the termination was in accordance with He-M 310.10 (c)(4) or (c)(7).

(d) If a hearing is requested, the provider shall continue to provide services to the individual until a decision is rendered by the administrative appeals unit, unless the reason for termination is the behavior of the resident posing a serious threat of bodily harm to the provider or others living in the residence, or substantial damage to the residence or property in accordance with He-M 310.10(c)(4).

(e) If a resident fails to appeal a notice within 5 business days of receipt of the notice required in (a) above, the resident loses their appeal rights and shall vacate the premises immediately.

(f) The hearings officer shall render a decision within 3 business days of the hearing.

(g) If the hearings officer finds that the provider met the burden of proof, the resident shall vacate the premises within 3 business days of the decision.

Appendix

RULE	STATUTE
He M 310.01	RSA 171-A:8; 11, 12, 13; 14; 15; 29; 137-K:3, IV
He M 310.02	RSA 171-A:8; 11, 12, 13; 14; 15; 29
He M 310.03	RSA 171-A:15; 137-K:3, IV
He M 310.04	RSA 171-A:14, I; 137-K:3, IV
He M 310.05	RSA 171-A:14; 29; 137-K:3, IV
He M 310.06	RSA 171-A:11, 12, 13; 137-K:3, IV, 42 CFR 441.301(c)(1)
He M 310.07	RSA 171-A:8; 137-K:3, IV
He M 310.08	RSA 171-A:8; 137-K:3, IV
He M 310.09	RSA 171-A:14, II, III, IV; 29; 137-K:3, IV; 42 CFR 441.301(c)(4)(vi)(F)
He M 310.10	42 CFR 441.301(c)(4)(vi)(A)
He-M 310.11	RSA 171-A:17
He-M 310.12	42 CFR 441.301(c)(4)(vi)(A)