

## **I. Introduction**

These rules are adopted in accordance with the statute noted below and in conformity with 5 MRSA §8001 *et seq.*

Severance Clause: The provisions of these rules are severable. If any provision of the rules is invalid, or if the application of the rules to any person or circumstances is invalid, such invalidity shall not effect other provisions or applications which can be given effect without the invalid provision or application.

Legal Basis: These rules are promulgated under the authority of 34-B MRSA §1203.

Effective Date: These rules shall become effective \_\_\_\_\_.

## **II. Definitions**

ADA: the Americans with Disabilities Act of 1990 (104 Stat 327, Pub. L. 101-336, 42 USC §§12101 *et seq.*)

Advocate: a representative of the protection and advocacy agency described at 5 MRSA §§19501-19509.

Agency: a firm, partnership, association, corporation, organization or trust certified or seeking certification under these regulations.

Assessment: the process of identifying the person's needs through in-person contact with the person and, where appropriate, consultation with other providers and with the person's family and guardian.

Case management services: those services provided by an agency, to identify the medical, social, educational and other needs of the person, identify the services necessary to meet those needs, and facilitate access to those services. Case management consists of plan of care development, coordination/advocacy, monitoring, and evaluation.

Certification: the process whereby an applicant agency is determined to be qualified to provide case management services to adults with mental retardation under the provisions of the MaineCare Manual (10-144 CMR 101), Section 13, Targeted Case Management.

Civil Rights Act: Civil Rights Act of 1964, Pub. L. 88-352, as amended.

Commissioner: the Commissioner of the Department of Health and Human Services.

Coordination/Advocacy: the process of facilitating the person's access to the services and resources identified in the care plan. The case manager may

advocate on behalf of the person for appropriate community resources and coordinate the multiple providers of social and health services defined in the care plan. As part of the coordination function, the case manager will avoid the duplication of services.

Cultural competence: the ability to understand, respect and effectively work with persons/groups with various cultural backgrounds including age and gender.

Department: the Department of Health and Human Services.

EEO: The Equal Employment Opportunity Act of 1972 (Pub. L. 92-261), as amended.

Eligibility: the process of determining if an individual is eligible for developmental disability services according to 34-B MRSA Ch. 5.

Evaluation: the process of determining whether the care plan is appropriate, whether a new plan is necessary, or whether services should be terminated. Evaluation is accomplished through periodic in-person reassessment of the person, consultation with other providers, and, if appropriate, consultation with the person's family and guardian.

Fee schedule: a document listing the charges for all services available from the service provider.

Governing Body: an individual or association of persons with ultimate managerial control and legal responsibility for the operation of a program or service and for defining the program or service authority and structure. Normally, the Governing Body discharges its responsibilities by employing a chief administrative officer and formulating policies for the agency's authority and structure.

Guardian: person(s) or agency with ongoing legal responsibility for ensuring the care of an individual, appointed pursuant to 18-A MRSA, Article 5, Part 3.

HIPAA: Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191).

Informed consent: consent obtained in writing from an individual or the individual's legally authorized representative for a specific treatment, intervention or service. Elements of a valid informed consent include information to assist the individual to make the consent, including the diagnosis, the nature and purpose of the procedure(s) or service(s) for which consent is sought, all material risks and consequences of the procedure(s) or service(s), an assessment of the likelihood that the procedure(s) or service(s) will accomplish the desired objective(s), any reasonably feasible alternatives for treatment, with the same

supporting information as is required regarding the proposed procedure(s) or service(s), and the prognosis if no treatment is provided.

**Intake:** a process whereby a case manager or qualified intake worker meets with the individual, the individual's family and the individual's guardian if one has been appointed, for the purpose of providing information regarding services, collecting evaluations and diagnoses to determine service eligibility, and conducting an assessment for planning purposes.

**MRSA:** Maine Revised Statutes Annotated.

**Maine Human Rights Act (MHRA):** 5 MRSA §4551, *et seq.*

**Mental retardation:** as defined at 34-B MRSA § 5001, a condition of significantly subaverage intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period.

**Monitoring:** the process of ensuring that the person's care plan is implemented and assessing progress towards meeting the objectives outlined in the care plan. It includes contact with the person as needed to monitor the care plan objectives and, if appropriate, periodic contact with the person's family and guardian.

**Person:** Person receiving services.

**Plan of Care Development:** the process of determining, with the person, and unless inappropriate, the person's family and guardian, and other providers, what services and resources are necessary to meet the identified needs and how they might be most appropriately delivered. The plan of care is designed to maintain current service delivery and to resolve gaps in services so that comprehensive care is attained. The plan of care development must be consistent with requirements of Person Centered Planning.

**Policy:** a statement of the principles that guide and govern the activities, procedures, and operations of a program or the provision of services.

**Procedure:** a series of activities designed to implement the goals or policies of a program.

**Quality management:** processes designed to improve the quality of care of services within an organization. Quality management includes quality assurances and quality improvement activities.

