TITLE 206 BEHAVIORAL HEALTH SERVICES

CHAPTER 4-000 CONTRACTING REQUIREMENTS

4-001 CONTRACTING REQUIREMENTS FOR REGIONAL BEHAVIORAL HEALTH AUTHORITIES (RBHAs)

4-001.01 ADMINISTRATION AND MANAGEMENT: The Nebraska Behavioral Health Services Act (Neb. Rev. Stat. §§ 71-801 to 71-818) established six behavioral health Regions.

4-001.01A Each Regional Behavioral Health Authority (RBHA) is governed by a Regional Governing Board. The Regional Governing Board consists of one county board member from each county in the Region.

4-001.01A1 Board members serve for staggered terms of three years and until their successors are appointed and qualified. Board members must serve without compensation but will be reimbursed for their actual and necessary expenses as provided in Neb. Rev. Stat. §§ 81-1174 to 81-1177.

4-001.01B The Regional Governing Board must appoint a Regional Administrator who is responsible for the administration and management of the regional behavioral health system.

4-001.01C The RBHA is responsible for the development and coordination of a network of publicly funded behavioral health services within the behavioral health Region, under the rules and regulations established within this title. Each RBHA must encourage and facilitate the involvement of consumers in all aspects of service planning and delivery within the Region. The RBHA must also coordinate these activities with the Office of Consumer Affairs within the Division.

4-001.01D Each RBHA must establish and utilize a Regional Advisory Committee for the purpose of advising the RBHA on matters relating to community behavioral health services provided in the Region.

4-001.01D1 The Regional Advisory Committee must be culturally representative of the Region and must include consumers, providers, and other interested parties.

4-001.01D2 Procedures must be established to prevent a conflict of interest for members of the committee who may benefit financially or programmatically from their participation.

4-001.01D3 Each RBHA must submit an annual updated list of the names, addresses, and phone numbers of the officers and members of the advisory committee to the Division by July 1.

4-001.01D4 The Regional Advisory Committee must meet quarterly per year at a minimum.

4-001.01D5 The RBHA must develop procedures for soliciting advice from the Regional Advisory Committee, including procedures for input into the regional planning process, budget development and approval, contracting, evaluation, and other related areas.

4-001.01D6 The RBHA must document the input received from the Regional Advisory Committee.

4-001.01E The RBHA must certify in writing to the Division, in a manner specified by the Division, that the required county matching funds have been allocated as required by Neb. Rev. Stat. § 71-808.

4-001.01E1 The RBHA must certify that required local match funds in each Region have been appropriated for expenditure during the fiscal year for which the match has been allocated.

4-001.01E2 The local match dollars must be expended for community behavioral health services and for the operation of the RBHA as reported in the Regional Budget Plan.

4-001.01E3 The amounts of local match dollars certified to the Division by the RBHA and expended during the fiscal year must appear in the annual audit of the RBHA.

4-001.01E4 The RBHA must annually submit to the Division a report summarizing the actual expenditure of funds and revenues received from all sources, in a manner specified by the Division.

4-001.01E5 The RBHA must provide reports, evaluations, plans, and any other documents as deemed necessary by the Division for monitoring and accountability.

4-001.01E6 In making any grant application to the federal government, the RBHA must submit the proposal to the Division for review and comment before formal submission to the Federal agency.

4-001.01F The RBHA must permit inspection of all programmatic and fiscal records and must allow access for on-site monitoring by authorized representatives of the Division.

4-001.01G The RBHA must facilitate the coordination of community behavioral health providers with other organizations and individuals to carry out the Regional Budget Plan (see 206 NAC 4-001.02).

4-001.01H The RBHA must maintain fiscal and service records at least five years following the end of the contract period or until resolution of any audit questions, whichever is later.

4-001.02 ANNUAL REGIONAL BUDGET PLAN: The RBHA must annually submit to the Division a Regional Budget Plan in a format specified by the Division that is consistent with the state plan. The Annual Regional Budget Plan must include, but is not limited to:

1. A proposed budget that projects expenses and the allocation of funds for the community-based services to be offered in the Region; and
2. A projection of all other revenues from all sources for each community behavioral health provider and the RBHA in a manner specified by the Division.

