

Notice Number _____

Rule Number _____

He-M 506

1. Agency Name & Address:

**Dept. of Health & Human Services
Bureau of Developmental Services
105 Pleasant Street, Main Building
Concord, NH 03301**

2. RSA Authority: **RSA 171-A:3; RSA 171-A:18, IV;
and RSA 137-K:3, IV**

3. Federal Authority: _____

4. Type of Action: _____

Adoption _____

Repeal _____

Readoption _____

Readoption w/amendment **X** _____5. Short Title: **Staff Qualifications and Staff Development Requirements for Developmental Service Agencies**

6. (a) Summary of what the rule says and of any proposed amendments including whether the rule implements a state statute for the first time:

He-M 506 outlines the minimum qualifications and training requirements of providers and staff who provide services to individuals with developmental disabilities or acquired brain disorders. He-M 506 was scheduled to expire on March 1, 2024, but has been extended pursuant to RSA-541-A:14-a.



The Department of Health and Human Services (Department) is proposing to readopt with amendment He-M 506. The proposed amendments are largely made in order to bring the rules into alignment with other Department rules, including Department rules that have been recently changed due to requirements of the Centers for Medicare and Medicaid Services (“CMS”). He-M 506.04 on policy and procedure requirements has not been amended. The proposed amendments to He-M 506 otherwise include:

- **Updating various provisions of the rule for better clarity and program integrity, and to be consistent with language used in other licensing rules that have been more recently adopted;**
- **Updating He-M 506.01 on the purpose by making clarifying revisions;**
- **Updating He-M 506.02 on definitions by:**
 - **Amending the definition of “acquired brain disorder”, “developmental disability”, “family”, “Health Risk Screening Tool (HRST)”, “individual”, “provider agency”, “staff”, “staff development”, and “Supports Intensity Scale-Adult Version ® (SIS-A ®)”;**
 - **Adding the definition of “days”; and**
 - **Removing the definition of “Bureau of Elderly and Adult Services (BEAS)”;**
- **Updating He-M 506.03 on minimum staff qualifications to clarify the minimum staff qualifications, including the background check requirements;**
- **Updating He-M 506.05 on staff development requirements by adding additional requirements for provider agency staff, providers, and contractors, and by making other minor substantive and editorial revisions for clarity; and**

- **Updating He-M 506.06 on waivers to clarify the process to request a waiver of rule provisions.**

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

He-M 506 affects staff of agencies providing services to individuals with developmental disabilities or acquired brain disorders. Individuals receiving services may also be affected.

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

RULE	SPECIFIC STATE STATUTES WHICH THE RULE IMPLEMENTS
He-M 506.01 – He-M 506.05	RSA 171-A:18; I, II; RSA 137-K:9
He-M 506.06	RSA 171-A:18; I, II; RSA 541-A:22, IV; RSA 137-K:9

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: **Tuesday, April 9, 2024**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, April 2, 2024 at 11:00 a.m.**

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

Electronic Access (if applicable): **N/A**

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

FIS # 24:021, dated February 22, 2024

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

When compared to the existing rules, the proposed rules may increase costs to independently-owned businesses by an indeterminable amount.

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

The Department of Health and Human Services states that it is currently under a corrective action plan with the federal Centers for Medicare and Medicaid Services to come into compliance with the requirements of 42 CFR 441.301, relative to conflict free service coordination, and 42 CFR 447.10, relative to providers' ability to directly bill Medicaid.

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

A. To State general or State special funds:

There is no general or special fund impact, however, the Department notes that failure to come into compliance with the federal mandate in (2) above would jeopardize federal matching funds, potentially resulting in increased general fund expenditures.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

The Department notes that the proposed rules include requirements for provider staff and contractors to participate in person-centered thinking programs. This requirement may result in an indeterminable cost to those providers.

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.

