

Summary of Changes to Title 404 NAC

The Department of Health and Human Services (DHHS), Division of Developmental Disabilities (DDD) has made revisions to Title 404 of the Nebraska Administrative Code (NAC). **The revised 404 NAC regulations are effective November 19, 2022.** Regulations in 403 NAC are also still effective.

This document contains an overview of changes made to 404 NAC. All developmental disabilities (DD) providers must adhere to 404 NAC immediately upon it becoming effective; however, certified agency providers will be given three months, until February 19, 2023, to update their policies and procedures to comply with the regulation changes, as stated in DD Provider Bulletin 22-04.

Chapter 1

- When DHHS 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.
- Added definitions 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.
 - Director – The person hired by, reporting to, and authorized by the certified provider to direct the day-to-day activities of the provider agency. The director may also be identified as the administrator, executive director, chief executive officer, program administrator, or other similar terms.
 - Emergency Safety Situation – Unanticipated behavior by a participant that places the participant or others at serious threat of violence or injury if no intervention occurs and that requires an emergency safety intervention.
 - Emergency Safety Intervention – Use of physical restraint or separation as an immediate response to an emergency safety situation.
 - Emotional Abuse – Humiliation, harassment, threats of punishment or deprivation, sexual coercion, or intimidation, resulting in emotional harm or emotional anguish
 - 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. §71-421.
 - 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.

- Risk Endorsement – An addendum for which a certified agency may apply in order to serve participants determined to meet the need for behavioral risk services.
- Seclusion – The involuntary confinement of a participant alone in a room or an area from which the participant is physically prevented from having contact with others or leaving. Seclusion is prohibited. Seclusion is not separation of a participant to a safe room or area in an emergency safety situation as part of an emergency safety intervention.
- Substantial Functional Limitation – A score that is two standard deviations or more below the mean on a properly administered and valid, norm-referenced assessment of adaptive functioning that is generally accepted within the field of psychology.
- Revised definitions for the following terms:
 - 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.
 - 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 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

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

Chapter 4

- Realigned information in chapters. Chapter 4 now contains certification requirements for certified DD providers.
- Replaced references to “specialized providers” with “agency providers.”
- Removed categories of service options, including individual support options and -provider-operated services. Information about specific requirements for all services, including what types of providers may offer the services, are outlined in 403 NAC.
- Removed the requirement to submit a letter of intent before submitting an application for certification.
- Revised the overview of the certification process to simplify and remove outdated language.
- An applicant for certification must now submit an application using forms provided by DHHS.
- Revised information required in the provider application.
- Removed provisional certification 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 when a certification review shows significant or repeated deficiencies or evidence provider systems are not functioning properly.
- Expanded grounds for denial of certification 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.
- Added requirements for agency providers seeking risk endorsement including, but not limited to, full-time employment of a licensed clinician, two consecutive years operating as a certified, licensed, or accredited agency provider in Nebraska, and additional staff training.
 - Added a notification requirement for providers to notify DDD 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.
 - Added a notification requirement for any provider with a risk endorsement to notify DDD in writing of a change in clinician, change in clinician's employment status with the provider, or change in clinician's license status within five business days of the change.
 - Added Appeal Rights for adverse action taken under Chapter 4, for persons or entities who had action taken against them.
 - Added hearing request procedure for persons or entities appealing an adverse action.
 - Removed Informal Dispute Resolution (IDR) an option for a provider to appeal a decision made by DHHS.
 - Removed the requirement for a participant to provide at least 30 days written notice when terminating services with a provider.
 - Revised requirements for background checks to reflect that the checks must be completed for all employees and contractors providing direct support to participants prior to working alone to supporting participants and at least annually thereafter.
 - Removed regulations that 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 they are listed on the Central Abuse and Neglect or State Patrol Sex Offender Registries, or if they are charged pending disposition or convicted of a crime outlined in 404 NAC.
 - Removed regulations allowing an alternative method of a criminal history check.
 - Expanded the list of criminal offenses referenced in this chapter 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 determines may endanger the health or safety of any person.
 - Moved service standards applying to all providers (agency and independent) of DD services to Chapter 5.
 - Moved requirements related to use of psychotropic medication from Chapter 6 to Chapter 4.
 - Added revised criteria for determining whether psychotropic medication is a rights restriction. The term Psychotropic Medications has been revised to Restrictive Measures.

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, which was moved from Chapter 4.
- Added regulations requiring providers to participate in Individual Support Plan (ISP) team meetings and provide services in accordance with the participant's ISP.
- Moved requirements for provision of Respite, Homemaker, and Home Modification services to

Chapter 5 from deleted chapters.

- Moved requirements for non-residential service settings to Chapter 5 from deleted chapters.
- Revised requirements for respite providers 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.
- Moved regulations related to the ISP, positive behavioral supports, assessments, Notice of Costs, health services, disaster preparedness, transportation, complaints, confidentiality, and recordkeeping from Chapter 4 to Chapter 5.
- Moved regulations related to rights restrictions and restraints from Chapter 6 to Chapter 5.
- Added regulation that restrictive measures need to be documented in the participant's ISP.

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.
- Moved regulations on provider data collection and reporting from Chapter 11 to Chapter 6.
- Removed 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.
- Added financial requirements for providers related to minimum cash reserve, annual audits, and fiscal year establishment.

Chapters 8-11

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