

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

June 21, 2021
10:00 a.m. Central Time
Nebraska State Office Building – Lower Level A
301 Centennial Mall South, Lincoln, Nebraska
Phone call information: 888-820-1398; Participant code: 3213662#

The purpose of this hearing is to receive comments on proposed changes to Title 395, Chapter 9 of the Nebraska Administrative Code (NAC) – *Alternative Response*. The proposed amendments remove duplicative statutory language; update definitions; change certain factors from exclusionary criteria to Review, Evaluate, Decide (RED) team criteria; specify the RED team review process; and clarify when intakes will be accepted for assessment to Alternative Response or Traditional Response. Other proposed changes restate and reorganize the exclusionary and RED team criteria; reformat and renumber several sections; add headings; and remove unnecessary language.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Due to the current public health crisis, the agency will enforce any Directed Health Measure Order on the size of gatherings that is in effect at the time of the hearing. In order to encourage participation in this public hearing, a phone conference line will be set up for any member of the public to call in and provide oral comments.

Interested persons may provide verbal comments by participating via phone conference line by calling 888-820-1398; Participant code: 3213662#.

Interested persons may attend the hearing and provide verbal or written comments or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals who are deaf or hard of hearing may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: Alternative Response	Prepared by: Mikayla Wicks
Chapter: 9	Date prepared: 2.11.21
Subject: Alternative Response	Telephone: 402-314-7166

Type of Fiscal Impact:

Please check all that apply

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact:

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

TITLE 395 CHILDREN AND FAMILY SERVICES: PROTECTION AND SAFETY

CHAPTER 9 ALTERNATIVE RESPONSE

001. SCOPE AND AUTHORITY. These regulations implement Alternative Response as authorized by Nebraska Revised Statute (Neb. Rev. Stat.) §§ 28-712 and 28-712.01 and contemplated by Neb. Rev. Stat. § 28-710.01.

002. DEFINITIONS. Definitions contained in Neb. Rev. Stat. § 28-710 and the following definitions apply to this chapter:

002.01 INTAKE ACCEPTED FOR ASSESSMENT. A report received by the Department Child Abuse and Neglect Hotline that creates concern for the safety of a child and includes information stated by the reporting party and collateral information gathered by the Department.

002.02 CARETAKER. Caretaker as defined by Neb. Rev. Stat. § 71-6721(3).

002.03 HOUSEHOLD MEMBER. Any person who has significant in-home contact with a child and includes individuals who have a familial or intimate relationship with any person in the home.

002.04 PREVENTION PLAN. A plan developed by the family, in collaboration with the Department, to address familial needs that may potentially relate to child safety. The plan may identify individuals or services which could help support or meet the needs of the family.

002.05 EXCLUSIONARY CRITERIA. Criteria which, if alleged or otherwise learned by the Department, automatically excludes an Intake Accepted for Assessment from eligibility for Alternative Response. Exclusionary Criteria include:

- ~~(A1) Factors listed in Neb. Rev. Stat. § 28-712.01(1)(b); Physical abuse of a child which resulted in serious bodily injury as defined in Neb. Rev. Stat. § 28-109(20) or is likely to cause death or severe injury to a child;~~
- ~~(B2) A Household Member has been convicted of a crime that resulted in the death of a child or has criminal charges pending for a crime that resulted in the death of a child~~
~~Sexual assault of a child as defined in Neb. Rev. Stat. §§ 28-319.01, 28-320.01;~~
- ~~(C3) Abuse or neglect of a child who resides with (i) the subject of an active Traditional Response or (ii) an individual or family that is receiving services through the Children and Family Services Protection and Safety section or (iii) an individual or family who is involved in juvenile court petition pursuant to Neb. Rev. Stat. § 43-247(3)(a) Sex trafficking of a minor as defined in Neb. Rev. Stat. §§ 28-830(14), 28-831(3);~~

