

TITLE 175 HEALTH CARE FACILITIES AND SERVICES LICENSURE

CHAPTER 3 LICENSURE OF CENTERS FOR PERSONS WITH DEVELOPMENTAL
DISABILITIES (CDDs)

3-001 SCOPE AND AUTHORITY: These regulations govern licensure of centers that provide services to persons with developmental disabilities (CDDs). These regulations are authorized by and implement the Health Care Facility Licensure Act, Neb. Rev. Stat. §§ 71-401 to 71-464.

3-001.01 These regulations apply to any setting where the following is provided:

1. Shelter;
2. Food;
3. Services to meet the needs of individuals including: care (habilitation, supervision and assistance with personal care, activities of daily living, health maintenance and other supportive services); treatment (to maintain well being or to diagnose, assess, alleviate, or prevent a disability, injury, illness, disease or other similar conditions); advice, counseling, diagnosis, or related services;
4. Services for a period of more than twenty-four consecutive hours; and
5. Services to four or more individuals who have developmental disabilities and reside at the setting.

~~001 DEFINITIONS.~~ As used in these regulations, unless the context to be intelligible or prevent absurdity otherwise requires:

~~001.01 Administrator means the operating or supervisory office of a Center for the Developmentally Disabled, however titled. The administrator may also, but need not be, the owner or the licensee of a Center for the Developmentally Disabled.~~

~~001.02 Center for the Developmentally Disabled means any residential facility, place, or building, not licensed as a hospital, which is used to provide accommodation, board, and training, advice, counseling, diagnosis, treatment, care, including medical care when appropriate, or services primarily or exclusively to four (4) or more persons residing in the facility who are developmentally disabled, which term shall include those persons suffering from mental retardation, cerebral palsy, epilepsy, or other neurological handicapping conditions which require care similar to the care required for persons suffering from such aforementioned conditions. The term, "Center for the Developmentally Disabled", shall include a group residence.~~

~~001.03 Group Residence means any group of rooms located within a building or structure forming a habitable unit with living, sleeping, cooking, and eating facilities for four (4) or more, developmentally disabled persons, operated by the same or identical lessee, owner, or management.~~

~~001.04 Ambulatory means the ability to walk without assistance.~~

~~001.05 Department means the Department of Health of the State of Nebraska.~~

~~001.06 Facility shall mean a Center for the Developmentally Disabled.~~

~~001.07 Licensee means the individual, firm, partnership, corporation or other entity legally responsible for the operation of the Center for the Developmentally Disabled and holding the license for its operation.~~

~~001.08 New Construction means erection of new buildings or the alteration of or addition to existing buildings and that wherever such alterations or additions occur shall comply with all the requirements or construction.~~

~~001.09 Non Ambulatory means the inability to walk without assistance.~~

~~001.10 Resident means any person admitted to a Center for the Developmentally Disabled.~~

~~001.11 Usable Floor Area means the floor area in a room exclusive of space used for entrance, vestibules, closets, toilet areas and bathing areas.~~

~~001.12 Conversion means converting an existing structure for use as a Center for the Developmentally Disabled.~~

~~001.13 Time Out Room is a program procedure which involves removing the person from a reinforcing situation by placing the person in a room where the person remains for a time under staff observation when the person engages in a specified inappropriate behavior.~~

~~001.14 Seclusion is placement of an individual alone in a locked room. Seclusion is not allowed.~~

3-002 DEFINITIONS

Abuse means any knowing, intentional, or negligent act or omission on the part of a person which results in physical, sexual, verbal, or emotional abuse, unreasonable confinement, cruel punishment, exploitation, or denial of essential care, treatment, or services to an individual.

Adjoining means located to allow access without having to enter a general corridor area used or observed by other facility occupants.

Administrator means the operating officer for the Center for Persons with Developmental Disabilities and may include titles such as administrator, manager, director or similar designation.

Applicant means the individual, government, corporation, partnership, limited liability company, or other form of business organization who applies for a license.

Assessment means the process that identifies the preferences, skills, and needs of the person and the services, interventions, and support that would facilitate a healthy, safe, and meaningful life.

Aversive stimuli means procedures, devices, or treatment that are punishing, physically painful, emotionally frightening, or deprivational or that have the potential to be a health and/or safety risk to individuals. Aversive stimuli are prohibited.

Care means the exercise of concern or responsibility for the comfort, welfare, and habilitation of persons, including a minimum amount of supervision and assistance with or the provision of personal care, activities of daily living, health maintenance activities, or other supportive services. For the purposes of this chapter:

1. Activities of daily living means transfer, ambulation, exercise, toileting, eating, self administered medication, and similar activities;
2. Health maintenance activities means non-complex interventions which can safely be performed according to exact directions, which do not require alteration of the standard procedure, and for which the results and the individuals' responses are predictable; and
3. Personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities.

Chief Medical Officer means the Director of Public Health, if s/he is licensed to practice medicine and surgery in the State of Nebraska. If the Director of Public Health is not licensed to practice medicine and surgery in the State of Nebraska, the Governor will appoint a chief medical officer in addition to the Director of Public Health. The chief medical officer is the final decision maker in contested cases regarding licensure of Centers for the Persons with Developmental Disabilities.

Choice means the individual's expression of preference, opportunity for, and active role in, decision-making related to the selection of assessments, services, providers, goals, and activities, and verification of satisfaction with these services.

Conflict of interest means a conflict between the private interests and the official responsibilities of a person in a position of trust.

Complaint means an expression of concern or dissatisfaction.

Completed application means an application that contains all the information specified in 175 NAC 3-003 and includes all required attachments, documentation, and the licensure fee.

Complex nursing intervention means, related to nurse delegation, interventions for health care needs of individuals, which require nursing judgment to safely alter standard procedures in accordance with the needs of the individual, which require nursing judgment to determine how to proceed from one step to the next, or which require a multidimensional application of the nursing process. Unlicensed persons can not provide these interventions. (Also see non-complex nursing interventions.)

Delegation means for the purpose of nurse delegation, means a process of transferring by the Registered Nurse (RN) to an unlicensed person the authority, responsibility, and accountability to perform non-complex nursing interventions.

Department means the Department of Health and Human Services, Division of Public Health.

Developmental disability means a severe, chronic disability of an individual that meets the following:

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
2. Is manifested before the individual attains age 22;
3. Is likely to continue indefinitely; and
4. Results in substantial functional limitations in three or more of the following areas of life activity:
 - a. Self-care;
 - b. Receptive and expressive language;
 - c. Learning;
 - d. Mobility;
 - e. Self-direction;
 - f. Capacity for independent living; and
 - g. Economic self-sufficiency.

Direct Support Staff means employees who provide the direct services, supports, care and treatment, and supervision to individuals.

Direction means, for the purpose of Nurse Delegation, managing, guiding, and supervising unlicensed persons performing the non-complex nursing interventions.

Direction and monitoring means, for the purpose of provision of medication by medication aides, the acceptance of responsibility for observing and taking appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with the medication being provided. Direction and monitoring can be done by a:

1. Recipient with capability and capacity to make informed decision about medications for him/herself;
2. Recipient-specific caretaker; or
3. Licensed health care professional.

Director means the Director of Public Health of the Division of Public Health.

Documentation means the provision of written, dated, and signed evidence.

Drug means substances as defined in Neb. Rev. Stat. § 38-2819.

Dwelling means a building that contains living and sleeping areas; storage room(s); separate room(s) containing a toilet, lavatory, and a bathtub or shower; and a kitchen area with a sink and cooking and refrigeration appliances.

Emergency safety situation means unanticipated behavior by an individual that places the individual or others at serious threat of violence or injury if no intervention occurs and that requires an emergency safety intervention.

Emergency safety intervention means the use of physical restraint as an immediate response to an emergency safety situation.

Emotional abuse means humiliation, harassment, threats of punishment or deprivation, sexual coercion, or intimidation, resulting in emotional harm or emotional anguish.

Employee means an employee of the CDD or, if the CDD is a subdivision of an agency or organization, an employee of the agency or organization who is appropriately trained and works at the CDD. Employee also refers to a volunteer under the jurisdiction of the CDD. May also be referred to as staff.

Existing facility means a licensed health care facility or a facility whose construction or remodeling plans were approved by the Department prior to the effective date of 175 NAC 3.

Exploitation means to obtain by deception, intimidation, or undue influence with the intent to deprive the individual of the individual's money, property, body, work, or sexuality, including taking pictures.

Facility means a Center for Persons with Developmental Disabilities.

Five rights means, for the purpose of medication provision in 172 NAC 95, getting the right drug to the right recipient in the right dosage by the right route at the right time.

Food means nourishment or meals directly provided or arranged for the individual by the facility.

Food Code means the Nebraska Food Code as defined in Neb. Rev. Stat. § 81-2,244.01 and as published by the Nebraska Department of Agriculture, except for compliance and enforcement provisions.

Foreign, when applied to corporations, means all those created by authority other than that of the State of Nebraska.

Grievance means a written expression of dissatisfaction by an individual receiving services, which may or may not be the result of an unresolved complaint.

Health care means any treatment, procedure, or intervention to diagnose, cure, care for, or treat the effects of disease, injury, and degenerative conditions.

Individual refers to the person receiving services.

Individual Plan means a written plan developed by the individual with other members of his/her interdisciplinary team that describes the services to meet the needs and preferences of the individual. May also be referred to as the Individual Program Plan or other similar terminology.

Informed choice means an individual's voluntary, well-considered decision made based on options, information, and understanding. The decision-making process should result in a free and informed decision by the individual about whether s/he desires supports and services and which services s/he needs.

Interdisciplinary team process means a process where the individual, legal representative, or others as chosen by the individual and those persons (professional, non professional) who possess the knowledge, skills and expertise necessary to accurately identify the comprehensive array of the individual's skills, preferences, and needs meet to design an Individual Plan which is responsive to those skills, preferences and needs and revise the Individual Plan as needed. May also be referred to as the team or the individual's team.

Legal representative means any person who has been vested by law with the power to act on behalf of the person receiving services in making decisions as required by these regulations. This term includes a guardian appointed by a court of competent jurisdiction or a parent in the case of a minor.

Licensed Health Care Professional means related to medication provision a licensed person whom administration of medication is included in the scope of practice.

Licensee means the individual, government, corporation, partnership, limited liability company, or other form of business organization legally responsible for the operation of the facility and to whom the Department has issued a license.

Mechanical restraint means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the individual's body. Mechanical restraint is prohibited. Devices used to provide support for the achievement of functional body position or proper balance, and devices used for specific medical and surgical (as distinguished from behavioral) treatment are excluded.

Medical practitioner means any licensed physician, osteopathic physician, dentist, podiatrist, optometrist, chiropractor, physician assistant, certified registered nurse anesthetist, advanced practice registered nurse, or nurse midwife.

Medication means any prescription or nonprescription drug intended for treatment or prevention of disease or to affect body function in humans.

Medication administration includes, but is not limited to:

1. Providing medications for another person according to the five rights;
2. Recording medication provision; and
3. Observing, monitoring, reporting, and otherwise taking appropriate actions regarding desired effects, side effects, interaction, and contraindications associated with the medication.

Medication aide means a person who is listed on the medication aide registry operated by the Department as provided in 172 NAC 95 and 96.

Medication provision means the component of the administration of medication that includes giving or applying a dose of a medication to an individual and includes assisting an individual in giving or applying such medication to him/herself.

Mistreatment means behavior or CDD practices that result in any type of individual exploitation such as financial, sexual, or criminal.

NAC means Nebraska Administrative Code.

Neglect means the failure or omission by one's self, a caregiver, or another person with a duty to supply or provide essential services which are reasonably necessary to ensure safety and well-being and to avoid physical or emotional harm or illness.

New construction means a facility or a distinct part of a facility in which services are to be provided and which is enlarged, remodeled, or altered in any fashion or is built from the ground up on or after the effective date of 175 NAC 3.

New facility means a facility or a distinct part of a facility in which services are to be provided and which is not currently licensed as a health care facility. New facility also includes those facilities, which were previously licensed for care and treatment in another licensure category, that now intend to seek licensure in a different category.

Non-complex nursing interventions means, related to nurse delegation, interventions for health care needs of individuals, which can safely be performed according to exact directions, do not require alteration of the standard procedure, and for which the results and response of the individual receiving services are predictable. (Also see complex nursing intervention.)

Physical abuse means hitting, slapping, pinching, kicking, biting, or other actions causing physical injury to the body.

Physical injury means harm, pain, illness, impairment of physical function, or damage to body tissue.

Physical restraint means any manual holding of or contact with an individual that restricts the individual's freedom of movement, normal functioning, or normal access to a portion or portions of an individual's body.

Physician means any person licensed to practice medicine in Nebraska as provided in Neb. Rev. Stat § 38-2001 to 38-2062.

Plan occupancy date means the date in which the entity is furnished and ready for operation.

Policy means a guiding principle used to set direction in the CDD.

Positive Behavioral Supports means supports that emphasize positive approaches directed towards maximizing the growth and development of each individual.

Premises means a facility, the facility's grounds, and each building or grounds on contiguous property used for administering and operating a facility.

PRN means an administration scheme, in which a medication is not routine, is taken as needed, and requires assessment for need and effectiveness.

Procedure means written direction with enough detail to give staff guidance in implementation.

Qualified inspector means a professional architect or engineer licensed to practice in Nebraska, an official or employee of a local jurisdiction authorized by that jurisdiction to make inspections of particular building equipment or systems, or an individual certified by a nationally recognized organization to make such inspections.

Respite service means a temporary interval of service to provide rest or relief for the caregiver of an individual. Respite services may be provided in the CDD and all regulations are applicable.

Restraint means restriction of the individual's freedom of movement, normal functioning, or normal access to a portion or portions of an individual's body.

Seclusion means the involuntary confinement of an individual alone in a room or an area from which the individual is physically prevented from having contact with others or leaving. Seclusion is prohibited.

Schematic plan means a diagram of the facility which describes the number and location of people, the location of service areas, Life Safety Code construction and occupancy classifications locations, fire compartments, and Fire Marshal-approved points of safety.

Serious injury means relating to emergency safety situation any significant impairment of the physical condition of the individual as determined by qualified medical personnel. This includes but is not limited to: burns, lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else.

Sexual abuse means sexual harassment, sexual coercion, or sexual assault.

Shelter means lodging directly provided or arranged for the individual by the facility.

Supervision means the daily observation and monitoring of individuals by direct support staff or oversight of staff by the administrator or administrator's designee.

Supervision means, related to nurse delegation, the provision of oversight and includes maintaining accountability to determine whether nursing care is adequate and delivered appropriately. Also includes the assessment and evaluation of the individual condition and

responses to the written individual protocol and evaluation of the competence of the non-licensed person providing the intervention.

Supports means those services provided to the individual to meet identified needs that are not provided through programs, such as appointments, medication provision, assessments/evaluations, assistance, supervision, personal care and health services. The provision of these services, as well as the frequency and discipline responsible for providing the services, must be specified in the Individual Plan. Supports are the assistance required by the individual to maintain or increase independence, achieve community participation, improve productivity, and for health and safety.

Special diet means a diet ordered by a physician as part of treatment for condition, to increase, decrease or eliminate certain substances in the diet, or to provide food the individual is able to eat.

Treatment means a therapy, modality, product, device, or other intervention used to maintain well being or to diagnose, assess, alleviate, or prevent a disability, injury, illness, disease, or other similar condition.

Unlicensed person means, related to Nursing Delegation, a person who does not have a license to practice nursing and who functions in an assistant or subordinate role to the Registered Nurse. Unlicensed persons receive authority to provide selected non-complex interventions through delegation from the RN.

Unlicensed direct support staff means employees who are not licensed or certified under the Uniform Licensing Law or other state laws governing the practice of health care and whose primary responsibility is to manage, supervise, and/or provide direct support for the individual's daily needs such as bathing, dressing, feeding, toileting, recreation, and habilitation.

Verbal abuse means the use of oral, written, or gestured language that willfully includes disparaging and derogatory terms to individuals served.

002 LICENSING PROCEDURES

~~002.01 Application Initial License. Application for an initial license to operate a Center for the Developmentally Disabled shall be made to the Department of Health of the State of Nebraska upon a form (attachment 1) provided by it upon request by the facility. The supporting documents that shall be submitted with the initial application form are:~~

~~002.01A Plans and specifications with bedrooms identified by number shall be submitted to the Department of Health of the State of Nebraska and State Fire Marshal.~~

~~002.01B Statement from zoning authority the facility location is zoned properly for intended use.~~

~~002.01C Required statutory license fees.~~

3-003 LICENSING REQUIREMENTS AND PROCEDURES: Any person intending to establish, operate, or maintain a CDD for persons with developmental disabilities must first obtain a license from the Department. An entity must not hold itself out as a CDD or as providing health care services unless licensed under the Health Care Facility Licensure Act. An applicant for an initial or renewal license must demonstrate that the CDD meets the standards contained in 175 NAC 3 and the Health Care Facility Licensure Act.

3-003.01 Initial License: The initial license process occurs in two stages. The first stage consists of the applicant's submission of affirmative evidence of the ability to comply with the operational and physical plant standards contained in 175 NAC 3-006 and 3-007. The application is not complete until the Department receives documents specified in 175 NAC 3-003.01B.

The second stage consists of the Department's review of the completed application together with an inspection of the location proposed to be licensed as a CDD. The Department determines whether the applicant meets the standards contained in 175 NAC 3 and the Health Care Facility Licensure Act.

3-003.01A Applicant Responsibilities: An applicant for an initial CDD license must:

1. Intend to provide CDD services as defined in 175 NAC 3-001.01;
2. Comply with the applicable codes, guidelines, and standards specified in 175 NAC 3;
3. Submit a written application to the Department as provided in 175 NAC 3-003.01B;
4. Receive approval, in writing from the Department, of schematic plans and, if new construction, of construction plans; and
5. Notify the Department at least 30 working days prior to planned occupancy.

3-003.01B Initial Application Requirements: The applicant must submit a written application to the Department. The applicant may construct an application or obtain an application form from the Department. The application must include:

1. Full name of the entity to be licensed, street and mailing addresses, and telephone and facsimile numbers, if any;
2. Type of entity to be licensed;
3. Name of Administrator;
4. Name(s) and address(es) of the owner(s);
5. Ownership type, such as individual, partnership, corporation, government, or limited liability company ;
6. Mailing address(es) of the owner(s);
7. The preferred mailing address for receipt of official notices from the Department;
8. List of names and addresses of all persons in control of the entity. The list must include all individual owners, partners, limited liability company members, parent companies, if any, and members of board of directors

- owning or managing the operations, and any other persons with financial interest or investments in the entity. In the case of publicly held corporations, only those stockholders who own 5% or more of the company's stock must be listed;
9. The legal name of the individual or business organization (government, corporation, partnership, limited liability company, or other type) to whom the license should be issued and a statement that the individual or organization accepts the legal responsibility for compliance with these regulations;
 10. Applicant's federal employer identification number, if not an individual;
 11. Applicant's social security number, if the applicant is an individual. To ensure social security numbers are not part of public records and are used only for administrative purposes, applicants may submit social security numbers in a separate document;
 12. Number of individuals to be served;
 13. Signature(s) of:
 - a. The owner, if an individual or partnership;
 - b. Two of its members, if a limited liability company;
 - c. Two of its officers, if a corporation; or
 - d. The head of the governmental unit having jurisdiction over the entity, if a governmental unit;
 14. Copy of the registration as a foreign corporation filed with the Nebraska Secretary of State, if the applicant is a foreign corporation;
 15. Schematic plans, which is a diagram of the entity which describes the number and location of bedroom where individuals served will be sleeping; Life Safety Code construction and occupancy classifications locations, fire compartments, and Fire Marshal approved points of safety;

003 PHYSICAL PLANT REQUIREMENTS FOR GROUP RESIDENCES

003.01 Group Residences, Approval of Plans:

~~003.01A Whenever construction of or an addition to a Center for the Developmentally Disabled is contemplated by a licensee or an applicant, plans and specifications shall be submitted for review to the State Department of Health in accordance with Nebraska Revised Statute §71-2022 and to the State Fire Marshal or qualified local fire prevention personnel specifically delegated responsibility by the State Fire Marshal as to fire safety. The submission must be made in not less than two (2) stages — preliminary and final. Construction work shall not be placed on market for bids or work commenced until the State Department of Health and the State Fire Marshal or qualified local fire prevention personnel have approved the final drawings and specifications. Any deviation from these final documents must have approval from the State Department of Health in writing prior to the work being performed. This standard shall not apply in the making of minor repairs or in matters of general maintenance.~~

~~003.01B In new construction and additions the preliminary stage shall include the following:~~

~~003.01B1~~ Plot plan showing size, shape of entire site, location of proposed building or structure and relation to any existing buildings or structures, adjacent streets, roads, highways, sidewalks, and railroads. The plan shall also show properly designated size, characteristics, and location of connections to water, sewer, and gas lines.

