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12/22/03

NEBRASKA HEALTH AND HUMAN SERVICES
REGULATION AND LICENSURE

175 NAC 19

TITLE 175 HEALTH CARE FACILITIES AND SERVICES LICENSURE
CHAPTER 19 MENTAL HEALTH CENTERS

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CHAPTER 19 MENTAL HEALTH CENTERS

19-001 SCOPE AND AUTHORITY These regulations govern licensure of mental health centers. The regulations are authorized by and implement the Health Care Facility Licensure Act, Neb. Rev. Stat. sections 71-401 to 71-462.

19-001.01 These regulations apply to any facility where:

1. Shelter, and
2. Food, and
3. Counseling, or diagnosis, or treatment, or care, or related services are provided by the facility for a period of more than 24 consecutive hours to persons residing at the facility who have a mental disease, disorder, or disability.

19-001.02 These regulations do not apply to:

1. Self-run programs;
2. A home, apartment or facility which does not exercise minimum supervision over the personal care, activities of daily living or health maintenance of clients.

19-002 DEFINITIONS

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

Activities of daily living (See definition of "Care".)

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

Administrator means the operating officer of a mental health center and may include titles such as administrator, chief executive officer, manager, superintendent, director or similar designation.

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

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

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

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

Chemical restraint means a drug that is used for discipline or staff convenience and is not required to treat medical symptoms.

Client means any person who has a mental disease, disorder, or disability residing in a mental health center for a period exceeding 24 hours.

Complaint means an expression of concern or dissatisfaction.

Completed application means an application that contains all the information specified in 175 NAC 19-003 and includes all required attachments, documentation, and the licensure fee.

Counseling means a professional relationship in which a mental health practitioner assists the client to understand, cope with, solve, and/or prevent problems, such as, but not limited to areas of education, vocation, and/or interpersonal relationships in the social environment.

Crisis management means treatment provided to immediately resolve an acute physical, social, or psychological emergency. It may include temporary housing, food, care, treatment, or referral to an emergency medical service or to a facility appropriate to meet the needs of the person. It is frequently the entry point into the continuum of care and provides an initial screening and evaluation.

Department means the Department of Health and Human Services Regulation and Licensure.

Designee means a person who is authorized by law or by the client to act on his or her behalf, for example: a parent of a minor child, a legal guardian, a conservator, and an attorney in fact named in a durable power of attorney for health care.

Diagnosis means the act or process of identifying or determining the nature of a disease by way of examination.

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Direction and monitoring means, for the purpose of medication administration, 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 may be done by a:

1. Competent individual for himself or herself;
2. Caretaker; or
3. Licensed health care professional.

Director means the Director of Regulation and Licensure.

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

Existing facility means a mental health center whose construction or remodeling plans were approved by the Department prior to the effective date of 175 NAC 19.

Facility means a mental health center.

Financial exploitation means the taking of property of a client by means of undue influence, breach of a fiduciary relationship, deception, or extortion or by any unlawful means.

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

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

Food Code means the Nebraska Food Code, 1999 Edition, Chapters 1-7 as published by the Nebraska Department of Agriculture, Bureau of Dairies and Foods.

Foreign, when applied to a corporation, means one incorporated in a state other than Nebraska.

Grievance means a written expression of dissatisfaction which may or may not be the result of an unresolved complaint.

Health care facility means an ambulatory surgical center, an assisted-living facility, a center or group home for the developmentally disabled, a critical access hospital, a general acute hospital, a health clinic, a hospital, an intermediate care facility, an intermediate care facility for the mentally retarded, a long-term care hospital, a mental health center, a nursing facility, a pharmacy, psychiatric or mental hospital, a public health clinic, a rehabilitation hospital, a skilled nursing facility, or a substance abuse treatment center.

Health care service means an adult day service, a home health agency, a hospice or hospice service, or a respite care service.

Health maintenance activities (See definition of "Care".)

Individualized service plan means a written action plan based on assessment data that identifies the client's needs and the strategy for providing care and/or treatment to meet those needs.

Licensed health care professional means an individual for whom administration of medication is included in the scope of practice.

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

Maintenance activities means provision of services intended to support the person who has a mental disease, disorder, or disability in the recovery process.

Manual restraint means the direct application of physical force by staff to a client, without the client's permission, to restrict his or her freedom of movement, without the use of mechanical or chemical restraints.

Mechanical restraint means any device, such as, a material or piece of equipment (such as, leather straps/belts and steel cuffs) attached or adjacent to an individual's body that he or she cannot remove easily and that restricts freedom of movement or normal access to his or her own body. This does not include the use of protective devices, such as, orthopedic appliances, braces or other devices used for postural support or to assist in obtaining and maintaining normal bodily functioning.

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

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

Medication administration means:

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

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

Medication provision means giving or applying a dose of medication to an individual and includes helping an individual in giving or applying the medication to himself or herself.

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Mental abuse means humiliation, harassment, threats of punishment or deprivation, or other actions causing mental anguish.

Mental disease/disorder/disability means a primary diagnosis of mental illness and is characterized by one or more functional impairments in the following areas: vocational, educational, emotional, social, or activities of daily living.

NAC means Nebraska Administrative Code.

Neglect means a failure to provide care, treatment or services necessary to avoid physical harm or mental anguish of a client.

New construction means a facility or a distinct part of a facility in which care and treatment is to be provided and which is enlarged, remodeled or altered in any fashion or is built from the ground up on or after the effective date of 175 NAC 19.

