

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

DPH Community Based Survey Team Appendix K Implementation Plan

Issued April 29, 2020; Expires September 6, 2020 or upon expiration of Appendix K NE 4154.R06.08 and NE 0394.R03.05, whichever is later.

The purpose of this document is to outline general implementation plans related to the DHHS Division of Public Health (DPH) regulatory oversight processes for community based agency providers under the authority of Title 404 NAC.

Licensed Centers for Developmental Disabilities (CDDs) are licensed by a separate DPH team under the authority of Title 175 NAC. Questions about CDD regulations should be directed to Mark Luger. “Independent” and “Independent Agency” services are under the direction of the Division of Developmental Disabilities and not included in this document.

In response to the COVID-19 issues affecting Nebraska’s delivery of developmental disability services, the Department of Health and Human Services (DHHS) Division of Developmental Disabilities (DD) and Division of Medicaid and Long-Term Care (MLTC) submitted “Appendix K: Emergency Preparedness and Response and COVID-19 Addendum” to the Centers for Medicare and Medicaid Services (CMS). The purpose of Appendix K is to receive federal approval to waive certain requirements under the 1915(c) home and community based waiver in response to emergencies. Two waiver appendices were submitted on March 31, 2020 and approved April 20, 2020.

1. Comprehensive Developmental Disabilities Services Waiver
<http://dhhs.ne.gov/DD%20Documents/NE%204154%20COVID-19%20Appendix%20K.pdf>
2. Developmental Disabilities Day Services Waiver for Adults
<http://dhhs.ne.gov/DD%20Documents/NE%200394%20COVID-19%20Appendix%20K.pdf>
<http://dhhs.ne.gov/DD%20Documents/NE%204154%20COVID-19%20Appendix%20K.pdf>

The effective dates are March 6, 2020 (retroactive) and ending September 6, 2020. The “COVID-19 Appendix K Fact Sheet” <http://dhhs.ne.gov/Guidance%20Docs/COVID-19%20Fact%20Sheet.pdf> and “Frequently Asked Questions for Agency Providers” <http://dhhs.ne.gov/Guidance%20Docs/COVID-19%20Appendix%20K%20FAQ%20AGENCY.pdf> provide a summary of the changes and impacts for agency providers. These documents were created by DD.

For the duration of Appendix K, the DPH community based services (CBS) surveyors:

1. Will continue to monitor all plans of improvement (POI) and disciplinary actions. Providers must continue to implement and submit POI updates as directed in the letters accepting the POI.

2. Will continue to investigate complaints of provider non-compliance with Title 404 NAC regulations.
3. May document areas of regulatory non-compliance or issue formal citations, and
 - a. May suspend requirements for a plan of improvement until the COVID-19 emergency situation has been lifted, or
 - b. May require a plan of improvement that is not required to be completed until the COVID-19 emergency is lifted.
4. May conduct recertification reviews by means including document reviews, telephone and other distance interviews, video observations, and any other reasonable means.
5. May issue certification extensions and conduct reviews later if distance reviews are not feasible. Criteria for extensions will be providers with:
 - a. Existing 2 year certifications,
 - b. No active POIs for complaint citations, and
 - c. No disciplinary actions in force.
6. May continue to review policies and procedures submitted by prospective new agency providers. New providers will not be allowed to begin serving individuals in residential settings until onsite visits can be completed. Special circumstances that would prevent a person in services from having a home may result in alternate means to evaluate a physical setting.

Surveyors, in consultation with the manager, will use reasonable judgement when determining if specific situations will be exempted from citations during this time, if:

- a) The failure to ensure the regulatory compliance does not put the health or safety of the individual(s) involved at risk,
- b) The provider has documentation of the attempts they have made to meet the regulatory requirement, and
- c) The provider describes a plan to come into compliance as soon as the situation makes it possible.

Citations for non-compliance between March 6, 2020 and September 6, 2020 still require a plan to bring the issues into regulatory compliance that reflects a reasonable time frame considering COVID-19 issues.

Providers of all services must ensure their services and supports provided maintain safety, health, habilitation, and well-being for all individuals served. Regulations related to abuse, neglect, exploitation, documentation, habilitation, and medical care are examples of regulatory requirements that will continue to be evaluated and cited.

Questions about specific situations can be directed to Susan Kotas, DPH Manager at Susan.Kotas@Nebraska.gov