~~003.01B2~~ Floor plans showing overall dimensions of building or buildings, or structure or structures, location, size and purpose of all rooms; location and size of all doors, windows, and other openings with swing of doors properly indicated; and location of stairs, elevators, vertical shafts, and chimneys.

~~003.01B3~~ Outline of specifications giving the kind and types of materials to be provided.

~~003.01C~~ In new construction and additions, final floor plans and specifications shall include complete working drawings and contract specifications including layouts for plumbing, heating, ventilation, and electrical work.

~~003.01D~~ If new construction or addition is delayed for a period of time exceeding one year from the time of review of the final drawing or if any other major changes are made, a new evaluation or review is required.

~~003.01E~~ In the alteration, remodeling, or conversion of a building or structure as a Center for the Developmentally Disabled:

~~003.01E1~~ Plans shall show overall dimensions and location of buildings or structures; the purpose of all rooms; the location and size of all doors, corridors, windows, and other openings; the location of stairs, elevators, vertical shafts, and chimneys, and the swing of doors.

~~003.01E2~~ Equipment shall be shown on the drawings, including but not limited to type of heating system and location of heating plant, type and capacity of hot water heaters, and all water closets, lavatories, and bathing facilities.

~~003.01E3~~ There shall be an outline of specifications giving the kind and type of materials to be provided.

~~003.01E4~~ Plans and specifications are not required to be submitted for maintenance projects, i.e., replacement by floor coverings that meet fire safety requirements, painting, replacement of pumps, motors, plumbing fixtures, and other minor changes that do not affect fire safety or the function of the remodeled areas.

~~003.01F~~ Every detached building or structure on the same premises used as a Center for the Developmentally Disabled shall comply with these regulations and standards.

~~003.01G Approval or rejection of either preliminary drawings, plans or specifications or of final drawings, plans, or specifications shall be made by the State Department of Health no more than sixty (60) days after their submission in full and complete form.~~

~~003.01H Any major changes in the plans for specifications affecting the functions of any area shall be submitted to and approved by the State Department of Health before making the changes in the work. This shall not affect the owner's right to meet emergency conditions requiring immediate action during construction.~~

16. For new construction, construction plans completed in accordance with The Engineers and Architects Regulation Act, Neb. Rev. Stat. §§81-3401 to 81-3455. An applicant may construct a project description and/or certification document, or obtain a form from the Department. Construction plans must include the following:
 - a. Project name, description of the project with quantity and floor area information on bedrooms, bathrooms and dining areas, building systems, street address, and contact person;
 - b. Site plan, floor plans, elevations, wall and building sections, construction details, plumbing and electrical diagrams, construction component schedules;
 - c. Complete list of names, titles, and telephone numbers of other authorities reviewing or inspecting the construction;
 - d. Upon request of the Department, additional information that may be required for review, such as structural and mechanical calculations, electrical system calculations, and product and equipment information; and
 - e. Certification, if any, from a licensed architect or engineer that the construction plans and any revisions meet the requirements of 175 NAC 3-007.
17. An applicant may construct a project description and/or certification document, or obtain a form from the Department;
18. Planned occupancy date, meaning the anticipated date the applicant will be ready to initiate services to individuals;
19. Copies of zoning approval from the relevant jurisdiction;
20. Occupancy certificate issued by the State Fire Marshal or delegated authority; and
21. The required licensure fee specified in 175 NAC 3-004.09.

3-003.01B1 Citizenship/Qualified Alien Status: For individual CDDs, the applicant must attest that s/he is a citizen of the United States of America or that s/he is a qualified alien under the federal Immigration and Nationality Act, 8 USC 1101 et seq., as such act existed on January 1, 2009; and is lawfully present in the United States. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her United States Citizenship and Immigration Services (USCIS) documentation up on request.

3-003.01B1a Verification: For any applicant who has attested that s/he is a qualified alien under the paragraph above, eligibility must be verified through the Systemic Alien Verification for Entitlements Program. Until verification of eligibility is made, the attestation may be presumed to be proof of lawful presence unless the verification is required under another provision of state or federal law.

3-003.01C Department Responsibilities: The Department will:

1. Review the application for completeness;
2. Notify the applicant of any information needed to complete the license application;
3. Confirm, either by the Department review or by accepting certification from an architect or engineer, that the schematic plans and, if new construction, the construction plans meet the standards of 175 NAC 3-007;
4. Upon receipt of the requested information, conduct an on-site inspection in accordance with 175 NAC 3-005, prior to issuance of a license; and
5. Issue or deny a license based on the results of the initial inspection.

3-003.01D Denial of License: See 175 NAC 3-008.01 and 3-008.02 for grounds and procedures for the Department's denial of an initial license.

~~002.04 Renewal. Approximately sixty (60) days prior to the expiration date of the license, a renewal application form will be provided by the Department. The required statutory annual license fee shall accompany the application for renewal. Beginning December 1, 1984, all licenses, initial or renewal, shall expire on November 30 of each year.~~

3-003.02 Renewal of Licenses

3-003.02A Licensee Responsibilities: The licensee must submit a written application to the Department. The licensee may construct an application or obtain an application form from the Department. The licensure renewal application must include:

1. Full name of the CDD, street and mailing address, telephone and facsimile number, if any;
2. The type of service to be licensed;
3. Name of the administrator;
4. Name and address of the owner(s);
5. Ownership type; such as individual, partnership, corporation, government, or limited liability company;
6. Mailing address for the owner;
7. The preferred mailing address for receipt of official notices from the Department;

8. List of names and addresses of all persons in control of the CDD. The list must include all individual owners, partners, limited liability company members, and members of boards of directors owning or managing operations, and any other persons with financial interests or investments in the CDD. In the case of publicly held corporations, only those stockholders who own 5% or more of the company's stock must be listed;
9. Legal name of the individual or business organization (government, corporation, partnership, limited liability company, or other type) to whom the license should be issued and a statement that the individual or organization accepts the legal responsibility for compliance with 175 NAC 3;
10. Applicant's federal employer identification number, if not an individual;
11. Applicant's social security number, if the applicant is an individual. To ensure social security numbers are not part of public records and are used only for administrative purposes, applicants may submit social security numbers in a separate document;
12. Number of individuals to be served;
13. Signatures of:
 - a. The owner, if the applicant is an individual or partnership;
 - b. Two of its members, if the applicant is a limited liability company;
 - c. Two of its officers, if the applicant is a corporation;
 - d. The head of the governmental unit having jurisdiction over the facility to be licensed, if the applicant is a governmental unit;
15. Occupancy certificates issued by the State Fire Marshal or delegated authority dated within the 18 months prior to the license expiration date; and
16. The required licensure fee specified in 175 NAC 3-004.09.

3-003.02A1 Citizenship/Qualified Alien Status: For individual CDDs, the applicant must attest that s/he is a citizen of the United States of America or that s/he is a qualified alien under the federal Immigration and Nationality Act, 8 USC 1101 et seq., as such act existed on January 1, 2009; and is lawfully present in the United States. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her United States Citizenship and Immigration Services (USCIS) documentation up on request.

3-003.02A1a Verification: For any applicant who has attested that s/he is a qualified alien under the paragraph above, eligibility must be verified through the Systemic Alien Verification for Entitlements Program. Until verification of eligibility is made, the attestation may be presumed to be proof of lawful presence unless the verification is required under another provision of state or federal law.

3-003.02B Department Responsibilities: The Department will:

1. Send a notice of expiration and an application for renewal to the licensee's preferred mailing address not later than 30 days prior to the expiration date. The licensure renewal notice specifies:
 - a. Date of expiration;
 - b. Fee for renewal;
 - c. License number; and
 - d. Name and address of the CDD;
2. Issue a renewal CDD license when it determines that the licensee has submitted a completed application;
3. Send to each licensee that fails to renew a CDD license a second notice, which is the final notice, and specifies that:
 - a. The licensee has failed to pay its renewal fees, submit an application, or both;
 - b. The CDD license has expired;
 - c. The Department will suspend action for 30 days following the date of expiration;
 - d. Upon receipt of the renewal fee and completed CDD renewal application, the Department will issue the renewal license; and
 - e. Upon failure to receive the renewal fee and completed renewal application, the CDD license will be lapsed;
4. Place the CDD license on lapsed status for nonpayment of fees if the licensee fails to renew the license. During this time, the CDD may not operate. The license remains in lapsed status until it is reinstated.

3-003.02C Refusal to Renew: See 175 NAC 3-008.01 and 3-008.02 for grounds and procedures for the Department's refusal to renew a license.

3-003.03 Reinstatement of a CDD License from Lapsed Status: A CDD requesting reinstatement of its lapsed license must submit to the Department an application for reinstatement and pay the required licensure fee specified in 175 NAC 3-004.09. The application must conform to the requirements specified in 175 NAC 3-003.02.

3-003.03A The Department will review the application for completeness and will decide if an on-site inspection is needed to determine compliance with the applicable standards of 175 NAC 3-006 and 3-007. The decision is based on the following factors:

1. The length of time that has transpired from the date the license was placed on lapsed status to the date of the reinstatement application; and
2. Whether the CDD has provided services from the site under a license that is different than that of the lapsed license.

3-003.03B When the Department decides that a reinstatement inspection is warranted, it will conduct the inspection in accordance with 175 NAC 3-005.

3-003.03C When the Department decides that a reinstatement inspection is not warranted and the application is complete, it will reinstate the CDD license.

3-003.03D Refusal to Reinstatement: See 175 NAC 3-008.01 and 3-008.02 for grounds and procedures for the Department's refusal to reinstate a lapsed license.

3-004 GENERAL REQUIREMENTS

~~002.06 Separate License. Separate buildings or structures on the same premises under one management shall require only one license; however, upon request by the licensee, separate licenses shall be issued. Licenses shall not be transferable, or assignable, and shall be posted in a conspicuous place on the licensed premises.~~

3-004.01 Separate License: An applicant must obtain a separate license for each location and each type of service under the Health Care Facility Licensure Act, Neb. Rev. Stat. §§ 71-401 to 71-464 that the applicant seeks to operate. A single license may be issued for multiple structures on the same premises under one management. The premises includes the grounds and each building or grounds on contiguous property used for administering and operating a CDD.

3-004.02 Single License Document: The Department may issue one license document that indicates the various types of services for which the entity is licensed.

3-004.03 Effective Date and Term of License: CDD licenses expire on November 30th of each year.

3-004.04 License Not Transferable: A license is issued only for the premises and persons named in the application and is not transferable or assignable. Change of ownership (sale, whether of stock, title, or assets, lease, discontinuance of operations) or change of premises terminates the license. If there is a change of ownership and the CDD remains on the same premises, the inspection in 175 NAC 3-005 is not required. If there is a change of premises, the entity must pass the inspection specified in 175 NAC 3-005.

3-004.05 Capacity, Usage, and Location: The CDD must not serve more individuals than the total number which the CDD is licensed. Changes in the use and location of sleeping areas may occur at any time without Department approval for licensure purposes. The CDD must not locate more individuals in a sleeping room/bedroom than the capacity for which the room was originally approved.

3-004.06 Change of Ownership or Premises: The licensee must notify the Department in writing ten days before a CDD is sold, leased, discontinued, or moved to a new premises.

~~002.05 Notification. The Department shall be notified in writing by the licensee within forty eight (48) hours whenever a licensed Center for the Developmentally Disabled is sold, leased, discontinued, moved to a new location or has a change of administrator.~~

3-004.07 Notification: An applicant or licensee must notify the Department in writing, by electronic mail, facsimile, or postal service:

1. At the time of license renewal, of any change in the use or location of sleeping areas for individuals served;
2. At least 30 working days prior to the date it wishes to increase the number of persons for which the CDD is licensed to serve;
3. To request a single license document;
4. To request simultaneous licensure inspections for all types of licensure held or sought;
5. If new construction is planned, submit construction plans for Department approval prior to any new construction affecting individual living space in the CDD. The Department may accept certification from an architect or engineer in lieu of Department review;
6. Within 24 hours of any individual's death that occurred due to an individual's suicide, a violent act, or the individual's leaving the CDD without staff knowledge when departure presented a threat to the safety of the individual or others;
7. Within 24 hours if a CDD has reason to believe that an individual's death was due to abuse or neglect by staff;
8. Within 24 hours of any fire requiring fire department response;
9. Within 24 hours of an accident or natural disaster resulting in damage to the physical plant and having a direct or immediate adverse effect on the health, safety, and security of individuals served. This must include a description of the well-being of the individuals who reside at the CDD and the steps being taken to assure individuals' safety, well-being, and continuity of services. The notification may be made by telephone if the accident or natural disaster has affected the CDD's capacity to communicate; and
10. Within 10 days a copy of the facility's completed investigation report of suspected abuse, neglect, mistreatment, or exploitation of individuals who reside in the CDD.

3-004.08 Information Available to Public: The licensee must make available for public inspection, upon request, licenses, license record information, and inspection reports.

~~002.04A~~ 3-004.09 Fees: The licensee must pay fees for licensure and services as set forth below:

1. Initial and renewal licensure fees: \$150
2. Duplicate license: \$10
3. Refunds for denied applications:
 - a. If the Department did not perform an inspection, the license fee is refunded except for an administrative fee of \$25.
 - b. If the Department performed an inspection, the license fee is not refunded.

~~002.03 Prerequisite Inspections. Upon receipt of a full and complete application for an initial license, the Department shall make or cause to be made an inspection of the premises within thirty (30) days thereof, unless the applicant specifically states that the facility will not be ready for occupancy until a later specified date. A written report describing any deficiencies found in the facility shall be mailed to the applicant within seven (7) working days after such inspection. A final decision by the Department for approval or disapproval of a full and complete application for a license shall be made within one hundred and twenty (120) days after the submission of A full and complete application by the facility. The Department, through its authorized representatives, may inspect the building or structure of any applicant for or holder of a license to operate a Center for the Developmentally Disabled to determine compliance with these regulations. Inspection by the Department, or its authorized representatives, at any time, of a Center for the Developmentally Disabled is a condition of continued licensure.~~

3-005 INSPECTIONS: The applicant for a CDD license must have operational policies and procedures in place to implement standards in 175 NAC 3. To determine compliance with operational and service and building standards, the Department will conduct an inspection prior to and following licensure. The Department determines compliance through on-site inspections, review of schematic and construction plans, and reports of qualified inspectors.

3-005.01 Initial Inspection: The Department will conduct an announced initial on-site inspection to determine compliance with 175 NAC 3-006 and 3-007. The inspection will be conducted within 30 working days, or later if requested by the applicant, of receipt of a completed application for an initial CDD license. The Department will provide a copy of the inspection report to the CDD within ten working days after completion of an inspection.

3-005.02 Results of Initial Inspection

3-005.02A When the Department finds that the applicant fully complies with the requirements of 175 NAC 3-006 and 3-007, the Department will issue a license.

3-005.02B When the Department finds that the applicant has complied substantially but has failed to comply fully with the requirements of 175 NAC 3-006 and 3-007 and the failure(s) would not pose an imminent danger of death or physical harm to individuals of at the facility, the Department may issue a provisional license. The provisional license:

1. Is valid for up to one year; and
2. Is not renewable.

3-005.02C When the Department finds the applicant has one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or security of the individuals, the Department may send a letter to the applicant requesting a statement of compliance. The letter will include:

1. A description of each violation;

2. A request that the CDD submit a statement of compliance within ten working days; and
3. A notice that the Department may take further steps if the statement of compliance is not submitted.

3-005.02D Statement of Compliance: The statement of compliance must indicate any steps that have been or will be taken to correct each violation and the estimated time to correct each violation. Based on the statement of compliance, the Department will take one of the following actions:

1. If the CDD submits and implements a statement of compliance that indicates a good faith effort to correct the violations, the Department will issue either a regular license or a provisional license; or
2. If the CDD fails to submit and implement a statement of compliance that indicates a good faith effort to correct the violations, the Department may deny the license.

3-005.02E When the Department finds the applicant fails to meet the requirements of 175 NAC 3-006 and 3-007 and the failure(s) would create an imminent danger of death or serious physical harm, the Department will deny the license.

3-005.03 Physical Plant Inspections: The Department will conduct inspections for conformity with construction plans and compliance with 175 NAC 3-007 for new construction and new CDDs prior to occupancy.

3-005.03A On-site progress inspections of the physical plant by qualified inspectors for conformity to construction documents and compliance with code requirements may occur at any time after construction has begun and prior to the concealment of essential components. A qualified inspector includes a professional architect or engineer licensed to practice in Nebraska, an official or employee of a local jurisdiction authorized by that jurisdiction to make inspections of particular building structure, equipment or systems, or an individual certified by a nationally recognized organization to make such inspections.

3-005.03B The Department will conduct an on-site final inspection of the physical plant prior to use or occupancy by four or more individuals with developmental disabilities. In lieu of an on-site final inspection by the Department, the Department may accept a certification from a licensed architect or engineer that the building(s) meets the requirements of 175 NAC 3 and the Health Care Facility Licensure Act, and that the physical plant is complete and ready for occupancy in accordance with Department-approved plans. The architect or engineer may construct a certification form or obtain a certification form from the Department.

3-005.03B1 The certification must state:

1. Name of the architect or engineer;
2. Name of the professional entity with which s/he is affiliated, if any;

3. Address and telephone number;
4. Type of license held, the state in which it is held, and the license number;
5. Name and location of the CDD;
6. Name(s) of the owner(s) of the CDD;
7. New construction had the building structure and plumbing rough-in inspected by a qualified inspector prior to the time these would be concealed and preclude observation;
8. All new construction, service areas, bedroom sizes, handrails, grab bars, hardware, building systems, protective shielding, privacy curtains, appropriate room finishes, and other safety equipment are completed in accordance with approved construction plans; and
9. The CDD is furnished, cleaned, and equipped to provide services in compliance with 175 NAC 3-007, and approved for use and occupancy.

3-005.03B2 The certification must have attached to it:

1. Copies of documents from other authorities having jurisdiction verifying the facility meets the codes specified in 175 NAC 3-007 and is approved for use and occupancy;
2. Copies of certifications and documentation from equipment and building system installers verifying that all equipment and systems installed are operating and approved for use and occupancy; and
3. Schematic floor plans documenting actual room numbers and titles, bed locations, capacity, and life safety information.

3-005.04 Compliance Inspections: The Department may, following the initial licensure of a CDD, conduct an unannounced onsite inspection at any time it deems necessary to determine compliance with 175 NAC 3-006 and 3-007. Any inspection may occur based on random selection or focused selection.

3-005.04A Random Selection: Each year the Department may inspect up to 25% of the CDDs based on a random selection of licensed CDDs.

3-005.04B Focused Selection: The Department may inspect a CDD when the Department is informed of one or more of the following:

1. An occurrence resulting in individual death or serious physical harm;
2. An occurrence resulting in imminent danger to or the possibility of death or serious physical harm to individuals;
3. An accident or natural disaster resulting in damage to the physical plant and having a direct or immediate adverse effect on the health, safety, and security of individuals;
4. The passage of five years without an inspection;
5. A complaint alleging violation of 175 NAC 3 or the Health Care Facility Licensure Act;

6. Complaints that, because of their number, frequency, or type, raise concerns about the maintenance, operation, or management of the CDD;
7. Financial instability of the licensee or the licensee's parent company;
8. Outbreaks or recurrent incidents of physical health problems such as dehydration, pressure sores, or other illnesses;
9. Change of services, management, or ownership; or
10. Any other event that raises concerns about the maintenance, operation, services, or management of the facility.

3-005.05 Results of Compliance Inspections

3-005.05A When the inspection reveals violations that create imminent danger of death or serious physical harm or have a direct or immediate adverse effect on the health, safety, or security of individuals, the Department will review the inspection findings within 20 working days after the inspection. If the evidence from the inspection supports the findings, the Department will impose discipline in accordance with 175 NAC 3-008.03.

3-005.05B When the inspection reveals one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse effect on the health, safety, or security of individuals, the Department may request a statement of compliance from the CDD. The statement of compliance must indicate any steps that have been or will be taken to correct each violation, and the estimated time to correct each violation. Based on the statement of compliance, the Department will take one of the following actions:

1. If the CDD submits and implements a statement of compliance that indicates a good faith effort to correct the violations, the Department will not take any disciplinary action against the license; or
2. If the CDD fails to submit and implement a statement of compliance, the Department will initiate disciplinary action against the CDD license in accordance with 175 NAC 3-008.