**Rehabilitation Act:** Rehabilitation Act of 1973 (87 Stat. 355, Pub. L. 93-112, 42 USC §§701 *et seq.*)

Referral: (1) a request for a particular service at an agency or agencies known to provide that service for a specific individual by the individual, a family member, a guardian or by another entity (such as a health care provider or case management agency) with the permission of the individual or guardian if one has been appointed; (2) a transfer of information about an individual to another agency for purposes of seeking services from that agency on the individual's behalf. Documentation of the referral process and informed consent are required elements of a referral.

### **III. CERTIFICATION PROCESS**

#### **A. Terms of Certification**

1. Prohibition. No case management services for adults with mental retardation, as described in these rules, may be provided without certification.
2. Certification. Certification shall be granted to agencies that meet the terms and conditions described herein.
3. Prohibition. Agencies certified under these rules to provide case management services may not provide other services to the same group of clients.

#### **B. Application for Certification**

1. Application Form. Applications shall be made on a form provided by the Department .
  - a. The application for a certification shall be accompanied by documents demonstrating compliance with the following portions of these rules:
    - IV. Agency Organization
    - V. Personnel Management
    - VI. Operational Policies and Procedures
    - VII. Environment and Safety
2. Site Visits. A site visit of the agency's office location shall be may be conducted by representatives of the Department before certification is granted.
3. Disclosures. Agencies must disclose other operations or services provided, including those operating in other states or nations. Agencies must disclose any enforcement orders, violations or sanctions they may be under in any operation.

**C. Transfer of Certification.** Certification shall not be transferable from one agency or provider to another.

**D. Sanctions and Corrective Actions.** Whenever the Department finds that case management services are being provided in a manner not in

compliance with applicable rules, or that an agency is operating in a manner not in compliance with these rules, the Department may take actions that include, but are not limited to, notifying the Bureau of Medical Services, Department of Human Services, to request suspension of MaineCare payments until the problem is resolved.

#### **IV. AGENCY ORGANIZATION**

##### **A. Statement of Ownership**

1. Authority. The agency shall maintain documentary evidence of its source(s) of authority to provide services. Such evidence will include articles of incorporation, corporate charter or similar documents.
2. Records. Corporations, partnerships or associations, whether for-profit or not-for-profit, shall maintain records of the names and current addresses of officers and directors, charters, partnership agreements, constitutions, articles of association and/or by-laws, as applicable.
3. For Profit Organizations. Organizations operating on a for-profit basis shall maintain the names and current addresses of principal owners.

##### **B. Governing Body**

1. Membership of the Governing Body
  - a. Employees of any state or Federal government entity assigned responsibilities associated with the licensing of, purchase of service from, or contracting with the agency, or members of the immediate family of such employees, shall not be members of the Governing Body.
  - b. The agency shall maintain a record of the membership of the Governing Body, indicating the position and term of office for each member.
2. Nonprofit Organizations
  - a. If a paid agency staff person or the chief administrative officer of the agency serves as a member of the Governing Body, he or she shall not have a vote.
  - b. Members of the Governing Body of nonprofit organizations shall number no fewer than three persons.
  - c. Individuals who are recipients of agency services or their family members shall be included as equal members of the Governing Body. At least one person with a developmental disability shall be a member of the

Governing Body. The input of the members of the Governing Body who are recipients or family members shall be solicited in meaningful ways for the full spectrum of the governance activities of the agency. Documentation and adequacy of such efforts shall be subject to the review of the Department.

### 3. For-Profit Organizations

#### a. Advisory Board.

- i. The Governing Body shall be served by an advisory board.
- ii. The advisory board shall be appointed by the governing body from among persons knowledgeable in case management. Members of the advisory board shall not include members of the Governing Body; officers, directors, partners or owners; relatives or employees of members of the governing body, officers, directors, partners or owners; employees of any government entity assigned responsibilities associated with the licensing of, purchase of service from, or contracting with the agency, or members of the immediate family of such employees; or employees of the agency.
- iii. Individuals who are recipients of agency services or their family members shall be included as equal members of the advisory board. At least one person with a developmental disability shall be a member of the advisory board. The input of the members of the advisory board who are recipients or family members shall be solicited in meaningful ways for the full spectrum of the governance activities of the agency. Documentation and adequacy of such efforts shall be subject to the review of the Department.
- iv. The agency shall maintain a list of the members of the advisory board which shall indicate the name, current address, professional occupation and term of membership.
- v. The agency shall provide to the advisory board the support needed to carry out its duties.

#### b. Duties of the Advisory Board

- i. The advisory board shall provide advice to the Governing Body on matters affecting the provision of services to adults with Mental Retardation. .
- ii. The advisory board shall meet at least quarterly.

- iii. The advisory board shall develop and maintain by-laws governing its operation, to include but not necessarily be limited to, quorum and selection of the chair.
- iv. The advisory board shall maintain records of attendance and minutes of its meetings. Such minutes shall include matters reviewed, the results of any votes, and advisory opinions provided. Minutes shall be forwarded to the Governing Body. Records of attendance and minutes shall be maintained by the agency and made available to the Department.