4-001.03 CONTRACTING: The RBHA is responsible for contracting for the publicly funded behavioral health services for consumers within its designated Region, consistent with the approved regional budget and funding plan. Contracting must meet the following requirements.

4-001.03A The RBHA must contract all behavioral health services developed after July 1, 2004 through an open, public competitive bidding process. For services provided by the RBHA, the RBHA must comply with 206 NAC 4-001.03E.

4-001.03B The RBHA must publicize and distribute a "Request for Proposal" that has been approved by the Division. Approved Request for Proposals must be released with adequate public notice before notification of award to ensure an open and fair competitive process. Each RBHA is expected to make reasonable efforts to contact all potentially eligible bidders.

This provision may be waived only by following the procedures in 206 NAC 3-005.

4-001.03C Requests for Proposals for services must at a minimum contain:

1. A clear ~~indication that consumers are to be involved in the development, implementation, and evaluation of the services to be provided~~ description of the process by which consumers are directly and actively involved in the development, implementation, and evaluation of the services to be provided;
2. A clear description of the service(s) to be provided;
3. A clear description of the minimum qualifications for prospective bidders;
4. Accurate data related to the service (as available);
5. The process to be used to determine the award; and
6. The process for appeal.

4-001.03D Determination of Award for contracts must meet the following minimum criteria:

1. Each proposal received must be recorded and evaluated according to the published criteria in the request; and
2. Upon notice of award to the successful bidder, all proposals must be open to public inspection.

4-001.03E As specified in Neb. Rev. Stat. § 71-809, except for services being provided by a RBHA on July 1, 2004, under applicable state law in effect prior to such date, no RBHA is allowed to provide behavioral health services funded in whole or part with revenue received and administered by the Division under the Nebraska Behavioral Health Services Act unless:

1. There has been a public competitive bidding process for the services as required in 206 NAC 4-001.03A;
2. The RBHA has determined, as a result of the bidding process, that there are no qualified and willing providers to provide the services; and
3. The RBHA receives written authorization from the Director of the Division and enters into a contract with the Division to provide the services.

4-001.03F If the RBHA contracts with the Division for the provision of the services, the RBHA must comply with all applicable rules of the Division relating to the provision of behavioral health services including rules that:

1. Establish definitions of conflicts of interest for the RBHAs and procedures if a conflict of interest arises; and
2. Require the RBHAs to establish and maintain a separate budget and separately account for all revenue and expenditures for the provision of the services.

4-001.03G The RBHA must receive approval from the Division before entering into contracts with any organization or individual providing behavioral health services funded in whole or in part by the Division. The Division's approval of the Annual Regional Budget Plan and funding allocation may serve as the written approval for the purposes of this requirement.

4-001.03H The RBHA must file with the Division a current copy of all subcontracts between organizations or individuals providing behavioral health services and the RBHA.

4-001.03H1 The RBHA must file with the Division a copy of the subcontracts no later than 120 days after full execution of the contract with the State.

4-001.03H2 As these contract(s) are amended, the RBHA must file copies of the amendments with the Division within 30 days of contract execution.

4-001.03I The contract between the RBHA and the organization or individual must stipulate that the provider must adhere to the regulations and contract requirements of the Division.

4-001.03J The RBHA is responsible for enrolling contracted providers in their network. At a minimum, the enrollment must include:

1. Demonstration of capacity to provide behavioral health services based upon verification of:
   a. Compliance with all applicable state standards and licensure requirements for program, facilities, and staff members;
   b. Professional licenses and endorsements;
   c. All applicable insurance coverage including but not limited to: worker's compensation, motor vehicle liability, professional liability, directors/officers liability, and general liability coverage; and
   d. Fiscal viability, including fiscal and budgetary systems that provide appropriate accounting for and spending of contracted funds;
2. Verified demonstration of compliance with state or national accreditation standards as specified in 206 NAC 5-001;
3. Documented completion of an on-site visit for all contracted providers and programs before enrollment and service provision to any consumer receiving services funded by the Division. This on-site visit must include the following minimum areas:
   a. Verification of compliance with 206 NAC 4-001.03J; and
   b. Verification that the clinical record keeping practices conform with the program plan submitted and meet the minimum standards as described in 206 NAC 6-007; and
4. Primary source verification of all information used to meet the criteria in items 1-3.