Readopt with amendment He-M 506, effective 3-1-14 (Document #10528), to read as follows:

PART He-M 506 STAFF QUALIFICATIONS AND STAFF DEVELOPMENT REQUIREMENTS FOR DEVELOPMENTAL SERVICE AGENCIES

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

He-M 506.01 Purpose. The purpose of these rules is to outline the minimum qualifications and training requirements of providers and ~~agency staff~~, ~~and the training requirements for such staff~~.

He-M 506.02 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;
- (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~~ and

h. Other neurological disorders such as Huntington's disease or multiple sclerosis which predominantly affect the central nervous system resulting in diminished cognitive functioning and ability; 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 of elderly and adult services (BEAS) state registry" means a database created and maintained pursuant to RSA 161-F:49 and He E 720 containing information on founded reports of abuse, neglect, or exploitation of incapacitated adults by a paid or volunteer caregiver, guardian, or agent acting under the authority of any power of attorney or any durable power of attorney.~~

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

(d) "Days" means calendar days unless otherwise specified.

(e) "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 handicap to such individual's ability to function normally in society."

(f) "Family" means a group of 2 or more persons that:

(1) Is related by ancestry, marriage, or other legal arrangement;

(2) Is living in the same household; and

(3) Has at least one member who is an individual as defined in (h) below.

(g) “Health Risk Screening Tool (HRST)” means the 20~~15~~⁰⁹ edition of the Health Risk ~~Screening Training~~-Tool, available as noted in Appendix A, which is a web-based rating instrument used for performing health risk screenings on individuals in order to:

- (1) Determine an individual’s vulnerability regarding potential health risks; and
- (2) Enable the early identification of health issues and monitoring of health needs.

(h) “Individual” means any person with a developmental disability or acquired brain disorder ~~who receives, or has been found eligible to receive, area agency services.~~

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

(j) “Provider agency” means an ~~area~~ agency or an independent provider entity under contract with an area agency that is established to provide responsible for providing services to individuals and who meets the criteria in He-M 504.

(k) “Staff” means a person employed by a provider agency, subcontract agency, or other employer. staff who provide direct supports to people who have developmental disabilities or acquired brain disorders, including, at a minimum, service coordinators, clinical staff, and personal care staff.

(l) “Staff development” means education and training designed to improve the competencies of ~~provider agency~~ staff.

(m) “Supports Intensity Scale Adult Version ® (SIS-A ®)” means the 20~~23~~⁰⁴ edition of the Supports Intensity Scale, available as noted in Appendix A, which is an assessment tool intended to assist in service planning by measuring the individual’s support needs in the areas of home living, community living, lifelong learning, employment, health and safety, social activities, and protection and advocacy. The tool uses a formal rating scale to identify the type of supports needed, frequency of supports needed, and daily support time.

He-M 506.03 Minimum Staff Qualifications.

(a) Providers and agency staff shall meet the qualifications for and conditions of employment identified in He-M 503, He-M 504, He-M 507, He-M 510, He-M 513, He-M 518, He-M 521, He-M 524, He-M 1001, and He-M 1201.

(b) Each applicant for employment shall:

- (1) Meet the educational qualifications, or the equivalent combination of education and experience, identified in the job description;
- (2) Meet professional certification and licensure requirements of the position;
- (3) Meet the motor vehicle licensure requirement identified in the job description;
- (4) Either:
 - a. Present documentation of a tuberculosis (TB) test performed within the past 6 months; or
 - b. Undergo a TB test prior to employment; and

