

Notice Number _____

Rule Number _____

He-M 518

1. Agency Name & Address:

**Department 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: **Employment Services**

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 518 specifies the requirements for employment services for individuals with developmental disabilities and acquired brain disorders served within the service delivery system who have an expressed interest in working, provides access to comprehensive employment services by staff qualified, and makes employment opportunities, training and education opportunities, and the use of co-worker supports and generic resources available to these individuals. He-M 518 was scheduled to expire on February 18, 2024, but is subject to extension pursuant to RSA 541-A:14-a.

The Department of Health and Human Services (Department) is proposing to readopt with amendment He-M 518. Amendments are being made to a majority of the He-M 518 except for He-M 518.06 on wages and He-M 518.11 on oversight and quality improvement which have no amendments. 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”). The proposed amendments to He-M 518 include:

- **Updating various provisions of the rule for better clarity, program integrity, and to be consistent with language used in other licensing rules that have been more recently adopted;**
- **Updating He-M 518.01 on the purpose by making clarifying revisions;**
- **Updating He-M 518.02 on definitions by:**
 - **Amending the definition of “acquired brain disorder”, “area agency”, “career exploration”, “developmental disability”, “individual”, “provider agency”, “service agreement”, and “service coordinator”;** and
 - **Adding the definition of “days”, “employment professional”, “person-centered service planning”, “provider,” and “staff”;**
- **Updating He-M 518.03 on service principles to clarify the service principles for employment services, and the other rules and waiver requirements providers must comply with;**

- Updating He-M 518.04 on eligibility for employment services to clarify the eligibility requirements for employment services;
- Updating He-M 518.05 on the individual employment planning process to clarify that the individual employment planning process should be person-centered;
- Updating He-M 518.07 on covered services to clarify what employment services encompass and making other minor editorial revisions;
- Updating He-M 518.08 on employment planning for individuals in school to clarify the age requirements for employment planning for individuals in school to align with the Board of Education rule, Ed 1109.01(a)(1);
- Updating He-M 518.09 on records and reporting to clarify the records and reporting requirements for provider agencies;
- Updating He-M 518.10 on staff qualifications and responsibilities to clarify the staff qualifications and responsibilities for providers and provider agencies of employment services; and
- Updating He-M 518.12 on waivers to clarify the process to request a waiver of rule provisions.

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

This rule affects individuals with developmental disabilities or acquired brain disorders who desire employment services, as well as employment service providers.

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 518.01 – He-M 518.11	RSA 171-A:18; I, II; RSA 137-K:9
He-M 518.12	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 Administrative Rules Unit 129 Pleasant Street, 2nd Floor Concord, NH 03301	Phone #:	(603) 271-9604 (603) 271-5590
		Fax#:	Allyson.E.Raadmae@dhhs.nh.gov
		E-mail:	

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, March 26, 2024**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, March 19, 2024 at 1:00 p.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 # **24:014**, dated **February 6, 2024**

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

There is no difference in cost when comparing the proposed rules to the existing rules.

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:

None.

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 500 DEVELOPMENTAL SERVICES

Readopt with amendment He-M 518, effective 2-18-14 (Document #10493), to read as follows:

PART He-M 518 EMPLOYMENT SERVICES

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

He-M 518.01 Purpose. The purpose of these rules ~~are~~ is to:

(a) Establish the requirements for employment services for ~~individuals~~ persons with developmental disabilities and acquired brain disorders served within the ~~state community developmental services delivery~~ system who have an expressed interest in working;

(b) Provide access to comprehensive employment services by staff qualified pursuant to He-M 518.10; and

(c) Make available, based upon individual need~~s~~ and interest~~s~~:

- (1) Employment opportunities;
- (2) Training and educational opportunities; and
- (3) The use of co-worker supports and generic resources, to the maximum extent possible.

He-M 518.02 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 in RSA 171-A:2, I-b. an entity established as a non-profit corporation in the state of New Hampshire which is established by rules adopted by the commissioner to provide services to persons with developmental disabilities or aquired brain disorders in the area.

