

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

November 1, 2023
1:00 p.m. Central Time
Nebraska State Office Building – Lower Level
Meadowlark Conference Room
301 Centennial Mall South, Lincoln, Nebraska

The purpose of this hearing is to receive comments on proposed changes to Title 404, Chapter 4 of the Nebraska Administrative Code (NAC) – *Certification Requirements For Certified Providers of Services*. These regulations govern community-based services for persons with developmental disabilities. The proposed changes update requirements and add clarification language for background checks, crimes, and administrative sanctions; update section headings, formatting, re-numbering sections; and correct punctuation.

Authority for these regulations is found in Neb. Rev. Stat. §§ 81-3117(7) and 83-1226.

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 (fax) 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 via 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: 404	Prepared by: Miranda Newtonson
Chapter: 4	Date prepared: 6/23/2023
Subject: Certification Requirements for Certified Providers of Services	Telephone:402-471-8037

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:

State Agency: No Fiscal Impact.

Political Subdivision: No Fiscal Impact.

Regulated Public: No Fiscal Impact.

If indeterminable, explain why:

TITLE 404 DEVELOPMENTAL DISABILITIES SERVICES

CHAPTER 4 CERTIFICATION REQUIREMENTS FOR CERTIFIED PROVIDERS OF SERVICES

001. CERTIFICATION OF PROVIDERS. All agency providers of services under the Developmental Disabilities Services Act must meet the certification and accreditation requirements established by the Department of Health and Human Services.

001.01 OVERVIEW OF CERTIFICATION PROCESS. To become a certified provider, the provider applicant must:

- (1) Submit a complete application;
- (2) Be a United States citizen or qualified alien under applicable federal and state law;
- (3) Provide all additional information the Department may require; and
- (4) Comply with all provider requirements in this chapter.

001.01(A) APPLICATION. An applicant for certification as an agency provider of developmental disabilities services must apply for certification on the forms supplied by the Department. The applicant shall provide the following:

- (i) The legal name of the applicant, address, and contact information;
- (ii) The structure, such as partnership, corporation, government, or limited liability company;
- (iii) A list of names and addresses of all persons with financial interest in the agency provider;
- (iv) The preferred mailing address for receipt of official notices from the Department;
- (v) The applicant's federal employer identification number;
- (vi) The signature of the person of authority applying to be a certified agency provider;
- (vii) A copy of the registration as a foreign corporation filed with the Nebraska Secretary of State, if applicable;
- (viii) Program description for provision of services that includes:
 - (1) A copy of the applicant's organizational chart identifying authority over the agency and the organization of management positions;
 - (2) The developmental disabilities services to be provided;
 - (3) The address, including street and city, and telephone number of each location for service delivery, including type of service to be provided at each location and planned capacity at each location;
 - (4) Copies of current policies and procedures, as required by this chapter; and
 - (5) A list of all subcontractors and proposed subcontracts that will provide services under this application; and

- (ix) A disclosure of any criminal history or listing on the Department's Central Abuse and Neglect registries or the Nebraska State Patrol Sex Offender Registry for any management positions, including owners, directors, and managers;
- (x) At initial certification only, documentation showing the provider maintains a \$10,000.00 minimum cash reserve or business line of credit; and
- (xi) A statement of intent to seek a risk endorsement (if applicable).

001.01(B) INITIAL CERTIFICATION. For prospective providers, the Department will issue an initial certification for a six month period upon approval of the application. Before the expiration of initial certification, the Department will conduct an on-site review to determine compliance.

001.01(B)(i) EXTENSIONS. Initial certification may be extended for up to six additional months when the provider has not been serving a participant for at least 90 days before the initial certification expires.

001.01(B)(ii) REVIEW. Following on-site review, the Department will:

- (1) Issue a one or two year certification when the provider is found to be in compliance with applicable regulations;
- (2) Extend initial certification on a one-time basis for up to six months when the on-site review shows the provider is not in compliance with applicable regulations, but there are no health or safety issues and the provider is making satisfactory progress towards compliance; or
- (3) Deny certification when the on-site certification review shows the provider is not in compliance with applicable regulations and has not made progress in doing so, or there are serious health or safety issues identified.