4-001.03J1 Contract retention is determined through a performance review that at a minimum includes the following:

1. Continued compliance with 206 NAC 4-001.03J, items 1 and 2;
2. A review of data demonstrating the operation of the service outlined in the current contract;
3. Consumer satisfaction;
4. Compliance with information reporting to the Division;
5. On-site visit consistent with 206 NAC 4-001.03J, item 3;
6. Completion of all provider enrollment forms and reports specified by the Division; and
7. Inclusion of consumers in development, implementation, and evaluation of services.

4-001.03K The Division may contract directly with other entities for community-based and other behavioral health services in Regions including but not limited to services for Native American Tribes and Problem Gambling Services. (Moved from 4-001.03)

4-001.04 CONFLICT OF INTEREST

4-001.04A The RBHA must have policies and procedures that guard against a conflict of interest between the RBHA, a current or prospective provider, or any individual member of either organization.

4-001.04A1 For the purposes of these regulations, a conflict of interest exists when an organizational matter to be acted upon confers a personal benefit, financial or otherwise, direct or indirect, to a member of the Regional Governing Board, an employee, a volunteer, a student, a consultant, or person related by kinship, or personal or professional association.

4-001.04B The RBHA must have policies and procedures that, at a minimum, ensure no person covered under 206 NAC 4-001.04A:

1. Is the recipient of gifts or gratuities, with financial value or otherwise, from individuals or organizations doing business with the RBHA or a provider;
2. Misuses confidential information;
3. Uses the organization's personnel, resources, property, or funds for personal financial gain;
4. Employs persons related by kinship or personal or professional association without prior written approval from the RBHA; or
5. Uses or attempts to use any official position to secure unwarranted privileges or exemptions for themselves or others.

4-001.04C The RBHA must have policies and procedures that detail the method to identify, report, and resolve potential conflicts of interest. All disclosures, reports, and resolutions must be in writing and be available for review by the Division.

4-001.04C1 The RBHA must have policies and procedures that address any conflict of interest between the RBHA in its role as administrator and any provider including the RBHA in its role as a provider and how the conflict is resolved.

4-001.05 DISASTER PLANNING

4-001.05A The RBHA must have the capacity to respond to the psychosocial needs of people affected by a disaster within the Region's assigned geographic area, consistent with the state disaster plan.

4-001.05B The RBHA must have a written plan prepared to meet the disaster-generated psychosocial needs for the people residing within the Region.

4-001.05B1 The RBHA's disaster response plan must reflect coordination of its disaster preparations and response with the other emergency responders in the Region's assigned geographic area.

4-001.05B2 The RBHA must work in cooperation with the local emergency management organization and the Division to organize, recruit, and train qualified behavioral health staff to respond in times of disaster. The behavioral health personnel designated to serve as part of the disaster response team must have received training to develop skills for providing psychosocial support after disaster.

4-001.06 ACCESSIBILITY: Each RBHA must be located in physically accessible offices and provide all materials in accessible formats as required by ADA and the ADA Accessibility Guidelines.

4-001.07 INABILITY TO PAY: A program funded in whole or in part under a contract with the Division must not deny services to persons residing in Nebraska because of inability to pay scheduled fees, including preadmission deposits.

4-001.08 PUBLICITY: Publications describing an organization/program funded by the Division must disclose within such publications that the organization/program is partially funded by the Department.

4-001.09 SETTING: The RBHA must ensure that community-based behavioral health services are provided in the most integrated setting appropriate for each consumer's needs.

4-001.10 EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

4-001.10A All Regional Governing Boards and contracting providers agree to abide by all of the applicable federal, state, and local laws and regulations as they relate to equal employment opportunities and affirmative action. This includes equal opportunity for persons with mental illness.

4-001.10B The RBHA/provider must prepare an affirmative action plan or related policy statements if such is required by the Division.

4-001.10C The RBHA/provider must comply with all affirmative action compliance review procedures deemed necessary by the Division.