5. Duties of the Governing Body

a. Meetings. The Governing Body shall

- i. meet at least quarterly;
- ii. maintain records of attendance and minutes of its meetings. Records of attendance and minutes shall be maintained by the agency and made available to the Department;
- iii. adopt a policy regarding conflicts of interest for its members. At minimum, the policy must define a conflict of interest and a matter of self interest, and describe the procedures for resolving those conflicts.

b. Agency Operation and Management. The Governing Body shall

- i. develop a mission statement describing the overall philosophy and function of the agency;
- ii. be responsible for and have authority over the policies and operations of the agency;
- iii. respond in writing to the recommendations of the Advisory Board, if applicable;
- iv. designate a person to act as chief administrative officer of the agency and delegate sufficient authority to that person to manage the agency, while retaining responsibility and authority for those areas specifically described in these rules;
- v. complete an annual written performance evaluation of the chief administrative officer;
- vi. formulate and periodically review, or designate authority to formulate and approve, written policies required by these rules, in consultation with the chief administrative officer;
- vii. periodically confer with persons receiving services

- and members of the communities in which services are provided as to the nature and direction the agency is heading;
- viii. make available to the Department any policies or records required by these rules or reasonably related to the assessment of compliance with these rules;
  - ix. ensure that services are provided in compliance with ADA, Section 504 of the Rehabilitation Act and the Maine Human Rights Act (MHRA);
  - xi. be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine;
  - xii. certify that it shall provide a work place free of illegal or illicit drugs,
  - xiii. ensure there is in place a quality management system that serves as an integral part of providing quality services to the persons served by the agency.
- c. Fiscal Management. The Governing Body shall
- i. ensure that the agency is adequately funded to provide certified services;
  - ii. provide physical facilities, staff, equipment, supplies and other needs adequate and sufficient to provide services;
  - iii. review and approve the agency's annual budget;
  - iv. provide for an annual report of the agency's financial status, completed by an independent auditor, consistent with these rules, and shall review and accept said report.
- d. Communication with the Department. The Governing Body shall ensure written notification to the Department
- i. ninety calendar days in advance of any proposed change in location, name or ownership of the agency;
  - ii. thirty calendar days prior to any planned change or within ten calendar days following any unplanned change of chief administrative officer of the agency;
  - iii. sixty calendar days in advance of any substantial change in policy or service;
  - iv. within two working days after the agency receives notice of any legal proceedings arising from circumstances related to the provision of services or the continued operation of the facility and/or

- program, whether brought against the agency or against any employee;
- v. within two calendar days after receiving notice or learning of criminal convictions for events occurring in the workplace;
- vi. within ten calendar days after receiving notice of significant discrepancies found at audit.

### **C. Chief Administrative Officer**

#### **1. Selection and Appointment**

- a. The chief administrative officer shall be appointed by the Governing Body from among persons knowledgeable, by training and experience, and capable of managing the affairs of the agency. The chief administrative officer shall possess a baccalaureate degree from an accredited college or university in a field of study applicable to the provisions of human or social services, and shall have had a minimum of five years of progressive responsibility and experience in the provision of human or social services, which included fiscal responsibilities for the day to day operation of a program which required an annual audit.
- b. Nothing in these rules prohibits the Governing Body from selecting a contracted management company to fulfill the duties of the chief administrative officer, so long as the individual(s) assuming actual duties fulfill those duties in a manner consistent with these rules.

#### **2. Duties of the Chief Administrative Officer. The chief administrative officer shall**

- a. manage the affairs of the agency in accordance with policies established by the Governing Body and ensure compliance with all rules and regulations applicable to the provision of services and all programs operated by the agency, except those specifically noted to be the responsibility of the Governing Body, and to ensure that the goals and intent of case management for adult with mental retardation as outlined in these rules, applicable standards and policy are adhered to.
- b. have directional authority over all operations of the agency;
- c. comply with requirements regarding reportable events;
- d. ensure timely written notification to the Department in the event of a change in a program director, medical director or clinical director;

- e. ensure written notification of arrests or indictments of staff related to drug use on the grounds of any program or location for the provision of services, within 24 hours of learning of the event.

#### **D. Fiscal Management**

1. Budget. There shall be a formal, annualized line item budget, approved by the Governing Body, indicating anticipated revenues and expenses for the current fiscal year.
  - a. Revenue shall be documented by source.
  - b. Expenses shall be categorized by line item, and shall be specific to each discrete program or other management division.
  - c. Revisions to the budget shall be clearly documented.
  - d. Review and approval of the budget by the Governing Body shall be clearly documented, including date of approval.
  
2. Policies. The agency shall maintain written policies regarding the fiscal management of the agency. These shall include, but not necessarily be limited to,
  - a. purchasing and inventory control including purchasing authority and procedures, inventory control, product selection and evaluation, and storage and distribution relevant to all materials acquired or retained for the provision of licensed services;
  - b. accounts receivable, including handling of cash, credit for services, write-offs for free services or bad debts, billing for services;
  - c. accounts payable, including authority and procedures for making payments and disbursements;
  - d. setting of fees or charges for services;
  - e. notification to clients of fee schedules and means to document such notification.
  