001.01(C) LENGTH OF CERTIFICATION. Provider certification is contingent upon compliance with applicable 404 NAC standards as required by the Department. Agencies, organizations, or individuals seeking certification will receive a two-year certification upon successful completion of the certification review. If the outcomes of the certification review show significant or repeated deficiencies, or if there is evidence that provider systems are not functioning properly, the Department may issue a one-year certification.

001.01(D) DENIAL OF CERTIFICATION. The Department, in its discretion, may deny or terminate a provider's certification for good cause, which includes but is not limited to the following grounds:

- (1) Violations of any of the provisions of Nebraska Administrative Code (NAC) Titles 172, 403, 404, 471, 480, 482 or other applicable law or regulation governing services provided;
- (2) The provider or its owner is the respondent of a protection order;
- (3) The provider or its owner committed a crime:
 - (a) Against a child or vulnerable adult;
 - (b) Involving the illegal use, possession, or distribution of a controlled substance; or
 - (c) That, if repeated, could injure or harm the Developmental Disabilities Services Waiver program or a developmental disabilities services participant;

- (4) A provider's owner or administrative staff or management have been convicted of any of the crimes listed in this chapter; or
- (5) The provider or its owner is listed as a perpetrator on the Nebraska Adult Protective Services Central Registry or the Child Abuse and Neglect Central Registry in a court-substantiated or agency-substantiated case or is listed as a perpetrator on any comparable registry in any other state.

001.01(D)(i) COMMISSION OF CRIMES. The Department deems a crime to have been committed when a conviction, admission, or substantial evidence of commission exists. In exercising its discretion, the Department considers the severity of the crime(s), the applicability of the crime(s) to the service of the provider, and the amount of time that has passed since the commission of the crime.

001.01(D)(ii) FAILURE TO DISCLOSE. Failure to disclose requested information on the application or providing incomplete or incorrect information on the application may result in the denial of a certification.

001.01(E) CONDITIONS FOR DENIAL OR TERMINATION. Provider certification will be denied or terminated when any person with a 5% or greater direct or indirect ownership interest in the provider has been convicted of a criminal offense related to that person's involvement with a Medicare, Medicaid, or Title XXI program within the last ten years, unless the Department determines that denial or termination of enrollment is not in the best interest of the program.

001.02 EXTENSION OF CERTIFICATION. The Department may extend the certification for up to 60 calendar days, for good cause shown.

001.03 CERTIFICATION RENEWAL. Renewal applications must be submitted at least 90 calendar days prior to the expiration of the current certification. At any time, the Department may conduct an onsite review and request additional documentation.

001.03(A) ON-SITE CERTIFICATION REVIEW. Initial and renewal certifications will not be issued until the Department has conducted an on-site certification review to assess compliance.

001.03(B) RENEWAL APPLICATION. The provider must submit a complete renewal application which includes all requirements outlined in this chapter.

001.04 RISK ENDORSEMENT. In addition to all other certification requirements in this chapter, a certified agency seeking risk endorsement must meet specific qualifications including the following:

- (A) Full-time employment of a clinician who is currently licensed in Nebraska as one of the following:
 - (i) Licensed Independent Mental Health Practitioner (LIMHP);
 - (ii) Licensed Clinical Psychologist; or
 - (iii) Advanced Practice Registered Nurse (APRN);

- (B) Two consecutive years operating as a certified, licensed, or accredited agency provider of Medicaid 1915(c) Waiver Home and Community-Based Services for individuals with developmental disabilities in Nebraska or another state;
- (C) In good standing with the certification, licensing, or accrediting body in any and all states of operation; and
- (D) Any other requirements as defined by and at the Department's discretion.

001.05 NOTIFICATION REQUIREMENTS. The provider must notify the Department, in writing, of any:

- (1) Change of ownership or control within 10 business days of the effective date;
- (2) Change in director within 10 business days of the effective date;
- (3) Addition of a new service option at least 30 calendar days prior to the effective date;
- (4) Termination of a service option currently being provided to participants at least 60 calendar days prior to the effective date;
- (5) Addition of a new provider-operated or controlled service setting at least 15 calendar days prior to opening;
- (6) Change in contact information, including physical business address, phone number, mailing address, and e-mail address, within 10 business days of the effective date; and
- (7) For any provider with a risk endorsement, a change in clinician, change in clinician's employment status with the provider, or change in clinician's license status, within 5 business days of the effective date of the change.