4-001.10D All individuals who have a complaint with the RBHA/provider under the Americans with Disabilities Act must have access to the RBHA's/provider's grievance procedures. All individuals referred to under this section include:

1. Any eligible person who is referred to receive services offered by the RBHA's/provider's program;
2. The people considered by the RBHA's/provider's program to be active consumers;
3. Applicants for employment by the RBHA/provider; and

4. Employees of the RBHA/provider. Programs referred to under this section means all services receiving community behavioral health funds administered by the Division.

4-001.11 CHANGES IN PROGRAM ADMINISTRATION: The RBHA/provider must report in writing to the Division within 20 days of its occurrence any of the following changes:

1. Changes regarding programs offered by the Regional Governing Board and/or a provider which are different from the approved Regional Plan of Expenditure;
2. Changes in ownership, the governing body's responsibilities or structure, or control of program(s); and
3. Any changes in the capacity and/or type(s) of services.

The Division may immediately terminate and/or amend the contract containing funds administered by the Division, or any portion thereof, based on the changes reported by the RBHA/provider.

4-002 CONTRACTING REQUIREMENTS FOR ALL CONTRACTORS: The Division has the right to inspect records at anytime.

4-002.01 FISCAL ACCOUNTABILITY: The RBHA or contractor must have fiscal and budgetary systems that provide appropriate accounting for and spending of funds administered by the Division.

4-002.01A Fiscal accountability must be consistent with the principles and standards set by the American Institute of Certified Public Accountants (AICPA). Accounting and internal control procedures must be in accordance with practices based on generally accepted accounting principles, consistently applied, according to AICPA standards, regardless of sources of funds. All supporting records must itemize income and expenditures in sufficient detail to show the exact nature of income and expenditures and to distinguish administrative from behavioral health services expenditures.

4-002.01B Fiscal Audits: The accounting system must provide for completion of an annual financial report to be completed by an independent entity in accordance with generally accepted auditing standards in the United States of America and conform when applicable, to the generally accepted government auditing standards issued by the Comptroller General of the United States. In addition, if applicable, audits must comply with the “Single Audit Act” and related circulars or regulations issued by the federal Office of Management and Budget (OMB).

4-002.01B1 A provider or contractor with a total annual operating budget of less than $~~50,000~~ 100,000 may submit a detailed financial statement providing a review of receipts and disbursements, including a source and use of funds statement, and a statement of fund balances, in lieu of the

independent audit. Audit by the Department may be conducted in order to verify this statement.

4-002.01B2 All audits must be performed within the time frame specified in the contract.

4-002.01B3 Audits and any accompanying Letters to Management must be available to the Division free of charge as specified in the contract. The contractor must also make the audit available to the public for review by request. A reasonable fee may be charged to provide copies to the public, not to exceed actual cost.

4-002.01B4 The preparing auditor must retain audit work papers/records for three years or until the resolution of any reviews is completed, whichever is longer.

4-002.01B5 Audit engagements must be subject to competitive bid. The RBHA must obtain bids to perform the audit at least once every ~~three~~ four years.

4-002.01B6 The identification of questioned costs in an annual independent audit or any special audit performed by the Auditor of Public Accounts or other qualified Auditor will be deemed sufficient cause to withhold or recover funds in the amount of the questioned costs.

4-002.01B7 If an audit identifies questioned costs, material weaknesses, reportable conditions, insufficient internal controls, or other deficiencies, the RBHA or contractor must prepare and implement a Plan of Correction to correct the problems and prevent them in the future. Failure to prepare and implement an effective Plan of Correction may be cause to terminate an existing contract or withhold funds from the RBHA or contractor.

4-002.01B8 The RBHA or contractor must establish a fiscal year which must not be changed unless prior written notice is provided to the Division. If the RBHA or contractor's fiscal year is not the same as the contract period, the RBHA or contractor must adapt its accounting records and procedures as necessary to track and report the contract according to the contract period.

4-002.01B9 The fund balances for behavioral health must be tracked and accounted for separately from the fund balances of any other non-behavioral health services offered by the RBHA or contractor, consistent with AICPA standard.