New facility means a facility or a distinct part of a facility in which care and treatment is to be provided and which is enlarged, remodeled or altered in any fashion. New facility also includes those facilities, which were previously licensed for care and treatment in another licensure category which now seek licensure in a different category and those facilities that were not previously licensed to provide care and treatment in any licensure category.

Personal care (See definition of "Care".)

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

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

Provide means supply directly or indirectly.

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

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

Related services means those activities that assist the client in carrying out their therapeutic activities as outlined in their individualized service plan.

Restraints means the use of manual, mechanical, chemical or other means to temporarily subdue an individual or otherwise limit a person's freedom of movement. (See definitions of "Mechanical restraints", "Chemical restraints", and "Manual restraints".)

Schematic plans means a diagram of the facility which describes the number and location of beds; the location of care and treatment rooms, Life Safety Code construction and occupancy classifications locations, fire compartments, and Fire Marshal approved points of safety.

Seclusion means the involuntarily confinement of an individual in a locked room. A locked room includes a room with any type of door locking device, or physically holding the door shut. (See definition of "Time-out".)

Self-run program means a program, which may be residential, which is operated by persons with mental diseases, disorders, or disabilities for their own benefit. If a mental health practitioner is involved in a self-help program it is only in an advisory or informational rather than a supervisory or administrative capacity.

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

Shelter means lodging that is directly provided to the client or arranged for the client by the facility for compensation.

Supervision means the daily observation, and monitoring of clients by direct care staff and oversight of staff by the administrator or administrator's designee.

Supportive services means those services which support personal care, provision of medications, activities of daily living and health maintenance activities.

Time-out means the removal of a client from the setting in which he or she is exhibiting inappropriate behavior until the client exhibits appropriate behavior. Staff requires the client to remain in an unlocked room or area where there are no other individuals except for staff monitoring the client.

Therapeutic activity means a professionally directed set of actions designed to lessen the effects of the disease whether physical or mental and designed to facilitate a behavior change in the individual.

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

Verbal abuse means the use of oral, written, or gestured language including disparaging and derogatory terms to clients or within their hearing distance, or within their sight.

19-003 LICENSING REQUIREMENTS AND PROCEDURES. Any person intending to establish, operate, or maintain a mental health center must first obtain a license from the Department. A facility must not hold itself out as a mental health center or as providing mental health services unless licensed under the Health Care Facility Licensure Act. An applicant for an initial or renewal license must demonstrate that the mental health center meets the care, treatment, and operational and physical plant standards of 175 NAC 19.

19-003.01 Initial License: The initial license process occurs in two stages. The first stage consists of the applicant's submission of affirmative evidence of the ability to comply with the operational and physical plant standards contained in 175 NAC 19-006 and 175 NAC 19-007. The application is not complete until the Department receives documents specified in 175 NAC 19-003.01.

The second stage consists of the Department's review of the completed application together with an inspection of the mental health center. The Department determines whether the applicant meets the standards contained in 175 NAC 19 and the Health Care Facility Licensure Act.

19-003.01A Applicant Responsibilities An applicant for an initial mental health center license must:

1. Intend to provide shelter, food, and counseling, diagnosis, treatment, care, or related services for a period of more than 24 consecutive hours to persons residing at the facility who have a mental disease, disorder, or disability.
2. Comply with the applicable codes, guidelines, and standards specified in 175 NAC 19-007.
3. Submit a written application to the Department as provided in 175 NAC 19-003.01B
4. Receive approval in writing, from the Department, of schematic and, if new construction, of construction plans; and
5. Notify the Department at least 30 working days prior to planned client occupancy.

19-003.01B Application Requirements: An applicant may construct an application or obtain an application form from the Department. The application must include:

1. Full name of the facility to be licensed, street and mailing address, telephone and facsimile number, if any;
2. The type of facility to be licensed;
3. Name of the administrator;
4. Name and address of the facility owner(s);
5. Ownership type;
6. Mailing address for the owner;
7. The preferred mailing address for receipt of official notices from the Department;
8. List of names and addresses of all persons in control of the facility. The list must include all individual owners, partners, limited liability company members, and members of boards of directors owning or managing

operations, and any other persons with financial interests or investments in the facility. In the case of publicly held corporations, only those stockholders who own 5% or more of the company's stock must be listed;

9. The legal name of the individual or business organization (government, corporation, partnership, limited liability company, or other type) to whom the license should be issued and a statement that the individual or organization accepts the legal responsibility for compliance with these regulations;
10. Applicant's social security number if the applicant is an individual; (To ensure social security numbers are not part of public records and are used only for administrative purposes, applicants may submit social security numbers in a separate document.)
11. Applicant's federal employer identification number, if not an individual;
12. Number of beds;
13. Signatures of:
 - a. The owner, if the applicant is an individual or partnership;
 - b. Two of its members, if the applicant is a limited liability company;
 - c. Two of its officers, if the applicant is a corporation;
 - d. The head of the governmental unit having jurisdiction over the facility to be licensed, if the applicant is a governmental unit.
14. A copy of the registration as a foreign corporation filed with the Nebraska Secretary of State, if applicant is a foreign corporation;
15. Schematic plans,
16. For new construction, construction plans completed in accordance with The Engineers and Architects Regulation Act, Neb. Rev. Stat. Sections 81-3401 to 81-3455. An applicant may construct a project and/or certification document, or obtain a form from the Department. Construction plans must include the following:
 - a. Project name, description of the project with quantity and floor area information on bed, care, treatment, bathing, toileting, dining, and activity locations, building systems, medical equipment, street address, and contact person;