3. Audits. The agency shall have an annual audit or review of financial operation of over-all agency operation and of each discrete program or other management division, which shall conform to the requirements of the Maine Accounting and Auditing Practices for Community Agencies, and which shall be conducted by an independent auditor not otherwise receiving remuneration from the agency or the Governing Body.
  - a. Audits shall be performed in accordance with applicable state and Federal regulations and shall accurately reflect the agency's financial position.
  - b. Audit reports shall include a review of the system of cost

accounting, which reflects the current cost per unit of service for each discrete program or other management division, and which shall include the formulas used to compute the costs.

- c. Audit reports shall be reviewed by the Governing Body. Documentation of such review shall be maintained, including the date of the review. Audit reports and the documentation of review shall be subject to the review of the licensing authority.

**E. General Policies.** The agency shall maintain and follow policies governing essential elements of service provision.

1. Rights. The agency shall maintain policies and procedures guaranteeing the rights of individuals receiving services, consistent with applicable rule and law.

2. Records. The agency shall maintain policies and procedures regarding records of services provided, which shall be consistent with applicable law and rule and integrated with the Departments information systems. Policies shall address, but not necessarily be limited to,

- a. organization and content of paper records;
- b. definition of active records;
- c. confidentiality of records, including security of automated record systems and the Department's information system;
- d. security of active and inactive records, including access and removal from storage;
- e. authorization for release of information. Authorizations for release of information must comply with the HIPAA and other applicable laws and rules.
- f. disposal of inactive records, which shall provide for retention for no fewer than seven years following the date of the last service contact or the age of majority, whichever is later;
- g. legibility and integrity of entries to paper records. At minimum, the policy must address
  - i. corrections to records, prohibiting the use of correction fluid, tapes, labels and similar techniques and devices;
  - ii. the prohibition of back-dating entries;
  - iii. a provision for the use of late entries to records, which must include the use of a phrase identifying the entry as late;
  - iv. a requirement for an easily recognizable date for every entry;
- h. signatures and identification of persons making entries to

- records, including professional qualifications;
  - i. discharge summaries, which shall summarize the course of service/treatment and address efficacy of service/ treatment provided as outlined in the service plan goals, and make recommendations for further services if needed or desired.
3. Informed consent. The agency shall maintain policies and procedures regarding the acquisition and support of informed consent for services. The policy must address the agency's role in the pursuit of guardianship if necessary to ensure informed consent.
4. Confidentiality.
- a. The agency shall maintain policies and procedures regarding the maintenance of confidentiality in the use of facsimile machines, electronic transfer of data, cellular phones, and other technologies used to store or transmit information, and in interpersonal exchanges.
  - b. Specific policies, consistent with 5 MRSA §19203, shall address the maintenance of confidentiality of results of testing for Human Immunodeficiency Virus (HIV).
  - c. Policies must comply with HIPAA and other applicable laws and rules.
5. Access by clients. The agency shall maintain policies and procedures regarding the access of individuals to their own records.

## **F. Quality Management**

1. Policies. There shall be written policies governing the development and maintenance of an effective quality management program.
2. Plan. The agency shall maintain a plan to monitor, evaluate, document and improve the services provided and the service delivery systems.
  - a. The plan shall identify areas determined by the agency to be critical to quality service provision.
    - i. There shall be clearly documented evidence that the plan has been developed with meaningful involvement of people who are recipients of the services provided by the agency.
    - ii. The plan shall clearly demonstrate a logical progression of review of elements in areas critical to quality service provision.

- b. The plan shall describe goals set by the agency to improve services or service delivery and shall describe indicators to measure achievement of the goals.
  - c. The plan shall include on-going, year-round, regular activities to measure goal achievement.
- 3. Quality Management Review. The findings of the quality management process shall be reviewed at least annually.
  - a. The review process shall include the Governing Body, individuals receiving services, family members, guardians, advocates, agency staff, funding agencies and members of the community at large.
  - b. For-profit agencies shall include representation from their Advisory Board.
  - c. The findings, and actions taken as a result of findings, shall be documented and the plan shall be revised in accordance with the findings.
- 4. Reports of Abuse, Neglect or Exploitation. The agency shall maintain a specific policy and procedure governing the reporting, recording and review of allegations of abuse, neglect or exploitation of persons receiving services, in accordance with applicable laws, rules and regulations, including but not necessarily limited to the Adult Protective Services Act, 22 MRSA §3740 *et seq.*; 14-197 CMR 6, Regulations Governing Adult Protective Assessments & Investigations for Persons with Mental Retardation or Autism, and 14-197 CMR 9, Reporting, Investigation and Review of Reportable Events.
- 5. Grievances. The agency shall maintain a specific policy and procedure in accordance with 14-197 CMR 8, governing the reporting of grievances of individuals receiving services, the procedural follow-up and response on the part of the agency to the person making the complaint, and the documentation of the process and outcome.

**G. Miscellaneous**

- 1. Insurance. An insurance program shall be in force at all times. Coverage shall include, but not necessarily be limited to,
  - a. comprehensive liability insurance for the Governing Body, personnel, and property;
  - b. automobile liability insurance for every vehicle owned or operated by the agency in an amount equal to the limit set by the Maine Torts Claim Act (14 MRSA § 8101 *et seq.*);
  - c. automobile liability insurance for any staff-owned vehicle

used for transportation of individuals receiving services, in an amount equal to the limit set by the Maine Torts Claim Act.