001.05(A) CHANGE IN OWNERSHIP. A provider certification is issued only to the person named in the application as the certified provider. When a change of ownership occurs, the new owner must assume responsibility for correction of all previously cited deficient practices from the acquired provider.

001.06 CERTIFICATION AND SERVICE REVIEWS. The Department may, at any time, conduct unannounced on-site reviews. Providers must cooperate with site reviews and documentation requests.

001.06(A) RESULTS OF CERTIFICATION OR SERVICE REVIEWS. If the Department determines there are deficiencies or discovers non-compliance, the provider may:

- (i) Be required to provide a plan of improvement;
- (ii) Have a disciplinary action imposed; or
- (iii) Have its certification terminated.

001.06(B) PLAN OF IMPROVEMENT. If the Department determines that a provider is in non-compliance with the provider requirements outlined in the Medicaid provider agreement or applicable law or regulation, a plan of improvement will be required from the provider. Within 20 days of receipt of the Department's written findings of non-compliance, the provider must submit an acceptable plan of improvement to address areas found to be out of compliance. The plan of improvement must:

- (i) Be specific in identifying a planned action on how the areas found to be out of compliance have been or will be corrected for the individual cases included in the review and system wide within the provider organization;

- (ii) Include an expected date for completion of the plan of improvement that is timely, taking into consideration the nature of the violation;
- (iii) Identify a means to prevent a recurrence;
- (iv) Identify who is responsible for implementing the plan of improvement and ensuring all areas are corrected and compliance is maintained; and
- (v) Be signed and dated by the director of the provider or designee.

001.07 DISCIPLINARY ACTIONS. When a provider is out of compliance with the provider requirements outlined in the Medicaid provider agreement or applicable law or regulation, the Department may impose, in any order, one or more of the following types of disciplinary action.

001.07(A) DIRECTED PLAN OF IMPROVEMENT. The provider will be required to implement a directed plan of improvement, within the specified period of time, developed by the Department, containing specific actions and timeframes.

001.07(B) DIRECTED IN-SERVICE TRAINING. The provider will be required to train staff as required by the Department. The provider is responsible for the required training and the associated cost of the training.

001.07(C) STATE MONITORING. The provider will be required to submit to monitoring by the Department or designee as a safeguard against further harm or injury to participants or serious risk to the safety of the participants.

001.07(D) PROBATION. The provider will be placed on probation and be required to meet the terms and conditions of the probation in order to continue to operate.

001.07(E) SUSPENSION OF SERVICES. The provider will be prohibited from:

- (i) Accepting new participants;
- (ii) Providing a specific service to any participants;
- (iii) Providing a specific service at a specific site; or
- (iv) Providing services as otherwise deemed appropriate by the department.

001.07(F) TERMINATION OF THE PROVIDER CERTIFICATION. The provider's certification may be terminated when:

- (i) The provider's non-compliance poses an immediate and serious threat to one or more participant's health and safety;
- (ii) The provider's conduct or practices are detrimental to the health or safety of a participant or others;
- (iii) The provider knowingly fails to report abuse, neglect, or exploitations as required by applicable law;
- (iv) The provider has established a pattern of not maintaining compliance;
- (v) The provider has not corrected previously identified areas of non-compliance;
- (vi) The provider has established a pattern of not using internal quality improvement practices;
- (vii) The provider commits, permits, aids, or abets any unlawful act that would disqualify it from enrollment as a provider;

- (viii) The provider failed to disclose information on the application or provided incomplete or incorrect information on the application;
- (ix) The provider has failed to submit an acceptable plan of improvement; or
- (x) The provider has failed to comply with any previously imposed disciplinary action directed by the Department.

001.07(G) NOTICE OF DISCIPLINARY ACTION TO PROVIDER. Notice of disciplinary action will be given to the provider in writing via mail or email.

001.07(H) IMMEDIATE AND SERIOUS THREATS TO HEALTH AND SAFETY. When situations involving immediate and serious threat to one or more participants' health and safety are identified, the provider:

- (i) Upon discovery, must take immediate action to remove the risk to the identified individual and implement corrective measures to prevent further immediate and serious threat situations;
- (ii) May have participants removed from its services, if the provider fails to remove the risk to identified participants and to implement corrective measures to prevent further immediate and serious threat situations;
- (iii) May have its certification terminated unless the provider has eliminated the immediate and serious threat and is able to maintain corrective actions;
- (iv) Must submit written evidence of correction or that the circumstances causing the immediate and serious threat no longer exist and that safeguards are in place to ensure the health and safety of participants; and
- (v) May be required to submit to monitoring by the Department, including revisits, to verify compliance.