3-005.06 Re-Inspections

3-005.06A The Department may conduct re-inspections to determine if a CDD fully complies with the requirements of 175 NAC 3-006 and 3-007. Re-inspection occurs:

1. After the Department has issued a provisional license;
2. Before a provisional license is converted to a regular license;
3. Before a disciplinary action is modified or terminated; or
4. After the Department receives a statement of compliance for cited violations.

3-005.06B Following a re-inspection, the Department may:

1. Convert a provisional license to a regular license;

2. Affirm that the provisional license is to remain effective;
3. Modify a disciplinary action in accordance with 175 NAC 3-008.02, or
4. Grant full reinstatement of the license.

3-006 STANDARDS OF OPERATION AND SERVICES: The primary purpose of the Center for Persons with Developmental Disabilities (CDD) is to provide habilitation, care, and treatment to individuals and provide protection and promotion of health, safety, and well-being of individuals.

3-006.01 Licensee Requirements: The licensee of each CDD must assume the responsibility for the total operation of the CDD. The licensee's responsibilities include:

1. Maintaining compliance with all applicable state, federal and local laws, regulations and codes pertaining to health, safety and sanitation;
2. Ensuring written policies and procedures are established, monitored, and revised as necessary that provide operating directions. The written policies and procedures must be in sufficient detail to give directions on how a policy and the procedures are to be consistently implemented. These policies and procedures must ensure the necessary staffing, training resources, equipment, and environment to provide individuals with habilitation, care, and treatment, and to provide for the individual's health and safety. Policies and procedures must be in writing and must be developed and implemented to comply with 175 NAC 3. The policies and procedures must:
 - a. Include a description of all services and supports provided to individuals;
 - a. Be consistent with prevailing professional standards;
 - c. Delineate the scope of services provided by the CDD;
3. Establishing criteria in writing for the Administrator that include:
 - a. The qualifications for the Administrator;
 - b. The duties and responsibilities of the administrator; and
 - c. Designate an administrator who is responsible for the day-to-day management of the CDD;
4. Monitoring to ensure appropriate administration and management of the CDD;
5. Ensuring quality services and supports to individuals with developmental disabilities whether furnished directly by the CDD, through contract or through other means;
6. Notifying the Department in writing within five working days when a vacancy in the administrator position occurs including who will be designated as the administrator until another administrator is appointed; and
7. Notifying the Department in writing within five working days when the vacancy is filled including effective date and name of person appointed administrator.

~~005.01A Personnel. One individual must be identified as having primary authority over and responsibility for the overall operation of each center for the developmentally disabled in accordance with the written policies of the center; such a person shall be the Administrator. The Administrator shall be the contact person for the facility. This individual's name must appear on the licensure application.~~

3-006.02 Administrator: The administrator is responsible for the overall operation and day-to-day management of the CDD, including planning, organizing, and directing the services provided by the CDD. A CDD must have an administrator who has training and experience in services provided to persons with developmental disabilities. The administrator must report all matters related to the maintenance, operation, and management of the CDD to the licensee and be directly responsible to the licensee or to the person or persons delegated governing authority by the licensee. The administrator must:

1. Be responsible for the CDD's compliance with 175 NAC 3;
2. Designate in writing a substitute to act in his or her absence who must be responsible and accountable for management of the CDD;
3. Maintain staff with appropriate training and skills and sufficient in number to meet individual's needs;
4. Establish and implement written policies and procedures that encompass all services provided to individuals. The policies and procedures are consistent with generally accepted practice, delineate the scope of services provided in the CDD and encompass aspects to protect the health and safety of individuals. These policies and procedures must be available for visual review to staff, individuals, family and legal representatives. Policies and procedures must include:
 - a. Range of services to be provided;
 - b. Criteria for admission, discharge, and transfer of individuals, which ensure only individuals whose needs can be met by the CDD will be admitted and retained for services;
5. Monitor services to ensure the individual's plan has been developed and implemented as needed and meets the needs and preferences of the individual;
6. Be on the premises a sufficient number of hours per week to permit adequate attention to the management of the CDD;
7. Monitor that CDD employees identify and review incidents and accidents, complaints and concerns, patterns and trends in overall CDD operation such as provision of individuals services and take action to alleviate problems and prevent recurrence; and
8. Complete a thorough investigation on suspected abuse, neglect, mistreatment or exploitation and take appropriate action to protect individuals to prevent recurrence.

3-006.03 Department Access: The provider must allow access by Department staff to all records or other documents relating to the operation of the CDD, provision of services and employee records. In addition, access to the CDD and the services and to all individuals served as the Department deems necessary.

3-006.04 Employee Requirements: Each CDD must maintain a sufficient number of staff with the required training and skills necessary to meet the needs of individuals served at all times.

~~005.01D Staffing. Regardless of the organization or design of resident living units, the staff resident ratios, unless program needs justify otherwise, shall be, morning (awake and present), afternoon and evening (awake and present) and overnight (sleeping):~~

~~005.01D1 For units including either children under the age of 6 years, severely and profoundly retarded, severely physically handicapped; or residents who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic like behavior, or other residents who require considerable adult guidance and supervision, the staff resident ratios shall be not less than:~~

~~morning 1:4
afternoon and evening 1:4
overnight 1:8~~

~~005.01D2 For units serving residents requiring training in basic independent living skills and who do not attend vocational training programs but may attend prevocational training programs, the staff resident ratios shall not be less than:~~

~~morning 1:8
afternoon and evening 1:8
overnight 1:10~~

~~005.01D3 For units serving residents in vocational training programs and adults who work in sheltered employment situations, the staff resident ratios shall not be less than:~~

~~morning 1:8
afternoon and evening 1:8
overnight 1:10~~

~~For time periods when residents are awake and not present in the facility, the staff resident ratio need not be maintained. Additional staff coverage shall be provided on call for the Center as necessary during emergencies, including illness of a resident or residents. Additional staff coverage shall be provided on call during emergencies in accordance with the previously stated ratios. These individuals and their phone numbers must be listed near the Center's main telephone. Volunteers cannot be included in the staff resident ratios. Those facilities that accept residents whose needs require awake overnight care must provide awake and present staff in the prescribed ratios.~~

3-006.04A CDD Staffing: The CDD must have the necessary staff working at the CDD when individuals are present to meet the needs and preferences of the individuals. This includes staff to provide services and supports to individuals as

well as necessary supervision to safeguard health and safety. Staff must be awake at all times unless specified in the individual's plan that it is safe for each individual and the individual's needs would be met for staff to sleep during the night. The staff assigned to the CDD must not be responsible for individuals at other locations. There must be sufficient staff to meet the individual's needs and preferences in the CDD as well as in the community.

3-006.04B Employment Eligibility: Each CDD must insure and maintain documentation of the following:

3-006.04B1 Employee Credentialing: Any employee who provide services to an individual for which a license, certification, registration, or credential is required must hold the license, certification, registration, or credential in accordance with applicable State laws and regulations, and each CDD must verify the licensure, registration, certification, or required credentials of employees prior to employees assuming job responsibilities.

004.08 Health of Personnel:

~~004.08A All employees shall have a pre employment medical examination which shall consist of a physical examination by a physician. All persons shall have an annual tuberculin skin test except for those who have a positive reaction and are without x ray evidence of active disease shall be required to have either chemoprophylaxis against tuberculosis infection or a chest x ray every three years. Results of such examinations and tests shall be retained as part of the person's employment record.~~

~~004.08B Any person (including any volunteer) who is afflicted with a disease in a communicable stage, or who is a carrier of a communicable disease, or who has an open wound or sore, is not permitted to work in a capacity (including food service) where there is a likelihood of transmitting the disease or infection to a resident or to other personnel.~~

3-006.04B2 Health Status of Staff: The CDD must establish and implement policies and procedures regarding the health status of direct support staff who provide direct services to individuals to prevent the transmission of infectious diseases to Individuals. The CDD:

1. Must complete a health screening of each person prior to assuming job responsibilities with individuals; and
2. May, at the discretion of the CDD, based on the health screening require a direct support staff to have a physical exam.

3-006.04B3 Criminal Background and Registry Checks: The CDD must complete and maintain documentation of pre-employment criminal background and registry checks on each unlicensed direct support staff.

3-006.04B3a Criminal Background and Registry Checks: The CDD must complete criminal background checks through a governmental law enforcement agency or a private entity that maintains criminal background information on each unlicensed direct support staff.

3-006.04B3b Registry Checks: The CDD must check for adverse findings on each unlicensed direct support staff on the following registries:

1. Nurse Aide Registry;
2. Medication Aide Registry;
3. Adult Protective Services Registry;
4. Central Register of Child Protection Cases; and
5. Nebraska State Patrol Sex Offender Registry.

3-006.04B3c The CDD must:

1. Determine how the criminal background and registry information will be used in making hiring decisions;
2. Decide whether employment can begin prior to receiving the criminal background and registry information; and
3. Document any decision to hire a person with a criminal background or adverse registry findings, except for the Nurse Aide Registry. The documentation must be the basis for the decision and how it will not pose a threat to each individual's safety or individual's property.

3-006.04B3d The CDD must not employ a person with adverse findings on the Nurse Aide Registry regarding abuse, neglect, or misappropriation of property.

3-006.04B3e The CDD must not utilize a person as a medication aide who does not have the competencies to be a medication aide as indicated by review of the Medication Aide Registry.

~~005.01C Training.~~

~~005.01C1 Staff orientation for new employees must take place during the first three (3) months of employment and must begin on the first day of employment. Orientation during the first three (3) months must be consistent with the job description for the individual and the needs of the individuals served. Training during the first three months shall include: basic first aid and cardiopulmonary resuscitation, (2) drug administration, (in service must be completed prior to administration of drugs), (3) Individual Program Plan development and~~

~~implementation, (4) resident rights, (5) agency/facility policies and procedures, and (6) on the job training.~~

~~005.01C2 Policies and procedures shall be available which specify the training to be received during the three (3) months orientation period and provide for inservice training and staff development on a regular basis thereafter.~~

~~005.01C3 Inservice training and staff development must be available to and attended by all staff on a regular basis. Training must be consistent with the job description for the individual and the needs of the individuals to be served. A plan of inservice training and staff development shall be established for a three (3) month period and shall provide for ongoing inservice training and staff development.~~

~~005.01C4 Documentation of all staff training and inservices attended shall be kept in each employee's personnel record. Inservice records shall include topic and content, actual training time and date of training.~~

3-006.04C Employee Training: The CDD must provide each employee with initial and continuing training that enables the employee to perform his/her duties effectively, efficiently, and competently at all times at the CDD. The training must be designed to meet the needs of each individual receiving services at the CDD. Training must be provided by a person(s) qualified by education, experience, and knowledge to the area of the service being provided including verification of the employee's demonstration of competency.

005.02 Emergency Medical Services:

~~005.02A There shall be written procedures for the handling of emergency situations. All employees and volunteers must have immediate access to such information along with the names, telephone numbers, location, and type of medical services available. Emergency information must be maintained in the Center at a location known to all Center employees.~~

~~005.02B All staff shall have immediate access to residents' medical information including, name of physician(s), person to notify in case of emergency, current medications, and known allergies. Medical information must be maintained in the Center at a location known to all Center employees.~~

~~005.02C The Center shall maintain a first aid kit adequate to deal with possible emergency situations. This kit shall be checked on at least an annual basis and restocked as needed. Documentation of the annual check must be maintained in the Center for two years. The first aid kit shall contain the following items:~~

~~band-aids~~
~~adhesive tape~~
~~gauze bandages~~
~~sterile gauze pads~~
~~antiseptic such as Merthiolate~~
~~triangular bandages~~
~~sterile eye pads~~
~~seissors~~
~~tweezers~~
~~ointment, cream, or spray~~
~~paper tape~~
First aid handbook

~~005.02D All employees shall be trained during their first three months of employment in the administration of first aid and cardiopulmonary resuscitation. Documentation of training must be kept in each employee's personnel file.~~

3-006.04C1 Employees must be trained and demonstrate competencies in:

1. Meeting specific needs and preferences of individuals who receive services from the CDD;
2. Emergency procedures including medical, fire safety and evacuation, disaster preparedness plans, and missing person;
3. Identifying, reporting, and prevention of abuse, neglect, mistreatment, and exploitation of individuals;
4. Individuals' rights;
5. Confidentiality;
6. Universal precautions;
7. Dignity and respect;
8. First aid;
9. Cardiopulmonary resuscitation;
10. Appropriate conduct and interactions with individuals;
11. Emergency safety situations and approved emergency safety interventions; and
12. Positive behavioral supports.

3-006.04C2 Ongoing Training: The CDD must provide and maintain evidence of ongoing training or continuing education for employees to ensure continued compliance with regulations and to ensure staff competencies in the provision of services.

3-006.04C3 Specialized Training: When individuals' needs warrant special procedures, the CDD must ensure that each employee is trained by qualified persons prior to conducting the procedure. The qualified person must verify the employee's competencies through demonstration. For example:

1. When the CDD provides services to children/youth, there must be training specific to child/youth development;
2. When unlicensed employees provide non complex nursing interventions to Individuals, there must be training by a Registered Nurse and demonstration of competencies by the employees by a Registered Nurse;
3. When medication aides are utilized by the CDD, there must be ongoing training to ensure competencies are met as provided in 172 NAC 95 and 96.

3-006.04C4 Record of Staff Training: The CDD must maintain documentation of initial, ongoing, and specialized training given to each employee. The documentation must include: topic and content of training, name of employee, date and length of training, name of person providing the training, and determination of competency of each employee.

~~005.03 Personnel Files. Personnel files shall be maintained in a centralized system and shall be subject to inspection by authorized representatives of the Department at any time. Personnel files shall be maintained for all personnel and shall include, but need not be limited to:~~

~~005.03A Job description;~~

~~005.03B Documentation of completed training and inservice attended;~~

~~005.03C Documentation of annual performance evaluation;~~

~~005.03D Pre employment physical;~~

~~005.03E Documentation on an annual basis of tuberculin skin tests, or chemoprophylaxis or x ray (every three years);~~

~~005.03F Job application;~~

~~005.03G Credential verification;~~

~~005.03H Date of hiring; and~~

~~005.03I Disciplinary actions, if any.~~

3-006.04D Employment Record: The CDD must maintain a current employment record for each employee. The record must contain information on background and registry checks, initial and ongoing training, specialized training, credentialing, health history screening, and length of service.

3-006.04E Employee Work Records: The CDD must maintain a record of hours worked by each employee who provide direct support services to individuals who reside at the CDD. The record must include the name of the employee, position title, date and specific time period worked.

~~005.05 Rights of Residents.~~ The Center shall have policies and procedures assuring that all residents of a Center for Developmentally Disabled persons have the same constitutional rights as all other citizens unless specific rights have been removed: (1) by court of law after the resident has been afforded his or her full due process rights, or (2) for the particular circumstances and with specific safeguards outlined. The Center shall have a Human Rights Committee. Policies and procedures regarding Residents' Rights should be reviewed by the Human Rights Committee at least annually. Any compromise of these rights must be documented with justification. Residents shall have a right to treatment, services and habilitation designed to maximize developmental potential of the person and provided in a setting that is least restrictive of the resident's personal liberty. A Human Rights Committee must be established for each Center. Reports of the Committee meetings must be available in each facility served or locale and must specify what occurred during the Committee meetings.

~~005.05A Protective Safeguards of Residents' Rights.~~ The Center's Human Rights Committee shall review and take action in accordance with written policies and procedures, with respect to alleged instances of mistreatment, neglect, abuse, exploitation, and situations in which restraints, psychotropic medication or aversive conditioning are used. Documentation of reviews and actions by the Human Rights Committee must be maintained in the Center for residents of the Center. Composition of the Human Rights Committee shall be as follows: (1) Administrative staff representative, (2) Residential and service staff, (3) Direct consumer, i.e., resident, (4) Indirect consumer, i.e., the parents or guardian of a resident, (5) Representatives from community concerned with rights of individuals with developmental disabilities.

~~005.05C Recognition of Human Dignity.~~ Each resident shall be treated with consideration, respect, truthfulness and full recognition of his or her dignity and individuality, including privacy in treatment and in care of his or her personal needs. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, and entertainments shall be elicited and respected by the facility. Privacy of a resident's body shall be maintained during toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance.

~~005.05D Input into Decision Making.~~ There shall be documentation that each resident is afforded maximum opportunity to participate in any decisions concerning his or her person, including those decisions involving medical care and treatment, residency, and the development and implementation of the Individual Program Plan. If it is

~~determined that informing residents of their condition is medically contraindicated, this decision and reasons for it shall be documented in the Center in the resident's record by the physician.~~

3-006.05 Rights Of Individuals: Each individual receiving services has the same legal rights and responsibilities guaranteed to all other individuals under federal and state laws. These rights can only be modified or suspended according to state or federal law.

~~005.05G Freedom of Association and Communication. Each resident shall be afforded the right to communicate, associate, and meet privately with persons of his or her own choice; to send and receive his or her personal mail unopened; and to participate in activities of social, religious, and community groups at his or her discretion. There will be documentation of the rationale for the restriction of any of these rights. A decision to restrict a visitor is reviewed and re-evaluated each time the resident's Individual Program Plan is reviewed by the Interdisciplinary Team and medical orders are reviewed by the physician or at the resident's request. Close relatives shall be permitted to visit residents at reasonable hours without prior notice.~~

~~005.05H Confidential Treatment of Resident Information. Each resident shall be assured of confidential treatment of all information contained in his or her records and his or her written, informed consent, or the written, informed consent of his or her family, guardian, or representative, if applicable, shall be required for the release of information to persons not authorized under law to receive it.~~

3-006.05A Rights as a Recipient of CDD Services: The CDD must have a written policy stating its commitment to assuring the rights of all individuals and the services and supports provided must respect the rights of individuals. The CDD must assist individuals to understand and exercise the rights listed in this section as well as rights provided by state or federal law. These rights must not be treated as a privilege and must not be suspended or modified. At a minimum, as a recipient of services from the CDD, each individual has the right to:

1. Be free from abuse, neglect, mistreatment and exploitation;
2. Be free from aversive stimuli including procedures, devices and treatments;
3. Have privacy, dignity, confidentiality and be treated in a respectful manner;
4. Meaningful and functional activities to each individual;
5. High quality health, safety, and well-being;
6. Self direct activities, participate in decisions; opportunities to make informed choice;
7. Communicate in private by mail or telephone and other personal conversation and have access to a telephone;
8. Communicate in his or her primary language and primary mode of communication;

9. To voice a complaint or grievance and be free from retaliation for making a complaint or grievance, recommending changes in services, staff or policies; or exercising a legal right. This includes when family members, or legal representatives are advocating on behalf of the individual or complaints were reported to outside agencies. See 175 NAC 3-006.11;
10. Retain and use personal possessions including furnishings, and clothing, as space permits, unless to do so would infringe up on the rights and safety of other individuals;
11. Receive visitors as long as this does not infringe on the rights and safety of other individuals in the CDD;
12. Exercise religious beliefs; and
13. Confidentiality of all records, communications, and personal information.

~~005.05B Information Regarding Rights. Each resident must be informed, by an appropriate communication system, of his or her rights and responsibilities as a resident, and of all rules and regulations governing resident conduct and responsibilities. Receipt of such information must be acknowledged in writing by the resident or his or her family, guardian, or representative, where applicable, and maintained in the resident's record in the Center. If written acknowledgement cannot be obtained, information regarding resident's rights shall be sent to his or her family, guardian or representative by certified mail.~~

3-006.05B Each individual served, and parent if a minor or legal representative, must be informed of the individual's rights and responsibilities:

1. The information must be given at the time of entry to services, annually thereafter, and when significant changes occur; and
2. The information must be provided in a manner that is easily understood, given verbally and in writing, in the native language of the individual, or through other modes of communication necessary for understanding.