2. Bonding.

- a. The agency shall maintain fidelity bonding in an amount equal to the maximum projected monthly cash flow.
- b. All persons delegated the authority to disburse, collect or manage funds shall be bonded at the agency's expense.

3. Marketing. Marketing and promotional material distributed by or on behalf of the agency shall accurately portray the scope of services provided.

## V. PERSONNEL MANAGEMENT

**A. Personnel Policies.** The agency shall adopt written personnel policies and procedures to address adequately relevant elements of these rules and applicable laws.

1. Access to personnel policies. Employees, individuals receiving services, guardians, advocates and representatives of the Department shall have access to personnel policies during regular business hours of the agency, except as provided below.
  - a. nothing in these rules prohibits restricting access to personnel policies by employees, individuals receiving services, families, guardians and advocates to specific locations or circumstances of oversight and supervision, if the restrictions are reasonable, are clearly defined in policy and otherwise comport with applicable laws and regulations.
  - b. copies of personnel policies shall be promptly provided to individuals receiving services, families, guardians and advocates, if requested. However, nothing in these rules requires the agency to provide copies of personnel policies to persons receiving services, guardians and advocates at the agency's expense.
  - c. copies of policies governing access to personnel policies, and specific job descriptions, Orientation and Training, shall be provided to employees at the agency's expense. Copies of additional personnel policies shall be promptly provided to employees, if requested. Nothing in these rules requires the agency to provide copies of additional personnel policies to employees at the agency's expense.

- d. no restrictions of access may be imposed on authorized representatives of the Department, nor may fees be charged for copies of personnel policies when access and requests for copies of personnel policies are part of the legitimate functions of the Department.
2. Compensation and Benefits. The agency shall adopt policies and procedures that describe the methods used by the agency
- a. to set salary and compensation schedules, including premium payments, if applicable;
  - b. to establish benefit plans and eligibility requirements to participate in benefit plans, if any benefit program is offered to any employee. At minimum, the policy shall address paid and unpaid vacation or other time off, sick leave, leaves of absence, health-related insurance, educational benefits, retirement and deferred compensation plans. Nothing in these rules requires the agency to provide specific benefits to any employee.
3. Collective Bargaining Agreements. The agency shall adopt policies and procedures regarding compliance with collective bargaining agreements, if applicable. Copies of collective bargaining agreements shall be available for review by the licensing authority if requested.

## **B. Organizational Structure**

1. Table of Organization. The agency shall maintain current a table of organization that clearly describes the relationships between
- a. overall management, to include the Governing Body, Advisory Board, the Chief Administrative Officer, and administrative and management functions described elsewhere in these rules, as applicable;
  - b. overall agency management and the management of each discrete program or other management division.
2. Lines of Authority. The table of organization shall clearly describe the functional lines of authority, oversight, management and/or consultative relationships between each and every position, body or board depicted in the table of organization.
3. Contracted Services. Services provided through contracted relationships shall be so identified on the table of organization.

## **C. Job Descriptions**

1. Written Job Descriptions. The agency shall have written job

descriptions for all positions within the agency, which include minimum qualifications, responsibilities, positions supervised and position(s) providing supervision.

- a. Jobs divided by a “job sharing” or similar program shall further describe the division of tasks agreed upon among the parties.
  - b. A copy of the relevant job description(s) shall be included in the employee’s personnel file.
2. Minimum Standards. The following minimum standards shall apply to all staff providing case management.
- a. A case manager must have a minimum of a bachelor’s degree from an accredited four (4) year institution of higher learning with a specialization in psychology, behavioral health, social work, special education, counseling, rehabilitation, nursing, or a closely related field and one (1) year experience in one of the areas listed above.
  - b. A supervisor of case management or a regional supervisor must have a baccalaureate degree plus a minimum of four years experience in the mental retardation field. The supervisor must also have experience supervising staff providing services to persons with mental retardation and/or autism, knowledge of the public education system in Maine, and training in flexible funding and family-focused service provision.
3. Copies to Employees. The agency at its own expense shall provide a copy of the applicable job description to each employee at the time of hire, promotion or orientation.
4. Access by Managers. The agency shall ensure access to job descriptions within the individual’s chain of command to every person who has management or supervisory responsibilities.
5. Development Process. The agency shall maintain an effective method for development, review and revision of job descriptions.

#### **D. Recruitment and Selection of Employees**

##### **1. General Criteria**

- a. The agency shall not hire or retain in any capacity any person who has a prior criminal conviction or disciplinary action by a professional licensing, registration or accrediting body, that pertains to consumer abuse, neglect, or exploitation.

