

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

January 31, 2022
1:00 p.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 172, Chapter 95 of the Nebraska Administrative Code (NAC) – *Administration of Medications by Medication Aides and Medication Staff*. The proposed changes update definitions; update terminology; set requirements for unlicensed individuals administering medications; remove all duplicate statutory, unnecessary, and inconsistent language from the regulations; update section headings and formatting; and restructure the regulatory chapter.

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

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 in person or 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.



TO: Executive Board
Room 2108 State Capitol
Legislative Council

FROM: Marge Respeliers, Paralegal I
Legal Services
Department of Health and Human Services (DHHS)

DATE: December 20, 2021

RE: Notice of Rulemaking under Neb. Rev. Stat. § 84-907.06

The Department of Health and Human Services (DHHS) will be holding a public hearing on amending the following regulations:

TITLE: 172 Professional and Occupational Licensure
CHAPTER: 95 Administration of Medications by Medication Aides and Medication Staff

These regulations are scheduled for public hearing on January 31, 2022.

The purpose of this hearing is to receive comments on proposed changes to Title 172, Chapter 95 of the Nebraska Administrative Code (NAC) – *Administration of Medications by Medication Aides and Medication Staff*. The proposed changes update definitions; update terminology; set requirements for unlicensed individuals administering medications; remove all duplicate statutory, unnecessary, and inconsistent language from the regulations; update section headings and formatting; and restructure the regulatory chapter.

The following items are enclosed for your referral to the chair of the relevant standing committee of the Legislature:

1. A copy of the notice of public hearing;
2. A copy of the proposed regulations;
3. A copy of the Policy Pre-Review Checklist; and
4. The estimated fiscal impact of this rulemaking action on state agencies, political subdivisions or persons being regulated.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 172	Prepared by: Dan Taylor, RN
Chapter: 95	Date prepared: 7/12/2021
Subject: Administration of medications by medication aides and medication staff	Telephone: 402-471-4969

Type of Fiscal Impact:

	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: None

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 95 ADMINISTRATION OF MEDICATIONS BY MEDICATION AIDES AND
MEDICATION STAFF

~~95-001. SCOPE AND AUTHORITY.:~~ ~~The administration of medication is a regulated activity. These regulations govern the safe administration of medications by medication aides and medication staff under Nebraska Revised Statute (Neb. Rev. Stat.) §§ 71-6718 to 71-6742.~~

~~95-001.01 Administration of medication includes three components:~~

- ~~1. The physical act of giving or applying a medication;~~
- ~~2. The recording of the physical act; and~~
- ~~3. The observing and monitoring for, and taking appropriate action regarding, desired effects, side effects, interactions, and contraindications associated with the medication.~~

~~95-001.02 All of the components of administration may be performed by:~~

- ~~1. A competent recipient;~~
- ~~2. A caretaker, or~~
- ~~3. A licensed health care professional.~~

~~95-001.03 There are circumstances under which it is appropriate and desirable for the individuals set out in 172 NAC 95-001.02 to receive assistance with the administration of medication. These regulations identify the circumstances and conditions under which assistance with administration of medication may be provided by unlicensed individuals as indicated in 172 NAC 95-001.04.~~

~~95-001.04 These regulations allow for assistance with the administration of medication only by:~~

- ~~1. Medication aides;~~
- ~~2. Persons licensed to operate a child care facility or staff members of a child care facility;~~
~~or~~
- ~~3. Staff members of a school.~~

~~95-001.05 The persons identified in 172 NAC 95-001.04 may assist with the provision of medication, and with the documentation of the provision of the medication; and, under the specific conditions set forth in 172 NAC 95-006, these persons may also participate in observing and reporting.~~

~~95-001.06 These regulations do not govern:~~

- ~~1. Self-administration of medication by a competent individual;~~
- ~~2. Self-provision of medication by a minor or other non-competent individual when~~