- (5) If a test referenced in (4) above is positive, provide evidence of follow-up conducted in accordance with the Centers for Disease Control and Prevention's "Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings", 2005 edition,² available as noted in Appendix A.
- (c) All staff shall be at least 18 years of age, except as permitted in He-M 524 and He-M 525.
- (d) Prior to a person working directly with ~~an~~ individuals, the provider agency, with the consent of the person, shall complete the necessary registry, criminal background, and office of the inspector general exclusion list checks in accordance with He-M 504.03 and
- ~~(1) Obtain at least 2 references for the person;~~
 - ~~(2) Complete, at a minimum, a New Hampshire criminal records check no more than 30 days prior to hire;~~
 - ~~(3) If a person's primary residence is out of state, complete a criminal records check for their state of residence;~~
 - ~~(4) If a person has resided in New Hampshire for less than one year, complete a criminal records check for their previous state of residence; and~~
 - ~~(5) Complete a BEAS state registry check no more than 30 days prior to hire.~~
- ~~— (e) Except as allowed in (f) (g) below, the provider agency shall not hire a person:~~
- ~~(1) Who has a:~~
 - ~~a. Felony conviction; or~~
 - ~~b. Any misdemeanor conviction involving:~~
 - ~~1. Physical or sexual assault;~~
 - ~~2. Violence;~~
 - ~~3. Exploitation;~~
 - ~~4. Child pornography;~~
 - ~~5. Threatening or reckless conduct;~~
 - ~~6. Theft;~~
 - ~~7. Driving under the influence of drugs or alcohol; or~~
 - ~~8. Any other conduct that represents evidence of behavior that could endanger the well-being of an individual; or~~
 - ~~(2) Whose name is on the BEAS state registry.~~
- ~~— (f) A provider agency may hire a person with a criminal record listed in (e)(1)a. or b. above for a single offense that occurred 10 or more years ago in accordance with (g) and (h) below. In such instances, the individual, his or her guardian if applicable, and the area agency shall review the person's history prior to approving the person's employment.~~
- ~~— (g) Employment of a person pursuant to (f) above shall only occur if such employment:~~

- ~~(1) Is approved by the individual, his or her guardian if applicable, and the area agency;~~
- ~~(2) Does not negatively impact the health or safety of the individual(s); and~~
- ~~(3) Does not affect the quality of services to individuals.~~
- ~~(h) Upon hiring a person pursuant to (f) above, the provider agency shall document and retain the following information in the individual's record:~~
 - ~~(1) Identification of the region, according to He-M 505.04, in which the provider agency is located;~~
 - ~~(2) The date(s) of the approvals in (f) above;~~
 - ~~(3) The name of the individual or individuals for whom the person will provide services;~~
 - ~~(4) The name of the person hired;~~
 - ~~(5) Description of the person's criminal offense;~~
 - ~~(6) The type of service the person is hired to provide;~~
 - ~~(7) The provider agency's name and address;~~
 - ~~(8) The certification number and expiration date of the certified program, if applicable;~~
 - ~~(9) A full explanation of why the provider agency is hiring the person despite the person's criminal record;~~
 - ~~(10) Signature of the individual(s), or of the legal guardian(s) if applicable, indicating agreement with the employment and date signed;~~
 - ~~(11) Signature of the staff person who obtained the individual's or guardian's signature and date signed;~~
 - ~~(12) Signature of the area agency's executive director or designee approving the employment; and~~
 - ~~(13) The signature and phone number of the person being hired.~~

(ei) Personnel records, including background information relating to a staff person's qualifications for the position held, shall be maintained by the provider agency for a period of 67 years after that staff person's employment termination date.

He-M 506.04 Policy and Procedure Requirements. Each provider agency shall establish and implement written personnel and staff development policies which shall specifically address the following:

(a) Non-discrimination on the basis of:

- (1) Race;
- (2) Color;
- (3) Sex;
- (4) Creed;

- (5) National origin;
- (6) Age;
- (7) Marital status;
- (8) Familial status;
- (9) Sexual orientation; or
- (10) Physical or mental disability;
- (b) Job descriptions, including conditions of employment;
- (c) Staff performance reviews; and
- (d) Individual staff development plans.

He-M 506.05 Staff Development Requirements.

(a) Each ~~provider and staff person employed by a provider agency~~ shall participate in the writing and implementation of an individual staff development plan with ~~their his or her~~ supervisor at least annually.

(b) The staff development plan shall be kept in the employee's personnel file.

(c) The staff development plan shall include the following:

- (1) An assessment of current work-related competencies; and
- (2) Methods identified to achieve improvement in competencies, including:
 - a. Education;
 - b. Training, or re-training; and
 - c. Other staff supports that have been identified.