- b. For those staff who have other types of criminal convictions or negative work history known to the agency, the agency shall document in the individual's personnel file the crime and/or other sanctions, the agency's assessment of the seriousness of the information provided and the agency's rationale for hiring and/or retaining the individual. The agency shall specifically address issues of professional misfeasance, malfeasance, malpractice or other related misconduct; convictions or findings in which substance use or the use of firearms or other weapons were elements; criminal convictions in which the actual or threatened infliction of personal injury upon another was an element.
  - c. The agency shall develop criteria and procedures specifying the conditions under which persons related to members of the Governing Body or other staff serving in an administrative, governing or supervisory capacity are employed.
  - d. The agency shall ensure that employment is in compliance with the ADA, the Rehabilitation Act, the Civil Rights Act of 1964, the Maine Human Rights Act, and any other federal, state or local laws or regulations. All substantiated complaints of violations of these laws or regulations shall be assessed by the agency and actions shall be taken to achieve compliance. Plans to achieve compliance shall be subject to the review of the Department.
  - e. Nothing in these rules prohibits an agency from conducting more extensive background checks on staff.
2. Reference and Background Checks
- a. The agency shall acquire and retain evidence to demonstrate that all persons engaged in the provision of case management services meets the standards specified at 10-144 CMR 118, Chapter 2 (56), of a Qualified Mental Retardation Professional (QMRP).
  - b. When the operation of a motor vehicle is expected or reasonably anticipated in the course of the employee's work, the agency shall conduct a check of the employee's driving record. For those staff who have convictions for operating under the influence or any other violations or accidents that indicate an unsafe driving history within the past three (3) years, the agency shall not permit the employee to transport persons.
  - c. The agency shall acquire and retain evidence that all

persons who in the completion of their duties are expected or could be reasonably anticipated to operate a motor vehicle, have valid driver's licenses appropriate to the class of vehicle to be used. If a staff person, in the course of work, is operating a vehicle not provided by the agency, evidence of registration, inspection and insurance shall be maintained. Such evidence shall be acquired at the commencement of the person's employment and shall be maintained current.

- d. The agency shall take effective and lawful action to ensure compliance with V.D.1.a-e, above. This shall include, but not necessarily be limited to, background checks through the State Bureau of Identification, Child Protective Services, Adult Protective Services, the Certified Nursing Assistant register and other similar registers, the Bureau of Motor Vehicles, and such other relevant and available registers, sources of information or data bases.
- e. Background checks shall be conducted at the agency's expense.
- f. Continued employment of any individual shall be contingent upon results of the background checks. Background checks must be completed and the information available to the hiring agency within six (6) months of the date of hire.

## **E. Training and Orientation**

1. Orientation Program. The agency shall provide to all new employees orientation relevant to the organization as a whole and training that relates directly to the provision of case management services for adults with mental retardation. The content of training shall be subject to the review and approval of the Department. This orientation shall include, but not necessarily be limited to,
  - a. an overview of the service delivery system as a whole;
  - b. the agency's mission, philosophy, and other related services;
  - c. the individual's right to privacy and confidentiality;
  - d. safety and emergency procedures;
  - e. the identification, response and reporting of abuse, neglect, and exploitation, and the consequences of failure;
  - f. overview of developmental theory, the nature of mental retardation and autism, and other relevant introductory information;
  - g. overview of abuse and trauma, and the implications for service and treatment programming;

- h. cultural competence issues relevant to the populations served, including age, gender, race, religion, culture and sexual orientation;
  - i. specific job responsibilities. For managers or supervisors, this shall include responsibilities and procedures for management, supervision and discipline of employees;
  - j. supervisory chain of command;
  - k. specialized techniques of communication and intervention, as applicable to the needs of persons served in the program;
  - l. assessment, evaluation, person-centered planning , service delivery, and documentation appropriate to the position and to the persons served in the program.
    - i. This shall include but not necessarily be limited to identification of needs and coaching/support techniques.
    - ii. This shall specifically include training in the maintenance of appropriate professional boundaries;
  - m. technical training on the maintenance of electronic records in the Department's management information system.
2. Assumption of duties following orientation. Employees shall not be assigned to duties requiring direct involvement with individuals receiving services until the following elements of orientation and training have been completed and documented:
- a. all elements of the position specific orientation,
  - b. general orientation topics of reporting of abuse and neglect, safety and emergency procedures, child rights, and confidentiality.
- The remaining training and orientation elements must be completed within 60 calendar days of hire, unless otherwise specified.
3. Ongoing training and education. The agency shall develop and implement policies and procedures to
- a. ensure compliance with on-going professional training for all employees;
  - b. identify staff training needs and provide such training, as pertinent to the services provided by the agency;
  - c. provide annual inservice or external training that includes:
    - i. individual reporting requirements for incidents of abuse, mistreatment, neglect or exploitation,
    - ii. diversity education and/or cultural competence training,

- iii. ethics,
- iv. confidentiality,
- v. job specific competencies, and
- vi. documentation and record keeping.

Additional training shall be applicable to the duties of the staff receiving the training.

- 4. Records of completion of orientation and training. The agency shall maintain written, accessible documentation that orientation and ongoing training have been completed as described in these rules. The documentation shall include, at minimum, curriculum, names and credentials of persons providing orientation or training, dates orientation or training was provided, the length of time of each orientation or training session, and the dated signature of the trainee acknowledging receipt of the orientation or training.