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

(d) "Bureau of vocational rehabilitation" means the New Hampshire department of education, bureau of vocational rehabilitation.

(e) "Career exploration" means as part of the career planning process, selection by an individual of a job, training, or educational path that fits their his or her interests, skills, and abilities.

(f) "Career planning" means a time-limited, person-centered, comprehensive, employment planning process that assists an individual to identify a career direction and results in a plan for achieving employment at or above minimum wage.

(g) "Career portfolio" means a tool used to organize and document training, education, work experiences, skills, contributions, and accomplishments.

(h) "Customized employment" means the individualizing of the employment relationship between employees and employers in ways that meet the needs of both. It is based on an individualized determination

of the strengths, needs, and interests of the individual, and is also designed to meet the specific needs of the employer.

(i) “Days” means calendar days unless otherwise specified.

(j) “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.”

(k) “Employee” means an individual who receives wages in exchange for work rendered in an integrated setting.

(l) “Employment” means working for at least minimum wage in an integrated setting or being self-employed.

(m) “Employment professional” means a provider who meets the criteria in He-M 518.10 (e)(1) and (2).

(n) “Employment profile” means a summary of an individual’s vocationally-related:

- (1) Competencies;
- (2) Interests;
- (3) Preferences;
- (4) Learning style;
- (5) Environmental considerations; and
- (6) Supports.

(o) “Fading plan” means a specific plan that is developed to assist an individual to achieve maximum independence on the job through a variety of activities including cultivating natural supports.

(p) “Hard skills” means the essential skills required to perform a job such as, but not limited to:

- (1) Operating machinery;
- (2) Using a computer;
- (3) Providing customer service; and
- (4) Typing.

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

(~~ip~~) “Integrated setting” means a workplace where people with disabilities work alongside other employees who do not have disabilities and where they have the same opportunities to participate in all activities in which other employees participate.

(~~sq~~) “Job coaching” means the training of an employee through structured intervention techniques to help the employee learn to perform job tasks to the employer’s specifications and to learn the interpersonal skills necessary to be accepted as a worker at the job site and in related community contacts.

(~~tf~~) “Job development” means contacting and connecting with employers to identify, develop, or customize jobs suited to individuals’ skills and interests.

(~~us~~) “National core indicators” means standard measures compiled by the National Association of State Directors of Developmental Disabilities Services and the Human Services Research Institute and used across states to assess the outcomes of services provided to individuals and families. Indicators address key areas of concern including employment, rights, service planning, community inclusion, choice, and health and safety. National core indicators are published as annual reports, state reports, and consumer outcomes reports, and are available at <http://www.nationalcoreindicators.org/>.

(~~vt~~) “Natural support” means support wherein a community business provides direct training, supervision, or assistance to an employee.

(w) “Person-centered service planning” is an individual-directed, positive approach to the planning and coordination of a person’s services and other supports based on the individual’s aspirations, needs, preferences, and goals.

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

(~~yw~~) “Provider agency” means an ~~area~~-agency or independent provider that is established to provide services to individuals and meets the criteria in He-M 504. ~~subcontractor of an area agency that offers employment services.~~

(~~zw~~) “Safeguards” means specific measures taken to protect the individual from harm or loss.

(~~aaw~~) “Service agreement” means a written agreement ~~pursuant to He-M 503.10—He-M 503.11~~ between ~~the an~~ individual, ~~or~~ guardian, ~~or representative,~~ and provider agency the area agency that is prepared as a result of the person-centered service planning process and that describes the services that an ~~the~~ individual will receive and constitutes an individual service agreement as defined in RSA 171-A:2, X and developed pursuant to He-M 503 or He-M 522.