001.08 APPEAL RIGHTS. Any adverse action taken under Chapter 4 of this Title may be appealed to the Director of the Division of Developmental Disabilities by the person or entity against whom the action was taken.

001.08(A) HEARING REQUEST PROCEDURE. The person or entity appealing an adverse action under Chapter 4 of this Title must submit a written hearing request to the Director of the Division of Developmental Disabilities within 30 days of the date of the action.

001.08(B) HEARINGS. Appeal and hearing procedures are governed by 465 NAC.

002. ADMINISTRATION STANDARDS. All agency providers of services under the Developmental Disabilities Services Act must meet the administration standards and requirements in this section.

002.01 MEDICAID PROVIDERS. All providers must be an enrolled Medicaid provider pursuant to applicable laws and regulations relating to the Nebraska Medical Assistance Program.

002.02 DIRECTOR. Each provider must have a director who is responsible for overall management and compliance of the requirements in this Title, establish policies and

procedures as specified in this chapter and ensure compliance with applicable laws and regulations.

002.03 PROVIDER POLICIES AND PROCEDURES. The provider must establish and implement written policies and procedures that:

- (1) Describe the provider's operation and how systems are set up to meet participants' needs;
- (2) Comply with all applicable regulations and laws governing providers;
- (3) Are available to staff; and
- (4) Are reviewed at least annually and revised if needed.

002.03(A) PROCEDURAL REQUIREMENTS REGARDING RIGHTS. The provider must establish procedures that:

- (i) Specify participant rights and responsibilities and this specification does not conflict with Title 404 NAC;
- (ii) Inform each participant served, and if applicable, the participant's parent if a minor, or the participant's legal representative, of the participant's rights and responsibilities;
 - (1) The information must be given at the time of entry to services, at the participant's annual individual support plan (ISP) review, 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 participant, or through other modes of communication necessary for understanding;
- (iii) Require the provision of supports to participants receiving services in exercising their rights;
- (iv) Do not treat participants' rights as privileges; and
- (v) Prohibit retaliation against participants' services and supports due to the participant, family members, or legal representatives advocating on behalf of the participant served. This includes initiating a complaint with outside agencies.

002.04 PSYCHOTROPIC MEDICATION. Psychotropic medications administered by the certified agency provider must:

- (1) Only be given as prescribed by the participant's treating medical professional acting within his or her scope of practice;
- (2) Be reviewed by the individual support planning team to determine if the benefits outweigh the risks and potential side effects;
- (3) Be supported by evidence that a less restrictive and more positive technique has been systematically tried and shown to be ineffective, and that administration of the medications is part of the participant's person-centered plan as demonstrated by supporting data and outcome measures;
- (4) Be reviewed by the rights review committee, unless all of the following are clearly documented:
 - (a) The psychotropic medication and dosage;
 - (b) The diagnosis for which the medication has been prescribed;
 - (c) The justification or reason for the medication; and
 - (d) Changes in the medication prescribed or dosage, if any;

- (5) Be reviewed annually by the prescribing physician and semi-annually by the individual support planning team;
- (6) Not be used as a way to deal with under-staffing; ineffective, inappropriate, or other nonfunctional programs or environments;
- (7) Also have a positive behavioral supports plan established and in place to address problem behavior when it occurs; and
- (8) Be monitored and documented on an ongoing basis by the provider to provide the individual support planning team and physician sufficient information regarding:
 - (a) The effectiveness of and any side effects experienced from the medication;
 - (b) Frequency and severity of symptoms; and
 - (c) The effectiveness of the positive behavioral supports plan.

002.04(A) BEHAVIORAL SUPPORT PLAN. No positive behavioral support plan is 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.

002.05 RIGHTS REVIEW COMMITTEE. The provider must establish a rights review committee to review any situation requiring an emergency safety intervention, the use of certain psychotropic medications, any restrictive measure, and any situation where violation of a participant's rights occurred.

002.05(A) MEMBERSHIP OF THE RIGHTS REVIEW COMMITTEE. ~~At least half of the committee members must be participants, family, or other interested persons who are not provider staff.~~ The provider must appoint members of the committee that:

- (i) Are free from conflict of interest; and
- (ii) Will ensure the confidentiality of information related to participants served.