4-002.01C In completing the Audit report, the auditor must provide:

1. Two-year comparison of income and expenditures;
2. Listing of all deferred revenue by source and amount;

3. Amount of county funds received and expended in each fiscal year reported; and
4. Administrative expenditures and expenditures for services.

4-002.02 SERVICES PURCHASED AND PROGRAM FIDELITY REVIEWS: The RBHA or contractor must verify the accuracy of the numbers and required documentation of services billed to the Division, in accordance with applicable provisions of the contract and service definitions for the time period being audited. When the contractor is ~~not~~ an RBHA, the contractor must allow the division to complete Services Purchased and Program Fidelity Reviews in a manner consistent with the provisions in this section.

4-002.02A The RBHA must ensure that the audits of providers receiving behavioral health funds includes examinations to verify the accuracy of the numbers of units of services billed to the RBHA.

4-002.02B If the RBHA is a direct service provider, the Division or its designee must audit the RBHA. The same regional procedures used to audit subcontractors must be used to audit the RBHA if the Division or its designee audits the RBHA or subcontractor.

4-002.02C The RBHA services purchased and program fidelity verification procedures must be in compliance with minimum standards established by the Division and have the prior written approval of the Division.

4-002.02D The Program Fidelity Review must include a review of documentation including clinical records and other programmatic and clinical details of the service that are sufficient to verify that the services provided comply with the minimum state standards and service definition components set by the State.

4-002.02E Each unit of service must be tracked back to the individual service record.

4-002.02F Specific documentation includes the consumer data form for the Division's management information system and a specific progress note documenting the service provided consistent with Division requirements.

4-002.02G Failure to achieve desired results over a period of time may result in technical assistance or corrective action, if necessary. Failure to show improvement after technical assistance or corrective action may result in termination of the contract.

4-002.03 ALLOWABLE AND UNALLOWABLE COSTS: All costs incurred, either direct or indirect, pertaining to the contract must be included in the financial records of the contractor. Allowable and unallowable costs must be tracked and recorded in accordance with the provisions specified in the contract. Unless approved in writing in the contract, all costs incurred prior to the effective date of the contract are unallowable. If any pre-award costs are allowed, the contract must specify which costs are allowable.

Allowable costs include costs for the infrastructure necessary to develop, maintain, and evaluate a community-based continuum of care for behavioral health services.

4-002.03A Unallowable Costs: Any costs not properly related to carrying out the purpose of the program under contract are unallowable. Costs determined to be unallowable and not eligible for support by funds administered by the Division include but are not limited to:

1. Costs for services which occurred in a prior or subsequent fiscal year; all reimbursement must be for the cost of services rendered during the contract period;
2. Contributions to a restricted fund or any similar provision for unforeseen events;
3. Any personal costs unrelated to the provision of approved services and/or costs of personal gifts;
4. Costs of amusements, social activities, and related expenses for employees and governing body members, except when part of an authorized consumer treatment/rehabilitation/recovery program;
5. Costs of luncheons or dinners held to award employees;
6. Costs of a personal nature unrelated to the provision of approved program;
7. Costs of alcoholic beverages;
8. Costs resulting from violations of, or failure to comply with federal, state and local laws and regulations;
9. Costs relating to lobbying or attempts to influence/promote legislative action by local, state or federal government; and
10. Costs of lawsuits or other legal or court proceedings against the Department, its employees, or State of Nebraska.

4-002.03B Allowable Costs: Use of state and/or federal funds administered by the Department are limited to the cost of providing approved Department services including employment of personnel, technical assistance, consultation, operation of programs, leasing, renting, and maintenance of facilities, and for the initiation and continuance of programs and services.

4-002.03B1 Travel costs related to the programs funded in whole or in part by the Department are allowable, and cannot exceed the amounts specified in applicable Internal Revenue Service guidelines.

4-002.03B2 The use of state funds for alteration, renovation, or minor remodeling of real property is allowable under the following conditions:

1. Alteration or renovation is needed to accomplish the objectives of the mental health program and is approved by the Department;
2. The space involved will actually be occupied by the region/provider;

3. The costs of alterations or remodeling are the result of a competitive bidding process;
4. There is documentation by a suitably qualified individual that the building has a useable life consistent with program purposes and is structurally suitable for conversion;
5. There is, prior to alteration or renovation of rented space, a lease approved by the Department;
6. The costs related to purchase of adequate insurance coverage to cover the region/provider's exposure. The region/provider shall annually file a certificate of coverage showing the kinds of coverage with the contract authority.