(~~abx~~) “Service coordinator” means a person-provider who meets the criteria in He-M 503 or He-M 522 and is chosen ~~or approved~~ by an individual and their or his or her guardian or representative ~~and designated by the area agency~~ to organize, facilitate, and document service planning and to negotiate and monitor the provision of the individual’s services, ~~and who is:~~

- ~~(1) An area agency service coordinator, family support coordinator, or any other area agency or subcontract agency employee;~~
- ~~(2) A member of the individual’s family;~~
- ~~(3) A friend of the individual; or~~
- ~~(4) Any other person chosen by the individual.~~

(acy) “Soft skills” means the interpersonal skills required to be successful in a job, such as:

- (1) Effective communication;
- (2) Managing emotions;
- (3) Conflict resolution;
- (4) Creative problem solving;
- (5) Critical thinking; and
- (6) Team building.

(ad) “Staff” means a person employed by a provider agency, subcontract agency, or other employer.

(acz) “Work incentives” means special regulations developed by the Social Security Administration making it possible for people with disabilities receiving Social Security or Supplemental Security Income (SSI) to work and still receive monthly payments and Medicare or Medicaid, including:

- (1) Trial work period, 20 CFR 404.1592;
- (2) Impairment related work expenses, 20 CFR 404.1576;
- (3) Extended period of eligibility, 20 CFR 404.1592a;
- (4) Extended Medicare coverage for Social Security Disability Insurance, 42 CFR 406.12(e);
- (5) Earned income exclusion, 20 CFR 418.3325;
- (6) Continued Medicaid eligibility, section 1619(b) of the Social Security Act;
- (7) Plan to achieve self-support, 20 CFR 416.1225;
- (8) Ticket to work program, 20 CFR part 411, subpart B;
- (9) Impairment-related work expenses, 20 CFR 404.1576;
- (10) Expedited reinstatement, 20 CFR 416.999;
- (11) Unsuccessful work attempt, 20 CFR 416.974; and
- (12) Medicaid for employed adults with disabilities (MEAD), pursuant to He-W 504.

(afa) “Work incentives planning” means specific planning around earning income, managing public benefits, and accessing work incentives.

He-M 518.03 Service Principles.

(a) All employment services shall be designed to:

- (1) Assist the individual to obtain employment or self-employment that is based on the individual’s employment profile and goals as outlined in the service agreement;

(2) Provide the individual with opportunities to participate in a comprehensive career development process that helps to identify, in a timely manner, the individual's employment profile;

(3) Support the individual to develop appropriate skills for job searching, including:

- a. Creating a resume and employment portfolio;
- b. Practicing job interviews; and
- c. Learning soft skills that are essential for succeeding in the workplace;

(4) Assist the individual to become as independent as possible in ~~their his or her~~ employment, internships, and education and training opportunities by:

- a. Developing accommodations;
- b. Utilizing assistive technology; and
- c. Creating and implementing a fading plan;

(5) Help the individual to:

- a. Meet ~~their his or her~~ goal for the desired number of hours of work as ~~articulated~~ outlined in the service agreement; and
- b. Earn wages of at least minimum wage or prevailing wage, unless the individual is pursuing income based on self-employment;

(6) Assess, cultivate, and utilize natural supports within the workplace to assist the individual to achieve independence to the greatest extent possible;

(7) Help the individual to learn about, and develop appropriate social skills to actively participate in, the culture of ~~their his or her~~ workplace;

(8) Understand, respect, and address the business needs of the individual's employer, in order to support the individual to meet appropriate workplace standards and goals;

(9) Maintain communication with, and provide consultations to, the employer to:

- a. Address employer specific questions or concerns to enable the individual to perform and retain ~~their his/her~~ job; and
- b. Explore opportunities for further skill development and advancement for the individual;

(10) Help the individual to learn, improve, and maintain a variety of life skills related to employment, such as:

- a. Traveling safely in the community;
- b. Managing personal funds;
- c. Utilizing public transportation; and
- d. Other life skills identified in the service agreement related to employment;

