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Interim Commissioner

Melissa A. Hardy
Director

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

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Re: New Hampshire's request for a Corrective Action Plan

Dear Ms. Richardson,

Please accept New Hampshire's formal request for a Corrective Action Plan regarding the implementation of the Final Settings Rule for its four 1915(c) Home and Community Based Services (HCBS) waivers.

Developmental Disabilities (DD), Acquired Brain Disorder (ABD) and In Home Supports (IHS) Waivers

New Hampshire has been working to implement its Statewide Transition Plan (STP) since it was submitted in May of 2016. Compliance monitoring is in place and areas of noncompliance have been identified and addressed by the setting, as applicable, with the exception of the lease/residency agreement requirement and participants' access to the community, as the public health emergency (PHE) has impacted the State's ability to conclude its reviews. New Hampshire continues to review settings in order to ensure compliance in these areas and will require additional time to assess the home and community based settings. The State anticipates that these reviews will be complete by March 17, 2024.

New Hampshire respectfully requests a Corrective Action Plan to allow the State to have until March 17, 2024 to complete its assessment of HCBS settings to ensure that all settings are fully compliant with the HCBS Settings Expectations, including the implementation and monitoring of a Residency Agreement and ensuring compliance with the requirement of participants' access to the greater community in the DD, ABD and IHS Waivers.

Corrective Action Area #1

I. Information on which criteria the state will need extra time to ensure full provider compliance.

Additional time is requested to assess and ensure that all settings are compliant with the HCBS Settings expectations, including compliance with the lease/residency agreement requirement.

II. The state's efforts to bring providers into compliance with those criteria, and PHE-related impacts that created barriers to compliance.

1. New Hampshire developed a draft Residency Agreement to be used as a template.

New Hampshire's Request for a Corrective Action Plan

- a. New Hampshire has worked with the Centers for Medicare and Medicaid Services (CMS) to access technical assistance in order to ensure that all necessary requirements were included in the Residency Agreement.
 - b. CMS has provided assistance on several occasions and New Hampshire has revised its draft Residency Agreement accordingly.
2. New Hampshire solicited stakeholder feedback on proposed edits to administrative rule He-M 310, *Rights of People Receiving Developmental Services Or Acquired Brain Disorder Services In The Community*, which includes the draft Residency Agreement.
 - a. Stakeholders provided significant feedback on the draft Residency Agreement resulting in revisions to the draft.
 3. In accordance with New Hampshire procedure, He-M 310 must now proceed through the Administrative Rules process in order to amend the rule and implement the lease/residency agreement requirement.
 - a. Once approved, the State will develop and provide updated rights training (as outlined in New Hampshire's STP, Topic Area Goal #6), which includes the lease/residency agreement requirement.
 - b. The timeframe to ensure statewide compliance with the lease/residency agreement requirement will extend beyond March 17, 2023. The State anticipates that it will take until 3/17/2024 to fully assess all settings in order to ensure compliance with the HCBS settings requirements, including the lease/residency agreement requirement.
 4. The PHE and related workforce challenges impacted the State's projected timeline for approval and implementation of He-M 310 and compliance monitoring of the lease/residency agreement. The State anticipates that the rule review will occur in March of 2023.

III. The state's plan to overcome encountered barriers, and the time needed to do so.

1. The draft Residency Agreement must be included in He-M 310 before it can be implemented and monitored for compliance through the State's Office of Legal and Regulatory Services. Settings cannot be fully evaluated to determine if they are in compliance with the HCBS Settings Expectations until the rule is finalized and a Residency Agreement is executed. The revised draft of He-M 310 is projected to be heard by the Joint Legislative Committee on Administrative Rules (JLCAR) in March of 2023.
 - a. Once He-M 310 has been approved:
 - i. Training on an individual's rights will be provided, which will include the Residency Agreement requirement.
 - ii. The State will update the Individual Rights booklet and create training for participants, which will include all updated regulatory HCBS expectations.
 - iii. Residency Agreements will be completed during annual person-centered planning. The State expects that full compliance of participants having Residency Agreements will occur one year after approval of the rule.

Corrective Action Area #2

I. Information on which criteria the state will need extra time to ensure full provider compliance.

Additional time is requested to ensure compliance with the requirement of participants' access to the greater community.

II. *The state's efforts to bring providers into compliance with those criteria, and PHE-related impacts that created barriers to compliance.*

1. New Hampshire's state administrative rules include the requirement that the participant's written plan reflect that the setting is chosen by the participant and is integrated in and supports full access to the greater community.
2. Providers have been trained in the requirement that participants must have access to the greater community.
3. The PHE has significantly impacted New Hampshire's workforce and created staffing shortages. These workforce challenges have impacted some participants' ability to access the greater community.