- ~~directed and monitored by the individual's caretaker or licensed health care professional;~~
- ~~3. Administration of medication by licensed health care professionals;~~
 - ~~4. Provision of medication in an emergency situation;~~
 - ~~5. Administration of medications to an individual in that individual's home, which includes foster family homes, group homes, child caring agencies and child placing agencies as defined in Neb. Rev. Stat. § 71-1902, except, administration of medication in the home is regulated if provided through a licensed home health agency or through licensed or certified home and community-based providers; and~~
 - ~~6. Provision of reminders to persons to self-administer medication or assistance to persons in the delivery of non-therapeutic topical applications by in-home personal services workers.~~

002. DEFINITIONS: ~~For the purposes of the Act and these regulations, the following definitions apply: Definitions are found in Neb. Rev. Stat. § 71-6721 and this chapter.~~

~~Act means Neb. Rev. Stat. §§ 71-6718 to 71-6742, known as the Medication Aide Act.~~

~~Administration of medication 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, interactions, and contraindications associated with the medication.~~

~~Adult means an individual who is not a minor as defined by Neb. Rev. Stat. § 43-2101.~~

~~**002.01 CAPABILITY AND CAPACITY.** Capability and capacity to make an informed decision about medications means a ~~An individual who has knowledge related to the medication(s) such as purposes, and desired effects, and potential side effects, of the medication being administered and has knowledge of and the consequences if the medication is not provided and received as prescribed or recommended is considered to have capability and capacity.~~~~

~~Caretaker means a parent, foster parent, family member, friend, or legal guardian who provides care for an individual. A caretaker provides direction and monitoring and has capability and capacity to observe and take appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with a dose of medication. A caretaker has current first-hand knowledge of the recipient's health status and the medications being provided, and has consistent frequent interaction with the recipient. A staff member of an entity is not a caretaker.~~

~~Competent means being an adult who is the recipient of medication and having the capability and capacity to make an informed decision about taking medications.~~

~~Department means the Department of Health and Human Services.~~

~~Direction and monitoring means the acceptance of responsibility for observing and taking~~

~~appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with the medication. Direction and monitoring can be done by a:~~

- ~~1. Competent recipient;~~
- ~~2. Recipient-specific caretaker; or~~
- ~~3. Licensed health care professional.~~

002.02 ENTITY. ~~entity means a~~ facility, school, licensed child care facility, or any other business or individual utilizing a medication aide or medication staff.

~~Facility means a health care facility or health care service as defined in Neb. Rev. Stat. § 71-413 or 71-415 or an entity or person certified by the Department to provide home and community-based services.~~

~~Five rights means getting the right drug to the right recipient in the right dosage by the right route at the right time.~~

~~Licensed health care professional means a licensed individual for whom administration of medication is included in his/her scope of practice.~~

~~Home means the residence of an individual but does not include any facility, school, or licensed child care facility.~~

~~Informed decision means a decision made knowingly, based upon capacity to process information about choices and consequences, and made voluntarily.~~

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

~~Medication aide means an individual who has met all requirements of Title 172 Chapter 96 for registration and is listed on the Medication Aide Registry operated by the Department.~~

002.03 MEDICATION STAFF. Medication staff means ~~a~~^{an} individual who is licensed to operate a child care facility, or a staff member of a child care facility, or a staff member of a school; and, who has been determined to be competent to assist with the administration of medication.

~~Nonprescription drug means a drug or device which can be sold without a prescription and meets the requirements defined in Neb. Rev. Stat. § 71-1,142.~~

~~Prescription drug means a drug or device which requires a prescription prior to being dispensed, and meets the requirements defined in Neb. Rev. Stat. § 71-1,142. Oxygen is a prescription drug.~~

~~Provision of medication 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 himself or herself. Provision of medication~~

~~are these components of administration of medication that include providing medications for another person according to the five rights. Provision of medication does not include observing, monitoring, reporting, and otherwise taking appropriate action regarding desired effects, side effects, interactions, and contraindications associated with the medication, or recording the provision of the medication.~~

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

~~Recipient means a person who is receiving medication.~~

002.04 REVIEWED PERIODICALLY. Reviewed periodically means a Δ review for which the time interval is determined by the caretaker or licensed health care professional based upon the health condition of the recipient, the nature of the additional activity, and the experience of the medication aide in the additional activity. The review should be conducted frequently enough to assure recipient safety.

