

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES

GUIDANCE DOCUMENT

“This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Nebraska Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.”

Pursuant to
Neb. Rev. Stat. § 84-901.03

PROVIDER BULLETIN



Pete Ricketts, Governor

No. 19-02

DATE: July 1, 2019

UPDATED: 9/6/2019
6/15/2020

TO: Medicaid HCBS DD Waiver Agency Service Providers

FROM: Courtney Miller, Director; Tony Green, Interim Director
Division of Developmental Disabilities

BY: Katherine Becker, Policy Administrator II; Katie Weidner, Program Manager

RE: Guardians employed by Medicaid HCBS DD Agency Service Providers

This bulletin is being issued to remind Medicaid Home and Community-Based Services (HCBS) Developmental Disabilities (DD) Agency Service Providers [hereinafter “Agency Providers”] that, pursuant to the Comprehensive DD waiver, number NE.4154, having an effective date of June 1, 2017; and the Adult Day DD waiver, number NE.0394, having an effective date of March 1, 2017, an Agency Provider delivering direct services and supports under either waiver cannot also serve as a court-appointed guardian of the participant.

Per Nebraska Revised Statute §§ 30-2627(a) and 30-2639(a), it is unlawful for a person to be appointed or serve as guardian or conservator for a ward, if that person is also an employee, owner, part owner, manager, or administrator (or spouse of any of the aforementioned) of: a room and board home, assisted-living facility, or institution engaged in the care, treatment, or housing of any person physically or mentally handicapped, and the ward is residing, under care, receiving treatment, or being housed by that same home, facility, or institution.

This bulletin is intended to clarify that the actions of subcontractors of Agency Providers, such as shared living providers (formerly known as extended family home providers), are imputed under the common law of agency to that Agency Provider. As such, where an Agency Provider is prohibited by the comprehensive or adult day waivers from serving as guardian for an individual to whom that Agency Provider is delivering direct services and supports, so is any subcontractor to that Agency Provider.

The Division of Developmental Disabilities is tasked with administering the Medicaid Home and Community Based Services (HCBS) DD waivers upon application approval by the Centers for Medicare and Medicaid Services (CMS).¹ The approved DD waivers contain assurances the State of Nebraska has made to CMS regarding the manner in which DD HCBS will be delivered, monitored, and implemented.

¹ Neb. Rev. Stat. § 83-1216(1)

As the designated state Medicaid agency responsible for administering the DD waivers, DHHS is responsible for ensuring that a waiver is operated in accordance with applicable Federal regulations and the provisions of the waiver itself.

In addition, state law empowers the Division of Developmental Disabilities to regulate Agency Providers. Pursuant to Title 404 of the Nebraska Administrative Code, Chapter 5-003, to maintain certification as an Agency Provider, the provider must comply with all applicable state law and regulation. Thus, regulations promulgated by the State of Nebraska, the federal government, and provisions of the approved Medicaid waiver application are all applicable sources of law and impose certain requirements on all Agency Providers which are certified by DHHS to provide HCBS waiver services.

On August 21, 2019, the Division of Developmental Disabilities sent letters to guardians who are out of compliance to informally request that they work with the Medicaid HCBS DD Agency Service Provider with whom they are employed to remediate this *by October 31, 2020*.

Previous iterations of this bulletin indicated that remediation must occur no later than one year from the date of the letter. This deadline is being extended to allow for additional time due to the COVID-19 pandemic.

If you have any questions about this provider bulletin, please contact Katie Weidner at katie.weidner@nebraska.gov or 402-471-8706 or 402-560-1585.

June 15, 2020 - Updates to this provider bulletin are denoted in Italics.