- (11) Promote the individual's health and safety;
 - (12) Protect the individual's right to freedom from abuse, neglect, and exploitation; ~~and~~
 - (13) Protect the individual's rights in accordance with He-M 310; and
 - ~~(14)~~ (13) Provide opportunities for the individual to exercise personal choice and independence within the bounds of reasonable risks.
- (b) An individual, ~~or guardian, or representative~~ may select any available person, any provider that is qualified pursuant to He-M 504, agency, or another area agency as a provider to deliver the employment services identified in the individual's service agreement in accordance with He-M 518.05 and He-M 518.10.
- (c) All provider agencies and providers of employment services shall:
- (1) Comply with the rules, 1915(c) home and community-based waiver service authority and any other federal laws, rules, and regulations, when applicable ~~pertaining to employment services~~;
 - ~~(2) Enter into a contractual agreement with the area agency;~~
 - ~~(23)~~ Meet the provisions specified within the individual's service ~~Operate within the limits of funding authorized by the agreement; and~~
 - ~~(34)~~ (34) Meet the needs of the individual while taking into account the interests and obligations of the employer.

He-M 518.04 Eligibility For Employment Services.

- (a) ~~Any individual who receives services through the area agency system and who has an employment goal shall be eligible for e~~Employment services shall be available to any individual who:-
- (1) Has been referred to the bureau of vocational rehabilitation at the start of the employment planning process to first assess if the service the individual needs is provided and available by vocational rehabilitation, and it has been determined that the individual requires employment supports in excess of the vocational rehabilitation services available to the individual;
 - (2) Is found to be eligible for Home and Community Based waiver services (HCBS services) in accordance with He-M 503.05 or He-M 522.05;
 - (3) Has a service agreement that includes the goals and desired outcomes that will be addressed through the provision of employment services; and
 - (4) Has a prior authorization requested by the agency intending to provide employment services through the Medicaid program using the procedure outlined in He-M 517.
- (b) The determination or confirmation that the individual has an employment goal and desires services shall occur at or by:
- (1) The preliminary recommendations for services process under He-M 503 or He-M 522.07(a)(1);
 - (2) The service planning required by He-M 503 or He-M 522.40;

(3) The transition process described in Ed 1109.01 (a)(10) for individuals youth beginning at age aged 14 or younger, as applicable through 20 who are in school; or

(4) Any other informal or formal means by which the individual expresses a desire to work.

He-M 518.05 The Individual Employment Planning Process.

(a) As part of the person-centered service planning process, the individual's service coordinator shall include employment planning for each individual seeking or receiving employment services.

(b) The employment planning process shall:

(1) Be led by an employment professional qualified pursuant to He-M 518.10(~~ch~~); and

(2) Include:

a. A vocational evaluation or an assessment of employment interests and capacities;

b. Development of an employment profile to include:

1. Learning style;

2. Environmental needs;

3. Medical needs;

4. Physical needs; and

5. Safety needs;

c. Career exploration;

d. Goal setting;

e. Development of soft skills;

f. Development of hard skills through:

1. Internships;

2. Sector-based training;

3. Continuing education;

4. On-the-job training; and

5. Unpaid work experiences;

g. Development of strategies for achieving employment;

h. Transportation planning and training to independently use transportation options;

i. Community safety skills training; and

j. Work incentives planning.

(c) The service agreement for each individual who receives employment services shall include:

- (1) An employment profile of the individual;
- (2) A resume and employment portfolio;
- (3) Employment goal(s) and strategies with specific timeframes for achieving the goal(s) that include:
 - a. Skills training;
 - b. Increased responsibilities;
 - c. Career advancement;
 - d. Increased wages;
 - e. Increased hours worked;
 - f. Change in employment; and
 - g. Any other identified goals;
- (4) Referral to the bureau of vocational rehabilitation;
- (5) Identification of the roles and responsibilities of team members in implementing the goal(s) and service(s); and
- (6) Identification of any of the services listed in He-M 518.07 to achieve the goal(s).

He-M 518.06 Wages.