~~Routine means that the frequency of administration of medication, and the amount, strength, and method of administration are specifically fixed.~~

~~School means an entity or person who meets the requirements for a school set by Chapter 79.~~

~~95-003. ADMINISTRATION OF MEDICATION BY UNLICENSED INDIVIDUALS. MINIMUM COMPETENCY AREAS AND STANDARDS Assistance with the administration of medication may only be performed by the following unlicensed individuals:~~

- ~~(A) Medication aides;~~
- ~~(B) Persons licensed to operate a child care facility or staff members of a child care facility;~~
- ~~and~~
- ~~(C) Staff members of a school.~~

~~003.01 ADDITIONAL DUTIES THAT MAY BE PERFORMED DURING ADMINISTRATION OF MEDICATION BY UNLICENSED INDIVIDUALS. The persons identified in 172 NAC 95-003 may assist with the provision of medication, and with the documentation of the provision of the medication; and, with the documentation of the provision of the medication; and, under the specific conditions set forth in 172 NAC 95-007, these persons may also participate in observing and reporting.~~

~~95-003.01004. Competency Areas: MINIMUM COMPETENCY AREAS AND STANDARDS. Medication aides and medication staff must ~~be meet competent in~~ the following competency areas standards:~~

- ~~1.— Maintaining confidentiality;~~
- ~~2.— Complying with a recipient's right to refuse to take medication;~~
- ~~3.— Maintaining hygiene and current accepted standards for infection control;~~

- ~~4. Documenting accurately and completely;~~
- ~~5. Providing medications according to the five rights;~~
- ~~6. Having the ability to understand and follow instructions;~~
- ~~7. Practicing safety in application of medication procedures;~~
- ~~8. Complying with limitations and conditions under which a medication aide or medication staff may provide medications;~~
- ~~9. Having an awareness of abuse and neglect reporting requirements; and~~
- ~~10. Complying with every recipient's right to be free from physical and verbal abuse, neglect, and misappropriation or misuse of property.~~

~~95-003.02 Competency Standards: The standards for each of the competencies set out in 172 NAC 95-003.01 are:~~

- ~~1.(A)~~ Does not share confidential information except when it affects the recipient's care and is shared with ~~to~~ the appropriate person~~(s)~~;
- ~~2.(B)~~ Does not force recipients to take medication. Uses appropriate measures to encourage taking of medications when directed for recipients who are not competent;
- ~~3.(C)~~ Utilizes appropriate infection control principles when providing medications;
- ~~4.(D)~~ Accurately documents all medication provided including the name of the medication, dose, route, and time administered and any refusal of medication, and spoilage;
- ~~5.(E)~~ Provides the right medication, to the right person, at the right time, in the right dose, and by the right route;
- ~~6.(F)~~ Comprehends written or oral directions;
- ~~7.(G)~~ Properly: ~~a.~~ Stores and handles all medication in accordance with entity policy;
- ~~b.(H)~~ Intervenes when unsafe conditions of the medication indicate a medication should not be provided; and
- ~~c.(I)~~ Provides medication to recipients in accordance with their age and condition;
- ~~8.(J)~~ Knows that they must:
 - ~~a.(i)~~ Be competent and have been assessed;
 - ~~b.(ii)~~ Always comply with the 5 rights of provision of medications;
 - ~~c.(iii)~~ Record all medication provided or refused; and
 - ~~d.(iv)~~ Have additional competencies to provide additional activities;
- ~~9.(K)~~ Identifies:
 - ~~a.(i)~~ Occurrences of possible abuse of a vulnerable adult and reports this information to the appropriate person or agency as required by the Adult Protective Services Act; and
 - ~~b.(ii)~~ Occurrences of possible abuse or neglect of a child and reports this information to the appropriate person or agency as required by Neb. Rev. Stat. §§ 28-710 to 28-727; and
- ~~10.(L)~~ Does not misuse recipient property or cause physical harm, pain, or mental anguish to recipients.