(d) Within the first month of employment, a provider agency shall train each employee in:

- (1) An overview of the rights of persons who receive services, as described in He-M 202 and He-M 310; and
- (2) Developing an understanding of the stigmas, negative labels and common life experiences of people with disabilities including how individuals utilize behavior as communication.

(e) All provider agency staff, providers, and contractors who have direct contact with individuals and families shall meet the applicable requirements in He-M 504.11.

(f) All provider agency staff, providers, and contractors hired after March of 2025 shall participate in a person-centered thinking program and demonstrate competencies within the first 3 months of employment.

(ge) Prior to working directly with an individual, staff shall be trained in and, pursuant to (lg) below, demonstrate an understanding of the following information regarding the individual:

- (1) Personal profile;
- (2) Goals;
- (3) Specific health-related requirements, including:
 - a. All current medical conditions, medical history, and routine and emergency protocols;
 - b. Any special nutrition, hydration, elimination, personal hygiene, oral health, or ambulation needs; and
 - c. Any special, cognitive, mental health, or behavioral needs;
- (4) Information the family, and guardian if applicable, believe would be helpful to the service provision process;
- (5) Emergency contact information;
- (6) Safety plan;
- (7) Behavior or risk management plan;
- (8) HRST information pertinent to supporting the individual;
- (9) SIS information pertinent to supporting the individual;
- (10) Any other information needed to ensure the individual's health and safety needs are understood; and
- (11) Any information in the service agreement not specified in (1)-(10) above.

(hf) Staff with no prior experience providing services directly to individuals shall be assigned to work with an experienced staff member, for not less than receive direct oversight and support during at least the first 16 hours during their orientation, of providing services.

(ig) Prior to staff working directly with an individual and annually thereafter, supervisors shall ask each staff to demonstrate, through examples, their understanding of the information presented pursuant to (ge) above.

(jh) At least monthly, supervisors or their designees shall conduct unannounced visits to staff at community locations while they are providing services for individuals. The purpose of the visits shall be to assure that services are provided in accordance with each individual's service agreement.

(ki) Staff shall be re-trained annually in an overview of the rights of ~~persons who receive services~~ individuals, as described in He-M 202 and He-M 310. Provider agencies shall re-train staff and the ~~Re~~-training shall include examples of rights violations.

(lj) A provider agency shall train staff in the following areas within the first 6 months of employment:

- (1) An overview of developmental disabilities and acquired brain disorders, which shall include:
 - a. An overview of the different types of developmental disabilities and acquired brain disorders and their causes;

- b. An overview of the local and state service delivery system; and
 - c. An overview of professional services and technologies including therapies, assistive technologies, and environmental modifications necessary to achieve individuals' goals at home, in the community, in the workplace and in recreation or leisure activities;
- (2) An overview of conditions promoting or detracting from the quality of life that individuals enjoy, which shall provide staff the competencies necessary to:
- a. Support individuals to obtain and maintain valued social roles;
 - b. Support individuals to build relationships with their families, neighbors, co-workers and other community members;
 - c. Create and enhance opportunities for individuals to:
 - 1. Increase their presence in the life of their local communities; and
 - 2. Increase the ways in which they contribute to their communities;
 - d. Support individuals to have as much control as possible over their own lives;
 - e. Build individuals' skills, strengths and interests that are functional and meaningful in natural community environments;
 - f. Create supports that enable individuals to explore and participate in a wide variety of community activities and experiences in settings that are available to the general public; and
 - g. Support individuals to gain as much independence as possible;
- (3) Methods to assist individuals with challenging behaviors utilizing positive behavioral supports as described in He-M 1001.07 (d);
- (4) Understanding, and assisting individuals to manage behavior that derives from neurological compromises or limitations;
- (5) Techniques to:
- a. Facilitate social relationships;
 - b. Enhance skills that improve everyday living and promote independence; and
 - c. Teach, coach and mentor individuals to learn skills that maximize independence;
- (6) Basic health and safety practices related to:
- a. Personal wellness;
 - b. Success in living, working and recreating in the community; and
 - c. An understanding of the importance of common signs and symptoms of illness;
- (7) Training relative to supporting individuals in employment pursuant to He-M 518, as appropriate;
- (8) Skills necessary to support individuals and their families to:

- a. Make their own decisions;
 - b. Advocate for themselves; and
 - c. Create their own social networks;
- (9) Any trainings specified in an individual's service agreement; and
- (10) Training in orienting individuals to fire safety and emergency evacuation procedures.