#### **F. Management, Supervision and Discipline**

- 1. Lines of Authority. The agency shall maintain policies and effective procedures governing the application of the lines of authority, as described in the table of organization.
- 2. Supervision. The agency shall identify a supervisor for each position. Supervisors are responsible for supervising individual support coordinators or case managers, developing and reviewing service plans, and assuring the provision of quality case management services.
  - a. At minimum, supervision shall be provided according to the following standards:
    - i. Supervision must be conducted at regularly scheduled times, no less frequently than once monthly for each staff member.
    - ii. Supervision may be conducted on an individual or group basis. Supervision shall be measured and documented in hours and shall be subject to the review of the Department.
    - iii. Supervision shall include the following:
      - (a) review of case records, including the PCP,
      - (b) documentation in the case records, indicating the occurrence of the review,
      - (c) review of case record management activities, including adequacy and completeness of screenings, assessments, referrals, etc.,
      - (d) participation in the development of the employee's individual, group and family support skills, as applicable,

- (e) maintenance of a record of supervision, including the dates, employee(s) supervised, duration and content of supervision, signed by the supervisor, and
    - (f) issues germane to the duties being performed.
  - b. Policies shall describe day-to-day supervision and performance evaluation of staff members.
- 3. Performance evaluations. The agency shall maintain policies and effective procedures governing the routine, periodic, formal performance evaluation of employees. These policies shall discuss at a minimum,
  - a. criteria and procedures for employee performance evaluations;
  - b. the development and implementation of individualized performance improvement and training plans;
  - c. frequency of performance evaluations, which shall be completed no less frequently than at the conclusion of the first six and the first twelve months of employment, whether full or part time, and annually thereafter;
  - d. documentation of performance evaluations; and
  - e. provision of copies of performance evaluations to employees.
- 4. Discipline. The agency shall maintain policies and effective, lawful procedures governing employee discipline. These policies shall discuss at a minimum,
  - a. the circumstances under which discipline may be administered;
  - b. the range of interventions or penalties permitted;
  - c. the circumstances under which particular penalties are required or permitted;
  - d. the penalties for child abuse, mistreatment, neglect or exploitation;
  - e. the penalties for violation of individual rights;
  - f. the penalties for violation of rules of confidentiality, including those specific to the services being provided;
  - g. the penalties for workplace use or possession of illicit substances, alcohol or firearms;
  - h. the penalties for working under the influence of illicit substances or alcohol;
  - i. the penalties for falsification of any documents related to hiring or retaining employees, whether for self or on behalf of others;
  - j. the penalties for violation of personnel laws (including but not necessarily limited to EEO and ADA) and agency personnel policies;

- k. procedures for employees' appeal of discipline; and
- l. documentation of disciplinary actions and results of appeals.

5. Employee grievances. The agency shall maintain policies and effective procedures governing the acceptance and resolution of grievances brought by employees as a result of management practices, to include but not necessarily be limited to EEO, ADA and the Maine Human Rights Act.

## **G. Personnel Records**

1. Policies. The agency shall maintain policies and effective, reasonable procedures governing personnel records. These policies shall discuss at a minimum ,
  - a. custody, security and confidentiality of personnel records;
  - b. access to personnel records by employees, supervisors and other agency managers;
  - c. circumstances under which employees may add material to their own records;
  - d. circumstances under which employees may remove or request the removal of material from their own records;
  - e. circumstances under which persons other than the employee may add material to records;
  - f. circumstances under which persons other than the employee may remove material from records;
  - g. circumstances under which all or part of the personnel record may be discussed with or provided to others.
2. Active Records. The agency shall maintain active records for all current employees, contracted staff and consultants.
3. Inactive Records. The agency shall maintain policies and effective procedures governing the identification, custody, security, confidentiality and disposal of personnel records considered inactive. Inactive records shall be maintained at the agency for a period no less than three calendar years following the last period of employment.
4. Content of Records. Personnel records shall, at minimum, contain
  - a. a completed, signed, dated application or resume.
    - i. Applications shall include a statement consistent with 17-A MRSA §453, regarding falsification of information provided in the application.
    - ii. Resumes submitted in lieu of applications must include a complete description of relevant education and experience. The applicants who submit resumes in lieu

- of applications shall sign and date a separate document including the statement described above in 4.a.i, which shall be attached to the resume;
- b. letters of reference, if provided or acquired. Notes of any telephone reference checks shall be included. Unfavorable references may not be omitted, if provided or acquired;
  - c. applicable, current professional credentials and certifications;
  - d. records of completion of orientation and training required under these rules;
  - e. the results of all background or reference checks, as described at Section V. D. 2, above;
  - f. current job description;
  - g. performance evaluations;
  - h. documentation of disciplinary action and results of appeals;
  - i. starting, transfer, promotion, demotion and termination dates;
  - j. a statement read, signed and dated by the employee, which clearly defines abuse, mistreatment, neglect, exploitation and breach of confidentiality; outlines the responsibility to refrain from such actions and to report all such incidents or suspected incidents; and describes the consequences of failure to comply with the requirements to refrain from such actions and to report all such incidents or suspected incidents;
  - k. employment agreements, if applicable, including contracts governing the use of contracted employees or consultants;
  - l. letters of accommodation and supporting medical records, if applicable.