~~95-003.03004.01 Competency Assessment~~ **COMPETENCY ASSESSMENT. 95-**

~~003.03A~~ Medication aides and medication staff must meet the standards set out in 172 NAC 95-00~~34~~.~~021~~. ~~95-003.03B~~ The methods for assessment and those who may complete an assessment of medication aides or medication staff are ~~regulated by and~~ set out in the following:

- ~~1.(A)~~ For medication aides in 172 NAC 96 for medication aides;
- ~~2.(B)~~ For medication staff at schools in 92 NAC 59 for medication staff at schools; and
- ~~3.(C)~~ For licensees or medication staff at Family Child Care Homes I and II, medication staff at Child Care Centers, and medication staff at Preschools, in 391 NAC 3 for licensees or medication staff at Family Child Care Home, medication staff at Child Care Centers, and medication staff at Preschools.

~~95-0045005~~. PROVISION OF DIRECTION AND MONITORING.: Medications may be provided by medication aides and medication staff only when direction and monitoring is provided and documented.

~~95-0045.01~~ DIRECTION AND MONITORING. Direction and monitoring must be provided by 1 of the following:

- ~~1.(A)~~ A competent recipient; ~~or~~
- ~~2.(B)~~ A caretaker; or
- ~~3.(C)~~ A licensed health care professional. A licensed health care professional who provides direction and monitoring must do so within the prevailing practice standards of the profession. Licensed Practical Nurses must do so under direction and in accordance with the Nurse Practice Act.

~~95-0045.02~~ MAY NOT PROVIDE DIRECTION AND MONITORING. A medication aide or medication staff may not provide direction and monitoring but may participate in observing and reporting as provided in 172 NAC 95-006.04, item 37.

~~95-004.03~~ Acceptance of responsibility to provide direction and monitoring must be in writing and must be provided by one of the following: a competent recipient, a caretaker, or a licensed health care professional.

~~95-004.03A005.03~~ DIRECTION AND MONITORING ACCEPTANCE BY COMPETENT RECIPIENTS. Acceptance of responsibility for direction and monitoring for a competent recipient may be provided by the recipient ~~for him/herself,~~ themselves, a caretaker, or a licensed health care professional.

~~95-004.03A005.04~~ DIRECTION AND MONITORING ACCEPTANCE FOR NON-COMPETENT RECIPIENTS. Acceptance of responsibility for direction and monitoring for recipients who are not competent may be provided by a caretaker or a licensed health care professional.

~~95-004.03C00.05~~ DIRECTION AND MONITORING ACCEPTANCE FOR NON-COMPETENT RECIPIENTS AND RECIPIENTS WITH NO CARETAKERS. For recipients who are not competent and for whom there are no caretakers, acceptance of responsibility for direction and monitoring must be provided by a licensed health care professional. Documentation may be accomplished by any of the following methods:

- ~~1.(A)~~ When licensed health care professionals are employees, entities may identify on an

individual basis or by title and job description or role delineation the licensed health care professional or the classification~~(s)~~ of licensed health care professionals who are responsible to provide direction and monitoring. Written acceptance of responsibility is not required to be recipient-specific and can be through acceptance of title and job description or role delineation~~;~~

~~2.(B)~~ When licensed health care professionals are not employees, entities must identify the licensed health care professional ~~by name, profession, and license number~~ who is designated to provide direction and monitoring by name, profession, and license number. Written acceptance of responsibility must be recipient-specific~~;~~ or

~~3.(C)~~ A licensed health care professional who provides direction and monitoring directly to a recipient, rather than indirectly through employment by a facility or other entity, must have a documented professional relationship with the recipient, or with a responsible party on behalf of the recipient. The documentation must include the health care professional's acceptance of the responsibility for direction and monitoring.