- ~~(D4) Law enforcement has cited a Caretaker for the child abuse or neglect alleged in the Intake Accepted for Assessment; and Sexual exploitation of a child as defined in Neb. Rev. Stat. § 28-707(d);~~
- ~~(5) Neglect of a child resulting in serious bodily injury as defined in Neb. Rev. Stat. § 28-109(20);~~
- ~~(6) Allegations that require Child Advocacy Center, law enforcement, and Department coordination as set forth in Neb. Rev. Stat. § 28-728(3)(d)(iii);~~
- ~~(7) A Household Member has been convicted of a crime that resulted in the death of a child or has criminal charges pending for a crime that resulted in the death of a child;~~
- (E8) A Household Member has been convicted of or has criminal charges pending for manufacturing methamphetamine or other controlled substances as defined in Neb. Rev. Stat. §§ 28-401, 28-405;
- ~~(9) A child resides with a Household Member whose parental rights have been terminated during a court-involved case;~~
- ~~(10) Abuse or neglect of a child who resides with (i) the subject of an active Traditional Response or (ii) an individual or family that is receiving services through the Children and Family Services Protection and Safety section or (iii) an individual or family who is involved in juvenile court petition pursuant to Neb. Rev. Stat. § 43-247(3)(a);~~
- ~~(11) Child abuse or neglect has occurred in an out-of-home setting;~~
- ~~(12) A Household Member has a prior court substantiated report of child abuse or neglect or is a sex offender who is on the sex offender registry; and~~
- ~~(13) Law enforcement has cited a Caretaker for the child abuse or neglect alleged in the Intake Accepted for Assessment.~~

002.06 REVIEW, EVALUATE, DECIDE (RED) TEAM. A team of staff within the Department that reviews and evaluates Intakes Accepted for Assessment that include at least one Review, Evaluate, Decide (RED) Team Criteria and no Exclusionary Criteria.

002.07 REVIEW, EVALUATE, DECIDE (RED) TEAM CRITERIA. Criteria which, if alleged or otherwise learned by the Department, requires the Review, Evaluate, Decide (RED) Team to review and evaluation to determine eligibility for Alternative Response. Review, Evaluate, Decide (RED) Team Criteria include:

- (A4) A Caretaker exhibiting symptoms related to significant mental illness including but not limited to psychotic behaviors, delusional behaviors, and danger to self or others;
- ~~(B2) The family is currently receiving an Alternative Response has had another Intake Accepted for Assessment within the past six months and includes two or more children under the age of five or one child under the age of two;~~
- ~~(C3) A Household Member or alternate Caretaker has a history of using or manufacturing methamphetamine or other controlled substances as defined in Neb. Rev. Stat. §§ 28-401, 28-405 The family is currently receiving an Alternative Response;~~
- ~~(D4) Factors listed in Neb. Rev. Stat. § 28-712.01(1)(d) A Household Member or alternate Caretaker has a history of using or manufacturing methamphetamine or other controlled substances as defined in Neb. Rev. Stat. §§ 28-401, 28-405; or~~
- ~~(E5) A Household Member has a prior court substantiated report of child abuse or neglect; or Domestic violence involving a Caretaker and the alleged perpetrator lives in the home with access to the child or Caretaker.~~
- (F) A Household Member is a sex offender who is on the sex offender registry.

003. RESPONSE ASSIGNMENT PROCESS.

003.01 SCREENING. The Department will screen each Intake Accepted for Assessment for the presence of Exclusionary Criteria and each Intake Accepted for Assessment that includes no Exclusionary Criteria for the presence of Review, Evaluate, Decide (RED) Team Criteria.

~~003.02 REVIEW, EVALUATE, DECIDE (RED) TEAM REVIEW. The Review, Evaluate, Decide (RED) Team will review and evaluate an Intake Accepted for Assessment that includes Review, Evaluate, Decide (RED) Team Criteria to determine whether it is eligible for Alternative Response.~~

003.023 RESPONSE ELIGIBILITY. The Department will determine eligibility for Alternative Response based upon the presence or absence of Exclusionary Criteria and Review, Evaluate, Decide (RED) Team Criteria. If an Intake Accepted for Assessment includes:

- (A) One or more Exclusionary Criteria, it is ineligible for Alternative Response;
- (B) No Exclusionary Criteria and no Review, Evaluate, Decide (RED) Team Criteria, it is eligible accepted for Alternative Response; and
- (C) One or more Review, Evaluate, Decide (RED) Team criteria and no Exclusionary Criteria, and the Review, Evaluate, Decide (RED) Team reaches a decision that it is eligible for Alternative Response, it is eligible accepted for Alternative Response.