~~005.05E Freedom from Restraints and Abuse. Mistreatment, neglect, physical, mental or verbal abuse, or exploitation of residents in any form is prohibited. The Center must have a written policy that defines use of behavior modification programs, the staff members who may authorize their use, and a mechanism for monitoring and controlling their use. Seclusion (defined as the placement of a resident alone in a locked room) is also prohibited. Physical restraints, psychotropic medications or aversive conditioning techniques shall be employed only in accordance with policies and procedures approved by the Human Rights Committee and shall be employed only after approval by the same. Physical restraints, psychotropic medication and aversive conditioning techniques (defined as using noxious or aversive stimuli) shall never be used as a punishment, for the convenience of staff, or as a substitute for programs, and shall be applied only after other means of controlling behavior have been tried and have failed. Documentation of the failure of these alternative techniques shall be~~

~~included in a resident's record and reviewed by the Human Rights Committee. Prior to the incorporation of physical restraints, psychotropic medications, or aversive conditioning techniques in a resident's habilitation plan, except when absolutely necessary in an emergency situation to prevent a resident from seriously injuring himself or others: (1) It must be documented in the resident's record in the Center that physical restraints, psychotropic medications or aversive conditioning techniques, or any or all of them, are essential for the resident's habilitation and that less restrictive techniques have been attempted and have failed; and (2) incorporation of aversive conditioning techniques, physical restraints, or psychotropic medications in the resident's habilitation plans has been with the informed consent of the resident, or his or her family, guardian, or representative, when applicable, and documented in the resident's record in the Center. The written policies and procedures of the facility governing the use of restraints must delineate the following:~~

~~005.05E1 Physician's orders must indicate the specific reasons for the use of restraints and must specify the type of restraints used;~~

~~005.05E2 The use of restraints must be temporary and the resident shall not be restrained for an indefinite amount of time;~~

~~005.05E3 Orders for restraints shall not be enforced for longer than 12 hours, unless the resident's condition warrants and must be reordered every 12 hours by the physician;~~

~~005.05E4 A resident placed in the restraint shall be checked at least every 15 minutes by appropriately trained staff and an account must be kept of this surveillance;~~

~~005.05E5 Reorders shall be issued only after a review of the resident's condition;~~

~~005.05E6 The use of restraints must not be employed as punishment, for the convenience of the staff, or as a substitute for supervision;~~

~~005.05E7 Mechanical restraints must avoid physical injury to the resident and provide a minimum of discomfort;~~

~~005.05E8 The opportunity for motion and exercise must be provided for a period of not less than 10 minutes during each 2 hours in which restraints are employed, except at night, if the client is asleep.~~

~~The following documentation is required before incorporation in the residents habilitation plan of more restrictive methods of managing behavior, i.e., psychotropic medication, restraint, or aversive conditioning:~~

~~005.05E8a~~ A complete description of the maladaptive behavior.

~~005.05E8a(1)~~ The form of the behavior.

~~005.05E8a(2)~~ Where and when the behavior occurred.

~~005.05E8a(3)~~ The frequency of the occurrence of the behavior.

~~005.05E8a(4)~~ The results of this occurrence.

~~005.05E8b~~ The previous intervention approaches tried.

~~005.05E8b(1)~~ The description of the teaching procedures.

~~005.05E8b(2)~~ The persons responsible.

~~005.05E8b(3)~~ The setting.

~~005.05E8b(4)~~ The time spent per day and week.

~~005.05E8b(6)~~ The results of the alternative approaches.

~~005.05E8c~~ The proposed procedure.

~~005.05E8c(1)~~ The description of the proposed procedure.

~~005.05E8c(2)~~ The persons responsible.

~~005.05E8c(3)~~ The setting.

~~005.05E8c(4)~~ The rationale for choosing this specific procedure.

~~005.05E8c(5)~~ The evaluation of the program (data collection).

~~005.05E8c(6)~~ Who will review it.

~~005.05E8c(7)~~ The proposed length of the implementation.

~~005.05E8c(8)~~ Who can terminate the procedure.

~~005.05E8c(9)~~ Who will monitor and how frequently will they monitor.

~~005.05E8d Consent Form. For discontinuation of a behavior management program associated with the use of psychotropic medication(s), the resident record shall contain documentation that the cessation of psychotropic medication does not interfere with a resident's habilitation program and that there is documentation of no problematic behavior. Once a maintenance dose for psychotropic medication has been established, there must be provision in the resident's Individual Program Plan for quarterly review of the resident's status and documentation of the review maintained in the Center's records for the resident.~~

3-006.06 Use of Restrictive Measures: The CDD must identify in policy whether they allow for the use of restrictive measures. If the CDD allows for the use of restrictive measures, the CDD must develop policies and procedures for implementation of restrictive measures that ensure safeguarding individuals' rights and must not suspend or modify individuals rights identified at 175 NAC 3-006.05. The policies and procedures must address the following:

3-006.06A When the CDD allows for the use of restrictive measures, the CDD must identify the type of restrictive measures allowed. The CDD must ensure the following:

1. The restrictive measure determined necessary for one individual must not adversely affect other individuals who receive services from the CDD;
2. The restrictive measure must not be used as punishment, for the convenience of staff, due to shortage of staff, as a substitute for habilitation, or in place of an effective positive behavioral support plan;
3. The restrictive measure must be the least restrictive and intrusive possible;
4. The restrictive measure is temporary;
5. Prior to proposing a restrictive measure, there must be documented evidence that other less restrictive methods had been regularly applied by trained staff and failed;
6. The restrictive measure must be safe for all individuals; and
7. Approved restrictive measures must be specified and defined.

3-006.06B Review and Approval of Restrictive Measure: Prior to implementation of a restrictive measure, the CDD must ensure review and approval by the interdisciplinary team and rights review committee and written informed consent.

3-006.06C Interdisciplinary Team Review of Restrictive Measures: The CDD must participate in the interdisciplinary team process to discuss and review the proposed restrictive measure prior to implementation. The individual plan must document the team's determination of the individual's ability to acquire, retain, or understand the information proposed in the restrictive measure. The discussion and approval of the use of the restrictive measure including the following must be recorded in the individual's plan:

1. The proposed restrictive measures;
2. Methods previously tried and shown to be ineffective;
3. Risks involved with the restrictive measure and risk involved if no restrictive measure is used;
4. Rationale for the proposed restrictive measure;
5. Other possible alternative methods;
6. Description of the positive behavioral support plan proposed to be used in conjunction with the restrictive measure to lead to elimination of the restrictive measure and the criterion for the elimination of the restrictive measure; and
7. Frequency that the individual's team will review the effectiveness of the plan, but not less than every six months. The team review must address:
 - a. The original reason for the restrictive measure, current circumstances, success or failure of the positive behavioral support plan, and the rationale based on evidence for continued use of the restrictive measure; and
 - b. Decrease in the use or elimination of the restrictive measure as soon as circumstances justify, based on established and approved criterion in the individual plan.

3-006.06D Written Informed Consent: The provider must obtain written informed consent from each individual or legal representative as applicable, for authorization to use a restrictive measure. The written informed consent must be obtained prior to implementation of the restrictive measure. The provider must present in writing sufficient information in a manner that is understandable to the individual or legal representative to make an informed decision. The consent must be voluntary, in writing, and include the following information specific to each restrictive measure for each individual:

1. The proposed restrictive measure;
2. The purpose of the restrictive measure;
3. The expected duration of the restrictive measure;
4. Description of the procedures for the use of the restrictive measure and the positive behavior support plan that lead to reduction and eventual elimination of the use of the restrictive measure;
5. Description of any reasonable foreseeable risks, discomforts, side effects, or consequences;
6. Description of the intended outcome and benefits;
7. Specify appropriate alternate plan, if available;
8. Description of the plan to eliminate the restrictive measure;
9. The right to refuse and to withdraw consent at any time. If appropriate, identify consequences of refusal; and
10. Signature and date, signed by the individual or the individual's legal representative authorizing informed consent.

3-006.07 ABUSE/NEGLECT SYSTEM: The CDD must develop and implement written policies and procedures that prevent abuse, neglect, exploitation, and mistreatment of individuals served. The policies and procedures must include the following:

1. Definition of abuse and neglect consistent with these regulations;
2. Description of the process and timelines for prompt and accurate reporting of allegations or suspicion of abuse or neglect to appropriate outside authorities in accordance with Neb. Rev. Stat. §28-372 of the Adult Protective Services Act or, in the case of a child, in accordance with Neb. Rev. Stat. §28-711;
3. Description of measures and timelines for reporting of suspicion of abuse and neglect to appropriate CDD administrative staff; the legal representative, if appropriate, and service coordinator;
4. Description of the process to conduct a timely, thorough, and objective investigation of all allegations or suspicions of abuse and neglect, including protection of individuals during the investigation;
5. Description of the process for disciplinary action taken when staff are found to have engaged in abusive or neglectful behavior;
6. Documentation that appropriate corrective or disciplinary action was taken in response to the investigation;
7. Review by the director of the entity, or designee, of all allegations and investigations and make decisions on the action to be taken;
8. Identification of the means to lessen the likelihood of further incidents if the allegation is substantiated;
9. Documentation of the allegation, investigation, conclusion, action taken, and means to prevent further incidents;
10. The rights review committee must evaluate all allegations and investigations of abuse and neglect for any violation of an individual's rights; and
11. Submit the completed written investigation to the Department within 10 days of management becoming aware of the allegation of abuse or neglect. See 175 NAC 3-004.07.

~~005.05L Fee Schedule. The agency provides each resident a fee schedule of its charges for services to the resident.~~

3-006.08 Notice of Costs to the Individual: The CDD must develop and implement a system for notification to individuals and legal representatives of any associated cost to the individual to reside at the CDD and receive services or items and terms of payment. Written notice must be given to the individual before initiation of service and before any change, giving adequate time for the individual or legal representative to respond to the notice. The notice must specify that individuals will not be charged for services or items that are covered through other funding sources, including items necessary to provide habilitation and transportation related to habilitation. The CDD must provide information in policies for:

1. Who is responsible for replacement or compensation when individuals' personal items are damaged or missing; and

2. How individuals will be compensated when staff or other individuals in service who do not reside in the location (i.e., respite) utilize the environment and eat food paid for by individuals. This excludes any visitors/guests invited by the individuals to socialize in the residence.

~~005.051 Freedom from Interference with Personal Financial Affairs. Each resident shall be afforded the right to manage his or her personal financial affairs. In the event a resident has had a conservator appointed by a court of law, the conservator shall be free to manage the resident's personal financial affairs within the bounds of the court order appointing the conservator. Each resident and his or her parent(s), or conservator, if applicable, shall be informed orally and in writing of all financial responsibilities involved in being a resident of a Center for Developmentally Disabled persons. Written authorization from the resident or his or her conservator, if applicable, shall be obtained when the Center is handling the resident's and documented in the resident's record in the Center.~~

~~005.0511 The Center must maintain a written account of all residents' funds received by or deposited with the facility.~~

~~005.0512 The Center may, at the residents request, keep on deposit personal funds over which the resident has control. Should the resident or conservator, where applicable, request these funds, they shall be given to him on request with receipts maintained by the facility and a copy to the resident.~~

~~005.0513 If the Center makes financial transactions on a resident's behalf the resident or his representative must receive, or acknowledge that he has seen, an itemized accounting, of disbursements and current balances at least quarterly. A copy of this statement must be maintained in the resident's financial or business record.~~

3-006.09 Personal Funds And Property: The CDD must develop and implement written policies and procedures to identify and detail the system to be used to protect individuals' funds and property. These policies and procedures must include the following:

3-006.09A General Requirements: The CDD must ensure that:

1. The CDD must not use the individual's funds and property as a reward or punishment for the individual;
2. The CDD must not assess the individual's funds and personal property as payment for damages unless the Individual Plan team reviews, on a case by case basis, whether it is appropriate for the individual to make restitution, the rationale is documented on the individual plan, and the individual or legal representative gives written informed consent to make restitution for damages;

3. The CDD must not assess the individual's funds and personal property for damages when the damage is the result of lack of appropriate supervision or lack of programmatic intervention;
4. The CDD must not use the individual's funds and personal property to purchase inventory or services for the CDD; and
5. The individual's funds and personal property are not borrowed by employees.

3-006.09B Support in Managing Financial Resources: When an individual does not have the skills necessary to manage his/her financial resources, the CDD may, with the informed choice of the individual, offer services and supports that temporarily transfer some of the control of handling the individual's financial resources to the CDD.

3-006.09B1 The transfer of control of an individual's financial resources:

1. Must not be for a convenience of employees, or as a substitute for habilitation;
2. Must be temporary;
3. Must be based on the choice of the individual and the extent to which the individual can participate;
4. Must not be transferred to another entity and the individual must not be charged for the service.

3-006.09C The individual's team must determine and document in the individual plan the following regarding the temporary transfer of control of an individual's finances to the CDD:

1. The extent in which the individual can participate in management of his/her financial resources;
2. The individual's informed choice;
3. The rationale for the transfer of control;
4. The support plan that leads to returning control of the finances to the individual; and
5. The frequency in which the team will review the temporary transfer of control and support plan, but at least annually.

3-006.09D CDD Management of Individuals' Finances: When the CDD is responsible for handling the individual's funds:

1. The CDD must maintain a financial record for each individual that includes:
 - a. Documentation of all cash funds, savings, and checking accounts, deposits, and withdrawals; and
 - b. An individual ledger which provides a record of all funds received and disbursed and the current balance;

2. The CDD must provide account balances and records of transactions to the individual or legal representative at least quarterly, unless otherwise requested;
3. The CDD must ensure that all non-routine expenditures exceeding \$100 are reviewed and prior authorized by the individual or legal representative. The individual's team must be notified;
4. The CDD must ensure that policies and procedures outline how financial errors, overdrafts, late fees, and missing money will be handled when the CDD is responsible for managing the individual's funds. The policies and procedures must include that:
 - a. The CDD is responsible for service charges and fees assessed due to staff errors;
 - b. The CDD must replace missing money promptly if missing money is due to employee error; and
 - c. The CDD is responsible for taking steps to correct an individual's credit history when it is affected by CDD employee actions in managing the individual's finances; and
5. When the CDD is maintaining individuals' personal funds in a common trust, a separate accounting is maintained for each individual or for his/her interest in a common trust fund.

3-006.10 Confidentiality: The CDD must ensure protection of the confidentiality of each individual's information and person, including verbal, electronic, and written form. Individual information must be protected regardless of the form or storage method of the records.

3-006.11 Complaints And Grievances: Each CDD must establish policies and procedures to implement a process for addressing complaints and grievances, received on behalf of individuals served. The process must:

1. Include a procedure for submission of complaints and grievances;
2. Be convenient to individuals served;
3. Include time frames and procedures for review of complaints and grievances and provision of a response; and
4. nclude how information from complaints and grievances and responses are utilized to improve the quality of services and supports to individuals.

3-006.11A The CDD must maintain documentation of the receipt of all complaints and grievances, the resolution, and the response to the complainant.

3-006.12 Rights Review Committee: The CDD must utilize a committee to review and advise the CDD on practices prior to implementation that affect or have the potential to adversely affect individual's rights, person, and property, including situations of alleged abuse, neglect, mistreatment, and exploitation. This function may be performed by a single committee or multiple committees.

3-006.12A The CDD must develop policies and procedures that describe:

1. The roles and responsibilities of the committee;
2. The membership of the committee;
3. The means to ensure confidentiality;
4. The means to ensure members are free from conflict of interest;
5. How committee approvals and recommendations will be communicated;
and
6. Frequency in which the committee will review restrictive measures.

3-006.12B The rights review committee must review:

1. Provider practices, supports, programs, and policies and procedures as they relate to protection of rights and safety;
2. The use of restrictive measures and psychotropic medication prior to implementation;
3. All situations that utilized emergency safety interventions; and
4. All reports and investigations of alleged or suspected abuse, neglect, mistreatment, and exploitation.

3-006.12C The CDD must maintain documentation of the rights review committee meetings, including date of meeting, information reviewed, recommendations, and list of participants.

3-006.13 Incident Reporting System: The CDD must develop and implement a system for handling incidents. The CDD must develop policies and procedures to implement this system that includes procedures to ensure timely reporting, recording, reviewing, and trending of incidents. The policies and procedures for the incident reporting system must include:

1. Identification of the incidents involving individuals served that require completion of an incident report. This must include:
 - a. Situations that adversely affect the physical or emotional well-being;
 - b. Suspected cases of abuse, neglect, exploitation, and mistreatment;
 - c. Emergency safety situations that require the use of emergency safety interventions;
 - d. Unusual situations for the individual;
 - e. An individual served leaving staff supervision where the safety of the individual or others is potentially threatened;
 - f. Hospitalization due to mental health/behavioral concerns;
 - g. Injuries that require medical attention to individuals served;
 - h. Discovery of an injury of unknown origin;
 - i. Police contacts (e.g., calls or visits) due to the behavior of an individual served, initiated by staff persons employed by the CDD, individuals served by the CDD, or by people in the community who report concerns about the CDD's services; and
 - j. Deaths of individuals served;

2. Recording the essential facts of the incident, including the results of the incident and any actions which might have prevented the incident;
3. An action plan that includes the CDD's immediate effort to address the situation and prevent recurrence;
4. Establish timelines to ensure prompt reporting of incidents as appropriate, including reporting to:
 - a. Management;
 - b. The individual who receives services involved in the incident;
 - c. Family member/legal representative as appropriate;
 - d. Child and Adult Abuse/Neglect in the Department of Health and Human Services; and
 - e. Law enforcement.
5. Review and analyze information from incident reports to identify trends and problematic practices which may be occurring and take appropriate corrective action to address problematic practices identified and to prevent recurrence.

3-006.14 Quality Assurance/Quality Improvement: The CDD must conduct an ongoing comprehensive, integrated self-assessment of the quality and appropriateness of services and supports. The CDD must use the findings to correct identified problems and to revise CDD policies and procedures, if necessary. Those responsible for the quality assurance program must:

1. Implement and report on activities and mechanisms for monitoring the quality of services and supports;
2. Identify and resolve problems; and
3. Make recommendations for improving individual services and supports.

3-006.14A Documentation of QA/QI Activities: The CDD must maintain documentation of the quality assurance/quality improvement activities.

3-006.15 Individual's Services And Supports: The CDD must establish and implement written policies and procedures that encompass all services and supports provided to individuals. The policies and procedures must be consistent with prevailing professional standards, delineate the scope of services provided in the CDD, and encompass aspects to protect the health and safety of all individuals served. The CDD must ensure that all individuals receive habilitation, supports, health care and treatment, and other related services consistent with the needs and preferences of the individual.

3-006.15A Habilitation: Each individual receiving services must receive habilitation services to acquire, retain, and improve the skills necessary so the individual is able to function with as much independence as possible, enhance choice and self management, and participate in the rights and responsibilities.

3-006.15A1 Habilitation must be an ongoing planned process of formal and informal services which includes consistent implementation of specialized and generic services and supports.

3-006.15A2 Habilitation must be observable in daily practice and identifiable in the Individual Plan and supporting documentation.

3-006.15A3 Individuals with conditions that make further growth or development unlikely must receive training and supports designed to maintain skills and functioning and to prevent further regression to the extent possible.

3-006.15B Comprehensive Functional Assessments: Comprehensive Functional Assessments must be conducted for each individual to obtain accurate and complete information related to the individual's history, preferences, strengths and abilities, and needed services. Assessments must be completed or reviewed and updated as needed to reflect the individual's current status as follows:

1. Within 30 calendar days of entry to the CDD;
2. At least annually; and
3. Revised or additional assessments conducted as the individual's situation warrants.

~~005.06B The interdisciplinary team is responsible for development of a preliminary program plan at the time of admission, an individual Program Plan with 30 days, and at least annual review of the Individual Program Plan. The interdisciplinary of at least:~~

~~005.06B1 The individual's case manager,~~

~~005.06B2 The individual's parent or guardian, if applicable,~~

~~005.06B3 The individual to be served, or reason for nonattendance,~~

~~005.06B4 A representative from the Center's residential programmatic staff,~~

~~005.06B5 Professionals from those disciplines for which there are currently identified needs, including vocational staff, if applicable and school system representatives, if applicable.~~

~~If any member(s) of the previous team is not involved in this determination, the reasons for their nonparticipation shall be documented in the minutes of the Interdisciplinary Team meeting. Program Plans shall include signatures of the individuals participation, in the Interdisciplinary Team meeting.~~

~~Professionals who participate on the Interdisciplinary Team must meet the following requirements:~~

~~005.06B5a Psychologists must be licensed to practice in the State and certified by the Department as qualified practice clinical psychology.~~

~~005.06B5b~~ Social Services Workers must have a minimum of a baccalaureate degree from an accredited college or university, in social work, mental retardation, or a related field.

~~005.06B5c~~ Physicians must be licensed to practice in the State.

~~005.06B5d~~ Dentists must be licensed to practice in the State.