~~95-0056.~~ USUAL ACTIVITIES IN THE PROVISION OF MEDICATIONS. ~~95-005.01~~ All medication aides and medication staff~~,~~ when directed and monitored in accordance with 172 NAC 95-0045, may provide routine medications by the following routes:

~~1.(A)~~ Oral, which includes any medication given by mouth, including sublingual ~~(placing under the tongue)~~~~,~~ and buccal which is ~~(placing between the cheek and gum)~~~~,~~ ~~routes~~ and oral sprays;

~~2.(B)~~ Inhalation, which includes inhalers and nebulizers. Oxygen may be given by inhalation;

~~3.(C)~~ Topical application of sprays, creams, ointments, and lotions and transdermal patches; and

~~4.(D)~~ Instillation by drops, ointments, and sprays into the eyes, ears, and nose.

~~95-0056.021~~ RECORD OF PROVISION OF MEDICATION. All medication aides and medication staff must make an accurate record of their provision of medication. ~~95-005.02A~~ The record of provision of medication must include ~~but is not limited to:~~

~~1.(A)~~ Identification of the recipient;

~~2.(B)~~ Name of the medication given;

~~3.(C)~~ The date, time, dosage, and route for each medication provided;

~~4.(D)~~ Identification of the person who provided the medication; and

~~5.(E)~~ Any refusal by the recipient to take and/or receive a medication.

~~95-0056.02B~~ MEDICATION RECORD RETENTION. The record must be given to the entity employing the medication aide or medication staff. The record must be kept and maintained as required by 172 NAC 95-0101.

~~95-0056.02G3~~ MEDICATION ERRORS. Any medication error must be reported to the person responsible for providing direction and monitoring immediately upon discovery of the error.

~~95-006.03~~ ~~All medication aides and medication staff must comply with the record keeping and reporting requirements of 172 NAC 95-005.02, including reporting of errors.~~

~~95-0067.~~ ADDITIONAL ACTIVITIES IN THE PROVISION OF MEDICATIONS.: In addition to the activities specified in 172 NAC 95-005.016, ~~items 1-4,~~ medication aides and medication staff may provide optional additional activities in accordance with this ~~section~~ chapter. Any additional

activity must be done under the direction and monitoring required in 172 NAC 95-0045. ~~95-006.02~~ Before an additional activity may be provided, the following ~~the~~ requirements ~~of 172 NAC 95-006.02A, 006.02B, and 006.02C~~ must each be met:

~~95-006.02(A)~~ The specific medication aide or medication staff must be determined to be competent to perform the specific activity, and the determination must be documented as set out in 172 NAC 95-0078.

~~95-006.02(B)~~ There must be written direction for each additional activity and for each recipient as described in 172 NAC 95-0089.

~~95-006.02(C)~~ A licensed health care professional must determine that these activities can be done safely for the specific recipient, and the determination must be documented as set out in 172 NAC 95-00910.

95-0067.01 OPTIONAL ADDITIONAL ACTIVITIES. The optional additional activities which may be provided by a medication aide or a medication staff ~~are~~ include:

~~1-(A)~~ Provision of as needed (PRN) medications,

~~2-(B)~~ Provision of medications by routes in addition to those identified in 172 NAC 95-0056 but not including provision of medications or fluids intravenously. Acceptable additional routes may include gastrostomy tube; injections including subcutaneous, intradermal, and intramuscular; rectal; and vaginal; and ~~or~~

~~3-(C)~~ Participation in "direction and monitoring" by observing for identified recipient responses and reporting these responses as directed.

007.02 ADDITIONAL ACTIVITIES RECORDKEEPING. All medication aides and medication staff must comply with the record keeping and reporting requirements of 172 NAC 95-006, including reporting of errors.

~~95-0078. DETERMINATION WRITTEN STATEMENT OF COMPETENCY DETERMINATION FOR A MEDICATION AIDE OR MEDICATION STAFF FOR TO PERFORM AN ADDITIONAL ACTIVITY.~~ Medication aides or medication staff may provide as needed (PRN) medication, provide medication by an additional route, or participate in monitoring if ~~there is~~ must be a written statement from a competent recipient, caretaker, or licensed health care professional that the medication aide or medication staff is competent to perform such duties. The following documentation is required: provide a PRN medication, to provide a medication by an additional route, or to participate in monitoring. Documentation may be accomplished by any of the following methods:

~~95-007.01(A)~~ For competent recipients, ~~there must be~~ a statement indicating informed determination that each medication aide or medication staff who provides the additional activity is competent. In the situation of a competent recipient who is making ~~his or her~~ their own determination of need and effectiveness regarding medications, written documentation is not required for as needed PRN medication or for participation in monitoring.