He-M 506.06 Waivers.

(a) ~~An applicant, area agency, A~~ provider agency, individual, guardian, or provider may request a waiver of specific procedures outlined in He-M 506 using the form titled "NH Bureau of Developmental Services Waiver Request" (~~July 2023~~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 the provider agency's executive director or designee recommending approval of the waiver.

~~(1) The individual or guardian 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 the department via:

(1) Email at bds@dhhs.nh.gov; or

(2) By mail to:

Department of Health and Human Services
Bureau of Developmental 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 their ~~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 the minimum period necessary to accommodate the waiver request, with a specific duration not to exceed 5 years except as in (h) and (i) below.

~~—(h) Those waivers which relate to other issues relative to the health, safety or welfare of individuals that require periodic reassessment shall be effective for the current certification period only.~~

(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 A: Incorporation by Reference Information

Rule	Title	Publisher; How to Obtain; and Cost
He-M 506.02(g)	Health Risk Screening Tool (HRST) (2015 edition)	Publisher: IntellectAbility Cost: 1–100 consumers = \$699.00 each; 1–200 consumers = \$899.00 each; 1–1000 consumers = \$999.00 each The incorporated document is available at https://replacingrisk.com/
He-M 506.02(m)	Supports Intensity Scale- Adult Version (SIS-A) (2023 edition)	Publisher: American Association on Intellectual and Developmental Disabilities (AAIDD) Cost: \$115 The incorporated document is available at: https://www.aaidd.org/sis
He-M 506.03(b)(5)	United States Centers for Disease Control and Prevention’s “Guidelines for Preventing the Transmission of <i>M. tuberculosis</i> in Health-Care Settings” (2005 Edition)	Publisher: United States Centers for Disease Control and Prevention Cost: Free of Charge The incorporated document is available at: https://www.cdc.gov/tb/publications/slidesets/infectionguidelines/default.htm

APPENDIX B

RULE	SPECIFIC STATE STATUTES WHICH THE RULE IMPLEMENTS
He-M 506.01 – 506.05	RSA 171-A:18; I, II; RSA 137-K:9
He-M 506.06	RSA 171-A:18; I, II; RSA 541-A:22, IV; RSA 137-K:9

NH BUREAU OF DEVELOPMENTAL SERVICES WAIVER REQUEST

Submit completed requests to: Bureau of Developmental Services

105 Pleasant St. – Main Bldg, Concord, NH 03301

Phone#: (603) 271-5034 Fax#: (603) 271-5166 email: bds@dhhs.nh.gov

*Criminal record checks, if applicable, must be current, within one year of waiver request.

*Only complete packets will be processed

Area Agency: **Please choose from list**

Indicate:

☐ - Initial

☐ - Renewal

If Renewal

Indicate Waiver Number:

Expiration Date:

Provider Agency (if applicable)

Individual Name (if applicable)

Staff Name (if applicable)

Name of Service
(if applicable)

Certified Setting name and address (*as it appears on the certificate*):

Certified Setting
Certificate #:
Expiration Date:

Indicate specific standard from which you request a waiver: **He-M**

Quote the specific language you seek to waive:

Provide a full explanation of why a waiver to this standard is sought:

Describe proposed alternative to satisfy regulatory intent:

Individual signature (if applicable): _____

Guardian signature (if applicable): _____ Approval Date: _____

Signature of Agency Executive Director / Designee: _____

Date: _____

Requested number of years for waiver to be effective (check one): ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ Permanent