~~005.06B5e~~ Dieticians must be eligible for registration by the American Dietetic Association under its requirements in effect on January 17, 1974 or have a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management, have one year of supervisory experience in the dietetic service of a health care institution, and also participate annually in continuing dietetic education.

~~005.06B5f~~ Speech pathologists or audiologists must be licensed to practice in the State.

~~005.06B5g~~ Physical Therapists must be licensed to practice in the State.

~~005.06B5h~~ Occupational Therapists must be:

~~005.06B5h(1)~~ Graduates of an occupational therapy curriculum accredited jointly by the Council on Medical Education of the American Medical Association and the American Occupational Therapy Association; or

~~005.06B5h(2)~~ Eligible for certification by the American Occupational Therapy Association under its requirements in effect on the effective date of these regulations; or

~~005.06B5h(3)~~ Have 2 years of competent experience as an occupational therapist.

~~005.06C~~ The individual evaluations conducted by the disciplinary areas shall include:

~~005.06C1~~ Summary of progress towards meeting the current Individual Program Plan's goal and objectives and assessments of continuing need for care;

~~005.06C2~~ Identification of the tools or methods used for assessment,

~~005.06C3~~ Needs, strengths and weaknesses (barriers),

~~005.06C4 Recommendations if the resident has habilitative needs (shall be stated behaviorally),~~

~~005.06C5 Written in language clearly understandable by all.~~

~~005.06D The individual Program Plan shall include:~~

~~005.06D1 Behaviorally stated long term goals and short term objectives, that are~~

~~005.06D1a Stated separately (that is, each objective is stated in terms of a single behavioral outcome),~~

~~005.06D1b Assigned projected completion dates~~

~~005.06D1c Expressed in behavioral terms that provide measurable indices of progress (inclusive of a pass and a fail criteria)~~

~~005.06D1d Sequenced within a developmental progression appropriate to the individual, and~~

~~005.06D1e Assigned priorities.~~

~~005.06D2 A description of the manner in which objectives will be achieved and possible barriers to the achievement of them in common language understandable by all concerned; a training plan shall be written for the implementation of each objective specifying:~~

~~005.06D2a Data collection procedures~~

~~005.06D2b Training procedures~~

~~005.06D2c Staff responsible for training~~

~~005.06D2e Conditions (environment) and materials needed~~

~~005.06D2f Method by which effectiveness of program will be evaluated.~~

~~005.06D3 A statement (in readily understandable form) of specific habilitation services to be provided, containing the identity of the individual (by name and title) or agency which will deliver each service, and specifying the date of the initiation of each service to be provided and the proposed duration of each service.~~

~~005.06D4~~ Activity schedules that are an active extension of the Individual Program Plan. The schedule shall be recorded and shall include:

~~005.06D4a~~ Resident's schedules on a weekly basis.

~~005.06D4b~~ Time periods in which staff are working with residents on their Individual Program Plans.

~~005.06D4c~~ Time periods residents are working alone or together on skill attainment.

~~005.06D4d~~ Times for the individual to choose activities that interest him or her.

~~005.06D5~~ Ongoing staff services (responsible persons)

~~005.06D6~~ Restrictions of resident rights

~~005.06D7~~ Barriers to programming, i.e., blind, non-ambulatory

~~005.06D8~~ Guardianship status

~~005.06D9~~ Admission date

~~005.06D10~~ Primary relative, guardian or advocate

~~005.06E~~ At the time of admission, a preliminary program plan shall be developed by an Interdisciplinary Team which may provide for the continuation of existing programs from previous facility, but shall for all individuals include comprehensive evaluations of the individual's developmental needs to be completed within 30 calendar days following admission. Reassessments must be provided annually or more frequently if needed as determined by resident need. Comprehensive evaluations must include:

~~005.06E1~~ Medical (upon admission and thereafter as needed) evaluations shall address physical and mental health and include a medication history.

~~005.06E2~~ Dental (upon admission and thereafter as needed) evaluations shall include complete extra and intra-oral examinations.

~~005.06E3~~ Sensorimotor Development.

~~005.06E4~~ Communicative Development.

~~005.06E5 Social Development. (Upon admission and thereafter as needed.)~~

~~005.06E6 Affective Development.~~

~~005.06E7 Cognitive Development.~~

~~005.06E8 Adaptive behaviors or independent living skills.~~

~~005.06E9 Dietary, if applicable. Dietary evaluations shall address eating skills; adaptive equipment; modified diets; and edible reinforcers, and nutritional inducements.~~

~~005.06E10 Speech, if applicable. Speech evaluations shall include appraisal of articulation, voice, rhythm, and language.~~

~~005.06E11 Audiology, if applicable. Audiology evaluations shall include tests of puretone air and bone conduction, speech audiometry, and other procedures as necessary, and include assessment of the use of visual cues, and use of amplification.~~

~~005.06E12 Physical therapy, if applicable. Physical therapy evaluations shall address the preservation and improvement of abilities for independent function such as range of motion, strength tolerance, coordination, and activities of daily living; and prevention, insofar as possible of irreducible or progressive disabilities through means such as the use of orthotic and prosthetic appliances, assistive and adaptive devices, positioning, behavior adaptations, and sensory stimulation.~~

~~005.06E13 Occupational therapy, if applicable. Occupational therapy evaluations shall address the preservation and improvement of abilities for independent function such as range of motion, strength, tolerance, coordination, and activities of daily living; and prevention, insofar as possible of irreducible or progressive disabilities through means such as the use of orthotic and prosthetic appliances, assistive and adaptive devices, positioning, behavior adaptations, and sensory stimulation.~~

~~005.06E14 Psychological (an initial evaluation upon admission and thereafter as needed). Psychological evaluations shall address perceptual skills, social skills, self direction, emotional stability, and effective use of time (including leisure time). Full scale shall include NA and adaptive behavior scale.~~

~~005.06E15 Vocational, if applicable. Vocational evaluations shall address resident aptitudes, abilities, interests, work attitudes, work habits, work tolerances, community and social skills.~~

~~005.06F1~~ The post admission Individual Program Plan, which shall include measurable goals and objectives, is developed and implemented within 30 calendar days after admission by the Interdisciplinary Team.

~~005.06F2~~ Continued placement and programs must be determined in accordance with developmental needs as identified by comprehensive assessments and not be contingent on age or time restrictions.

~~005.06G~~ All programs must be implemented as specified on the program plan. Programming frequency must be according to normal life activities.

~~005.06H~~ The ongoing implementation and continuing appropriateness of the Individual Program Plan must be reviewed at least quarterly by the individual's Interdisciplinary Team.

~~005.06I~~ The Individual Program Plan itself must also be reviewed and modified as necessary by the individual's Interdisciplinary Team at intervals determined by the team, and at least annually.

~~005.06J~~ Residents must be provided with leisure time activities by the Center which shall be directed at keeping the resident both physically and mentally alert and active.

~~005.06K~~ The Center shall utilize, as extensively as possible, generic services and resources appropriate to the needs of the individuals served, including introducing individuals into the environments available in the community that are most appropriate to addressing their needs. There must be written policies and procedures to utilize these resources within the scope of availability.

~~005.06L~~ Services must be provided in settings that are appropriate for and that encourage disabled individuals to experience relationships with non-disabled persons in community activities.

~~005.06M~~ The Interdisciplinary Team shall identify one staff person as responsible for coordinating all services provided to the resident by the Center. This person shall be designated on the resident's Individual Program Plan.

3-006.15C Individual Plan: The Individual Plan must be an individualized person centered plan that specifies agreed upon services to be delivered to the individual to meet identified needs and the individual's preferences.

3-006.15C1 The Individual Plan must be a plan to offer habilitation and provide health care services and supports.

3-006.15C2 The Individual Plan identifies programs and supports for the individual to learn new skills.

3-006.15C3 The Individual Plan identifies the supervision necessary and means to protect the safety and well being of the Individual.

3-006.15C4 The Individual Plan must be based on the comprehensive assessments.

3-006.15C5 The CDD must participate in development of the annual Individual Plan meeting and meetings to review and revise the Individual Plan as needed to take the necessary steps to ensure that the Individual Plan contains documentation of the agreed on team review, discussions, decisions, assignments and referrals.

3-006.15C6 The Individual Plan must be accurately and consistently implemented.

3-006.15C7 The Individual Plan must be developed at least annually and revised as needed.

3-006.15C7 The Individual Plan must be implemented within 30 days of: the annual Individual Plan meeting; modification to the Individual Plan and entry to CDD services.

3-006.15D Program and Support Strategies: The CDD must develop a specific written plan with enough detail for consistent implementation of the programs and supports to meet the needs of the individual. Program and supports must be consistently implemented as the need arises and as opportunities occur. Programs must have goals stated in measureable terms.

3-006.15E Team Process: The Individual Plan must be developed through a team process that includes participation of the individual, legal representative, if applicable and representative(s) of the CDD.

3-006.15F Data Recording/Measure Progress: The CDD must record type of data and frequency of data necessary to be able to assess progress toward the desired goals. The individual's performance must be accurately measured and programs or supports or both must be modified based on data and changes in individual circumstances.

3-006.15G Monitoring Services: The CDD must monitor service to ensure services are implemented correctly and determine if services are meeting the individual's needs and, as needed, cause actions to occur to ensure needs are addressed.

3-006.15H Positive Behavioral Supports: The CDD must develop and implement policies, procedures, and practices that create a supportive environment that focuses

on the use of positive and proactive approaches directed towards maximizing the growth and development of each individual and thereby eliminate challenging behaviors. The positive behavioral supports process must focus on understanding the individual and his/her challenging behavior, preventing the challenging behavior, and replacing the challenging behavior with positive skills.

3-006.15H1 The CDD must ensure that the following components of positive behavioral supports are in place:

1. Functional behavioral assessment must be completed. The assessment process must:
 - a. Identify the purpose the behavior serves in the individual's life;
 - b. Identify the communication function of the behavior;
 - c. Identify the conditions and triggers that increase the likelihood of the behavior;
 - d. Describe what the behavior targeted for change looks like; and
 - e. Include a review of the individual's day supports, residential supports, and other relevant data.
2. Identify the desired outcome in positive and measurable terms;
3. Behavioral support strategies. A plan must be developed based on the Functional assessment to help prevent the behaviors targeted for change. The strategies must:
 - a. Emphasize steps to be proactive and prevent the behavior;
 - b. Emphasize meaningful activities and options that are incompatible with the targeted behavior;
 - c. Include a description of potential conditions, stressors and triggers that may lead to the targeted behavior;
 - d. Include skill development to replace the behavior targeted with positive skills that appropriately achieve the desired outcome;
4. There must be meaningful and individualized data collection and data analysis that track the progress of the individual;
5. There must be a combination of a planned meaningful day and meaningful and individualized supports for the individual; and
6. Monitoring data and revising interventions as necessary.

3-006.15H2 Emergency Safety Situation

3-006.15H2a Physical restraint may only be used as an emergency safety intervention as an immediate response to the emergency safety situation:

1. When there is an emergency safety situation where an unanticipated behavior by an Individual or others places the individual or others at serious threat of violence or serious injury if no other intervention occurs;

2. Is not used as a behavioral consequence:

3-006.15H2b If an individual has a program that utilizes physical restraint as an option for intervening with behaviors, then a program must be implemented within 180 days of enactment of these regulations which eliminates the use of such restraints. The use of physical restraints will be prohibited one year from the enactment of these regulations, except as use for an emergency safety intervention.

3-006.15H2c Each use of emergency safety interventions must be documented. Documentation must include a description of the behavior, what preceded the behavior or the identified triggers, method of intervention, names of staff involved, duration of the intervention, identify injuries that may have occurred, and preventive measures tried and failed.

3-006.15H2d Each use of emergency safety interventions must be reviewed by the individual's team and the rights review committee to ensure that the use of the emergency safety intervention was appropriate and warranted.

~~005.05F Discipline of Residents. Residents shall not discipline other residents, except as, part of an organized self government program which is conducted in accordance with written policy of the Center.~~

3-006.15H3 Prohibited Methods: The provider must develop and implement policies that prohibit the use of seclusion, mechanical restraints, physical restraint except as noted in 175 NAC 3-006.15, aversive stimuli, corporal punishment, verbal abuse, physical abuse, mental abuse, sexual abuse, denial of meals, demeaning approaches, discipline of an individual in services by another individual in services, or other means of intervention with the behavior that result in, or is likely to result in injury to the individual. Physical restraints are prohibited except as specified at 175 NAC 3-006.15K. Medications to modify behaviors are prohibited except as identified at 175 NAC 3-006.15J.

~~004.02 Drug Storage and Handling. The licensee or designated employees of a center for the developmentally disabled may assist a resident in taking routine oral or external medications prescribed for the resident by a licensed physician and dispensed by a licensed pharmacist and may provide storage and handling of such medications if procedures for storage and handling comply with the specific regulations of the Department of Health rule Title 175 NAC 5.~~

3-006.15J Medications used for the purpose of modifying behaviors are considered a restrictive measure; therefore, 175 NAC 3-006.06 Restrictive Measures apply.

3-006.15J1 The CDD must ensure that medications used by individuals for the purpose of modifying behaviors:

1. Must be prescribed by a physician. PRN medications for the purpose of modifying behaviors are prohibited;
2. The CDD must monitor the medication and document on an ongoing basis to provide the individual's team and physician sufficient information regarding:
 - a. The effectiveness of and any side effects experienced from the medication;
 - b. Frequency and severity of symptoms;
 - c. The effectiveness of the positive behavioral supports plan; and
3. Have a positive behavioral support plan in place to be used in conjunction with the medication; and
4. The medication must not be used in a way to deal with understaffing or ineffective, inappropriate, or other nonfunctional programs or environments.

3-006.15J2 A positive behavioral supports plan is not required when an individual is prescribed a medication that has the effect of behavior modification, but is prescribed for other reasons, as documented by a physician.

3-006.15L Medical Supports and Orthotics

3-006.15L1 Medical Supports: Medical supports or medications may be used to facilitate treatment of an individual during a necessary medical or dental procedure or promote healing following injury. There must be a physician or dentist order for use of the medical support that includes time limitations, monitoring, and re-evaluation at regular intervals.

3-006.15L1a Medical supports may be used to promote healing after a medical procedure or an injury. Documentation of the situation must include:

1. Identification of the medical condition or injury;
2. Justification of the use of the restraint for the specific medical reasons; and
3. That a physician ordered the support, which is time limited, monitored, and re-evaluated at regular intervals.

3-006.15L2 Orthotics: Orthotics used to provide support for the achievement of functional body position or proper balance or used for medical or post surgery care are allowed under the following conditions:

1. The use of orthotics must be documented in the Individual Plan;

2. Orthotics must be used only under the direction of the prescriber, such as the physician, occupational therapist, or physical therapist; and
3. Written directions for the use of orthotics must be available to staff and include identification of the orthotic; purpose; instruction in proper application of the orthotic; length of time and frequency of use; and provisions for monitoring and checking for proper application.

3-006.15M Health Services: The CDD must ensure that each individual receives services and supports to meet the individual's health and personal care needs that include: medication administration and monitoring, medical services, dental services, nutritional services, health monitoring and supervision, assistance with personal care, personal health care and education, exercise, and other therapies.

3-006.15M1 Evaluations/Services: The CDD must arrange for or assist the individual in obtaining evaluations and services based on the individual's needs, such as physical exams, dental services, psychological services, physical and occupational therapy, speech therapy, audiological services, vision services, nutrition therapy, and other related evaluations and services. Each individual must receive the following evaluations:

1. A medical evaluation every 12 months. Exception: The medical practitioner has identified the need for these evaluations on an alternate schedule; and
2. A dental evaluation every 12 months. Exception: The dentist has identified the need for the evaluation on an alternate schedule.

3-006.15M2 Observing and Reporting: The CDD must ensure that the health status and physical conditions of individuals are observed, reported, and responded to in a timely and appropriate manner as needed.

3-006.15M3 Orders/Recommendations: The CDD must ensure individuals receive care, treatment, and medications in accordance with orders from a medical practitioner.

3-006.15M4 Assistive/Adaptive Devices: The CDD must assist individuals with the utilization of assistive and adaptive devices as needed and ensure they are maintained and available to the individual.

3-006.15N Direction and Supervision of Unlicensed Staff Providing Noncomplex Health Care Interventions: When the CDD intends to have unlicensed support staff provide noncomplex nursing interventions to individuals, the CDD must develop and implement policies and procedures to comply with 172 NAC 99. Noncomplex interventions are those which can safely be performed according to exact directions,

do not require alteration of the standard procedure, and for which the results and response of the individual receiving services are predictable.

Unlicensed staff must not provide complex interventions for health care needs of individuals. Complex interventions are those which require nursing judgment to safely alter standard procedures in accordance with the needs of the individual, which require nursing judgment to determine how to proceed from one step to the next, or which require a multidimensional application of the nursing process. The CDD must establish and implement policies and procedures that describe the following:

3-006.15N1 Written procedure that describes the steps for implementation of the nurse delegation process where a Registered Nurse (RN) may delegate non-complex nursing interventions to unlicensed staff and the RN retain responsibility;

3-006.15N2. Training of unlicensed staff to provide non complex interventions must be by the RN. The RN must test competencies of the staff through demonstration.

3-006.15N3 The RN must develop written individualized procedures for the noncomplex interventions to give specific directions to unlicensed staff to safely and correctly perform the interventions. Directions must include what needs to be monitored and reported by the unlicensed staff regarding the noncomplex nursing intervention and under what circumstances that monitoring and reporting directly to the RN by the unlicensed staff must occur;

3-006.15N4 The CDD must obtain the services of a Registered Nurse (RN) to perform the responsibilities required for nurse delegation to occur. The CDD may arrange for a registered nurse by direct employment or by written contract. Acceptance of responsibility for the nurse delegation by the RN must be in writing.

3-006.15N5. Specify how the RN will provide direction and supervision to the unlicensed staff providing the non-complex intervention. This must include the assessment and evaluation of individuals conditions and responses to the written procedures, and evaluation of the competencies of the unlicensed staff providing the non-complex nursing intervention by the RN.

3-006.N6 The CDD maintains responsibility for overall supervision, safety, and welfare of the individual's health care regardless who and how it is provided.

3-006.15O Provision of Medication: The CDD must establish and implement policies and procedures to ensure that individuals receive medications only as legally prescribed by a medical practitioner in accordance with the five rights; with

prevailing professional standards and 172 NAC 95 and 96, Regulations Governing the Provision of Medications by Medication Aides and Other Licensed Persons.

3-006.15O1 Methods of Administration of Medication: Responsibility for the provision of medication must be identified on the individual's plan and accomplished by the following methods:

3-006.15O1a Self Administration: The individuals who reside in the CDD may self administer their medication, with or without visual supervision, when the CDD determines that the individual is competent and capable of doing so and has the capacity to make an informed decision about taking medications in a safe manner. The CDD must establish policies and procedures to address individual self administration of medication that is in accordance with 172 NAC 95 and include:

1. Safe storage and handling of medication;
2. Inclusion of the determination that the individual may self-administer medication in the Individual's Plan; and
3. Monitoring the plan to assure continued safe administration of medication by the Individual.

3-006.15O1b Licensed Health Care Professional: When the CDD uses a licensed health care professional for whom medication administration is included in the scope of practice, the CDD must ensure the medications are properly administered in accordance with prevailing professional standards.

3-006.15O1c Medication Aides: When the CDD utilizes unlicensed staff in the provision of medications, the CDD must follow 172 NAC 95 and 96. The CDD must arrange for a licensed health care professional to provide direction and monitoring for the medications to individuals served and to medication aides. The CDD may arrange for a licensed health care professional by direct employment or through contract. The CDD must establish policies and procedures to give direction to the unlicensed staff and the licensed health care professional to be in compliance with the requirements in 172 NAC 95 and 96.