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- b. Site plan, floor plans, elevations, wall and building sections, construction details, plumbing and electrical diagrams, construction component schedules;
 - c. Complete list of names, titles and telephone numbers of other authorities reviewing or inspecting the construction;
 - d. Upon Department request, additional information that may be required for review, such as structural and mechanical calculations, electrical system calculations, and product and equipment information; and
 - e. Certification, if any, from a licensed architect or engineer that the schematic plans, construction plans, and any revisions thereof meet the requirements of 175 NAC 19-007;
- 17. Planned occupancy date;
 - 18. Copies of zoning approval from the relevant jurisdiction;
 - 19. Occupancy certificates issued by the State Fire Marshal or delegated authority; and
 - 20. The required licensure fee specified in 175 NAC 19-004.10.

19-003.01C Department Responsibilities: The Department must:

- 1. Review the application for completeness;
- 2. Provide notification to the applicant of any information needed to complete the application;
- 3. Confirm, either by Department review or by accepting certification from an architect or engineer, that the schematic plans and, if new construction, the construction plans meet the standards of 175 NAC 19-007;
- 4. Upon receipt of the requested information, conduct an on-site inspection in accordance with 175 NAC 19-005 prior to the issuance of a license; and
- 5. Issue or deny a license based on the results of the initial inspection.

19-003.01D Denial of License: See 175 NAC 19-008.01 and 19-008.02 for grounds and procedures for the Department's denial of an initial license.

19-003.02 Renewal Licenses

19-003.02A Licensee Responsibilities: The licensee must submit a written application to the Department. The licensee may construct an application or obtain an application form from the Department. The licensure application must include:

1. Full name of the facility to be licensed, street and mailing address, telephone and facsimile number, if any;
2. The type of facility to be licensed;
3. Name of the administrator;
4. Name and address of the facility owner(s);
5. Ownership type;
6. Mailing address for the owner;
7. The preferred mailing address for receipt of official notices from the Department;
8. List of names and addresses of all persons in control of the facility. The list must include all individual owners, partners, limited liability company members, and members of boards of directors owning or managing operations, and any other persons with financial interests or investments in the facility. In the case of publicly held corporations, only those stockholders who own 5% or more of the company's stock must be listed;
9. Legal name of the individual or business organization (government, corporation, partnership, limited liability company, or other type) to whom the license should be issued and a statement that the individual or organization accepts the legal responsibility for compliance 175 NAC 19.
10. Applicant's social security number if the applicant is an individual; (To ensure social security numbers are not part of public records and are used only for administrative purposes, applicants may submit social security numbers in a separate document.)
11. Applicant's federal employer identification number, if not an individual;
12. Number of beds;
13. Signatures of:
 - a. The owner, if the applicant is an individual or partnership;
 - b. Two of its members, if the applicant is a limited liability company;
 - c. Two of its officers, if the applicant is a corporation;
 - d. The head of the governmental unit having jurisdiction over the facility to be licensed, if the applicant is a governmental unit;
14. A copy of the registration as a foreign corporation filed with the Nebraska Secretary of State, if applicant is a foreign corporation;

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15. Occupancy certificates issued by the State Fire Marshal or delegated authority dated within the 12 months prior to the license expiration date; and
16. The required licensure fee specified in 175 NAC 19-004.10.

19-003.02B Department Responsibilities: The Department must:

1. Send a notice of expiration and an application for renewal to licensee's preferred mailing address no later than 30 days prior to the expiration date. The licensure renewal notice specifies:
 - a. Date of expiration;
 - b. Fee for renewal;
 - c. License number; and
 - d. Name and address of the facility;
2. Issue a renewal license when it determines that the licensee has submitted a completed renewal application;
3. Send to each licensee that fails to renew its license a second notice, which is the final notice and specifies that:
 - a. The licensee failed to pay its renewal fees or submit an application or both;
 - b. The license has expired;
 - c. The Department will suspend action for 30 days following the date of expiration;
 - d. Upon receipt of the renewal fee and completed renewal application, the Department must issue the renewal license; and
 - e. Upon failure to receive the renewal fee and completed renewal application, the license will be lapsed.
4. Place the facility license on lapsed status for nonpayment of fees if the licensee fails to renew the license. During this time, the facility may not operate. The license remains in lapsed status until it is reinstated.

19-003.02C Refusal to Renew See 175 NAC 19-008.01 and 19-008.02 for grounds and procedures for refusal to renew a license.

19-003.03 Reinstatement from Lapsed Status: A facility requesting reinstatement of its lapsed license must submit to the Department an application for reinstatement and pay the required licensure fee specified in 175 NAC 19-004.10. The application must conform to the requirements specified in 175 NAC 19-003.02.

19-003.03A The Department must review the application for completeness and must decide if an onsite inspection is needed to determine compliance with the

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physical plant and the operation and care and treatment requirements of 175 NAC 19-006 and 19-007. The decision is based upon the following factors:

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

19-003.03B When the Department decides that a reinstatement inspection is warranted, it must conduct an inspection in accordance with 175 NAC 19-005.