~~At least half of the committee members must be participants, family, or other interested persons who are not provider staff.~~

002.05(B) RECUSAL OF RIGHTS REVIEW COMMITTEE MEMBER. If the person responsible for approving the participant's program or any staff who provides direct services serves as a member of a rights review committee, he or she must recuse him or herself from participation in rights review committee proceedings pertaining to such participant.

002.05(C) MEETINGS. The committee must meet, at a minimum, semi-annually. The review may include obtaining additional information and gathering input from the affected participant and his or her legal representative, if applicable, to make recommendations to the provider.

002.05(D) SUB-COMMITTEES. The rights review committee may utilize sub-committees to complete its work. The sub-committee must document its activities and submit that documentation to the rights review committee, as evidenced in the rights review committee's meeting minutes.

002.05(E) INTERIM APPROVAL OF RESTRICTIVE MEASURES. Interim approvals of restrictive measures are allowed in circumstances that require immediate attention. The interim approval may be done by a documented designee of the rights review committee, who must be a current member of the rights review committee and can be an employee of the certified provider but must be free from conflict of interest. The meeting minutes must document final approval by the rights review committee at its next meeting.

002.05(F) ALLEGATIONS OF ABUSE OR NEGLECT. The rights review committee must evaluate all known allegations and investigations of abuse or neglect for any violation of a participant's rights.

002.06 PARTICIPANTS' PERSONAL FUNDS AND PROPERTY. The provider shall have written policies and procedures to protect the participant's funds and property. The provider must:

- (1) Have a policy to address who is responsible for replacement or compensation when a participant's personal items are damaged or missing;
- (2) Not use the participant's funds and personal property as a reward or punishment;
- (3) Not assess the participant's funds and personal property as payment for damages unless approved by the individual support planning team, and written consent is received from the participant to make the restitution;
- (4) Not use the participant's funds and personal property to purchase inventory or services for the provider; and
- (5) Not allow the participant's funds and personal property to be used by provider staff or subcontractors for their personal use.

002.06(A) SUPPORT IN MANAGING FINANCIAL RESOURCES. When a participant does not have the skills necessary to manage his or her financial resources, the provider may, with the informed choice of the participant, offer services and supports that temporarily transfers some of the control of handling the participant's financial resources to the provider.

002.06(A)(i) TRANSFER OF CONTROL. The transfer of control of a participant's financial resources:

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

002.06(A)(ii) DOCUMENTATION REQUIREMENTS. The participant's individual support planning team must determine and document in the individual support plan (ISP) the following regarding the temporary transfer of control of a participant's finances to the provider:

- (1) The extent in which the participant can participate in management of his or her financial resources;
- (2) The participant's informed choice; and
- (3) The rationale for the transfer of control.

002.06(B) PROVIDER MANAGEMENT OF PARTICIPANTS' FINANCES. If the provider is responsible for handling participants' funds:

- (i) The provider must maintain a financial record for each participant that includes:
 - (1) Documentation of all cash funds, savings, and checking accounts, deposits, and withdrawals; and
 - (2) An individual ledger which provides a record of all funds received and disbursed and the current balance;
- (ii) The provider must provide account balances and records of transactions to each participant at least quarterly, unless otherwise requested;
- (iii) Before the provider allows a non-routine expenditure exceeding \$150, the participant must review and prior authorize it, as well as notify the participant's individual support planning team;
- (iv) The provider must have policies and procedures that outline how financial errors, overdrafts, late fees, and missing money will be handled when the provider is responsible for managing participants' funds. The policies and procedures must include that:
 - (1) The provider is responsible for service charges and fees assessed due to staff errors;
 - (2) The provider must replace missing money promptly if missing money is due to staff error; and
 - (3) The provider is responsible for taking steps to correct a participant's credit history when it is affected by provider staff actions in managing the participant's finances; and
- (v) When the provider is maintaining participants' personal funds in a common trust, a separate accounting is maintained for each participant or for the participant's interest in a common trust fund.