~~95-007.02(B)~~ For recipients who are not competent but for whom there are caretakers, ~~there must be~~ a statement from the caretaker indicating ~~his or her~~ their determination that a medication aide or medication staff is competent to provide the additional activity. Competency determination of the medication aide or medication staff by the caretaker must be determined on a recipient-specific basis and the documentation must be on an individual-specific basis (for each medication aide or medication staff) and not by title or job description.

95-007.03(C) For recipients who are not competent and for whom there are not caretakers, ~~there must be~~ a statement from a licensed health care professional stating ~~his or her~~ their determination that a medication aide or medication staff is competent to provide the additional activity. This requirement must be met in one of the following methods:

95-007.03A(1) An entity which employs licensed health care professionals may identify on an individual basis or by written title and job description both the licensed health care professional who has made the competency determination and those medication aides and medication staff who have been determined competent for each additional activity~~;~~

95-007.03B(2) An entity which does not employ licensed health care professionals must identify by name, profession, and license number the licensed health care professional who has made the competency determination and those medication aides and medication staff who have been determined competent for each additional activity. Such persons may be identified on an individual basis or by written title and job description~~;~~ or

95-007.03C(3) A licensed health care professional who provides services directly to a recipient, rather than indirectly through entity employment ~~or~~ contract, must specify those medication aides and medication staff who have been determined competent to provide each additional activity. Such persons must be identified on an individual basis.

95-0089. WRITTEN DIRECTION FOR AN ADDITIONAL ACTIVITY~~;~~ There must be written direction whenever a medication aide or medication staff provides as needed (PRN) medication(s), provides medication by an additional route, or participates in observing and reporting. The written direction must be specific to each recipient, and provided by a caretaker or licensed health care professional. There is no requirement for written direction when direction and monitoring is provided by a competent recipient. Documentation may be accomplished by any of the following methods:

95-008.01(A) Direction for as needed (PRN) medication must include instructions for the recipient-specific criteria under which a specific medication may be provided and the reporting requirements associated with the as needed (PRN) provision of said medication. The instructions must be for each as needed (PRN) medication provided and must be readily available for reference by and reviewed periodically with the medication aide or medication staff to assure continued safe provision of as needed (PRN) medication(s)~~;~~

95-008.02(B) Directions for an additional route must include instructions for the recipient-specific procedure and must be readily available at all times for reference ~~to~~ and reviewed periodically with the medication aide or medication staff to assure continued safe provision of medication by an additional route~~;~~ or

95-008.03(C) Direction for participation in observing and reporting must include instructions for recipient-specific criteria for which the medication aide or medication staff is to observe and report. Instructions must include time lines for observing and reporting, and must identify the person to be notified. Instruction must be readily available for reference ~~by~~ and be reviewed periodically with the medication aide or medication staff to assure continued safe monitoring.

95-00910. WRITTEN DOCUMENTATION OF RECIPIENT SAFETY WHEN AN ADDITIONAL ACTIVITY IS PROVIDED~~;~~ There must be a written statement by a licensed health care

professional stating that it is safe for a medication aide or medication staff to provide as needed (PRN) medication, medication by an additional route, or participate in observing and reporting except when the medication is non-prescription and the monitoring is provided by a competent recipient for him/herself themselves or by a caretaker. ~~95-009.04~~ The licensed health care professional making the decision of recipient safety must do so within his/her their scope of practice. Licensed Practical Nurses must do so under direction and in accordance with the Nurse Practice Act. Documentation of safety may be accomplished by any of the following methods in this section.

95-009.020010.01 COMPETENT RECIPIENTS. ~~For competent recipients,~~ there must be a statement from a licensed health care professional as identified in 172 NAC 95-~~009.010~~ that it is safe for a medication aide or medication staff to provide as needed (PRN) prescription medication or to provide prescription medication by an additional route.