19-003.03C When the Department decides that a reinstatement inspection is not warranted and that the application is complete, it must reinstate the license.

19-003.03D Refusal to Reinstatement: See 175 NAC 19-008.01 and 19-008.02 for grounds and procedures for refusal to reinstate a lapsed license.

19-004 GENERAL REQUIREMENTS

19-004.01 Separate License: An applicant must obtain a separate license for each type of health care facility or health care service that the applicant seeks to operate. All buildings in which care and treatment is provided must comply with 175 NAC 19-006, and if applicable, 175 NAC 19-007. A single license may be issued for a facility operating in separate buildings or structures on the same premises under one management.

19-004.02 Single License Document: The Department may issue one license document that indicates the various types of health care facilities or health care services for which the entity is licensed.

19-004.03 Effective Date and Term of License: A mental health center facility license expires on February 28 of each year.

19-004.04 License Not Transferable: A license is issued only for the premises and persons named in the application and is not transferable or assignable. Change of ownership (sale, whether of stock, title, or assets, lease, discontinuance of operations) or premises terminates the license. If there is a change of ownership and the facility remains on the same premises, the inspection in 175 NAC 19-005 is not required. If a facility changes premises, it must pass the inspection specified in 175 NAC 19-005.

19-004.05 Bed Capacity, Usage, and Location: The licensee must not put into use more beds than the total number of beds for which the facility is licensed. Changes in the use and location of beds may occur at any time without prior Departmental approval for licensure purposes. A licensee must not locate more clients in a sleeping room or bedroom than the capacity for which the room was originally approved.

19-004.06 Change of Ownership or Location: The licensee must notify the Department in writing within five working days of the event if or when a mental health center facility is sold, leased, discontinued or moved to a new location.

19-004.07 Notifications: An applicant or licensee must notify the Department:

1. At the time of licensure renewal of any change in the location of beds;
2. At least 30 working days prior to the date it wishes to increase the number of beds for which the facility is licensed;
3. To request a single license document;
4. To request simultaneous facility or service licensure inspections for all types of licensure held or sought; or
5. If new construction is planned, submit construction plans prior to construction for Department approval prior to occupancy or use. The Department may accept certification from an architect or engineer in lieu of Department review

19-004.08 Information Available to Public: The licensee must make available for public inspection upon request licenses, license record information, and inspection reports. This information may be displayed on the licensed premises

19-004.09 Accreditation or Certification: The Department must deem applicants or licensees in compliance with 175 NAC 19-006 based on its accreditation by the:

1. Joint Commission on Accreditation of Healthcare Organizations;
2. Commission on Accreditation of Rehabilitation Facilities; or
3. Council on Accreditation for Children and Family Services.

19-004.09A The applicant or licensee must request the Department to deem its facility in compliance with 175 NAC 19-006 based upon its accreditation. The request must be:

1. In writing;
2. Submitted within 30 days of receipt of a report granting accreditation; and
3. Accompanied by a copy of the accreditation report.

19-004.09B Upon receipt of the request, the Department must deem the facility in compliance with 175 NAC 19-006 and must provide written notification of its decision to the facility within 10 working days of the receipt of the request.

19-004.09C The licensee must maintain the accreditation on which its license was issued. If the accreditation has been sanctioned, modified, terminated or withdrawn, the licensee must notify the Department within 15 days of receipt of notification of the action. After giving the notice, the facility may continue to operate unless the Department determines that the facility no longer meets the requirements for licensure under the Health Care Facility Licensure Act.

19-004.10 Fees: The licensee must pay fees for licensure and services as set forth below:

1. Initial and Renewal Licensure fees:
 - a. 1 to 16 Beds \$250
 - b. 17 to 50 Beds \$275
 - c. 51 or more Beds \$300
2. Duplicate license: \$10
3. Refunds for denied applications:
 - a. If the Department did not perform an inspection, it must refund the license fee except for an administrative fee of \$25.
 - b. If the Department performed an inspection, the fee is not refunded.

19-005 INSPECTIONS To determine compliance with operational, care, treatment, and physical plant standards, the Department inspects the mental health center facility prior to and following licensure. The Department determines compliance through on-site inspections, review of schematic and construction plans, and reports of qualified inspectors.

19-005.01 Initial Inspection: The department must conduct an initial on-site inspection to determine compliance with 175 NAC 19-006 and 19-007. This inspection must be conducted within 30 working days, or later when requested by the applicant, of receipt of a completed application for an initial license. The Department must provide a copy of the inspection report to the facility within 10 working days after completion of an inspection.

19-005.02 Results of Initial Inspection

19-005.02A When the Department finds that the applicant fully complies with the requirements of 175 NAC 19-006 and 19-007, the Department must issue a license.

19-005.02B When the Department finds that the applicant has complied substantially but has failed to comply fully with the requirements of 175 NAC 19-006 and 19-007 and the failure(s) would not pose an imminent danger of death or physical harm to the client, the Department may issue a provisional license. The provisional license:

1. Is valid for a period of up to one year;
2. Is not renewable; and,
3. May be converted to a regular license upon a showing that the facility fully complies with the requirements for licensure.

19-005.02C When the Department finds that the applicant has one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety or security of the clients residing in the facility, the Department may send a letter to the facility requesting a statement of compliance. The letter must include:

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

19-005.02D The Statement of Compliance The statement of compliance must indicate any steps that have been or will be taken to correct each violation and the estimated time necessary to correct each violation. Based on the statement of compliance, the Department must take one of the following actions:

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

19-005.02E When the Department finds that the applicant fails to meet the requirements of 175 NAC 19-006 and 19-007 and the failure(s) would create an imminent danger of death or serious physical harm, the Department must deny the license.