002.07 ENTRY TO SERVICE. Prior to accepting a participant into services, the provider must:

- (A) Gather and review referral information regarding the participant, to the greatest extent possible, to make an informed determination as to whether the agency is capable of providing services to meet the participant's needs;
- (B) Consider the safety of all participants in the decision to accept new participants to service or the location for the services;
- (C) Consider whether the provider has the capacity, commitment, and resources necessary to provide supports to the participant for the long term. The provider must not admit a participant to services if it cannot reasonably assure that it has the ability to meet the participant's needs; and
- (D) Participate in the transition process for a participant from one provider to another, whether the provider is ending services or beginning to provide services.

002.08 TERMINATION OF SERVICES. A provider may terminate services to a participant when the provider has determined that it can no longer effectively and appropriately serve the participant due to a lack of resources, skills, or capacity. Written notification outlining the reasons for termination of services must be given to the participant no less than 60 unless the participant is served under a risk endorsement, in which case written notification outlining the reason for termination of services must be given to the participant no less than 90 calendar days prior to the final day of services.

002.08(A) TRANSITION PLAN. If a provider or participant elects to terminate services, prior to terminating services, the provider must develop a transition plan in conjunction with the participant's individual support planning team. If another provider has been identified to serve the participant, that provider must be invited to the transition meeting. The individual support plan (ISP) must include:

- (i) A primary focus on the participant's needs and preferences;
- (ii) Timelines for the transition; and
- (iii) Supports and strategies that are needed for the new and current provider that meet the needs of the participant during and after the transition from one provider to another.

002.08(B) ADDITIONAL TIME. If additional time is needed to transition the participant from one provider to another, the provider terminating services may be required to provide services for up to an additional 10 calendar days.

002.09 ACCESS TO RECORDS. The provider must provide access to or copies of all records or other documents relating to the operation of the provider, and all participants served by the provider, to the Department upon request.

002.10 PARTICIPANT RECORD KEEPING. The provider must maintain participant records that:

- (A) Designate staff responsible for the maintenance of the individual's records;
- (B) Develop and implement a systematic organization of records to ensure permanency, accuracy, completeness, and easy retrieval of information;
- (C) Have a method to access the records by staff and other relevant persons as needed. The provider must ensure that current and applicable records relating to the participant are readily available to staff when providing services to participants. If there are changes in ownership, all participant records must be transferred to the current owner. Before dissolution of any provider agency, the administrator must notify the Department in writing of the location and storage of participant records;
- (D) Govern access to, duplication, dissemination, and release of information from the participant's record;
 - (i) The provider must ensure written consent is obtained from the participant or the participant's legal representative for the release of information specific to the participant, 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; and
 - (ii) The provider must specify the method and frequency for obtaining authorizations for medical treatment and consents.

002.11 INCIDENT REPORTING. The provider must report incidents using the electronic system approved and used by the Department. The provider must implement a system for handling and reporting incidents that includes:

- (A) Identification of incidents that require completion of an incident report to the Department that includes:

- (i) Situations that adversely affect the physical or emotional well-being of a participant served;
 - (ii) Alleged or suspected cases of abuse, neglect, exploitation, or mistreatment; and
 - (iii) Emergency safety situations that require the use of emergency safety interventions;
- (B) Recording the essential facts of the incident, including the results of the incident and any actions which might have prevented the incident;
- (C) An action plan that includes the provider's immediate effort to address the situation and prevent recurrence;
- (D) Timelines to ensure prompt reporting of incidents as appropriate, including reporting to:
- (i) Provider management;
 - (ii) The individual who receives services involved in the incident;
 - (iii) Family member or legal representative as appropriate;
 - (iv) Child and Adult Abuse and Neglect in the Department; and
 - (v) Law enforcement;
- (E) Reporting requirements including:
- (i) A verbal report to the Department upon becoming aware of the incident;
 - (ii) A written report using the Department approved format within 24 hours of the verbal report;
 - (iii) A written summary submitted to the Department of the provider's investigation and action taken within 14 calendar days; and
 - (iv) An aggregate report of incidents must be submitted to the Department on a quarterly basis. Each report must be received by the Department no later than 30 calendar days after the last day of the previous quarter. The reports must include a compilation, analysis, and interpretation of data, and include evidentiary examples to evaluate performance that result in a reduction in the number of incidents over time; and
- (F) A process to review and analyze information from incident reports to identify trends and problematic practices which may be occurring and take appropriate corrective actions to address problematic practices identified.