3-006.15O1d When the CDD utilizes a person other than a licensed health care professional in the provision of medications, the CDD must follow 172 NAC 95, Regulations Governing the Provision of Medications by Medication Aides, and 172 NAC 96, Regulations Governing the Medication Aide Registry. The CDD must establish and implement policies and procedures:

1. To ensure that medication aides are trained and have demonstrated the minimum competency standards specified in 175 NAC 95-004;
2. To ensure that competency assessments and/or courses for medication aides have been completed in accordance with the provisions of 175 NAC 96-005;
3. That specify how direction and monitoring will occur when the CDD allows medication aides to perform the additional routine/acceptable activities authorized by 172 NAC 95-005; and as follows:
 - a. Provide routine medication; and
 - b. Provision of medications by the following routes:
 - (1) Oral which includes any medication given by mouth including sublingual (placing under the tongue) and buccal (placing between the cheek and gum) routes and oral sprays;
 - (2) Inhalation which includes inhalers and nebulizers, including oxygen given by inhalation;
 - (3) Topical application of sprays, creams, ointments, and lotions and transdermal patches; and
 - (4) Instillation by drops, ointments, and sprays into the eyes, ears, and nose.
4. That specify how direction and monitoring will occur when the CDD allows medication aides to perform the additional routine/acceptable activities authorized by 172 NAC 95-005, and as follows:
 - a. Provision of PRN medications;
 - b. Provision of medications by additional routes including but not limited to gastrostomy tube, rectal, and vaginal; and/or
 - c. Participation in monitoring;
5. That specify how competency determinations will be made for medication aides to perform routine and additional activities pertaining to medication provision;
6. That specify how written direction will be provided for medication aides and to perform the additional activities authorized by 175 NAC 95-009;
7. That specify how records of medication provision by medication aides will be recorded and maintained;
8. That specify how medication errors, any variation from the five rights, made by a medication aide and adverse reactions by individuals to the medications will be reported. The reporting must be:
 - a. Made to the identified person responsible for direction and monitoring;

- b. Made immediately upon discovery; and
- c. Documented in individual records.

3-006.15O2 The CDD maintains responsibility for overall supervision, safety, and welfare of the individual in the administration or provision of medication, handling and storage of medication regardless of the method of administration or provision.

3-006.15O3 Reporting Medication Errors: The CDD must have policies and procedures for reporting any errors in administration or provision of prescribe medications. The CDD must report any variance from the five rights as an error:

- 1. To the individual's licensed practitioner;
- 2. In a timely manner upon discovery; and
- 3. By written report.

3-006.15O4 Storage: All medications must be stored in locked areas and in accordance with the manufacturer's or dispensing pharmacist's instructions for temperature, light, humidity, or other storage instructions.

3-006.15O5 Access to Medication: The CDD must ensure that only authorized staff who are designated by the CDD responsible for administration or provision of medications must have access to the medications.

3-006.15O6 Medication Record

3-006.15O6a The CDD must keep records in sufficient detail to assure that:

- 1. Individuals receive the medications authorized by a medical practitioner; and
- 2. The CDD is alerted to theft or loss of medication.

3-006.15O6b The CDD must keep an individual medication administration record for each individual. This record must include:

- 1. The identification of the individual;
- 2. The name of the medication given;
- 3. The date, time, dosage, method of administration or provision for each medication, the identification of the person who administered or provided the medication, and any refusal by the individual; and
- 4. The individual's medication allergies and sensitivities, if any.

3-006.1507 Disposal of Medications: The CDD must destroy medications that are discontinued by the medical practitioner and those which are beyond the expiration date. The CDD must develop and implement policies and procedures to identify who will be responsible for disposal of medications and how disposal of medication will occur.

~~004.09. Each facility shall comply with the provisions of the Nebraska Pure Food Act, Neb. Rev. Stat. §81-216.01 to 81-216.37 (Reissue 1981) as they pertain to the Food Service Code, which means the 1976 Recommendations of the Food and Drug Administration entitled Food Service Sanitation Manual Including A Model Food Service Sanitation Ordinance as it exists on August 1, 1981, except sections 10-601 and 10-602 of such code [Neb. Rev. Stat. § 81-216.03 (1981)]. This code, in the format published by the Nebraska Department of Agriculture, Bureau of Dairies and Foods, is hereby adopted and incorporated by reference and shall have the same force and effect as if set out verbatim in this subsection (Attachment 2).~~

~~004.09A Menu Planning:~~

~~004.09A1 Menus shall be planned at least a week in advance.~~

~~004.09A2 Menus shall be reviewed and approved by a dietician before service.~~

~~004.09A3 Records of substitutions shall be made. Substitutions shall be of equal nutritional value.~~

~~004.09A4 Records of menus shall be filed for six months in the center.~~

~~004.09B Modified or Therapeutic Diets:~~

~~004.09B1 Menus specifying portion sizes shall be planned at least two weeks in advance.~~

~~004.09B2 Modified or therapeutic diets shall be developed by a dietician and approved by the attending physician.~~

~~004.09C Dining Rooms:~~

~~004.09C1 All residents, including the mobile nonambulatory shall eat or be fed in dining areas except where contraindicated for health reasons.~~

~~004.09C2 Table service shall be provided for all who can and will eat at a table.~~

~~004.09C3 Dining areas shall be equipped with tables, chairs, eating utensils and dishes to meet the developmental needs of the residents.~~

~~004.09C4 Dining areas shall be adequately supervised and staffed for the direction of self help eating procedures and to assure that each resident receive an adequate amount and variety of food.~~

~~004.09D Food Purchasing:~~

~~004.09D1 Food shall be free from spoilage, filth, and other contamination.~~

~~004.09D2 Food shall be obtained from approved sources that comply with all laws relating to food and food labeling.~~

~~004.09D2a All meat and meat products shall be U.S.D.A. approved or obtained from a meat processing plant that is approved by U.S.D.A.~~

~~004.09D2b Only clean whole eggs with shell intact and without cracks shall be used. Pasteurized liquid, frozen or dry egg products may be used. Commercially prepared and packaged peeled hard boiled eggs may also be used.~~

~~004.09D2c Fresh garden vegetables may be used.~~

~~004.09D2d The use of food in hermetically sealed containers that were not prepared in U.S.D.A. approved food processing establishments are prohibited unless canned by residents of the facility.~~

~~004.09D3 Pasteurized Grade A milk and milk products shall be used.~~

3-006.15P Nutrition And Food: The CDD must provide food service to meet the nutritional needs of the individuals served. .

3-006.15P1 The CDD must ensure that foods prepared and offered:

1. Meet the nutritional needs and food preferences of the individual, including the offering of modified diets as prescribed by the physician. Modified diets include food altered in order to enable the individual to eat, for example, modification of consistency of the food and addresses nutritional deficiency of other health issues for the individual;
2. Meet the daily nutritional requirements;
3. Are of good quality and sufficient quantity; and
4. Are prepared and stored in a safe and sanitary manner at proper temperatures.

3-006.15P2 The CDD must store, prepare, protect, serve, and dispose of food in a safe manner and in accordance with the Food Code.

3-006.15P3 There must be sufficient adaptive eating equipment, proper positioning, supervision and seating to meet individuals' needs.

~~005.05K Transfer or Discharge of Residents. When the resident is transferred or discharged, the reason for the transfer or discharge and a summary of findings, progress and plans must be recorded and made available to both the transferring facility and the facility transferred to. Except in an emergency, the resident or his or her parents, guardian, or representative, if applicable, must be informed in writing at least 30 days in advance of transfer and at least 60 days in advance of discharge, and his or her written consent obtained. The interdisciplinary Team must convene prior to transfer or discharge of a resident and must review the move.~~

~~005.06A A center may not admit anyone whose current identified needs it cannot meet. Evaluations by at least a physician, a psychologist, a social worker and residential staff must be completed prior to admission.~~

3-006.16 Entry and Retention to Service: The CDD must ensure that individuals are only admitted and retained for services at the CDD when the CDD has the capacity to provide appropriate services to meet the individual's needs. The CDD must:

1. Gather and review referral information regarding the individual to ensure the CDD is fully aware of the individual's strengths, needs, and preferences and can make a determination as to whether the CDD is capable of providing appropriate services to meet the needs;
2. Consider the safety of individuals currently receiving services from the CDD in the decision to accept new individuals to the CDD; and
3. Only retain individuals for whom the CDD can meet their needs and ensure the safety of all individuals.

3-006.17 Termination of Services: The CDD must develop policies and procedures on involuntary termination of an individual's services. The CDD must give the individual and legal representative as appropriate, a minimum of 30 days advance written notice of termination of services to an individual, except where the termination from the CDD is necessary to protect the health and safety of the individual or others.

005.04 Resident Records:

~~005.04A Residents' records shall be retained for the period of time specified by the Center, but no less than the period of time the individual is a resident of the Center and at least three years following the individual's discharge from the Center. In cases in which a Center for the Developmentally Disabled ceases operation all records of residents shall be transferred to the facility to which the resident moves; all other~~

~~records of such Center for Developmentally Disabled if not specifically governed by the provisions of these regulations, shall be disposed of in accordance with Center policy so long as the residents rights of confidentiality are not violated. Resident records shall be subject to inspection by an authorized representative of the Department and may not be removed except by court order. Resident records may be destroyed only when they are in excess of three years of age, following resident discharge and destruction has been authorized in writing by the Department of Health. In order to insure the resident's rights of confidentiality, whenever the records of a resident of a Center for the Developmentally Disabled are destroyed or disposed of it shall be by shredding, mutilation, burning or similar protective measure.~~

~~005.04B The record of each resident of a Center shall be maintained and retained in the Center until the resident leaves the Center and in accordance with 005.04A above. A centralized system may be kept to maintain duplicate information.~~

~~005.04C A record containing information pertinent to the resident and the resident's program plan shall be maintained for each resident on the licensed premises and shall be available for inspection by any authorized representative of the Department of Health. All entries into the resident's record shall be legible, dated and authenticated by signature of the person making the entry. Records in the Center shall include:~~

~~005.04C1 At the time of admission a preliminary program plan and within 30 calendar days after admission a post admission Individual Program Plan. Thereafter an Individual Program Plan designed at least annually by an interdisciplinary team;~~

~~005.04C2 Documentation of observation of the resident's response to programs implemented in the Center and recorded as specified on the program plan;~~

~~005.04C3 Periodic, but at least quarterly, review of the resident's Individual Program Plan by a member or members of the individual's interdisciplinary team, as determined by the team;~~

~~005.04C4 Documentation of a medical examination. Upon admittance, a dated physical examination must have been completed by a physician the past 3 months, or within 15 days following admittance;~~

~~005.04C5 Documentation of a dated dental examination.~~

~~005.04C6 Height and weight records must be maintained.~~

~~005.04C6a For adults 118 years and older according to the Individual Program, Plan;~~

~~005.04C6b For children who shall be weighed once a month;~~

~~005.04C6c For children whose height shall be measured quarterly;~~

~~005.04C7 Documentation of immunizations and dates of immunizations for children;~~

~~005.04C8 A written physician's order for all current medications administered and all current treatments;~~

~~005.04C9 Documentation of all current medications as administered;~~

~~005.04C10 Documentation of visits to physician within the last 12 months;~~

~~005.04C11 Documentation of dental visits within the last 12 months;~~

~~005.04C12 Documentation of hospitalization within the last 12 months;~~

~~005.04C13 Documentation of illnesses within the last 12 months;~~

~~005.04C14 Documentation of accidents and seizures for the last 12 months;~~

~~005.04C15 Documentation of monitoring of restraints and time-out rooms which includes extent of time in time-out, reason for use, 15 minute checks of the restraint, release from restraints and exercise every 2 hours, and signature of the individual documenting monitoring of restraints. If a time-out room is used for behavior modification programs the room must provide a minimum of 60 square feet of floor space and have a ceiling height of 9 feet. There must be a means of observing the resident while in the time-out room. Appropriate furniture, at least a bed or chair and a light must be provided. The door must be lockable from only the outside.~~

~~005.04C16 Documentation of all current evaluations.~~

~~005.04C17 Documentation of incident reports.~~

~~005.04C18 Documentation of clothing and personal possession inventory.~~

~~005.04C19 Documentation of medication histories and response profiles.~~

~~005.04C20 Documentation of resident consent forms.~~

~~005.04D If vocational services are offered to the residents of the Center for the Developmentally Disabled, the records of the Center shall indicate whether or not such services have been approved by the state.~~

3-006.18 Record Keeping: Each CDD must maintain records and reports in a manner that ensures accuracy.

3-006.18A Individual Record: The CDD must ensure a permanent record of all CDD services is established for each individual.

3-006.18A1 Record Content: Entries in the permanent individual record must be identified and authenticated. Authentication must include signature, written initials:

1. Date of entry into services with the CDD;
2. Name, gender, and birth date of the individual;
3. The language or means of communication utilized by the individual;
4. Legal status of individual, and name, telephone number, and address of legal representative, if applicable;
5. Name, phone number, and address of persons to contact in an emergency;
6. Name, phone number of the individual's current personal physician and other health care professionals, if applicable;
7. Medical information; including history of seizures, illness, physician orders, treatments, medications, medication history, immunizations; physician contacts, emergency room visits, dental visits, counseling visits, and hospitalizations, as applicable;
8. Records of incidents and accidents;
9. Consents as appropriate;
10. Records of emergency safety intervention usage and the rationale for use;
11. Individual plan and team meetings;
12. Physician orders;
13. Documentation of delivery of services and supports;
14. The individual's rights notification;
15. Notice of charges;
16. Name of service coordinator and phone number;
17. Accounting records of the individual's funds, if managed by CDD;
18. Notification of termination of services with the CDD, if applicable;
and
19. Social history information.

3-006.18B Protection of Information: The CDD must safeguard the record against loss, destruction, and unauthorized use. The individual has the right to

confidentiality of his/her records maintained by the CDD. Individual information and/or records will be released only with consent of the individual or designee or as required by law.

3-006.18C Retention/Destruction of Records: The CDD must develop a process relating to retention, safe storage, and safe destruction of the individual's records to ensure retention of necessary information and to protect confidentiality of records. The CDD must retain records relating to the individual and the provision of services for at least six years, including HIPAA health-related records. All records must be disposed of by shredding, mutilation, burning, or other similar protective measures in order to preserve the individual's rights of confidentiality. Records or documentation of the actual fact of record destruction must be permanently maintained.

3-006.18D Documentation: The CDD must ensure sufficient, current, and accurate documentation to verify the delivery of services and compliance with applicable requirements in 175 NAC 3.

3-006.18E Location: The CDD must have a method to access the records by staff and other relevant persons as needed. The CDD must ensure that current and applicable records relating to the individual are readily available to staff when providing services to individuals. If there are changes in ownership, all individual records must be transferred to the current owner. Before dissolution of any CDD agency, the administrator must notify the Department in writing of the location and storage of individual records.

3-006.18F Access: The CDD must establish policies and procedures on access to, duplication, dissemination, and release of information from the individual's record.

3-006.18G The CDD must ensure written consent is obtained from the individual or the individual's legal representative for the release of information specific to the individual, including release of photographs to persons not authorized under law to receive them. The consent must identify the specific information to be released and the time period the consent is in effect, except that no written consent to release or access information is necessary for Department representatives to review the records.

3-006.18H Record Entries: The CDD must ensure that all record entries are dated, legible, and clearly identify the person making the entry. In the case of electronic records, signatures may be replaced by an approved, uniquely identifiable electronic equivalent.

3-006.18I Inspection of Records: The CDD must ensure that all administrative records and records relating to the individual served are made available for review by authorized representatives of the Department within 24 hours of request for records on the premises of the CDD or other site agreeable to the Department.

3-006.19 Itemized Billing Statement: A CDD must provide, upon written request of a individual or a individual's representative and without charge, an itemized billing statement, including diagnostic codes. The billing statement must be provided within 14 days after the request.

3-006.20 Environmental Services: The CDD must provide a safe, clean, and comfortable environment. Every detached building on the same premises used for services must comply with 175 NAC 3.

3-006.20A Housekeeping and Maintenance: The CDD must provide necessary housekeeping and maintenance to protect the health and safety of individuals.

3-006.20A1 The CDD building and grounds must be kept clean, safe, and in good repair.

003.041 Artificial Lighting.

003.0411 Each room or area, including store rooms shall be provided with light fixtures to provide the following minimum foot candles or lumen per square foot rating at an elevation of 30 inches above the floor:

<u>Area Name</u>	<u>General Illumination (foot candles)</u>
Recreation and dining	10
Corridors and halls	5
Storage room	3
Resident room (reading)	20
Resident room (general)	10
Bath and toilet area	10
Medicine area	20
Kitchen area	10
Laundry	8
Mechanical room	5

003.0412 Extension cords or temporary outlets are prohibited. Bare, incandescent bulbs are prohibited in resident areas.

3-006.20A2. The CDD must provide and maintain adequate lighting, environmental temperatures and sound levels.

004.12 Insect and Rodent Control. Every facility shall be equipped so as to prevent the entrance, harborage, or breeding of flies, roaches, bedbugs, rats, mice, and all other insects and vermin. Cleaning, renovation, or fumigation by licensed pest control operator for the elimination of such pests shall be used when necessary.

~~004.07 Garbage and Rubbish Disposal. All garbage and rubbish containing food wastes shall, prior to disposal, be kept in leak proof, nonabsorbent containers with disposable liners which shall be covered with tight fitting lids when filled or stored, or not in continuous use. All other rubbish shall be stored in containers. The rooms, enclosures, areas, and containers used shall provide adequate space for the storage of all food waste and rubbish accumulating on the premises. Adequate cleaning facilities shall be provided and each container, room, or area shall be thoroughly cleaned after the emptying or removal of garbage and rubbish. Food waste grinders, if used, shall be installed in compliance with state and local standards and shall be of suitable construction. All garbage and rubbish shall be disposed of in a manner so as to prevent the attraction of insects, rodents, and vermin.~~

3-006.20A3 All garbage and rubbish must be disposed of in a manner that prevents the attraction of rodents, flies, and all other insects and vermin. Disposal must be done in such a manner as to minimize the transmission of infectious diseases and minimize odor. The CDD must maintain and equip the premises to prevent the entrance, harborage, or breeding of rodents, flies, and all other insects and vermin.

~~004.06 Maintenance. All parts of the facility and all equipment must be maintained in proper working order and routine maintenance functions must be performed on a timely and appropriate basis.~~

3-006.20A4 Routine Maintenance Plan: The CDD must develop and implement a written plan for routine monitoring of the CDD to ensure prompt, routine, and preventive cleaning and maintenance and to identify and prevent hazards and accidents.

3-006.20B Equipment, Fixtures, and Furnishings: The CDD must maintain all equipment, fixtures and furnishings clean, safe and in good repair.

3-006.20B1 Common areas and sleeping areas for individuals must be furnished with beds, chairs, sofas, tables, and storage items that are comfortable, functional, and reflective of individual's needs and preferences. When an individual makes an informed choice, furnishings may be provided by the individual.

3-006.20B2 Bedding: Individuals must be provided a bed of appropriate size for the individual's needs with a clean comfortable mattress and solid foundation. Individuals must also be provided clean, sufficient bedding, including a pillow, linens, and blankets appropriate for the season.

3-006.20C The CDD must establish and implement a process designed for routine and preventative maintenance of equipment and furnishings to ensure that the equipment and furnishings are safe and function to meet their intended use.

3-006.20D The CDD must provide an adequate supply of bed, bath, and other linens as necessary for each individual.

3-006.20E Pets: If the CDD has a pet belonging to the facility, the CDD must assure that the pet does not negatively affect the individuals residing at the CDD. The CDD must have policies and procedures regarding pets that include:

1. An annual examination by a licensed veterinarian;
2. Vaccinations as recommended by the licensed veterinarian which must include at a minimum current vaccination for rabies for dogs, cats, and ferrets;
3. Provision of pet care necessary to prevent the acquisition and spread of fleas, ticks, and other parasites; and
4. Responsibility for the care and supervision of the pet by CDD staff.

3-006.20F Environmental Safety: The CDD must be responsible for maintaining the CDD in a manner that minimizes accidents.

~~004.04A Floors: The floors of all rooms, hallways, bathrooms, storerooms, and all other spaces used or traversed by residents and staff shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair. Cleaning of floors shall be so done as to minimize the raising of dust and exposure of residents thereto. The safe use of rugs, carpets, or natural stone which can be kept clean is permitted. Abrasive strips to reduce or prevent slipping shall be used where slippery surfaces present a hazard.~~

~~004.04B Dirt floors in a basement area are prohibited. Basement floors must be concrete with proper drainage.~~

~~004.04C Walls: Walls in bathrooms, utility rooms, kitchens, and other wet areas shall have a smooth, washable surface. They shall be free from spaces which may harbor insects. Walls in other areas of the facility shall have a cleanable finish. Lead based paints are not permitted in any area of the facility.~~

~~004.04D Ceilings: Ceilings in areas where food is stored or prepared and in which dishes and utensils are washed shall have a washable surface. Enamel painted plaster, gypsum board, concrete and vinyl coated suspended ceiling panels, or equally washable surfaces are adequate.~~

3-006.20G The CDD must maintain the environment to protect the health and safety of individuals by keeping surfaces smooth and free of sharp edges, mold, or dirt; keeping floors free of objects and slippery or uneven surfaces; and keeping the environment free of other conditions which may pose a potential risk.