19-005.03 Physical Plant Inspections: The Department must conduct inspections for conformity with approved construction plans and physical plant standards of 175 NAC 19-007 at existing facilities, new facilities, or new construction prior to use or occupancy.

19-005.03A On-site progress inspections of the physical plant by qualified inspectors for conformance to construction documents and code requirements may occur at any time after construction has begun and prior to the concealment of essential components.

19-005.03B The Department must conduct an on-site final inspection of the physical plant. In lieu of an on-site final inspection by the Department, the Department may accept a certification from a licensed architect or engineer that the physical plant meets the requirements of the Health Care Facility Licensure Act and 175 NAC 19, and that the facility is complete and ready for occupancy in accordance with Department approved plans. The architect or engineer may construct a certification form or obtain a certification form from the Department. The process for the certification is as follows:

19-005.03B1 The certification must state:

1. Name of the architect or engineer;
2. Name of the professional entity with which he or she is affiliated, if any;
3. Address and telephone number;
4. Type of license held, the state in which it is held, and the license number;
5. Name and location of the facility;
6. Name(s) of the owner(s) of the facility;
7. New construction had the building structure and plumbing rough-in inspected by a qualified inspector prior to the time these would be concealed and preclude observation;
8. All new construction, care and treatment room sizes, bedroom sizes, hardware, building systems, and other safety equipment as appropriate are completed in accordance with approved construction plans; and
9. The facility is furnished, cleaned, and equipped for the care and treatment to be performed in compliance with 175 NAC 19-007, and approved for use and occupancy.

19-005.03B2 The certification must have attached to it:

1. Copies of documents from other authorities having jurisdiction verifying the facility meets the codes specified in 175 NAC 19-007.03A, and approved for use and occupancy;
2. Copies of certifications and documentation from equipment and building system installers stating with the sufficiency as allows for Departmental verification that all equipment and systems installed are operating and approved for use and occupancy; and
3. Schematic floor plans documenting actual room numbers and titles, bed locations and capacity, and life safety information.

19-005.04 Timing of Inspection: The Department may conduct an on-site inspection at any time it deems necessary.

19-005.04A Random Selection: Each year the Department may conduct an inspection of up to 25% of the mental health centers based on a random selection of licensed mental health centers.

19-005.04B Focused Selection: The department may conduct an inspection of a mental health center when the Department is informed of one or more of the following:

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1. An occurrence resulting in client death or serious physical harm to clients;
2. An occurrence resulting in imminent danger to or the possibility of death or serious physical harm to clients;
3. An accident or natural disaster resulting in damage to the physical plant and having a direct or immediate adverse effect on the health, safety, and security of clients;
4. The passage of five years without an inspection;
5. A complaint alleging violation of the Health Care Facility Licensure Act or 175 NAC 19 ;
6. Complaints that, because of their number, frequency, and type, raise concerns about the maintenance, operation, and management of the mental health center;
7. Financial instability of the licensee or of the licensee's parent company;
8. Outbreaks or recurrent incidents of physical health problems such as dehydration, pressure sores, or other illnesses;
9. Change of services, management, or ownership;
10. Change of the status of the accreditation on which licensure is based as provided in 175 NAC 19-004.09
11. Any other event that raises concerns about the maintenance, operation, and management of the mental health center.

19-005.05 Results of Compliance Inspections

19-005.05A When the inspection reveals violations that create imminent danger of death or serious physical harm or has direct or immediate adverse relationship to the health, safety or security of the persons residing in the facility, the Department must review the inspection findings within 20 working days after the inspection. If the evidence supports the findings, the Department must impose discipline in accordance with 175 NAC 19-008.03.

19-005.05B When the inspection reveals one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety or security of the persons residing in the facility, the Department may request a statement of compliance from the facility. The statement of compliance must indicate any steps that have been or will be taken to correct each violation and the period of time estimated to be necessary to correct each violation. Based on the statement of compliance, the Department will take one of the following actions:

1. If the facility submits and implements a statement of compliance that indicates a good faith effort to correct the violations, the department must not take any disciplinary action against the facility license;
2. If the facility fails to submit and implement a statement of compliance, the Department must initiate disciplinary action against the facility license. The action must be in accordance with 175 NAC 19-008; or
3. In making a determination to accept a statement of compliance or initiate or not initiate disciplinary action against the license, the Department may conduct

a re-inspection within 90 days of the first inspection, or sooner as requested by the licensee.

19-005.06 Re-inspections

19-005.06A The Department may conduct re-inspections to determine if a facility fully complies with the requirements of 175 NAC 19-006 and 19-007. The re-inspection:

1. May occur after having issued a provisional license; having received a statement of compliance; or having imposed disciplinary action; and
2. Must occur within 90 days of the first inspection, or sooner as requested by the licensee.

19-005.06B Following a re-inspection, the Department may:

1. Convert a provisional license to a regular license;
2. Affirm that the provisional license is to remain effective; or
3. Modify a disciplinary action.

19-005.06C To modify a disciplinary action, the Department must follow the procedures in 175 NAC 19-008.02.

