



Community-Based Services DD Regulations

Prior to the reorganization of the Department of Health and Human Services (DHHS) and the creation of the Division of Developmental Disabilities in 2007, the responsibility for services to individuals with developmental disabilities was split between various agencies. Due to the fragmented nature of the regulatory framework and the interest in bringing Nebraska into compliance with nationally recognized best-practices, the Division began to work on revising regulations pertaining to developmental disability services in 2008. The Division took into consideration the input of stakeholders, emerging trends in service delivery, the requirements of the Department's settlement agreement with the U.S. Department of Justice, and the need for regulations that contain an adequate framework yet retain flexibility to ensure that person-centered outcomes can be obtained with developmental disability services.

Effective July 16, 2011, the developmental disability services regulations contained in Title 205 and Title 480 of the Nebraska Administrative Code were repealed and Title 404, Community-Based Services for Individuals with Developmental Disabilities, was adopted. Title 175, Regulations Governing Centers for the Developmentally Disabled, remains independent from Title 404, as the Division of Public Health retains facility licensure authority over Centers for Developmental Disabilities (i.e. residential facilities that serve four or more persons with developmental disabilities.) Title 202, which contains the regulations that determine an individual's ability to pay for services funded by DHHS, is also independent from Title 404 and is applicable to the services regulated through Title 404. Otherwise, the Division has successfully combined the regulatory requirements applicable to developmental disability services funded by the Division into one comprehensive set of regulations in Title 404.

A copy of Nebraska Administrative Code, Title 175 may be found at:

[http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Health and Human Services System/Title-175/Chapter-03.pdf](http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Health%20and%20Human%20Services%20System/Title-175/Chapter-03.pdf)

A copy of Nebraska Administrative Code, Title 202 may be found at:

http://dhhs.ne.gov/Pages/reg_t202.aspx

A copy of Nebraska Administrative Code, Title 404 is being provided in the Appendix Z herein.

The Division reviews Title 404 annually to determine whether revisions are needed based upon: statutory changes, federal regulatory changes, and the input of individuals, their families, providers, and other community stakeholders. During the 2014-15 fiscal year, the Division expects

to submit changes to Title 404 in order to address recent changes in federal requirements and state statute.

Changes to Title 404 may be necessary to address the following issues:

- The Centers for Medicare & Medicaid Services (CMS) issued a new rule on 3/17/2014, that includes a definition of community-based settings and authorities under which states may use Medicaid funds to pay for Home and Community Based Services.
- The United States Department of Labor implemented a new rule, effective January 2015, that revises some existing exceptions to the Fair Labor Standards Act and may impact the Division's array of services.
- Legislation was enacted in 2013 to address background provisions that were in conflict with federal law. The Division has already begun to implement the changes through administrative exception authority that is currently provided for in Title 404. It is prudent, however, to more permanently implement these changes through the formal regulatory process.
- On July 1, 2014, a new rate methodology was implemented for DD Services. Significantly, the new methodology provides for hourly and daily rates, instead of units. The Division has collaborated with service coordinators and providers to develop billing guidelines to provide clarity and accountability. While the billing guidelines are currently incorporated into our contracts with all specialized providers, such requirements should be implemented through the formal regulatory process to ensure continuity and due process.
- The Division has met routinely with provider agencies since implementation of the 2011 revisions. We will clarify some sections of the regulations that either provider agencies or Division staff have identified through this process.