- (a) All wages shall be paid to employees in accordance with the Fair Labor Standards Act as specified in 29 U.S.C. 201 et seq., and any other applicable state and federal statutes, rules, and regulations.
- (b) Whenever possible, wages shall be in the form of payment made directly to the employee by the employer.
- (c) In those situations when payments are made to the employee by the provider agency, wages shall be set based on the minimum wage pursuant RSA 279:21.
- (d) In no event shall Medicaid or bureau funds be used directly to pay or subsidize wages otherwise earned by employees.

He-M 518.07 Covered Services.

- (a) All employment services shall be:

- (1) ~~Be~~ Designed in accordance with the individual's specific needs, interests, competencies, and learning style, as described in the individual's service agreement and employment profile as outlined defined in He-M 503 or He-M 522.02-(1); and

- (2) ~~To~~ Assist each individual to assume as much personal responsibility in job seeking and job retention as is possible for that individual;

- (3) Responsive to the individual's changing needs and choices within the limitations of federal and state laws, rules, and regulations;

- (4) Provided only after the informed consent of the individual or their guardian or representative;
 - (5) Free from conflict in accordance with He-M 503 or He-M 522;
 - (6) Delivered by any willing and qualified provider agency or provider that is freely chosen by the individual or individual's guardian or representative and who meets the criteria in He-M 504; and
 - (7) Provided in accordance with He-M 310.
- (b) Payments for employment services shall cover:
- (1) All services identified in He-M 518.05;
 - (2) Job development;
 - (3) Assistance, as needed, with employment including:
 - a. Job applications;
 - b. Resume-writing;
 - c. Obtaining references;
 - d. Development of a career portfolio;
 - e. Interview preparation; and
 - f. All other activities related to obtaining and maintaining employment except as described in (10) below;
 - (4) Training for the individual to learn the responsibilities and expectations of employment, including:
 - a. Acquiring or developing acceptable work standards and workplace behavior;
 - b. Adjusting to the job site and work culture; and
 - c. Using accommodations, including any customized modifications made to perform the job;
 - (5) Implementation of the fading plan;
 - (6) Consultations or contacts with the businesses and the individual, as needed, to assist the individual to remain successfully employed;
 - (7) Outreach to employers for building relationships that lead to immediate or future job opportunities for the individual;
 - (8) Training for direct support staff as it relates to the individual's employment goals;
 - (9) Training for employers and co-workers to support the individual by understanding ~~his or her~~their;

- a. Learning style;
- b. Environmental needs;
- c. Medical needs;
- d. Physical needs; and
- e. Safety needs;

(10) When combined with another employment service, transportation and training in accessing transportation, as appropriate, to and from work;

(11) Referral, evaluation, and consultation for adaptive equipment, environmental modifications, communications technology or other forms of assistive technology, and educational opportunities related to the individual's employment services and goals;

(12) Accessing work incentives information and work incentives planning services for the individual; and

(13) Any other employment service identified in the individual's service agreement.

He-M 518.08 Employment Planning for ~~Individuals Youth Aged 14 through 20 Years~~ in School.

(a) Beginning at age 14, or younger if applicable, the individual and their ~~his or her~~ family and school personnel shall be given information by the area agency staff regarding:

- (1) The employment services that are available within the adult service system;
- (2) The importance of planning ahead for achieving successful employment outcomes in the future;
- (3) Work incentives planning; and
- (4) The bureau of vocational rehabilitation as a source of assistance regarding employment opportunities.

(b) In their communications with the individual, family, and schools, area agency staff shall continuously reinforce the importance of employment opportunities and facilitate as applicable, their development.

He-M 518.09 Records and Reporting. Each provider agency shall:

(a) Maintain records and provide documentation as outlined in He-M 504 and He-M 517 for all individuals receiving services pursuant to He-M 518; ~~and, including the following:~~

- ~~(1) Service provision records;~~
- ~~(2) The results of any relevant assessments or evaluations;~~
- ~~(3) The individual's service agreement;~~
- ~~(4) An individual week long work schedule or calendar;~~
- ~~(5) The individuals employment profile;~~

~~(6) The individual's employment history; and~~

~~(7) At a minimum, quarterly narrative progress notes and other service documentation, as specified in the service agreement; and~~

(b) At least annually, assess the employment service through interviews with employers, individuals, and guardians.