~~003.03 REVIEW, EVALUATE, DECIDE (RED) TEAM REVIEW. The Review, Evaluate, Decide (RED) Team will review and evaluate an Intake Accepted for Assessment that includes Review, Evaluate, Decide (RED) Team Criteria to determine whether it is eligible for Alternative Response.~~

~~003.03(A) REVIEW, EVALUATE, DECIDE (RED) TEAM REVIEW PROCESS. The Review, Evaluate, Decide (RED) Team will meet at least once each business day, unless there are no intakes to review. To determine whether an intake will be eligible for Alternative Response, the Review, Evaluate, Decide (RED) Team will consider the factors set forth in Neb. Rev. Stat. § 28-712.01, and the following:~~

- ~~(i) The household's past history or current involvement with the Department, including completed assessments and services provided by household;~~
- ~~(ii) The criminal history of any Household Member; and~~
- ~~(iii) The allegations and information included in the current intake.~~

~~003.03(B) REVIEW, EVALUATE DECIDE (RED) TEAM DECISION. The Review, Evaluate, Decide (RED) Team will assign an intake accepted for assessment to Alternative Response unless the team determines the child may be seriously endangered by the child's surroundings and removal may be necessary.~~

003.04 RESPONSE ASSIGNMENT. Each Intake Accepted for Assessment that is eligible for Alternative Response will be assigned to Alternative Response. The Department will assign all other intakes accepted for assessment to Traditional Response.

003.05 REASSIGNMENT FROM ALTERNATIVE RESPONSE TO TRADITIONAL RESPONSE. The Department will automatically transfer a family from Alternative Response to Traditional Response if: ~~(i) a safety threat is present that cannot be managed through an in-home safety plan; (ii) it cannot assess child safety; (iii) law enforcement notifies the Department that they have cited the Caretaker for the child abuse or neglect alleged in the Intake Accepted for Assessment; (iv) the Caretaker receiving Alternative Response requests Traditional Response; or (v) it learns a Household Member allegedly caused the death of a child.~~

- ~~(A) A safety threat is present that cannot be managed through an in-home safety plan;~~
- ~~(B) It cannot assess child safety;~~
- ~~(C) Law enforcement notifies the Department that they have cited the Caretaker for the child abuse or neglect alleged in the Intake Accepted for Assessment;~~
- ~~(D) The Caretaker receiving Alternative Response requests Traditional Response; or~~
- ~~(E) It learns a Household Member allegedly caused the death of a child.~~

~~A family will not be reassigned to Traditional Response based upon the family's decision not to enroll or participate in Alternative Response services if the comprehensive assessment is complete and the child is determined to be safe.~~

003.06 TRADITIONAL RESPONSE REASSIGNMENT. If a family is reassigned to Traditional Response individuals may be subject to having their name placed on the Central Registry. Individuals will receive written notice if their name is placed on the Central Registry in accordance with Neb. Rev. Stat § 28-713.01 (2).

004. ALTERNATIVE RESPONSE SERVICES AND INTERVENTIONS.

004.01 SUPPORTS AND SERVICES. Each family assigned to Alternative Response will be offered supports and services as available and appropriate based on the Department's assessment of safety and risk of future maltreatment.

004.02 SAFETY ASSESSMENTS. Ongoing assessment of child safety and risk of maltreatment will continue so long as the family participates in Alternative Response.

004.03 VOLUNTARY PARTICIPATION. Participation in Alternative Response becomes voluntary once the Department completes the comprehensive assessment and determines that no safety concerns are present.

004.04 FAMILY CONTACTS AND ENGAGEMENT. For each child in the family, the Department may contact all parents and Household Members as part of the assessment process and may engage all parents and Household Members in the development of the Prevention Plan.

005. NOTICE AND APPEAL.

005.01 NOTICE. The Department will provide written notice to families assigned to Alternative Response. This written notice will explain the Alternative Response process including assessment of safety and risk, criteria for reassignment of a family from Alternative Response

to Traditional Response, and the family's rights to terminate participation in Alternative Response.

005.02 GRIEVANCE PROCESS. Families receiving Alternative Response may file a grievance following the same grievance process available to families receiving Traditional Response pursuant to Neb. Rev. Stat. § 81-603.

005.03 GRIEVANCE LIMITATIONS. Families may not grieve assignment or reassignment to Traditional Response or actions of any person not employed by the Department.

006. TERMINATION OF PARTICIPATION. Alternative Response terminates upon: ~~(i) reassignment of a family to Traditional Response; (ii) request of the Caretaker receiving Alternative Response after completion of the comprehensive assessment (Neb. Rev. Stat §§ 28-710 & 28-712.01(3)); or (iii) Closure of Alternative Response.~~

(A) Reassignment of a family to Traditional Response;

(B) Request of the Caretaker receiving Alternative Response after completion of the comprehensive assessment (Neb. Rev. Stat §§ 28-710 & 28-712.01(3)); or

(C) Closure of Alternative Response.

007. COLLECTION, SHARING, AND REPORTING OF DATA. Data will be collected and shared at the Department's discretion.