19-006 STANDARDS OF OPERATION, CARE AND TREATMENT

19-006.01 Licensee The licensee must determine, implement and monitor policies to assure that the facility is administered and managed appropriately. The licensee's responsibilities include:

1. Monitoring policies to assure appropriate administration and management of the facility;
2. Ensuring the facility's compliance with all applicable state statutes and relevant rules and regulations;
3. Ensuring the quality of all services, care and treatment provided to clients whether those services, care or treatment are furnished by facility staff or through contract with the facility;
4. Designating an administrator who is responsible for the day to day management of the facility;
5. Defining the duties and responsibilities of the administrator in writing;
6. Notifying the Department in writing within five working days when a vacancy in the administrator position occurs, including who will be responsible for the position until another administrator is appointed;
7. Notifying the Department in writing within five working days when the administrator vacancy is filled indicating effective date and name of person appointed administrator;

8. Ensuring clients are provided with a stable and supportive environment, through respect for the rights of clients and responsiveness to client needs;
9. Receiving periodic reports and recommendations regarding the quality assurance/performance improvement (QA/PI) program;
10. Implementing programs and policies to maintain and improve the quality of client care and treatment based on QA/PI reports; and
11. Ensuring that staff levels are sufficient to meet the clients needs.

19-006.02 Administration The administrator is responsible for planning, organizing, and directing the day to day operation of the mental health center. The administrator must report and be directly responsible to the licensee in all matters related to the maintenance, operation, and management of the facility. The administrator's responsibilities include:

1. Being on the premises a sufficient number of hours to permit adequate attention to the management of the mental health center;
2. Ensuring that the mental health center protects and promotes the client's health, safety, and well-being;
3. Maintaining staff appropriate to meet clients' needs;
4. Designating a substitute, who is responsible and accountable for management of the facility, to act in the absence of the administrator.
5. Developing procedures which require the reporting of any evidence of abuse, neglect, or exploitation of any client served by the facility in accordance with Neb. Rev. Stat. Section 28-732 of the Adult Protective Services Act or in the case of a child, in accordance with Neb. Rev. Stat. Section 28-711; and
6. Ensuring an investigation is completed on suspected abuse, neglect or exploitation and that steps are taken to prevent further abuse and protect clients.

19-006.03 Staff Requirements The facility must maintain a sufficient number of staff with the required training and skills necessary to meet the clients' needs. The facility must provide care and treatment to clients in a safe and timely manner.

19-006.03A Facility Staffing: The facility must at all times maintain enough staff to provide adequate care to meet the client population's requirements for care and treatment, including needs for therapeutic activities, supervision, support, health, and safety.

19-006.03B Employment Eligibility:

19-006.03B1 Staff Credentialing: The facility must ensure that:

1. Any staff person providing a service for which a license, certification, registration or credential is required holds the license, certification, registration or credential in accordance with applicable state laws;
2. The staff have the appropriate license, certification, registration or credential prior to providing a service to clients; and

3. It maintains evidence of the staff having appropriate license, certification, registration or credential.

19-006.03C Health Status of Facility Staff: The facility must establish and implement policies and procedures regarding the health status of staff who provide direct care or treatment to clients to prevent the transmission of infectious disease. The facility:

1. Must complete a health screening for each staff person prior to assuming job responsibilities.
2. May, in its discretion, based on the health screening require a staff person to have a physical examination.

19-006.03D Staff Training: The facility must provide staff with sufficient training to meet client needs for care and treatment.

19-006.03D1 Initial Orientation: The facility must provide staff with orientation prior to the staff person having direct responsibility for care and treatment of clients. The training must include:

1. Client rights;
2. Job responsibilities relating to care and treatment programs and client interactions;
3. Emergency procedures including information regarding availability and notification;
4. Information on any physical and mental special needs of the clients of the facility; and
5. Information on abuse, neglect, and misappropriation of money or property of a client and the reporting procedures.

19-006.03D2 Ongoing Training: The facility must provide each staff person ongoing training in topics appropriate to the staff person's job duties, including meeting the needs, preferences, and protecting the rights of the clients in the facility.

19-006.03E Staff Records: The facility must maintain written documentation:

1. To support facility decisions regarding staffing of the facility, staff credentials, and staff health status; and
2. Regarding staff orientation and ongoing training.

19-006.04 Client Rights

19-006.04A The facility must:

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1. Ensure that the client is aware of the rights listed in 175 NAC 19-006.04B upon admission and for the duration of the stay;
2. Operate so as to afford the client the opportunity to exercise these rights; and
3. Protect and promote these rights.

19-006.04B The client must have the right:

1. To be informed in advance about care and treatment and of any changes in care and treatment that may affect the client's well-being;
2. To self-direct activities and participate in decisions regarding care and treatment;
3. To confidentiality of all records, communications, and personal information;
4. To voice complaints and file grievances without discrimination or reprisal and to have those complaints and grievances addressed;
5. To examine the results of the most recent survey of the facility conducted by representatives of the Department;
6. To privacy in written communication including sending and receiving mail consistent with individualized service plans;
7. To receive visitors as long as this does not infringe on the rights and safety of other clients and is consistent with individualized service plans;
8. To have access to a telephone where calls can be made without being overheard when consistent with individualized service plans;
9. To retain and use personal possessions, including furnishings and clothing as space permits, unless to do so would infringe upon the rights and safety of other clients;
10. To be free of restraints except when provided as in 175 NAC 19-006.12;
11. To be free of seclusion in a locked room, except as provided in 175 NAC 19-006.12;
12. To be free of physical punishment;
13. To exercise his or her rights as a client of the facility and as a citizen of the United States;
14. To be free from arbitrary transfer or discharge;
15. To be free from involuntary treatment, unless the client has been involuntarily committed by appropriate court order;
16. To be free from abuse and neglect and misappropriation of their money and personal property; and
17. To be informed prior to or at the time of admission and during stay at the facility of charges for care, treatment, or related charges.