He-M 518.10 Staff Qualifications and Responsibilities.

(a) Each provider agency shall have:

(1) ~~A sufficient number of p~~Personnel, qualified pursuant to ~~(b) and (c)~~ below, available to meet the individual and collective employment-related needs of each individual served; and

(2) Staff who meet the requirements of ~~(eh)~~ or ~~(fi)~~ below.

(b) Prior to a person providing employment services to individuals, the provider agency, with the consent of the person, shall complete the necessary registration, criminal background, and office of the inspector general exclusion list checks in accordance with He-M 504.:

(c) Prior to providing employment services to individuals, the provider agency, with the consent of the person, shall:

(1) Obtain at least 2 references for the person; and

(2) Complete a motor vehicles record check to ensure that the person has a valid driver's license if such provider will be transporting individuals.

~~(2) Complete, at a minimum, a New Hampshire criminal records check;~~

~~(3) If a person's primary residence is out of state, complete a criminal records check for the person's state of residence; and~~

~~(4) If a person has resided in New Hampshire for less than one year, complete a criminal records check for the person's previous state of residence.~~

~~(c) Except as allowed in (d) (f) 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 registry of founded reports of abuse, neglect, and exploitation pursuant to RSA 161-F:49.~~

~~—— (d) A provider agency may hire a person with a criminal record listed in (c)(1)a. or b. above for a single offense that occurred 10 or more years ago in accordance with (e) and (f) below. In such instances, the individual, his or her guardian, and the area agency shall review the person's history prior to approving the person's employment.~~

~~—— (e) Employment of a person pursuant to (d) above shall only occur if such employment:~~

~~(1) Is approved by the individual, his or her guardian, 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.~~

~~—— (f) Upon hiring a person pursuant to (d) 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 (e) 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) A full explanation of why the provider agency is hiring the person despite the person's criminal record;~~

~~(9) Signature of the individual(s) or legal guardian(s) indicating agreement with the employment and date signed;~~

~~(10) Signature of the staff person who obtained the individual's or guardian's signature and date signed;~~

~~(11) Signature of the area agency's executive director or designee approving the employment; and~~

~~(12) The signature and phone number of the person being hired.~~

~~(dg)~~ Provider agencies shall provide initial and ongoing training as required in He-M 506 and as required to implement services in He-M 518.05 and He-M 518.07.

(c) Employment professionals shall:

(1) Meet one of the following criteria:

- a. Have completed, or complete within the first 126 months of becoming an employment professional, training that meets the national competencies for job development and job coaching, as established by the Association of People Supporting Employment First (APSE) in “APSE UniversalSupported Employment Competencies” (Revision 20190), available as noted in Appendix A; or
- b. Have obtained the designation as a Certified Employment Services Professional through the Employment Services Professional Certification Commission (ESPCC), an affiliate of APSE; and

(2) Obtain 12 hours of continuing education annually in subject areas pertinent to employment professionals including, at a minimum:

- a. Employment;
- b. Customized employment;
- c. Task analysis/systematic instruction;
- d. Marketing and job development;
- e. Discovery;
- f. Person-centered employment planning;
- g. Work incentives for individuals and employers;
- h. Job accommodations;
- i. Assistive technology;
- j. Vocational evaluation;
- k. Personal career profile development;
- l. Situational assessments;
- m. Writing meaningful vocational objectives;
- n. Writing effective resumes and cover letters;
- o. Understanding workplace culture;
- p. Job carving;
- q. Understanding laws, rules, and regulations;
- r. Developing effective on the job training and supports;
- s. Developing a fading plan and natural supports;
- t. Self-employment; and

u. School to work transition.