3-006.20H The CDD must maintain all doors, stairways, passageways, aisles, or other means of exit in a manner that provides safe and adequate access.

~~003.04G Plumbing. Hot and cold water shall be piped to all fixtures in the building except cold water shall be piped to the water closet. Hot water at fixtures used by residents for bathing and lavatories shall at a minimum be 110°F and shall not exceed 115°F. In order to prevent a hazard to the residents mixing valves shall be utilized in cases where a resident's individual Program Plan specifies training in temperature adjustment, water temperature may exceed 115°F.~~

3-006.20I The CDD must provide water for bathing and hand washing at safe and comfortable temperatures to protect individuals from burns and scalds. The water temperature must not exceed 115 degrees Fahrenheit, except in CDDs where all individuals have been identified on the Individual Program Plan to be independent in adjusting and managing water temperatures.

3-006.20J The CDD must ensure hazardous/poisonous materials are properly handled and stored.

3-006.20K Disaster Preparedness and Management: The CDD must establish and implement disaster preparedness plans and procedures to ensure that individuals' services and supports, safety, and well-being are provided and maintained during and following instances of natural (tornado, flood, etc.) or other disasters, disease outbreaks, or other similar situations. The plans and procedures must address and delineate how the CDD will implement the following:

1. The CDD will maintain identification of each individual to ensure that services and supports coincide with the individual's needs;
2. The CDD will move individuals to points of safety or provide other means of protection when all or part of the building is damaged or uninhabitable due to natural or other disaster;
3. The CDD will protect individuals during the threat of exposure to the ingestion, absorption, or inhalation of hazardous substances or materials;
4. The CDD will provide food, water, medicine, medical supplies, and other necessary items to provide necessary services in the event of a natural or other disaster; and
5. The CDD will provide for the comfort, safety, and well-being of individuals in the event of 24 or more consecutive hours of:
 - a. Electrical or gas outage;
 - b. Heating, cooling, or sewer system failure; or
 - c. Loss or contamination of water supply.

3-006.20L Tornado and Fire Drills: The CDD must conduct tornado and fire drills that include participation of individuals on a quarterly basis on each shift of the day. The CDD must maintain documentation of these drills, including names of participants, time and date, any problems with the drills, and evidence that the CDD followed up on problems and took appropriate action.

3-006.20M Infection Control: Each CDD must have an infection control program to minimize sources and transmissions of infections and communicable diseases.

3-006.20N Transportation: When the CDD transports individuals, the CDD must ensure that all individuals are transported in a safe and comfortable manner that meets the needs of each individual. The CDD must ensure that:

1. Vehicles are adapted to meet the needs of all individuals served. Individuals must not be denied transportation services due to the lack of adaptation of vehicles;
2. Adequate measures are taken to provide a sufficient number of staff in the vehicle to ensure safety and to meet the needs of each individual being transported;
3. Transportation provided to children/youth must be in compliance with state law; and
4. Each person transporting individuals served:
 - a. Has a valid driver's license with the appropriate class code;
 - b. Has knowledge of state and local traffic rules;
 - c. Is capable of assisting individuals in and out of vehicles and to and from parking places, when required; and
 - d. Has received training in first aid, CPR, and in meeting the needs of the specific individuals for whom transportation is provided.

3-007 PHYSICAL PLANT STANDARDS: The CDD must be designed, constructed, and maintained in a manner that is safe and functional for use. The CDD must provide sufficient space to implement services and supports to individuals.

~~003.04B Food Service. the kitchen may be residential in nature in both layout and equipment except for the following requirements:~~

~~003.04B1 Dishwashing utilizing an automatic dishwasher or a three compartment sink is adequate if it meets the following requirements:~~

~~003.04B1a When automatic dishwashers are used the final rinse cycle temperature shall not be less than 150°F.;~~

~~003.04B1b For chemical sanitization of dishes in a three compartment sink the following procedure is followed:~~

~~003.04B1b(1) Immersion for a minimum of one minute in sanitizing solution containing: at least 50 parts per million of available chlorine in water at a temperature not less than 75°F. (one half tablespoon of laundry bleach or similar product containing 5 1/4 percent of available chlorine to each gallon of water provides minimum concentration.)~~

~~003.04B1b(2) Use another commercial chemical sanitizer which has the equivalent bacterial effect at this level of chlorine. The quantity required will need to be determined on an individual basis. For some, quantity will depend on the hardness or mineral content of the local water supply.~~

~~003.04B1b(3) At least a two compartment sink shall be available in each kitchen.~~

~~It is recommended that, when made up, the strength of sanitizing solutions be at least twice the minimum strength required for the particular sanitizing solution used. One tablespoon of laundry bleach or other solution containing 5 1/4 percent available chlorine to each gallon of water provides 100 parts per million.~~

~~003.04B2 Food Storage. Dry or staple foods must be stored at least 4 inches above the floor in a ventilated room not subject to sewage or waste water backflow, contamination leakage, water overflow, rodents, or vermin. This requirement does not preclude the use of dry or staple food stored in cabinets in the kitchen if these requirements are met.~~

~~003.04B3 There is a conveniently located handwashing facility in the kitchen.~~

~~003.04B4 There is cleanable work counter space for the preparation of meals. Formica, vinyl, or resilient type work counter coverings which are free of crevices or cracks are adequate.~~

~~003.04B5 Refrigerators are provided for perishable foods and are kept clean and in good working order, and maintain refrigerated foods at from 33°F to 45°F.~~

~~003.04B6 Laundry equipment shall not be located in the kitchen, but in the laundry room only.~~

3-007.01 Dietary Service: The CDD must have sufficient space and equipment for the preparation of meals. The food service and equipment must comply with the Food Code. The following exceptions to the food code apply when the CDD serves 16 or fewer individuals:

1. Instead of a three compartment food preparation and handwashing sink, a two-compartment sink may be used for clean up, dishwashing, and hand washing;
2. Instead of a final rinse cycle temperature of not less than 160 degrees Fahrenheit, an automatic dishwasher may have a final rinse cycle temperature not less than 150 degrees Fahrenheit;

3. Instead of storage space for food items and cooking and serving utensils no less than 6 inches above the floor, the space may be no less than 4 inches above the floor; and
4. Service sink and indirect waste plumbing connections are optional.

003.04K Laundry.

~~003.04K1 Laundry services or facilities for residents shall be provided in accordance with the developmental needs of the residents.~~

~~003.04K2 Separate storage space for soiled and clean laundry shall be located in the residence. All damp soiled linen such as bed linen, towels, and washcloths shall be maintained in covered waterproof containers.~~

~~003.04K3 Domestic type equipment shall be provided for the laundry. Under no circumstances can the laundry operation be located in the food service area.~~

3-007.02 Laundry: The CDD must provide laundry services including a laundry area with a washer and dryer and laundry supplies for individuals personal laundry.

~~003.04J Building Codes. Each center for the developmentally disabled must conform to at least the following codes and standards:~~

~~003.04J1 "Nebraska Electrical Code", National Electrical Code, except for tables 310-20 through 310-30 and figure 310-1, issued and adopted by the National Fire Protection Association in 1984, Publication Number 70-1984, and filed by the State Electrical Board with the Secretary of State and with the Revisor of Regulations.~~

~~003.04J2 American Standards Plumbing Code (ASA A40.8-1955) published by the American Society of Mechanical Engineers, and filed by the State Fire Marshal with the Revisor of Regulations.~~

~~003.04J3 Safety Code for Elevators, latest edition published by the Nebraska State Department of Labor prior to the adoption of these regulations and filed by same with the Revisor of Regulations as 223-NAC 1.~~

~~003.04J4 Regulations promulgated by the Nebraska State Fire Marshal Governing Safety to Life from Fire and Like Emergencies Buildings and Structures; And General Fire Prevention, effective October 18, 1973, as amended (Nebraska Life Safety Code), Rule 1 of the State Fire Marshal, and Appendix "B", Rule 2 of the State Fire Marshal, both in the latest edition filed by the State Fire Marshal with the Revisor of Regulations prior to the adoption of these regulations.~~

~~The codes and standards mentioned in the preceding subparts 003.04J1 through 003.04J4 are hereby adopted and incorporated by reference; they have the same force and effect as if set out verbatim in this part.~~

3-007.03 Construction Standards: A CDD must be designed, constructed, and maintained in a manner that is safe, clean, and functional for the type of services provided.

3-007.03A Codes and Guidelines: New construction must comply with the following codes and guidelines to provide a safe and accessible environment that is conducive to the needs of the individuals served. New construction means a building or distinct part of a building which is proposed to be licensed as a CDD and which is enlarged, remodeled, or altered in any fashion or is built from the ground up on or after the effective date of 175 NAC 3.

1. Building: Building Construction Act, Neb. Rev. Stat. §§ 71-6401 to 71-6407;
2. Plumbing: Plumbing Ordinance or Code, Neb. Rev. Stat. §18-1915;
3. Electrical: State Electrical Act, Neb. Rev. Stat. §81-2101 to 81-2143;
4. Boiler: Boiler inspection Act, Neb. Rev. Stat. § 48-719 to 48-743;
5. Accessibility: Nebraska Accessibility Requirements, State Fire Marshal Regulations, 156 NAC 1 to 12; and
6. Energy: Nebraska Energy Code, Neb. Rev. Stat. §81-1608 to 81-1626, for construction initiated on or after July 2005.

~~004.11 State Fire Safety Code. As a prerequisite to and condition of continued licensure, each building or structure in which a Center for the Developmentally Disabled is housed, shall comply with the Regulations Promulgated by the Nebraska State Fire Marshal Governing Safety to Life From Fire and Like Emergencies in Buildings and Structures; and General Fire Prevention effective October 18, 1973 as amended (Nebraska Life Safety Code), Rule 1 of the State Fire Marshal and Appendix "B", Rule 2 of the State Fire Marshal, both in the latest edition filed by the State Fire Marshal with the Revisor of Regulations prior to the adoption of these regulations. Any building or structure within this scope used or intended to be used for the housing of non-ambulatory, or of four (4) or more persons, shall have installed or maintained proper operating conditions and an approved automatic fire alarm system. Any building or structure within this scope or subdivision used or intended to be used for the housing of less than four (4) ambulatory persons shall have a minimum of a single station smoke detection system.~~

~~Every person, firm, corporation or other entity maintaining or operating any facility for the care of the mentally handicapped, developmentally disabled, or physically disabled, shall maintain documentation in each resident's record, on the annual physical, within fifteen (15) days of admission, or readmission of a~~

~~person, stating whether or not the resident is ambulatory or non-ambulatory person and enumerating the reasons for such classification. Such statement shall also be filed for each resident residing within the facility within thirty (30) days of the effective date of these regulations.~~

~~It shall be a violation of these regulations for any person, firm, or corporation required to file a statement pursuant to this section to include false statements therein. The ambulatory or non-ambulatory status of any mentally handicapped, developmentally disabled, or physically disabled person within this scope shall be determined by a physician.~~

3-007.03B Fire Codes: The CDD must comply with the Nebraska State Fire Code Regulations, State Fire Marshal, 153 NAC 1.

3-007.03C Existing and New CDDs: Existing and new CDDs must comply with the physical plant standards contained in 175 NAC 3-007. The CDD must maintain all building materials and structural components so that total loads imposed do not stress materials and components more than one and one-half times the working stresses allowed in the building code for new buildings of similar structure, purpose, or location.

3-007.03D Conflicts in Standards: In situations where the referenced codes and guidelines conflict with these regulations, the adopted rules and regulations of the Department and the Nebraska State Fire Marshal will prevail.

3-007.03E Interpretations: Floor area means dimension, sizes, and quantities; noted herein must be determined by rounding fractions to the nearest whole number.

3-007.03F Floor Area: Floor area means space with ceilings at least seven feet in height and does not include areas such as enclosed storage, toilets and bathing rooms, corridors, and halls. The space beyond the first two feet of vestibules and alcoves less than five feet in width must not be included in the required floor area. In rooms with sloped ceilings, at least half of the ceiling must be at least seven feet in height with areas less than five feet in height not included in the required floor area.

~~003.04A Dining and Recreation. All facilities shall have minimum areas for residents' dining and recreation which shall be at least 10 and 20 square feet respectively per resident, or 30 square feet total per resident when the area is used for a combination thereof. Space for non-ambulatory mobile residents shall be increased by 50 percent. Under no circumstances shall the combined recreation and dining space be less than 150 square feet. In residential units that have eight beds or less, space in the kitchen may be used for dining if the kitchen was laid out to accommodate table space for eating purposes; the space must be located apart from the food preparation area, and 10 square feet per resident must be allocated for dining purposes. Furnishings in the~~

~~dining recreation room shall include a couch, chair(s), end tables, dining table and chairs or similar furniture to provide a comfortable setting.~~

3-007.03G Dining Areas: Dining areas for individuals must have an outside wall with windows for natural light and ventilation.

3-007.03G1 Dining areas must be furnished with tables and chairs that accommodate individuals' needs.

3-007.03G2 Dining areas must have a floor area of 15 square feet per individual in existing CDDs and 20 square feet per individual in new construction.

3-007.03G3 Dining areas must allow for group dining at the same time in either separate dining areas or a single dining area, or dining in two shifts, or dining during open dining hours.

3-007.03G4 Dining areas must not be used for sleeping, offices or corridors.

003.03 Toilets and Bathing Facilities.

~~003.03A Resident toilet facilities shall be provided as follows: one lavatory and one water closet for each six residents or fraction thereof.~~

~~003.03B Bathing facilities shall be provided as follows: One bathing facility (tub or shower) for each eight residents or fraction thereof. Bathtubs and showers shall be provided with stable grab bars to assist residents.~~

~~003.03C No toilet room shall open directly into a food preparation area.~~

~~003.03D Toilet and bathing areas and fixtures shall approximate normal patterns found in residential construction. If there are wheelchair residents in the home, the toilet and bath areas shall be large enough for wheelchair use and also to include appropriate fixtures and appurtenances for the wheelchair residents' use. Shower curbs shall be omitted to permit access by wheelchairs. An accessible restroom shall provide at least the following fixtures and appurtenances for the wheelchair residents' use:~~

~~003.03D1 One lavatory which when mounted, allows 29 inches clearance from the floor to the bottom of the apron and a maximum rim height of 34 inches;~~

~~003.03D2 One water closet with the seat 110 inches to 20 inches from the floor, or 13 inches to 15 inches for children;~~

~~003.03D3 Grab bars near each side or one side attached and the back of the toilet stool securely attached 32 inches to 34 inches above the parallel to the floor.~~

~~Grab bars at the side shall not be less than 24 inches in front of the water closet stool. Grab bars shall have an outside diameter of not less than 1 1/2 inches and shall provide a clearance of 1 1/2 inches between grab bars and adjacent surface. For children's restrooms grab bars shall be securely attached 15 inches above the floor and be positioned to extend 16 inches beyond the water closet seat;~~

~~003.03D4 Towels or warm air hand dryers shall be provided with the operating mechanism no higher than 48 inches from the floor and not mounted directly above the lavatories;~~

~~003.03D5 Toilets shall provide bar soap or a scap dispenser to be located no higher than 48 inches from the floor;~~

~~003.03D6 Toilet tissue shall be provided within reach of the water closet seat and at a height of no more than 48 inches from the floor.~~

~~003.03E All toilet and bathing area facilities and fixtures shall be kept clean and in good repair.~~

~~003.03F Each bathroom and toilet area shall be well-lighted (Ref: Artificial Lighting 003.0411) with a mirror over each lavatory.~~

~~003.03G Wherever there is a water closet, there shall be an easily accessible lavatory.~~

3-007.03H Bathrooms: The CDD must have bathrooms in sufficient quantity that include tub and/or shower, toilet, and hand washing sink, equipped to meet the needs of individuals served. Bathrooms must also have sufficient hot water to meet the hand washing and bathing needs of the individuals served.

003.02 Resident Bedrooms:

~~003.02A Single bedrooms for ambulatory residents shall provide at least 80 square feet of usable floor area with a side dimension of not less than 7 feet 0 inches. The amount of usable floor space in a resident bedroom is determined after taking adjustments into account as stated in 003.02E. Space for closets, toilet areas, bath areas, or entrance vestibules shall not be counted as usable floor area.~~

~~003.02B Multi bedrooms for ambulatory residents shall provide at least 60 square feet of usable floor space for each resident. There shall be at least 3 feet 0 inches between beds placed side to side and not less than 3 feet 0 inches between the heads of the beds. The amount of usable floor space in a resident bedroom is determined after taking adjustments into account as stated in 003.02E. Space for closets, toilet areas, bath areas, or entrance vestibules shall not be counted as usable floor area.~~

~~003.02C Windows. Bedrooms shall be exterior rooms with at least one window which is easily opened to the outside. The minimum total area of the window or windows measured between stops—clear width when opened, shall be at least 10 percent of the Usable floor area. All windows shall be provided with screens which are maintained in good repair. Combination storm window screens are acceptable. Full length storm windows may be used during the winter months. Window ceils not be more than 36 inches above the finished floor. All exterior windows and doors shall have serviceable screens except for doors with panic hardware.~~

~~003.02D Closets. There shall be accessible private and adequate storage space for clothing and personal belongings in the bedroom area for each resident. Built in closets or wardrobes with doors or curtains are acceptable.~~

~~003.02E Ceiling Heights. Level ceilings in sleeping rooms shall not be less than 7 feet—0 inches high. in sleeping rooms with sloped ceilings, only the areas with vertical wall heights of 5 feet or more shall be included in the required usable floor area. At least half of the usable floor space must have a ceiling not less than 7 feet—0 inches.~~

~~003.02F Partitions. Partitions defining each bedroom shall run from floor to ceiling.~~

~~003.02G All resident bedrooms shall be located at or above natural grade level.~~

~~003.02H Doors:~~

~~003.02H1 Interior doors excluding time out room doors shall not have vision panels.~~

~~003.02H2 Door locks installed on sleeping room doors shall be lockable from the corridor side only, except where such doors directly to the outside of the building. Sleeping room doors leading directly to the outside of the building may be lockable on the room side. All locks shall permit exit from a room by a simple operation without the use of a key. Doors in homes may be lockable by the occupant if they can be unlocked by a master key from the opposite side. Master keys are to be carried by staff at all times.~~

~~003.02H3 Door widths shall not be less than 3 feet wide to allow a minimum clear opening of 32 inches in the fully opened position.~~

~~003.02H4 Door alarms shall be provided for exterior doors when residents requiring such supervision is established by the Individual Program Plan.~~

~~003.02I Corridors. Corridor widths shall not be less than 3 feet—0 inches.~~

~~003.02J Beds. Each resident shall have an individual bed. Adult beds shall be at least 36 inches wide. Adult size beds shall be provided for individuals 14 years of age and older. Each bed shall have good springs and a clean, firm, comfortable mattress. Beds shall be of suitable construction and dimensions to accommodate persons using them. Bunk beds, roll aways and trundles are not permitted.~~

~~003.02K Bedding and Linen.~~

~~003.02K1 All beds provided for residents shall be supplied with suitable pillowcases and bottom and top sheets. All bedding, including mattresses, mattress pads, quilts, blankets, pillows, sheets, spreads, and all bath linen shall be kept clean. Bedding, including mattresses, mattress pads, quilts, blankets, pillows, and bed and bath linen which is worn out or unfit for further use shall not be used. Bedding shall be appropriate to the season. Pillowcases, sheets, and bath linen, after being used by one resident, shall be washed before they are used by other residents.~~

~~003.02K2 Clean bed linen shall be furnished at least once each week, or more frequently, to maintain cleanliness and a clean washcloth, towel or appropriate paper service shall be available to each resident.~~

~~003.02L Room Furnishings. All equipment, fixtures, furniture and furnishings, including windows, draperies, curtains, and carpets shall be kept clean and free of dust, dirt, vermin, and other contaminants and shall be maintained in good order and repair. Each resident shall be provided with appropriate individual furniture, including as a minimum a chest of drawers, an individual wardrobe with clothes racks and shelves unless built in closet space is provided, and a mirror, and at least one chair per bedroom will be provided. Tilted mirrors or mirrors located at a height for wheelchair use shall be provided for residents where appropriate. There shall be accessible private storage space for clothing in the bedroom area for each resident. Each resident shall have individual racks or other drying space for washcloths and towels.~~

~~003.02M Non-ambulatory residents shall not be housed in bedrooms located above the first floor level.~~

~~003.02N No bedroom shall have no more than four beds.~~

~~003.02O Every resident bedroom shall be so located that it is unnecessary to pass through another resident's bedroom for access to the bedroom or a toilet or bath area.~~

~~003.02P Every resident's bedroom shall be so located that it is unnecessary to pass through another resident's bedroom for access to a bedroom or toilet or bath area used by residents other than the resident occupying the bedroom.~~

3-007.03I Bedrooms: The CDD must provide bedrooms which allow for sleeping, afford privacy, provide access to furniture and belongings, and accommodate the needs of the individuals served.

