

Adopt He-E 310 to read as follows:**PART He-E 310 RIGHTS OF INDIVIDUALS RECEIVING CHOICES FOR INDEPENDENCE IN THE COMMUNITY**

Statutory Authority: RSA 151-E:12

He-E 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-E 801.03 and who are being served in the community. Participants might have additional rights under RSA 151:21, patients' bill of rights for residents of health care facilities RSA 151:21-b, home care clients' bill of rights, RSA 151:26 transfer or discharge of patients and RSA 151:26-a discharge of home health care clients.

He-E 310.02 Definitions.

(a) "Abuse" as defined in RSA 161-F:43, II means "any one of the following:

(1) "Emotional abuse" means the misuse of power, authority, or both, verbal harassment, or unreasonable confinement which results or could result in the mental anguish or emotional distress of a vulnerable adult;

(2) "Physical abuse" means the use of physical force which results or could result in physical injury to a vulnerable adult; or

(3) "Sexual abuse" means contact or interaction of a sexual nature involving a vulnerable adult without his or her informed consent."

(b) "Adult day facility" means a facility licensed in accordance with He-P 818 and RSA 151:2 I.(f).

(c) "Adult family care" means participant housing option for eligible participants under the CFI waiver program, which includes a combination of personal care, homemaking, and other services that are provided to a participant who is a resident in a certified residence of an unrelated individual or the CFI waiver participant's relative in accordance with a person-centered plan.

(d) "Applicant" means any person who requests services pursuant to He-E 801.

(e) "Attorney" means a member of the New Hampshire bar association retained, employed, or appointed by a court to represent a participant.

(f) "Authorized representative" means an individual acting on behalf of the casehead in some or all of the aspects of initial and continuing eligibility..

(g) "Case management agency" means an agency licensed pursuant to RSA 151:2-b and He-P 819 and enrolled as a New Hampshire medicaid provider to provide targeted case management services to choices for independence (CFI) participants in accordance with He-E 805.

(h) "Coercion" means an act by an employee, contractor, consultant, or volunteer of a service provider which is designed to compel a participant to act in clear opposition to the preference of the participant, excluding requirements otherwise prescribed by law or rule.

(i) "Comprehensive care plan" means an individualized person-centered plan described in He-E 805.05(c) that is:

(1) The result of a person-centered process that identifies the strengths, capacities, preferences, and desired outcomes of the participant;

(2) Developed by the participant's case manager in collaboration with the participant, the participant's guardian, and the participant's legal representative if any;

(3) Written by the case manager; and

(4) Is an integrated plan of all the participant's services.

(j) "Department" means the New Hampshire department of health and human services.

(k) "Exploitation" as defined in RSA 161-F:43 IV. means the illegal use of a vulnerable adult's person or property for any purpose not in the proper and lawful execution of a trust, including, but not limited to, situation where a person obtains money, property, or services from a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud.

(l) "Grievance" means an expression of dissatisfaction or complaint related to the department's administration of or a provider's performance of CFI services regardless of whether remedial action is requested.

(m) "Guardian" means a person appointed under RSA 464-A.

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

(1) The participant understands that the participant is free to choose or refuse any available alternative;

(2) The participant indicates or expresses the participant's choice; and

(3) The choice is free from all coercion.

(o) "Legal representative" as defined in RSA 161-F:11, VII means any individual, duly appointed or designated in the manner required by law to act on behalf of another individual including:

(1) An attorney;

(2) A guardian or conservator; or

(3) An agent acting pursuant to a power of attorney."

(p) "Neglect" as defined in RSA 161-F:43, III, 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 and safety of a vulnerable adult."

(q) "Participant" means an individual receiving CFI services. For the purposes of this part, participant shall include an individual who has applied for CFI services.

(r) "Person-centered" means a process for planning and supporting the participant receiving services that builds upon the participant's capacity to engage in activities that promote community life, and honors the participant's preferences, choices, and abilities, and which involves families, friends, and professionals as the participant desires or requires.

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

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

(t) "Provider" means an individual or entity providing one or more CFI covered services.

