

The Department of Health and Human Services Division of Developmental Disabilities (DHHS-DD) has made revisions to Title 404 of the Nebraska Administrative Code (NAC). The new 404 NAC regulations are currently pending approval.

- This document contains an overview of the changes. Remember, 403 NAC regulations are also still in effect.
- All providers must adhere to 404 NAC immediately upon becoming effective; however, certified agency providers will be given 3 months to update their policies and procedures to comply with the regulation changes.

## Chapter 1

- When DHHS-DD denies a provider's request for alternative compliance, this decision cannot be appealed.

## Chapter 2

- For the purposes of 404 NAC, definitions found in the Developmental Disabilities Services Act (Neb. Rev. Stat. §§ 83-1201 to 83-1226), the Public Guardianship Act (Neb. Rev. Stat. §§ 30-4101 to 30-4118), the Workforce Innovation and Opportunity Act (34 C.F.R. parts 361, 363, and 397), the Adult Protective Services Act (Neb. Rev. Stat. §§28.348 to 28-387), and the Child Protection and Family Safety Act (Neb. Rev. Stat. §§ 28-710 to 28-727), and definitions found in 404 NAC Chapter 2 apply.
- Definitions were added for the following terms:
  - Applicant for Certification – The individual, governmental entity, corporation, partnership, limited liability company, or other form of business organization who applies for certification as a provider of specialized services.
  - Intermediate Care Facility for Individuals with Developmental Disabilities (ICF/DD) – Intermediate care facility for individuals with developmental disabilities has the same definition as that set forth at Neb. Rev. Stat. §71-412.
  - Individual Support Plan (ISP) – A written plan which identifies the supports, activities, and resources required for a participant to achieve and maintain personal goals and health and safety.
  - Individual Support Planning Team – The team, consisting of the participant, legal representative, if applicable, service coordinator, provider representative, and other individuals chosen by the participant served, that develops the ISP.
  - Participant – An individual receiving Waiver program services and supports. Where the right to receive notice, to participate in the individual support planning team process and development of the ISP, or informed choice are regulated in Title 404 NAC, participant also means any competent person legally authorized to act on behalf of the individual receiving Waiver program services and supports.
- Definitions for the following terms were revised:
  - Certified Provider – The person or entity providing developmental disabilities services and to whom the Department has issued a certification.

- Objective Assessment Process – The process used by the Department to determine the amount of funding for any participant receiving services, which includes the Inventory for Client and Agency Planning (ICAP) and other assessments.
  - Physical Restraint – Any physical hold that restricts, or is meant to restrict, the movement or normal functioning of a participant.
  - Service Coordination – Targeted case management services provided by Department staff to assist a participant in facilitating services and supports for which he or she qualifies.
- All other definitions contained in the previous version of 404 NAC remain the same or were removed. Definitions were removed when they appear elsewhere in statute or regulation, or because they are no longer relevant to 404 NAC.

### Chapter 3

- The timeline for notifying an individual of an eligibility determination was removed.
- Removed references to the graduate entitlement which is no longer a part of the Developmental Disabilities Services Act.
- Eligibility information for Medicaid HCBS Developmental Disabilities waivers was removed as this information can now be found in 403 NAC.
- Informal Dispute Resolution was removed as an option for appealing a DHHS-DD decision.