~~(See #4 in list below) 004.01C All resident bedrooms shall have windows which provide an unobstructed view of not less than 15 feet 0 inches in at least one horizontal direction.~~

3-007.03I1 Individuals' Bedrooms: Each individual's bedroom:

1. Must not be located in any garage, storage area, shed, or similar detached buildings;
2. Must be a single room located within an apartment, dwelling, or dormitory-like structure;
3. Must not be accessed through a bathroom, food preparation area, laundry, or another bedroom;
4. Must be located on an outside wall with an operable window and a minimum size of six square feet per individual. Such window must provide an unobstructed straight view of at least ten feet. Windows must have covering for privacy;
5. Must contain at least 45 cubic feet of enclosed storage volume per individual in dressers, closet, or wardrobes;
6. Be located so that it is not necessary for staff or other individuals to pass through an individual's bedroom in order to access other rooms or areas;
7. Must not be used by staff for sleeping or office space;
8. Must be sufficient size to meet the needs of the individual and any assistive equipment needed by the individual.

3-007.03I2 Bedroom Size: Individuals' bedrooms in existing and new CDDs must have at least the following floor areas:

1. Floor areas for single person rooms must be 80 square feet;
2. Floor areas for multiple person rooms must be 60 square feet per occupant with a maximum of 3 individuals; or
3. Floor area for apartments or dwellings must have 120 square feet for one individual plus 100 square feet for each additional individual.

3-007.03I3 Individuals' bedrooms in new construction must have at least the following floor areas:

1. Floor areas for single rooms must be 100 square feet;
2. Floor areas for multiple person rooms must be 80 square feet per person with a maximum of 2 persons; or
3. Floor area for apartments or dwellings must have 150 square feet for one person plus 110 square feet for each additional person.

3-007.03J Storage Space: The CDD must provide sufficient amount of storage space for the individual's clothing, personal items, equipment, and assistive devices. The storage must be easily accessible to the individual.

3-007.03K Access: To ensure safety and reasonable access for entrance, movement within, and exit from the CDD, all individuals who reside at the CDD must have access according to individuals' needs. There must be room for individuals to use their assistive devices.

3-007.03L Corridors/Doors: The corridor and doors must be wide enough to allow passage by individuals and their equipment. All stairways and ramps must have handrails.

3-007.03M The CDD must provide space for administrative offices and storage space for records, supplies, and equipment. An individual's bedroom must not be used for this space.

~~003.04D Outside Recreation Area. The lot shall be large enough for an outside recreation area commensurable with the number and type of residents in order to effectively promote normalization. In areas where public recreation is not available within one city block of the block where the facility is located, at least 25 square feet of outdoor recreation area per resident shall be provided.~~

3-007.03N Outdoor Areas. The CDD must provide an outdoor area for individuals' use. It must be equipped and situated to allow for individuals' safety and abilities.

3-007.03O Building Systems: The CDD must ensure that it has the following building systems that are designed, installed, and operated for the safety, comfort, and well being of each individual at no cost to the individual served:

~~004.10 Sewage Disposal. The sewage shall discharge into a sewage system which complies with the rules and regulations of the Department of Environmental Control of the State of Nebraska.~~

~~004.13 Water Supply. Every facility shall have a safe, sanitary, and potable water supply, connected to a municipal system when available, which complies with the provisions of Title 179, Nebraska Administrative Code,~~

~~Chapter 2, Regulations Governing Public Water Supply Systems, adopted and promulgated by the State Department of Health. No plumbing fixture or other device shall be installed which provides a connection between a drinking water supply and a drainage, soil, waste, or sewer pipe so as to make possible the backflow of sewage or waste water into the water supply system.~~

~~004.13A Any center for the developmentally disabled with a private well or wells as the source of the water supply must have this water supply tested for coliform bacteria~~

~~quarterly and a chemical analysis every three years by the State Health Department Laboratory or a laboratory approved by the same.~~

~~004.13B Bacteriological. The maximum permissible contaminant level for coliform bacteria is four per one hundred milliliters of sample examined. Any sample submitted which exceeds the four coliform per one hundred milliliters a second sample shall be immediately collected and submitted for examination. If two consecutive samples have greater than four coliform per one hundred milliliters, the well and wells shall be disinfected immediately.~~

~~004.13C Chemical. A water sample shall be submitted every three years for a chemical analysis. The maximum contaminate levels shall not exceed those contained in the Department regulation 179 NAC 2-002.01 and 179 NAC 2-002.02.~~

~~004.13D Copies of the water supply test reports must be retained in the center for the developmentally disabled for the period of one year and a copy of each report for the previous year must be submitted to the Department with the licensure application.~~

3-007.0301 Water and Sewer Systems: The CDD must ensure maintenance of an accessible, adequate, safe, and potable supply of water and a sanitary and functioning sewage system.

~~003.04H Heating and Cooling.~~

~~003.04H1 The building shall be equipped with a heating system and have a radiator, convertor, or register in each room used by residents that does not constitute a burn hazard. The heating system must be capable of maintaining a temperature of 70-75 degrees Fahrenheit during severe cold weather conditions at an elevation of 30 inches above the floor in all areas used by residents. For all facilities a cooling system is required which is capable of maintaining an indoor temperature of a range from 68°F. to 78°F. during hot weather conditions at an elevation of 30 inches above the floor in all areas used by residents. Indoor relative humidity must be maintained within the 30-70% range throughout the year. If hot water or steam radiators are used, they shall be provided with covers to prevent inadvertent burns.~~

~~003.04H2 Mechanical equipment rooms housing gas-fired heating and hot water equipment shall have positive outside combustion air supplied for the equipment.~~

~~003.04H3 Every gas-fired or oil-fired heating appliance and hot water and other heating appliance shall be vented to the outside air.~~

3-007.0302 Heating and Cooling Systems: The CDD must provide a heating and air conditioning system for the comfort and to meet any health care needs

of the individuals. The system must be capable of maintaining a temperature of at least 70 degrees Fahrenheit during heating conditions and a temperature that does not exceed 80 degrees Fahrenheit during cooling conditions.

~~003.04F Ventilation. If areas used as kitchens, bathrooms, toilet areas, or laundries are located in rooms without windows, these areas shall be provided with mechanical ventilation with vents leading directly to the outside. If these areas have windows that can be opened to the outside air, mechanical ventilation is not required.~~

3-007.03O3 Ventilation: The CDD must ensure that there is adequate exhaust and clean air to prevent noxious and offensive odors in the CDD. Ventilation may be provided by natural or mechanical means. New construction of a CDD must have mechanical ventilation for bathrooms and kitchens and similar rooms without windows for ventilation.

3-007.03O4 Electrical System: The CDD must ensure the CDD has an electrical system that has sufficient capacity to maintain the services provided and that are properly ground.

3-007.04 Waivers: The Department may waive any provision of 175 NAC 3 relating to construction or physical plant of a CDD upon proof by the licensee satisfactory to the Department that:

1. The waiver would not unduly jeopardize the health, safety, or welfare of the individuals residing at the CDD;
2. The provision would create an unreasonable hardship for the CDD; and
3. The waiver would not cause the State of Nebraska to fail to meet applicable requirements of Medicare or Medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

3-007.04A Unreasonable Hardship: In evaluating the issue of unreasonable hardship, the Department will consider the following:

1. The estimated cost of the modification or installation;
2. The extent and duration of the disruption of the normal use of areas used by individuals residing in the CDD resulting from construction work;
3. The estimated period over which the cost would be recovered through reduced insurance premiums and increase reimbursement related to costs;
4. The availability of financing; and
5. The remaining useful life of the building.

3-007.04B Waiver Terms and Conditions: A waiver may be granted under the terms and conditions and for a period of time as are applicable and appropriate to the waiver. Terms and conditions and period of waiver include but are not limited to:

1. Waivers that are granted to meet the special needs of an individual remain in effect as long as required by the individual;
2. Waivers may be granted for a period of time that ends at the time the conditions of approval no longer exist;
3. Waivers may be granted to permit a CDD time to come into compliance with the physical plant standards for a period of one year. Upon submission of proof of ongoing progress, the waiver may be continued for an additional year; and
4. An applicant or CDD must submit any request for a waiver of any construction or physical plant requirements set forth in these regulations. An applicant for a waiver may construct a request for waiver form or obtain a form from the Department.

3-007.04C Denial of Waiver: If the Department denies a provider's request for a waiver in a CDD, the provider may request an administrative hearing as provided in the Administrative Procedure Act (APA) and the Department's rules and regulations adopted and promulgated under the APA.

~~002.02 License; Suspension; Revocation; Hearing; Procedure. The Department of Health of the State of Nebraska shall issue a license for the operation of a Center for the Developmentally Disabled to any facility which is found to comply with Sections 71-2017 to 71-2029, Reissue Revised Statutes of Nebraska, 1943, and to such regulations as are lawfully promulgated thereto by the Department of Health. The Department of Health of the State of Nebraska shall deny, suspend or revoke licenses on any of the following grounds:~~

~~002.02A Violation of any of the provisions of Sections 71-2017 to 71-2029 or the rules and regulations lawfully promulgated pursuant thereto;~~

~~002.02B Permitting, aiding or abetting the commission of any unlawful act; or~~

~~002.02C Conduct or practices detrimental to the health or safety of residents and employees of the facility; provided that this provision shall not be construed to have any reference to healing practices authorized by law.~~

~~Should the department determine to deny, suspend, or revoke a license, it shall send to the applicant or licensee, by either registered or certified mail, a notice setting forth the particular reasons for the determination. The denial, suspension, or revocation shall become final thirty days after the mailing of the notice, unless the applicant or licensee, within such thirty day period, shall give notice of desire for hearing. Thereupon the applicant or licensee shall be given a fair hearing before the Department of Health of the State of Nebraska and shall have the right to present such evidence as may be proper. On the basis of such evidence the determination involved shall be affirmed or set aside, and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by either registered or certified mail to the applicant or licensee. The decision shall become final thirty days after a copy thereof is mailed, unless the applicant or licensee within such thirty day period appeals the decision under Section 71-2027, Reissue Revised Statutes of Nebraska, 1943. The procedure governing hearings authorized by this section shall be in accordance with~~

~~Department of Health Rules of Practice and Procedure. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by Department of Health Rules of Practice and Procedure.~~

3-008 DENIAL, REFUSAL TO RENEW, AND DISCIPLINARY ACTION

3-008.01 Grounds for Denial, Refusal to Renew, or Disciplinary Action

3-008.01A The Department may deny or refuse to renew a CDD license for failure to meet the requirements for licensure, including:

1. Failing a CDD inspection as specified in 175 NAC 3-005;
2. Having had a license revoked within the two-year period preceding an application; or
3. Any of the grounds specified in 175 NAC 3-008.01B.

3-008.01B The Department may take disciplinary action against a CDD license for any of the following grounds:

1. Violation of any of the provisions of the Health Care Facility Licensure Act or 175 NAC 3;
2. Committing, permitting, aiding, or abetting the commission of any unlawful act;
3. Conduct or practices detrimental to the health or safety of an individual residing at the CDD or employee;
4. A report from an accreditation body or public agency sanctioning, modifying, terminating, or withdrawing the accreditation or certification of the health care facility or service;
5. Failure to allow an agent or employee of the Department of Health and Human Services access to the CDD for the purpose of inspection, investigation, or other information collection activities necessary to carry out the duties of the Department;
6. Discrimination or retaliation against an individual residing at the CDD or employee who has submitted a complaint or information to the Department of Health and Human Services;
7. Violation of the Medication Aide Act;
8. Failure to file a report required by Neb. Rev. Stat. §§ 38-1127; or
9. Failure to file a report of suspected abuse or neglect as required by Neb. Rev. Stat. §§ 28-372 and §28-711.
10. Discrimination or retaliation against an individual or employee who has presented a grievance or information to the office of the state long term care ombudsman;
11. Failure to allow a state long term ombudsman or an ombudsman advocate access to the CDD for the purpose of investigation necessary to carry out the duties of the office of the state long term care ombudsman.

3-008.02 Procedures for Denial, Refusal to Renew, or Disciplinary Action

3-008.02A If the Department determines to deny, refuse renewal of, or take disciplinary action against a CDD license, the Department will send a notice to the applicant or licensee by certified mail to the last address shown on its records. The notice will state the determination, including a specific description of the nature of the violation and the statute or regulation violated, and the type of disciplinary action pending.

3-008.02B The denial, refusal to renew, or disciplinary action becomes final 15 days after the mailing of the notice unless the applicant or licensee within the 15-day period makes a written request to the Department for an:

1. Informal conference with a representative peer review organization;
2. Informal conference with the Department; or
3. Administrative hearing.

3-008.02C Informal Conference

3-008.02C1 At the request of the applicant or licensee, the peer review organization or the Department hold an informal conference within 30 days of the receipt of the request. The conference will be held in person, or by other means, at the request of the applicant or licensee.

If the pending action is based on an inspection, the Department's representative at the conference will not be the individual who did the inspection.

3-008.02C2 Within 20 working days of the conference, the peer review organization or the Department's representative will report in writing to the Department the conclusion regarding whether to affirm, modify, or dismiss the notice and the specific reasons for the conclusion and provide a copy of the report to the Department and the applicant or licensee.

3-008.02C3 Within ten working days after receiving the report under 175 NAC 3-008.02C2, the Department will consider the report and affirm, modify, or dismiss the notice and state the specific reasons for the decision, including, if applicable, the specific reasons for not adopting the conclusion of the peer review organization or the Department's representative as stated in the report. The Department will provide the applicant or CDD with a copy of the decision by certified mail to the address shown in the Department's records.

3-008.02C4 If the applicant or CDD successfully demonstrates at the informal conference that the deficiencies should not have been cited in the notice, the Department will remove the deficiencies from the notice and rescind any sanction imposed solely as a result of those cited deficiencies.

3-008.02C5 If the applicant or CDD contests the affirmed or modified notice, the applicant or CDD must submit a request for hearing in writing to the Department within five working days after receipt of the decision in writing.

3-008.02C6 The Department will collect a fee from any applicant or licensee requesting an informal conference with a representative peer review organization to cover all costs and expenses associated with the conference.

3-008.02D Administrative Hearing

3-008.02D1 When an applicant or licensee contests the notice and requests a hearing, the Department will hold a hearing in accordance with the Administrative Procedures Act (APA) and with the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. § 33-139 and 33-139.01.

3-008.02D2 On the basis of evidence presented at the hearing, the Chief Medical Officer will affirm, modify, or set aside the determination. The Chief Medical Officer's decision will:

1. Be in writing;
2. Be sent by registered or certified mail to the applicant or licensee;
and
3. Become final 30 working days after mailing unless the applicant or licensee, within the 30-day period, appeals the decision.

3-008.02D3 An applicant or a licensee's appeal of the Chief Medical Officer's decision must be in accordance with the Administrative Procedure Act (APA).

3-008.03 Types of Disciplinary Action for CDD

3-008.03A The Department may impose any one or a combination of the following types of disciplinary action against the CDD license:

1. A fine not to exceed \$10,000 per violation;
2. A prohibition on admissions or re-admissions, a limitation on enrollment, or a prohibition or limitation on the provision of care or service;
3. A period of probation not to exceed two years during which the CDD may continue to operate under terms and conditions fixed by the order of probation;
4. A period of suspension not to exceed three years during which the CDD may not operate; or

5. Revocation which is a permanent termination of the license. The licensee may not apply for a license for a minimum of two years after the effective date of the revocation.

3-008.03B In determining the type of disciplinary action to impose, the Department will consider:

1. The gravity of the violation, including the probability that death or serious physical or mental harm will result;
2. The severity of the actual or potential harm;
3. The extent to which the provisions of applicable statutes, rules, and regulations were violated;
4. The reasonableness of the diligence exercised by the CDD in identifying or correcting the violation;
5. Any previous violations committed by the CDD; and
6. The financial benefit to the CDD of committing or continuing the violation.

3-008.03C If the CDD fails to correct a violation or to comply with a particular type of disciplinary action, the Department may take additional disciplinary action as described in 175 NAC 3-008.03A.

3-008.03D Temporary Suspension or Temporary Limitation: If the Department determines that individuals are in imminent danger of death or serious physical harm, the Director of Public Health may:

1. Temporarily suspend or temporarily limit the CDD license, effective when the order is served upon the CDD. If the licensee is not involved in the daily operation of the CDD, the Department will mail a copy of the order to the licensee, or if the licensee is a corporation, to the corporation's registered agent;
2. Order the immediate removal of individuals who reside at the CDD;
3. Order the temporary closure of the CDD pending further action by the Department;

3-008.03D1 The Department will simultaneously institute proceedings for revocation, suspension, or limitation of the CDD license, and will conduct an administrative hearing no later than ten days after the date of the temporary suspension or temporary limitation.

3-008.03D2 The Department will conduct the hearing in accordance with the Administrative Procedure Act and the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. §§ 33-139 and 33-139.01.

3-008.03D3 If a written request for continuance of the hearing is made by the licensee, the Department will grant a continuance, which may not exceed 30 days.

3-008.03D4 On the basis of evidence presented at the hearing, the Chief Medical Officer will:

1. Order the revocation, suspension, or limitation of the license;
or
2. Set aside the temporary suspension or temporary limitation.

3-008.03D5 If the Chief Medical Officer does not reach a decision within 90 days of the date of the temporary suspension or temporary limitation, the temporary suspension or temporary limitation will expire.

3-008.03D6 Any appeal of the Chief Medical Officer's decision after the hearing must be in accordance with the APA.

3-008.04 Reinstatement from Disciplinary Probation or Suspension, and Re-Licensure After Revocation

3-008.04A Reinstatement at the End of Probation or Suspension

3-008.04A1 Reinstatement at the End of Probation: A license may be reinstated at the end of probation after the successful completion of an inspection, if the Department determines an inspection is warranted.

3-008.04A2 Reinstatement at the End of Suspension: A license may be reinstated at the end of suspension following:

1. Submission of an application to the Department for renewal that conforms to the requirements of 175 NAC 3-003.02;
2. Payment of the renewal fee as specified in 175 NAC 3-004.09; and
3. Successful completion of an inspection.

The Department will reinstate the license when it finds, based on an inspection as provided for in 175 NAC 3-005, that the CDD is in compliance with the operation and services and physical environment requirements of 175 NAC 3-006 and 3-007.

3-008.04B Reinstatement Before Completion of Probation or Suspension

3-008.04B1 Reinstatement Before the Completion of Probation: A licensee may request reinstatement before the completion of probation and must meet the following conditions:

1. Submit a petition to the Department stating:

- a. The reasons why the license should be reinstated before the probation completion date; and
- b. The corrective action taken to prevent recurrence of the violation(s) that served as the basis of the probation; and
2. Successfully complete any inspection the Department determines necessary.

3-008.04B2 Reinstatement Prior to Completion of Suspension: A licensee may request reinstatement prior to the completion of suspension and must meet the following conditions:

1. Submit a petition to the Department stating:
 - a. The reasons why the license should be reinstated prior to the suspension completion date; and
 - b. The corrective action taken to prevent recurrence of the violation(s) that served as the basis of the suspension;
2. Submit a written license application to the Department as specified in 175 NAC 3-003.01B;
3. Pay the renewal fee as specified in 175 NAC 3-004.09; and
4. Successfully complete any inspection that the Department determines necessary.

3-008.04B3 The Director of Public Health will consider the petition submitted and the results of the inspection or investigation conducted by the Department and:

1. Grant full reinstatement of the license;
2. Modify the probation or suspension; or
3. Deny the petition for reinstatement.

3-008.04B4 The Director of Public Health's decision is final 30 days after mailing the decision to the licensee unless the licensee requests a hearing within the 30-day period. The requested hearing will be held according to the Department's rules and regulations for administrative hearings in contested cases.

3-008.04C Re-Licensure After Revocation: A CDD license that has been revoked is not eligible for re-issuance until two years after the date of revocation.

3-008.04C1 A CDD seeking re-issuance of a license must apply for an initial license and meet the requirements for initial licensure in 175 NAC 3-003.

3-008.04C2 The Department will process the application for re-licensure of a license in the same manner as specified in 175 NAC 3-003.01.