(u) "Provider care plan" means a written guide that:

- (1) Is developed by the provider in consultation with the participant, , the participant's legal representative, if any, or both, and the participant's primary care provider, if applicable;
- (2) Is developed as a result of an assessment process which includes communication with the participant's case manager;
- (3) Is consistent with and addresses the applicable service needs identified in the participant's comprehensive care plan; and
- (4) Contains specific instructions on providing a defined service to the participant.

(v) "Quality manger" means an individual employed by BEAS as a quality manger or a designee of the quality manager.

(w) "Residential care facility" as defined in RSA 151-E:2 VIII. means a facility, including a supported residential care facility, which provides services to 2 or more individuals, beyond room and board care, in a residential setting, as an alternative to nursing facility care, which offers residents home-like living arrangements, social, health, or medical services, including but not limited to, medical or nursing supervision, or medical care or treatment by appropriately trained or licensed individuals, assistance in daily living, or protective care. "Residential care facility" shall also include a facility certified in accordance with RSA 151:9 VIII.

(x) "Residential services agreement" means a required agreement between a residential care facility and a participant pursuant to RSA 161-J:4.

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

(z) “Standard disclosure summary” means information that a residential care facility provides to a prospective resident regarding the costs and services options provided by the residential care facility pursuant to He-E 605.04.

(aa) “Systemic factors” means internal policies and processes that influence the department’s operations and effectiveness, including:

- (1) Practices regarding hiring, training, and managing employees;
- (2) Practices to assure quality of services and consumer satisfaction;
- (3) Practices to assure accurate fiscal management; and
- (4) Governmental regulations regarding licensing, funding, and service provision.

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

He-E 310.03 Notice of Rights of Participants and Applicants.

(a) Participants shall receive a pamphlet published by the department that shall explain the participant’s rights under these rules in plain language and form, both verbally and in writing, on an annual basis and provide meaningful access to participant with limited English proficiency.

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

- (1) Providers shall inform applicants for services of the applicant’s rights to evaluations and access to treatment and other services;
- (2) Providers shall provide meaningful and understandable information about rights to participants who have been adjudicated incapacitated as well as to the participant’s guardian or the participant’s legal representative;
- (3) Providers shall provide information outlining the process of how to file a grievance with:
 - a. The department pursuant to He-E 310.09 below;
 - b. Adult protective services for grievances involving abuse, neglect, exploitation, or self-neglect of a vulnerable adult;
 - c. The long term ombudsman established pursuant to RSA 161-F:10 for grievances involving residential care facilities; or
 - d. The department ombudsman’s office established pursuant to RSA 126-A:4 IV., for civil rights issues;
- (4) Providers shall advise the participant, the participant’s guardians, or the participant’s legal representative of the participant’s rights upon initial participation in any service, upon any change in provider or community residence, and at least once a year after initial participation;

(5) Every residential care facility and adult family care provider 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 plain language and form; and

(6) Each residential care facility and adult family care provider residence shall have on the premises complete copies of rules pertaining to rights of participants which are available for the participant, the participant's guardian, the participant's legal representative, and staff to review.

(c) Each provider shall provide participants meaningful time to review the participant's rights and encourage the participant or the participant's guardian, or the participant's legal representative, to sign a statement acknowledging notification of the participant's rights.

He-E 310.04 Fundamental Rights.

(a) All participants shall be entitled to any legal right to which all citizens are entitled.

(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 and to vote, if eligible, in public elections and, as provided in 42 USC 1973aa-6, the right to receive assistance from the person of the participant's choice in registering to vote and in voting;

(3) The following civil rights, unless a court has determined that a participant is legally incapacitated pursuant to RSA 464-A and the participant's guardian or the participant's legal representative has been appointed to make certain decisions:

- 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; and
- e. The right to make a will.

(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, gender identity, 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 participant;
- b. Services which are accessible to participants of limited English proficiency; and

- c. Service locations that are accessible and meet the participant's physical, sensory, intellectual, or emotional needs;
- (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; and
- (6) The right to receive copies of the participant's care plans, as defined in (h) and (r) above.

He-E 310.05 Personal Rights.