19-006.05 Complaints/Grievances The facility must establish and implement procedures for addressing complaints and grievances from clients, staff, and others.

19-006.05A The facility must have a procedure regarding submission of complaints and grievances available to clients, staff, and others.

19-006.05B The facility must document efforts to address complaints and grievances received in a timely manner.

19-006.05C The facility must ensure that the telephone number and address of the Department is readily available to clients, staff, and others who wish to lodge complaints and grievances.

19-006.06 Facility House Rules The facility must develop reasonable house rules outlining operating protocols concerning, but not limited to, meal times, night-time quiet hours, guest policies and smoking. The facility must provide the clients an opportunity to review and provide input into any proposed changes to house rules before the revisions become effective. The house rules must be:

1. Consistent with client rights;
2. Posted in an area readily accessible to clients; and
3. Reviewed and updated, as necessary.

19-006.07 Quality Assurance/Performance Improvement The facility must conduct an ongoing comprehensive, integrated assessment of the quality and appropriateness of care and treatment provided. The facility must use the findings to correct identified problems and to revise facility policies, if necessary.

19-006.07A Those responsible for the quality assurance/performance improvement program must:

1. Implement and report on activities and mechanisms for monitoring the quality of client care and treatment;
2. Identify and resolve problems;
3. Make suggestions for improving care and treatment;
4. Maintain documentation of quality assurance/performance improvement activities;
5. Report results of the quality assurance/performance improvement activities to the licensee; and
6. Provide for client participation.

19-006.08 Care and Treatment Requirements The facility must ensure that all clients receive care and treatment in accordance with the facility's program and that the facility meets each client's identified needs.

19-006.08A Program Description: The facility must have a written program description that is available to staff, clients and members of the public explaining the range of care and treatment provided. The description must include the following:

1. Specific care and treatment activities provided by the facility;
2. Availability of staff to provide care and treatment activities, including job responsibilities for meeting care and treatment needs of client population;

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3. Characteristics of the persons to be served;
4. Staff composition and staffing qualification requirements;
5. Admission and discharge processes, including criteria for admission and discharge;
6. Referral mechanisms for services outside the facility;
7. The client admission and ongoing assessment and evaluation procedures used by the facility, including individualized service plan process;
8. Plan for providing emergency care and treatment, including use of facility approved interventions to be used by staff in an emergency situation;
9. Quality assurance/performance improvement process, including who will be responsible for the program and how results will be utilized to improve care and treatment; and
10. System governing the reporting, investigation, and resolution of allegations of abuse, neglect and exploitation.

19-006.08B Policies and Procedures: The facility must establish policies and procedures to implement the facility's program as described in 175 NAC 19-006.08A.

19-006.08C Annual Review: The facility must review all elements of the written program description as listed in 175 NAC 19-006.08A at least annually. The facility must document the results of the annual review. Relevant findings from facility's quality assurance/performance improvement program for the purpose of improving client treatment and resolving problems in client care and treatment must be included in the review process. The licensee must revise the program description, as necessary, to reflect accurately the care and treatment the facility is providing.

19-006.09 Admission and Retention of Clients: The facility must ensure that its admission practices meet the client's identified needs and conform with the facility's program description.

19-006.09A Admission Criteria: The facility must have written criteria for admission that includes each level of care and the components of care and treatment provided by the facility. The written criteria must include how eligibility for admission is determined based on:

1. Identification of client need for care and treatment, including the severity of the presenting problem;
2. Rationale for determining appropriate level of care and treatment; and
3. Need for supervision and other issues related to providing care and treatment.

19-006.09B Admission Decisions: The facility must ensure that the decision to admit a client is based upon the facility's admission criteria and the facility's capability to meet the identified needs of the client.

19-006.09C Client Admission: The facility must provide an orientation to each new client that includes an explanation of the facility house rules, client rights, fee policy, conditions under which residency would be terminated and a general description of available activities. This client orientation must be provided within 24 hours of admission.

19-006.10 Care and Treatment Activities Provided The facility must provide for the following care and treatment activities to meet client needs on an ongoing basis in a manner that respects clients' rights, promotes recovery and affords personal dignity:

1. Provision of adequate shelter and arrangements for food and meals;
2. Provision of care and treatment to meet client identified needs;
3. Medical and clinical oversight of client needs as identified in the client assessment;
4. Assistance with acquiring skills to live as independently as possible;
5. Assistance and support, as necessary, to enable clients to meet personal hygiene and clothing needs;
6. Assistance and support, as necessary, to enable clients to meet their laundry needs, which includes access to washers and dryers so that clients can do their own personal laundry;
7. Assistance and support, as necessary, to enable clients to meet housekeeping needs essential to their health and comfort, including access to materials needed to perform their own housekeeping duties;
8. Activities and opportunities for socialization and recreation both within the facility and in the community;
9. Health-related care and treatment; and
10. Assistance with transportation arrangements.