(f) At a minimum, job coaching staff shall be trained on all of the following prior to supporting an individual in employment:

- (1) Understanding and respecting the business culture and business needs;
- (2) Task analysis;
- (3) Systematic instruction;
- (4) How to build natural supports;
- (5) Implementation of the fading plan;
- (6) Effective communication with all involved; ~~and~~
- (7) Methods to maximize the independence of the individual on the job site; ~~and~~

(8) Understanding individual specific health-related requirements including but not limited to any special, cognitive, mental health or behavioral needs.

(g) Supervisors of employment professionals shall ensure employment professionals and job coaches meet the criteria outlined in (e) and (f) above.

He-M 518.11 Oversight and Quality Improvement.

(a) The director of employment services shall:

- (1) Be responsible for providing oversight; and
- (2) Evaluate, facilitate, and improve the quality of services being delivered and outcomes achieved.

(b) Each individual's service coordinator shall provide oversight regarding the employment service arrangement and review and facilitate the effectiveness of the employment services being provided and outcomes achieved.

(c) In fulfilling the responsibilities cited in (a) and (b) above, the director of employment services and service coordinator shall consider whether the following criteria are being met:

- (1) Services are customized and meet the interests, goals, and desired outcomes of the individual, as defined in the service agreement;
- (2) Goals reflect the individual's growth and evolving interests and are revised accordingly;
- (3) The goals and desired outcomes identified in the service agreement are being achieved;
- (4) Staff are knowledgeable of the individual's service agreement as it pertains to employment services and are assisting in meeting the desired goals and outcomes;
- (5) Services occur in integrated settings;
- (6) Methods or strategies for achieving the individual's employment services goals and desired outcomes are evident and documented; and

- (7) Individuals, and guardians if applicable, are satisfied with services.
- (d) The bureau shall develop and maintain an employment services leadership committee consisting of representation of employment professionals from area agencies, provider agencies, and the bureau of vocational rehabilitation.
- (e) The employment services leadership committee shall:
 - (1) Review quarterly employment data reports, identify trends, and establish statewide employment benchmarks;
 - (2) Identify and ensure relevant employment training is available for individuals served, families, employment professionals, service coordinators and other agency personnel;
 - (3) Annually review the memorandum of understanding between the bureau of developmental services and the bureau of vocational rehabilitation;
 - (4) Provide an annual report to the developmental services quality council, established pursuant to RSA 171-A:33, at the end of each fiscal year;
 - (5) Review national core indicators and other relevant data to measure individual and family satisfaction with employment services; and
 - (6) Support efforts to collaborate with business and industry.

He-M 518.12 Waivers.

(a) An applicant, area agency, provider agency, individual, guardian, or provider may request a waiver of specific procedures outlined in He-M 518 using the form titled “NH bureau of developmental services waiver request” (~~October 2023~~~~September 2013~~ edition). The waiver request area agency shall be submitted the request in writing to the bureau administrator.

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

- (1) The individual or guardian indicating agreement with the request; and
- (2) The area agency or provider agency’s executive director or designee recommending approval of the waiver, when the waiver is requested by an area agency or a provider agency.

(c) A waiver request shall be submitted to the department via:

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

(2) By mail to:

The Bureau of Developmental ~~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 the 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.~~

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

(j) 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 518.10(e)(1)a.	Association of People Supporting Employment First, "APSE Universal Employment Competencies" (2019 Revision)	<p>Publisher: Association of People Supporting Employment First</p> <p>Cost: Free of Charge</p> <p>The incorporated document is available at: https://apse.org/wp-content/uploads/2019/03/Apse-universal-Comps-FINAL3-15-19.pdf</p>

APPENDIX B

RULE	SPECIFIC STATE STATUTES WHICH THE RULE IMPLEMENTS
He-M 518.01 – He-M 518.11	RSA 171-A:18; I, II; RSA 137-K:9
He-M 518.12	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