- (a) Participants and applicants shall be treated with dignity and respect at all times.
- (b) Participants shall be free from abuse, neglect, and exploitation including, at a minimum, personal or financial exploitation.
- (c) Participants shall have the right to privacy.
- (d) Participants shall have the right to be free from coercion.
- (e) Any participant who uses or has used CFI provider services shall have the right to confidentiality of all information and records.
- (f) Access to records shall be as follows:
 - (1) Information pertaining to a participant shall be released to the participant and the participant's guardian or the participant's legal representative upon request including all information provided by third parties;
 - (2) Information shall be released to any person or organization that has obtained the written consent of the participant, the participant's guardian, or the participant's legal representative;
 - (3) In cases where a participant, the participant's guardian, or the participant's legal representative of the participant requests copies of the record, such copies shall be made available free of charge; and
 - (4) Information regarding the medical treatment of a participant shall be released to law enforcement officials or health facility personnel if necessary to address an emergency situation involving danger to the participant's health or safety, but only specific information necessary to the relief of the emergency may be released without the participant's, the participant's guardian, or the participant's legal representative's consent.
- (g) In accordance with RSA 329:31, RSA 329-B:29, and RSA 330-A:35, when a participant 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:
 - (1). Physicians licensed pursuant to RSA 329;
 - (2). Psychologists licensed pursuant to RSA 329-B; and
 - (3). Persons licensed pursuant to RSA 330-A and those who work under the supervision of the mental health practitioner.

(h) Participants, and the participant's guardian, and the participant's legal representative 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 any other matter.

(i) Any person shall have the right to complain or bring a grievance on behalf of a participant or a group of participants to:

- (1) The department pursuant to He-E 310.09 below;
- (2) Adult protective services for grievances involving abuse, neglect, exploitation, or self-neglect of a vulnerable adult;
- (3) The long term ombudsman established pursuant to RSA 161-F:10 for grievances involving residential care facilities; and
- (4) The department's ombudsman's office established pursuant to RSA 126-A:4 IV for civil rights issues.

He-E 310.06 Service Rights.

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

- (1) The right to quality services including services provided in accordance with licensing requirements and rules adopted by the department in He-P 800 and other applicable rules of state agencies and services provided in keeping with generally accepted clinical and professional standards;
- (2) The right to receive services in the participant's community that will promote the participant's full community participation;
- (3) The right to a person-centered planning process that:
 - a. Is directed by the participant to the maximum extent possible;
 - b. Is intended to identify the strengths, capacities, preferences, needs, and desired outcomes of the participant;
 - c. Includes individuals freely chosen by the participants;
 - d. Provides information and support to assist the participant to direct the process and to make informed choices and decisions;
 - e. Reflects cultural considerations of the participant and is conducted in plain language and form and provides meaningful access to participants with limited English proficiency;
 - f. Occurs at times and location of convenience to the participant;
 - g. Includes strategies for solving conflict or disagreement within the process;
 - h. Offers informed choices to the participant, the participant's guardian, or legal representative, if applicable, regarding services and supports;

- i. Involves the family of the participant or other individuals the participant chooses in enabling and assisting the participant to identify and access a personalized mix of paid and non-paid services and supports that will assist the participant to achieve personally defined outcomes in the most integrated setting appropriate to the needs of the participant;
 - j. Includes identification of the participant's planning goals to achieve personal outcomes in collaboration with those whom the participant has identified;
 - k. Results in a comprehensive care plan that identifies the strengths, capacities, preferences, and desired outcomes of the participant and other services the participant is to receive to achieve those outcomes; and
 - l. Includes a method for the participant to request changes to the comprehensive care plan;
- (4) The right to a comprehensive care plan developed, reviewed, and revised in accordance with He-E 805;
- (5) The right to services in accordance with the time frame set in the comprehensive care plan
- (6) The right to services in a setting that is:
- a. Based on the participant's needs and preferences;
 - b. Chosen by the participant, the participant's guardian, or the participant's legal representative from among options that are identified in the comprehensive care plan and include non-disability specific settings; and
 - c. Integrated in, and supportive of full access of participants 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; and
 5. Live in a private unit in a residential setting, based on personal resources available for room and board;
- (7) The right to be informed of all significant risks, benefits, and alternative services and to give consent to any service or referral following an informed decision;
- (8) The right to refuse any service;
- (9) The right to be fully informed of one's own diagnosis and prognosis by the participant's health care provider;
- (10) The right to voluntary participation in services, as decided by the participant, the participant's guardian, or the participant's legal representative, including the right to seek changes in services or providers at any time or to withdraw from any form of service or from a provider;