4-002.04 BUDGETS: Budgets must be prepared in accordance with the instructions contained in the budget application.

4-002.04A Budgets approved in a contract may only be modified during the contract period if allowed in the terms and conditions of the contract.

4-002.05 SUBCONTRACTS: The provisions of this chapter apply fully to subcontractors and sub-subcontracts as well as contractors, including the RBHA's.

4-002.06 FEE SCHEDULE: The RBHA or contractor must administer a statewide fee schedule for services provided in accordance with co-pay schedules referred to in the contract, not in excess of actual cost.

4-002.06A Funds received under a contract with the Department shall supplement and not supplant any other sources of revenue available to contribute or assist in the support of a Department funded program delivering services to consumers.

MOVED TO CHAPTER 6

~~4-002.07 MANAGEMENT OF CONSUMER'S FUNDS: The provider must have a written policy on whether the provider will be involved in the management of consumer funds. If the provider elects to be involved in the management of consumer funds, there must be written policies and procedures approved by the governing body which identify the system to be used when the provider exercises control over the funds of a consumer to ensure that the provider maintains proper accountability for those funds.~~

~~4-002.07A The consumer's file must document when and how it was determined that the provider would exercise control over a consumer's funds, including:~~

~~1. The circumstances leading to this action;~~
~~2. The rationale for this action;~~
~~3. The protocol followed in taking this action; and~~
~~4. The plan for revoking this action, including methods and timeframes for implementation.~~

~~4-002.07A1 Unless the consumer has a payee, conservator, or guardian, the consumer must agree in writing with the provider's involvement in the management of these funds.~~

~~4-002.07B Each consumer must have an individual financial record that includes:~~

~~1. Documentation of all cash funds, savings and/or checking accounts, deposits and withdrawals;~~
~~2. An individual ledger which provides a record of all funds received and disbursed and the current balance; and~~
~~3. Documentation that the individual has access to and opportunities to handle his/her money.~~

~~4-002.07C If the provider has the responsibility for the management of consumers' funds,~~

~~1. A separate accounting is maintained for each consumer;~~
~~2. Account balances and records of transactions are provided to the consumer or the consumer's fiscal representative as requested, but at least quarterly;~~
~~3. The consumer, as well as the parents, guardian, advocate, and/or fiscal representative, are advised as required by law or agreed to by the conservator:~~
~~a. Prior to depletion of funds;~~
~~b. When large balances are accrued; and/or~~
~~c. When entitlement program eligibility can be affected.~~

~~4-002.07D The provider must have policies and procedures to prohibit the borrowing of personal funds from the consumer by staff and/or other consumers.~~

~~4-002.07E The provider must have policies and procedures approved by the governing body regarding the repair of damaged property or the replacement of destroyed property (either private or public), using a consumer's personal funds.~~

~~4-002.07F The provider must not withdraw any consumer's funds without the written approval of the consumer, the consumer's legal representative, or by an order of a judge or a court.~~

~~4-002.07G The provider must have written policies and procedures on how financial errors, overdrafts, and missing money will be handled.~~

4-002.0~~8~~7 FALSIFICATION OF DOCUMENTS: Documentation and information provided by any contractor, including an RBHA, to the Division is a critical element in the contracting process and in determining compliance with the regulations and contract requirements. The Division assumes the information and documentation is accurate, truthful, and complete.

4-002.0~~8~~7A The falsification of documents or information by a contractor will be grounds to immediately terminate the existing contract, to withhold payments under the contract, or to obtain repayment of any funds paid on the basis of the false documentation or information.

4-002.0~~8~~7B Unintentional errors in documents or information provided to the Division by a contractor will be grounds to withhold payment under the contract, not to exceed the amount of any overpayment based on the error, or to require repayment of any funds paid to the contractor based on the erroneous documentation or information.