## **VI. OPERATIONAL PRACTICES**

### **A. General**

1. Policies. The agency shall adopt written operational policies and procedures to adequately address each relevant element of these rules and applicable laws.
2. Tobacco.
  - a. Agency staff shall not provide, distribute or facilitate access to tobacco products to persons under the legal age.
  - b. Agency staff shall not use tobacco products in the presence of persons under the legal age.
  - c. Programs shall not allow persons under the legal age to use tobacco products at the program site or during service provision.
  - d. Programs shall maintain current and effective policies and procedures to ensure the above standards. Policies shall

describe disciplinary action to address employee noncompliance with the above standards. Policies shall be in compliance with Section V.F.

## **B. Program Organization**

1. Program Manager. The agency shall designate an individual as program manager, having overall responsibility for the operation of each program.

- a. the program manager shall be responsible for the operation of the program at all times. In the necessary absence of the program manager, there shall be designated a qualified person in charge;
- b. program managers shall be at least 21 years of age, shall possess a baccalaureate degree from an accredited college or university in a field of study applicable to the provision of human or social services, and shall have had at least four years of relevant experience in the provision of developmental disability services.
- c. the duties of the program manager shall be clearly described in the written job description, including minimum qualifications, responsibilities and lines of authority.
- d. nothing in these rules prohibits the sharing of managers between programs, if the programs are adequately managed.

2. Population Served. Characteristics of the population served shall be specifically defined.

- a. This description shall include, but not necessarily be limited to, age, gender, geographic area served, income constraints, need-based descriptors and criteria, and diagnostic or service need descriptors.
- b. The agency shall ensure the application of a policy of non-discrimination consistent with applicable laws and regulations, and shall publish this policy in all promotional material. Nothing in these rules prohibits agencies from extending the non-discrimination policy to exceed that required by law or regulation.
- c. the agency shall ensure the application of a specific policy and procedure regarding compliance with the ADA, Section 504 of the Rehabilitation Act, the Civil Rights Act, and the Maine Human Rights Act.
  - i. the policy shall specifically address how persons with disabilities may access services.
  - ii. the agency shall notify the Department of complaints pursuant to the above cited laws which result in a finding of reasonable grounds by an external regulatory body.

### **C. Program Management**

1. General. Each program shall develop, maintain and follow current, accurate policies and procedures governing each and every aspect of the delivery of certified services within the program.

- a. there shall be an effective method for development, review and revision of policies and procedures, coordinated and integrated with the review required of the Governing Body, described at Section IV B 5 b vi. Review of policies and procedures shall be no less frequent than every two years and shall include the signature of the program manager and/or chief administrative officer.
- b. employees shall have reasonable access to policies and procedures governing program administration. The definition of "reasonable" shall be contained in policy, and shall not be so restrictive as to impede an employee's performance of assigned duties.
- c. policies and procedures governing the administration of a program shall form the basis of training required under Section V E.
- d. policies and procedures implemented at the program level shall be consistent and in concert with policies and procedures of other related agency programs and with the agency as a whole.
- e. policies regarding hours of operation and access to services shall be clearly articulated and made available to staff and to persons receiving services.

2. Rights of Individuals Receiving Services. There shall be specific policies and procedures governing the assurance of rights of individuals receiving services.

3. Records. There shall be specific policies and procedures governing the confidential maintenance of records of service provision. These policies and procedures shall be consistent with agency policy and HIPAA, and shall address situations unique to the services provided, population served and site of operation.

4. Interpretive Services. There shall be specific policies and procedures governing the availability and provision of interpretive services, whether spoken language or sign, consistent with applicable law and regulation.

### **D. Staffing Patterns**

1. Number of Staff. The program shall employ a sufficient number of qualified employees to ensure the provision of services. Case managers working full time shall not carry case loads in excess of 35 persons. Case managers working part time shall carry case loads pro-rated to their hours worked.
2. Scheduling. Policies and procedures shall be maintained to govern
  - a. routine scheduling of staff;
  - b. emergency, unusual and unplanned changes in staffing requirements;
  - c. methods employed to ensure adequate program staffing during periods of staff unavailability, such as vacation, holidays, or sick leave;
  - d. the use of per diem or contracted staff;
  - e. any other staffing issue particular to the services provided or population served.
3. Staff to Supervisor Ratios. Supervisors shall provide clinical/professional and administrative supervision to direct care staff at a ratio of supervisors to staff that will ensure all supervisory requirements are met.
4. Records. Records of planned staffing and actual attendance shall be retained at each program for a period not less than 180 days and shall be subject to the review of the Department.

**E. Person Centered Plans.** Programs shall maintain and enforce policies and procedures to ensure adherence to the Department's standards for Person Centered Planning and or Individual Planning.

## **VII. ENVIRONMENT AND SAFETY**

**A. Compliance.** The agency shall ensure and document continuous compliance with all applicable laws, rules and regulations governing the location, occupancy, use, maintenance, construction and/or renovation of physical structures used in the delivery of licensed services.

**B. Structures.** All structures provided by the agency and used in the delivery of services shall be maintained in good repair and free from danger to health or safety, and shall be appropriate to the services provided. The agency shall meet current requirements of the ADA , the Rehabilitation Act, and the Maine Human Rights Act.

**C. Emergency Management Plans.** The agency shall adopt written procedures for staff to follow in case of emergency or disaster. Staff

Access to Plans. Copies of emergency management plans shall be readily available to all staff at all times.