- (11) The right to services which promote independence including services which shall be directed toward:
 - a. Eliminating or reducing the participant's need for continued services; and
 - b. Promoting the ability of the participant to function at the participant's highest capacity and as independently as possible;
 - (12) The right to receive or to refuse medical care, medications, and treatment;
 - (13) The right to consultation and second opinion at the participant's own expense the consultative services of private physicians, psychologists, dentists, or other health practitioners;
 - (14) The right to choose, or have the participant's guardian or the participant's legal representative choose, one or more of the any person(s) to be present at any person-centered planning meeting or other service planning meeting;
 - (15) The right to freedom from restraint except when allowed by RSA 151:21; and
 - (16) 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 access to telephones and to be allowed to make and to receive telephone calls that do not interfere with other residents;
 - c. The right to receive and to refuse to receive visitors; and
 - d. The right to engage in social, recreational, and religious activities including the provision of regular opportunities for participants to engage in such activities.
- (b) Individuals applying for CFI shall have the right to evaluation to determine an the individual'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) Providers shall, whenever possible, maximize the decision-making authority of the participant.
- (d) Providers may restrict access by participants to various locations to:
- (1) Ensure the privacy or safety of participants; or
 - (2) Comply with provisions of law and orders of court.
- (e) These rules shall not require any prescribing practitioner to administer treatment contrary to such professional's clinical judgment.

He-E 310.07 Termination of Services.

- (a) Providers shall only terminate services to participants in accordance with RSA 151:26 for residential care facilities or RSA 151:26-a for home health providers.
- (b) Residential care facilities and home health providers shall provide written notice to the participant, the participant's guardian, or the participant's legal representative of the participant's right to

appeal a discharge or transfer with the department's administrative appeals unit in accordance with He-C 200.

He-E 310.08 Rights of Participants in Residential Care Facilities.

(a) In addition to the foregoing rights, participants living in residential care facilities 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 participant;
- (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 access to telephones and to be allowed to make and to receive telephone calls that do not interfere with other residents;
 - c. The right to receive and to refuse to receive visitors; and
 - d. The right to engage in social, recreational, and religious activities including the provision of regular opportunities for participants to engage in such activities;
- (4) The right to privacy in the participant'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 participant with only appropriate staff having keys to doors;
 - c. The right to receive visitors of the participant'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 participant choice, including the following:
 - a. The right to keep and wear their own clothes;
 - b. The right to space for personal possessions;
 - c. The right to keep and to read materials of the participant's own choosing;
 - d. The right to keep and spend the participant's own money;
 - e. The right to be compensated for any work performed and the right not to work,
 - f. The right to have a choice of one's room if multiple rooms are available;

- g. The right to have a choice of one's roommate when bedrooms are shared;
- h. The right to furnish and decorate one's sleeping or living unit within the limits of the lease or other agreement; and
- i. The freedom and support to control one's own activities and schedules, including but not limited to access to food at any time; and

(6) The right to be reimbursed for the loss of any money held in safekeeping by the residential care facility.

(b) Nothing in He-E 310.08 shall require a residential care facility to have policies governing the behavior of the residents.

(c) Participants, the participant's guardians, and the participant's legal representatives shall have the right to be informed in writing of any residential care facility policies prior to admission to the residential care facility including a copy of the residential services agreement and standard disclosure summary.

(d) Residents shall have the right to participate in the development and modification of any house policies and be provided the opportunity to review the house policies at least annually.

(e) Residential care facility policies shall be in conformity with He-E 310.

(f) Residential care facility policies shall be reviewed annually for compliance with He-E 310 in connection with department site visits.

(g) Any modification to (a)(4) or (5) above shall be supported by a specific assessed need and documentation described in (i) below.

(h) A residential care facility shall only make modifications pursuant to (g) above by documenting in the provider care plan the following:

- (1) The specific and individualized assessed need with a description of the condition that is directly proportionate to the need;
- (2) Positive interventions and supports used prior to any modification to the provider care plan;
- (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 with established timelines for periodic review to determine whether the modification is still necessary or can be terminated;
- (5) Informed consent of the participant, the participant's guardian, or the participant's legal representative; and
- (6) An assurance that the interventions and supports will not cause harm to the participant.