III. *The state's plan to overcome encountered barriers, and the time needed to do so.*

1. New Hampshire continues its efforts to increase the workforce, and therefore to ensure participants' access to the greater community.
2. The state will continue the monitoring of this requirement through the ongoing review of participant's written plans.
3. New Hampshire will continue to review and monitor impacts from its efforts to increase the workforce every six months, until it is satisfied that compliance with this requirement is achieved.

New Hampshire's Choices for Independence (CFI) Waiver

Corrective Action Area #1

I. *Information on which criteria the state will need extra time to ensure full provider compliance.*

New Hampshire has recognized that additional work is needed on the administrative rules, above and beyond what was originally identified in the STP, to ensure that all settings will be monitored for compliance with the Final Settings Rule and the current, approved CFI Waiver performance measures (effective July 2022).

II. *The state's efforts to bring providers into compliance with those criteria, and the PHE-related impacts that created barriers to compliance.*

During the PHE, the focus for the Bureau of Elderly and Adult Services (BEAS) was on operational stability and pandemic response related issues.

1. New Hampshire updated administrative rule He-E 801, *Choices for Independence Program*, to incorporate HCBS requirements.
2. New Hampshire updated administrative rule He-P 804, *Assisted Living Residence-Residential Care Licensing*.
3. Currently New Hampshire is updating administrative rules He-P 805, *Supported Residential Health Care Facility Licensing Rules*, and He-E 805, *Targeted Case Management*.
 - a. While updating these administrative rules, it was identified that there was additional work that needed to be completed above and beyond the initial work noted in the statewide transition plan.

III. *The state's plan to overcome encountered barriers, and the time needed to do so.*

1. BEAS has decided to adopt a new administrative rule, He-E 310 "*Rights of Persons Receiving Choices for Independence Home and Community Based Care and Nursing Facility Care.*" This

New Hampshire's Request for a Corrective Action Plan

rule will be consistent with the administrative rule for Developmental Services, He-M 310, *Rights of People Receiving Developmental Services Or Acquired Brain Disorder Services In The Community*.

- a. The process for adopting the new He-E 310 is:
 - i. Expected draft of the initial proposal for internal stakeholder review approximately 12/2/22.
 - ii. Expected draft of the initial proposal for external stakeholder review approximately 1/3/23.
 - iii. Expected Joint Legislative Committee on Administrative Rules hearing on 5/19/23 or 6/16/23 with rule adoption immediately after.
2. BEAS has recognized the need to amend RSA 151:21 and RSA 151:21-b. The process is:
 - a. Draft the bill language and initial analysis for internal review by BEAS in June of 2023.
 - b. Involve other New Hampshire Department of Health and Human Services stakeholders July of 2023.
 - c. Submit draft legislation proposal August of 2023.
 - d. January-June 2024 legislative process to adopt bill.
3. Training will be provided for both the newly adopted He-E 310 and the amended RSA 151:21 and RSA 151:21-b.

Corrective Action Area #2

I. Information on which criteria the state will need extra time to ensure full provider compliance.

New Hampshire requests additional time to complete its Heightened Scrutiny Process on settings that would be considered institutional to ensure that the process can be complete by the end of the transition period.

II. The state's efforts to bring providers into compliance with those criteria, and (PHE)-related impacts that created barriers to compliance.

During the PHE, the focus for BEAS and its providers were on operational stability and pandemic response related issues.

III. The state's plan to overcome encountered barriers, and the time needed to do so.

1. The Heightened Scrutiny Reviews are complete.
2. The state is completing the additional steps of the HS process.

Corrective Action Area #3

I. Information on which criteria the state will need extra time to ensure full provider compliance.

Additional time is requested to ensure compliance with the requirement of participants' access to the greater community.

II. The state's efforts to bring providers into compliance with those criteria, and (PHE)-related impacts that created barriers to compliance.

New Hampshire's Request for a Corrective Action Plan

1. New Hampshire's state administrative rules include the requirement that the participant's written plan reflect that the setting is chosen by the participant and is integrated in and supports full access to the greater community.
2. Providers have been trained in the requirement that participants must have access to the greater community.
3. The PHE has significantly impacted New Hampshire's workforce and created staffing shortages. These workforce challenges have impacted some participants' ability to access the greater community.

III. The state's plan to overcome encountered barriers, and the time needed to do so.

1. New Hampshire continues its efforts to increase the workforce, and therefore to ensure participants' access to the greater community.
2. The State will continue the monitoring of this requirement through the ongoing review of participant's written plans.
3. New Hampshire will continue to review and monitor impacts from its efforts to increase the workforce every six months, until it is satisfied that compliance with this requirement is achieved.

Thank you for your consideration of this request. We are happy to meet with you to discuss further.

Respectfully Submitted,

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