003. STAFF REQUIREMENTS. When recruiting, training, managing, and retaining staff, the provider must:

- (1) Recruit, train, manage, and retain qualified staff with the skills necessary to meet the needs of participants and respond to emergencies;
- (2) Comply with the employee verification requirements of Neb. Rev. Stat. § 4-114;
- (3) Only hire staff who are at least 18 years of age if they will be providing direct services alone;
- (4) Obtain a National Criminal background check prior to working alone providing direct support to a participant, and annually thereafter, on all staff members, and subcontractors, if providing direct support to a participant, and, if in provider owned or operated residential settings, on household members age 18 and older;
- (5) Obtain a check of the Central Registry of Child Protection cases and Adult Protective Services prior to working alone providing direct support to a participant, and annually thereafter, on all staff members, and subcontractors, if providing direct support to a participant, and, if in provider owned or operated residential settings, on household members age 13 and older;

- (6) Obtain a check of the Nebraska State Patrol Sex Offender Registry prior to working alone providing direct support to a participant, and annually thereafter, on all staff members, and subcontractors, if providing direct support to a participant, and, if in provider owned or operated residential settings, on household members age 18 and older; and
- (7) Retain results of registry or background checks for one year following the termination of the staff person's employment.

003.01 EMPLOYEE BACKGROUND CHECKS. Employees who provide direct support services may not work alone with participants until the results of the registry checks and the criminal history background checks are reviewed by the provider. Background checks cannot be completed more than 180 calendar days before the staff person's hire date. Employees listed on the Central Abuse and Neglect Registry, Nebraska State Patrol Sex Offender Registry, or who have been charged pending disposition or convicted of crimes set forth in this chapter may not provide direct support services.

003.02 CRIMES. ~~The Department may, at its discretion, impose any of the types of discipline set forth in this chapter against a provider certification if the Department determines that the provider allowed employees or independent contractors who committed any of the crimes listed in 471 NAC 2 to work directly with participants. The Department deems a crime to have been committed when a conviction, admission, or substantial evidence of commission exists. In exercising its discretion, the Department considers the severity of the crime(s), the applicability of the crime(s) to the service(s) of the provider, the person's role within the provider entity, and the amount of time that has passed since the commission of the crime(s). The provider must not allow employees or independent contractors to work with participants served by the provider when charged pending disposition or convicted of a crime:~~

- ~~(1) — Against a child or vulnerable adult;~~
- ~~(2) — Of a nature, duration, or pattern that calls into question their regard for the law;~~
- ~~(3) — Involving the illegal use, possession, or distribution of a controlled substance; or~~
- ~~(4) — That, if repeated, could injure or harm a participant.~~

003.02(A) NOTIFICATION. All employees must notify the provider immediately if charged or convicted of any of the crimes listed above or if placed on any of the Department's registries or State Patrol Sex Offender Registry.

003.03 STAFF TRAINING AND COMPETENCY. The provider must ensure that employees, including subcontractors and management, responsible for providing supports and services to individuals with developmental disabilities are trained on the minimum requirements necessary to address the individual's needs prior to working with individuals in services.

003.03(A) COMPETENCY. Staff responsible for providing direct services must demonstrate the competence to support individuals as part of a required and on-going training program. The provider must ensure staff receive training and demonstrate competencies under the guidance of an already trained and proficient staff member prior to working alone with individuals.

003.03(B) RISK ENDORSEMENT TRAINING. For staff responsible for providing direct services to participants served under a Risk Endorsement, the provider must ensure staff receive training from the provider-employed clinician on the participant's Individual

Support Plan and any behavioral and safety plans and demonstrate competency in the implementation of these plans prior to working alone with a participant served under a risk endorsement.

003.03(C) DOCUMENTATION. The provider must document in the employee's personnel record that required orientation and training was completed and competency was demonstrated. It is the responsibility of the provider to ensure that training and verification of such is completed by persons with expertise who are qualified by education, training, or experience in those areas.

003.03(AD) INITIAL ORIENTATION REQUIREMENTS. Initial orientation must be completed by all new employees prior to working alone with individuals. Employees must complete the following training requirements:

- (i) Individual's choice;
- (ii) Individual's rights in accordance with state and federal laws;
- (iii) Confidentiality;
- (iv) Dignity and respectful interactions with individuals;
- (v) Individual support plan and any medical, behavioral, or safety protocols for all participants to whom the staff provides direct services; and
- (vi) Abuse, neglect, or exploitation and state law reporting requirements and prevention.