He-E 310.09 CFI Grievances

(a) A grievance may be made by any person including but not limited to:

- (1) A participant;
- (2) A participant's guardian or family member;

- (3) An employee, contractor, consultant, or volunteer for the department; or
 - (4) An employee, contractor, consultant, or volunteer for a CFI provider.
- (b) Individuals may file a grievance with the bureau of elderly and adult services (BEAS) by:
- (1) Emailing the grievance to BEASQualityManagement@dhhs.nh.gov;
 - (2) Mailing the grievance to: Bureau of Elderly and Adult Services, Attn: Quality Manager, 105 Pleasant Street, Concord, NH 03301;
 - (3) By telephone to 603-271-2240; or
 - (4) By fax to 603-271-4643, Attn: Quality Manager.
- (c) Individuals reporting a grievance to BEAS shall be contacted within 5 business days of the receipt of the grievance.
- (d) Reporters shall be informed of changes to the status of the grievance until the complaint is resolved.
- (e) BEAS shall resolve each grievance and provide notice as expeditiously as the participant's health condition requires pursuant to 42 CFR 441.301(c)(7)(v)(A).
- (f) BEAS shall provide assistance to individuals filing a grievance including ensuring accessibility to individuals with disabilities and individuals with limited English proficiency.
- (g) Anonymous grievances shall be accepted, but follow up information will not be provided to a grievant who fail to provide contact information.
- (h) The name and identity of a grievant shall be kept confidential during the resolution of the grievance unless the grievant requests that the grievant's name be shared.
- (i) Nothing in this section shall affect a participant's right to file an appeal pursuant to He-C 200.

He-E 310.10 Grievance Processing

- (a) The BEAS quality manager shall resolve grievances by one of the following:
- (1) An informal grievance resolution where the quality manager the participant, and any other appropriate parties shall meet via telephone, internet video meeting software, or any other agreed upon method to address concerns identified in the grievance;
 - (2) A formal grievance resolution where the quality manager shall investigate the grievance to determine the circumstances of the situation and submit a report to the BEAS bureau chief on the grievance and, if applicable, any systemic factors that played a role in the grievance; or
 - (3) Make a referral to another agency as appropriate as described in He-E 310.11.

(b) All appropriate parties involved in a grievance resolution shall receive a written summary stating the details of the grievance and the resolution made.

(c) For grievances filed the participant shall determine whether the quality manager proceeds with informal or formal resolution of the grievance.

(d) An individual unsatisfied with the outcome of an informal resolution may request a formal resolution by contacting the BEAS quality manager within thirty days of the date of the informal resolution summary provided to the grievant.

He-E 310.11 Grievance Referral

(a) The BEAS quality manager shall refer any grievance involving abuse, neglect, or exploitation of a potentially vulnerable adult to adult protective services.

(b) The BEAS quality manager shall refer any grievance that alleges criminal conduct of an individual to the appropriate law enforcement agency.

(c) The BEAS quality manager shall refer any grievance involving the services of a long-term care facility to the office of long-term care ombudsman.

(d) The BEAS quality manager shall refer any grievance regarding a licensed health care provider to DHHS health facilities administration.

(e) After referring a grievance pursuant to (a)-(d) above, the BEAS quality manager shall not proceed with attempting to resolve the grievance if the agency or office that received the referral indicates that the agency or office will proceed with an investigation. If the agency or office that received the referral does not indicate that the agency or office will proceed with an investigation within 5 business days of the referral, the quality manager shall proceed with either a formal or informal resolution.

(f) If a grievant is unsatisfied with the resolution of a referred entity, the grievant may contact the BEAS quality manager, and the BEAS quality manager shall proceed with either an informal or formal resolution.

He-E 310.12 Grievance Records BEAS shall maintain a record of each grievance received which shall include:

(a) A general description of the reason for the grievance;

(b) The date the grievance was received by BEAS;

(c) The date of each meeting held pursuant to He-E 310.10(a) above;

(d) The resolution of the grievance;

(e) The date of the resolution; and

(f) The name of the participant for whom the grievance was filed.

APPENDIX

Rule	Specific State or Federal Statute or Regulations the Rule Implements
He-E 310	RSA 151-E:12; 42 CFR 441.301(c)(4); RSA 151:19-30; RSA 161-J; 42 CFR 441.301(c)(7)