95-009.03010.02 RECIPIENTS WHO ARE NOT COMPETENT BUT FOR WHOM THERE ARE CARETAKERS. ~~For recipients who are not competent but for whom there are caretakers,~~ there must be a written statement obtained from a licensed health care professional as identified in 172 NAC 95-~~009.04010~~ indicating that it is safe for a medication aide or medication staff to provide an as needed (PRN) prescription medication, a prescription medication by an additional route, ~~and~~ or to participate in observing and reporting for the identified recipient.

95-009.04010.03 RECIPIENTS WHO ARE NOT COMPETENT AND FOR WHOM THERE ARE NO CARETAKERS. ~~For recipients who are not competent and for whom there are no caretakers,~~ there must be documentation by a licensed health care professional as identified in 172 NAC 95-~~009.04010~~ who has made recipient-specific determination that it is safe for a medication aide or medication staff to provide an as needed (PRN) medication, a medication by an additional route, ~~and~~ or participate in observing and reporting for the identified recipient. This requirement must be met in one of the following methods:

95-009.04A(A) An entity which employs licensed health care professionals may identify on an individual basis or by written title and job description the licensed health care professional who has made the recipient-specific safety determination for each additional activity.;

95-009.04B(B) An entity which does not employ licensed health care professionals must identify by name, profession, and license number of the licensed health care professional who has made the recipient-specific safety determination for each additional activity.;

95-009.04C(C) A licensed health care professional who provides services directly to a recipient may identify determination of recipient safety through the written records or plan of care for the recipient.

95-040011. RECORD RETENTION FOR ENTITIES. ~~95-040.03~~ All other entities, including licensed health care professionals providing services through contract, must establish policies for record maintenance and retention, and maintain the records for a minimum of two years after the service has been provided. This regulation does not affect the entity's obligation to retain the records for any other purpose.

~~95-040.01~~ Records required by 172 NAC 95 must be made available to the Department of Health

~~and Human Services and the State Department of Education for inspection and copying upon request.~~

~~95-010.02 Facility, child care, or school records must be retained for the length of time required by the applicable licensure regulations, or Department of Education regulations.~~

~~95-011.01 Storage:~~ 95-011.01 STORAGE AND HANDLING OF MEDICATION. Any entity responsible for administering or providing medication must ensure appropriate storage and handling of the medications. ~~Medications that are in the possession of an entity for emergency purposes are not covered by these regulations and should be more easily accessible than other medications; however, these medications should still be protected and stored appropriately.~~

95-011.01A012.01 MEDICATION STORAGE AND PROTECTION. All medications that an entity is responsible for administering or providing must be:

- ~~1.(A)~~ Protected from theft, tampering, and inappropriate use; and
- ~~2.(B)~~ Stored in accordance with the manufacturer's or dispensing pharmacist's instructions ~~as to whether the medication needs to be refrigerated, stored away from light, or any other storage instructions.~~

95-011.01B012.02 ACCESS TO MEDICATION. Only authorized personnel who are designated by the entity responsible for administration or provision of medications may have access to the medications.

95-011.01C012.03 ENTITY NOT RESPONSIBLE FOR PROVISION OF MEDICATION. When the entity is not responsible for administering or providing medications, ~~these regulations do this chapter does~~ not preclude an entity from allowing a recipient to possess and take the recipient's own medications; however, the entity is not required to allow such possession. Examples include ~~but are not limited to~~ minor students in schools, minor children in child care facilities, and incompetent adults in assisted-living facilities.

95-011.02012.04 HANDLING. Handling: The entity must ensure the proper handling of medications it is responsible for administering or providing.

95-011.02A012.05 MEDICATION INTEGRITY. Loss, waste, or spoilage of medication must be recorded according to entity policy.

95-011.02B012.06 TEMPORARY ABSENCE. Medications sent with a recipient for temporary absences must be in containers identified for the recipient with directions for the right dose, right time, and right route. The medication container must be given only to a competent recipient, to a resident-specific caretaker, or other designated responsible person.