### Chapter 4

- Information in chapters was realigned, and Chapter 4 now contains certification requirements for certified providers of developmental disabilities services.
- References to “specialized providers” have been replaced with “agency providers”.
- The categories of service options, including individual support options and provider operated services were removed. Information about specific requirements for all services, including what types of provider may offer the services, are outlined in 403 NAC.
- The requirement to submit a letter of intent before submitting an application for certification was removed.
- The overview of the certification process was revised to simplify and remove outdated language.
- An applicant for certification must now submit an application using forms provided by DHHS-DD.
- Information required in the application was revised.
- Provisional certification was removed as a step in the certification process. Providers will now receive a two-year certification upon successful completion of a certification review. A one-year certification may be issued if a certification review shows significant or repeated deficiencies or evidence provider systems are not functioning properly.
- Grounds for denial of certification were expanded to include circumstances in which:
  - A provider or agency owner is the respondent of a protection order;
  - A provider, agency owner, administrative staff, or management has committed a crime listed in the chapter;
  - The provider or its owner is listed on the Adult Protective Services or Child Abuse and Neglect Central Registries; or
  - A person with 5% or greater ownership interest in the provider has been convicted of a criminal offense related to involvement with Medicare, Medicaid, or Title XXI.
- A notification requirement was added for the provider to notify DHHS-DD in writing of any change in contact information, including physical business address, phone number, mailing address, or email address, within 10 business days of the change.
- Informal Dispute Resolution (IDR) was removed as an option for a provider to appeal a decision made by DHHS-DD.

- A requirement for a participant to provide at least 30 days written notice when terminating services with a provider was removed.
- Requirements for background checks were revised to reflect that the checks must be completed for all employees and contractors providing direct support to participants within 10 calendar days prior to supporting participants and at least annually thereafter.
- Regulations were removed which allowed a provider to employ a person listed on the Central Abuse and Neglect Registry, the State Patrol Sex Offender Registry, or charged or convicted of a crime listed in 404 NAC if the provider determines the person does not pose a risk to participants.. A provider now cannot have an employee or contractor providing direct support services if he/she is listed on the Central Abuse and Neglect or State Patrol Sex Offender Registries, or if he/she is charged pending disposition or convicted of a crime outlined in 404 NAC.
- Regulations allowing an alternative method of criminal history check was removed.
- The list of criminal offenses referenced in this chapter was expanded to include criminal child enticement, exploitation of a vulnerable adult, stalking, strangulation, terroristic threats, theft offenses, misdemeanor assault without a weapon, arson, kidnapping, false imprisonment, human or other trafficking offenses, manslaughter, and any crime which DHHS-DD determines may endanger the health or safety of any person.
- Service standards applying to all providers (agency and independent) of DD services were moved to Chapter 5.
- Requirements related to use of psychotropic medication were moved from Chapter 6 to Chapter 4.
- Revised criteria for determining whether psychotropic medication is a rights restriction has been added.

## Chapter 5

- Chapter 5 previously contained regulations for Individual Support Options services. DD services are no longer divided into Provider Operated and Individual Support Options, so all information on Individual Support Options services was removed.
- Chapter 5 now contains core requirements for all providers (agency and independent) of DD services.
- Regulations requiring providers to participate in Individual Support Plan (ISP) team meetings and provide services in accordance with the participant's ISP were added.
- Requirements for provision of Respite, Homemaker, and Home Modification services were moved to Chapter 5 from deleted chapters.
- Requirements for non-residential service settings were moved to Chapter 5 from deleted chapters.
- Requirements for respite providers were revised to state that independent providers of respite must be age 19 or older, and all providers of respite must be certified in first aid and CPR and agree to never leave a minor participant alone.
- Regulations related to the ISP, positive behavioral supports, assessments, Notice of Costs, health services, disaster preparedness, transportation, complaints, confidentiality, and recordkeeping were moved from Chapter 4 to Chapter 5.
- Regulations related to rights restrictions and restraints were moved from Chapter 6 to Chapter 5.

## Chapter 6

- Chapter 6 previously contained regulations for Provider Operated Service Options. DD services are no longer divided into Provider Operated and Individual Support Options, so all information in this chapter was moved or deleted.
- Regulations on provider data collection and reporting were moved from Chapter 11 to Chapter 6.
- An exception allowing a provider with an annual operating budget of less than \$200,000 to submit a detailed financial statement in lieu of an independent, detailed audit was removed.

## Chapters 8-11

- The remaining chapters in 404 NAC were repealed. Regulations in these chapters were included in the revised chapters, were included in 403 NAC, or were removed.