003.03(BE) REQUIRED TRAINING. Employees must be trained to respond to injury, illness, and emergencies, and competency verified within 30 calendar days of hire or before working alone with an individual. The following training areas must be completed:

- (i) Emergency procedures;
- (ii) Cardiopulmonary resuscitation (CPR);
- (iii) Basic first aid; and
- (iv) Infection control.

003.03(CF) IMPLEMENTATION. Employees must be trained and demonstrate competency within 180 calendar days of hire regarding the implementation of the provision of services to individuals. This training must include:

- (i) Implementation and development of the individual support plan (ISP) and interdisciplinary process;
- (ii) Positive support techniques;
- (iii) Division approved emergency safety intervention techniques;
- (iv) Concepts of habilitation, socialization, and age-appropriateness, depending on the needs of the individual;
- (v) Use of adaptive and augmentative devices used to support individuals, as necessary;
- (vi) Other training required by the provider; and
- (vii) Other training as required by the specific service options.

003.03(DG) DIRECT SERVICES REQUIREMENTS. For employees providing direct services to individuals served under a risk endorsement, all training requirements outlined in this chapter 404-NAC-4-003.03 must be completed prior to working alone with a participant served under a risk endorsement.

003.03(EH) VERIFICATION. Training and verification of competencies in the above areas must be conducted by persons with expertise who are qualified by education, training, or expertise in those areas.

003.03(EH)(i) DEMONSTRATION OF COMPETENCY. Staff training and demonstration of competency must be documented and maintained by the provider, and must include:

- (1) The training topic;
- (2) Date staff attended training;
- (3) Date competencies verified;
- (4) Name of person conducting training; and
- (5) Verification of competencies.

003.04 STAFF CREDENTIALS. The provider must maintain documentation of all current credentials of individuals providing services for which credentialing is required.

003.05 SUFFICIENT STAFF. The provider must at all times maintain enough persons providing services, supports, and supervision to meet the needs of each participant served.

003.06 STAFF RECORDS. All agency providers of services under the Developmental Disabilities Services Act must meet the staff records requirements in this section.

003.06(A) WORK RECORDS. The provider must maintain a record of hours worked by staff who provide direct services. The record must include the:

- (i) Name of the staff person;
- (ii) Staff person's position title;
- (iii) Date and specific time period worked; and
- (iv) Location the staff person worked for the specified period of time.

003.06(B) EMPLOYMENT RECORDS. The provider must maintain a current employment record for each staff person. The record must include:

- (i) Date of hire;
- (ii) Initial and ongoing training;
- (iii) Credentialing information, if applicable;
- (iv) Background checks;
- (v) Job qualifications; and
- (vi) Personnel actions, if applicable.

004. QUALITY ASSURANCE AND QUALITY IMPROVEMENT (QA/QI). The provider must have a quality assurance and quality improvement (QA/QI) process. This process must include:

- (1) Ongoing proactive internal review of the quality and individualization of services;
- (2) Continuous quality review of the services provided; and
- (3) The provider must provide evidence that participants served and their families are involved in the quality assurance and quality improvement (QA/QI) process.

004.01 QUALITY ASSURANCE AND QUALITY IMPROVEMENT (QA/QI) STRUCTURAL COMPONENTS. The provider must create the structural components of the quality assurance

and quality improvement (QA/QI) process. The process must be applied on a provider-wide basis and include:

- (A) Areas of services to be monitored and evaluated to determine the quality of these services through identification of patterns and trends of the provider services; and
- (B) Provisions for reviewing quality assurance and quality improvement (QA/QI) policies and procedures at least annually and revising as needed.

004.02 QUALITY ASSURANCE AND QUALITY IMPROVEMENT (QA/QI) ACTIVITIES. The quality assurance and quality improvement (QA/QI) activities must result in:

- (A) Identification and correction of problems and noncompliance with applicable requirements in a timely manner and on a provider-wide basis; and
- (B) Use of information from reviews, results, and recommendations to correct problems, improve services to participants served, and revise policies and procedures, if necessary.

004.03 DOCUMENTATION OF QUALITY ASSURANCE AND QUALITY IMPROVEMENT (QA/QI) ACTIVITIES. The provider must maintain documentation of all quality assurance and quality improvement (QA/QI) activities, including the results of reviews, recommendations, action taken, effectiveness of action taken, review by the director and certified provider, and other relevant information.