19-006.11 Mental Health Services: The facility must arrange for access to mental health services on a routine and ongoing basis to meet the identified client needs. The facility must assist the client in keeping appointments and participating in treatment programs.

19-006.11A Professional Services: The facility must arrange for licensed mental health professional services consistent to meet client population served and individual client needs on an ongoing basis.

19-006.11B Emergency Services: The facility must make arrangements for care of client emergencies on a 24 hour, 7 day a week basis. Arrangements must include the following:

1. Access to qualified facility staff trained to handle psychiatric behaviors who must be available to provide care and treatment;
2. Plan for provision of emergency treatment, including circumstances when restraint use may be necessary and how facility staff will respond; and

3. Plan to provide safety to clients who pose an imminent danger to themselves or others, which may include transfer to an appropriate facility.

19-006.12 Use of Restraints and Seclusion: The mental health center must not use restraints and/or seclusion except as provided in 175 NAC 19-006.12. Restraint and/or seclusion includes the following interventions:

1. Seclusion;
2. Mechanical restraint;
3. Chemical restraint;
4. Manual restraint; and
5. Time-out.

19-006.12A Secured Environment Facilities: A mental health center that provides a secured and protective environment by restricting a client's exit from the facility or its grounds through the use of approved locking devices on exit doors or other closures must be accredited by an approved qualifying organization. The approved qualifying organizations are:

1. Joint Commission on Accreditation of Healthcare Organizations;
2. Commission on Accreditation of Rehabilitation Facilities; and
3. Council on Accreditation for Children and Family Services.

The facility must ensure compliance with the approved qualifying organization's requirements, Building Code requirements and Life Safety Code requirements regarding secured environments.

19-006.12B Use of Restraints and Seclusion in Accredited Facilities: A mental health center that is accredited by an approved qualifying organization may use restraint and seclusion methods as part of a client's treatment plan. The facility must comply with approved qualifying organization's requirements for initiation and continued use of restraint and seclusion.

19-006.12C Use of Restraints and Seclusion in Non-accredited Facilities: A non-accredited mental health center is prohibited from using mechanical and chemical restraints and seclusion. The facility must establish alternative and less restrictive methods for staff to use in the place of restraints and seclusion to deal with client behaviors.

19-006.12C1 A non-accredited mental health center may use manual restraint and/or time out as therapeutic techniques only after it has:

1. Written policies and procedures for the use of manual restraint and time-out;
2. Documented physician approval of the methods used by the facility;

3. Trained all staff who might have the occasion to use manual restraints and/or time-out in the appropriate methods to use in order to protect client safety and rights; and
4. Developed a system to review each use of manual restraint or time-out. The facility must ensure the review process includes the following requirements:
 - a. That each use of manual restraint or time-out be reported to the administrator for review of compliance with facility procedures; and
 - b. That documentation of each use of manual restraint or time-out include a description of the incident and identification of staff involved.

19-006.12C2 A non-accredited mental health center may use manual restraint and/or time out as therapeutic techniques only in the following circumstances:

1. An emergency situation where the safety of the client or others is threatened;
2. The implementation and failure of other less restrictive behavior interventions; and
3. Use of manual restraint and/or time out only by staff who are trained as described in 175 NAC 19-006.12C1, item 3.

19-006.13 Client Assessment Requirements: The facility must complete the following assessments prior to the development of the individualized service plan:

1. Assessments of current functioning according to presenting problem including community living skills, independent living skills and emotional psychological health;
2. Basic medical history and information, determination of the necessity of a medical examination or the results of the medical examination;
3. Current prescribed medications and, if available, history of medications used; and
4. Summary of prior mental health treatment and, if available, service system involvement.

19-006.14 Individualized Service Plan: Within 30 days of admission, the facility must develop for each client a written plan which is based on admission assessment and ongoing assessment information.

19-006.14A The individualized service plan must be in writing and include the following:

1. Client's name;
2. Date of development of the plan;

3. Specified client care and treatment needs to be addressed including therapeutic activities, behavioral concerns, self-care, physical and medical needs, and medication regimen;
4. Client goals related to specified needs identified that are to be addressed;
5. Interventions addressing the plan goals and who will be responsible for ensuring interventions are carried out as planned;
6. Documentation of client participation in the planning process;
7. Planned frequency and identification of contacts; and
8. Documentation of collaboration with the primary mental health professional in development of the individualized service plan.

19-006.14B Individualized Service Plan Review: The individualized service plan must be reviewed every six months and revised as necessary to ensure current client needs are being addressed on an ongoing basis.

19-006.15 Supportive Services: The facility must know about services provided by other agencies and ensure that there is coordination with those agencies in the provision of care and treatment to each client. The care and treatment activities provided by other agencies must be included in each client's individualized service plan.

19-006.16 Health Management: The facility must ensure that each client is offered medical attention when needed. Arrangements for health services must be made with the consent of the client and/or designee.

19-006.16A Admission Health Screening: The facility must ensure that each client has a health screening, which includes evaluation for infectious disease, within 30 days of admission unless the client has had a physical examination by a licensed practitioner within 90 days prior to admission.

19-006.16B Regular Health Screenings: The facility must ensure that each client has access to a qualified health care professional who is responsible for monitoring his/her health care. Regular health screenings must be done in accordance with the recommendations of the qualified health care professional.

19-006.16C Emergency Medical Services: The facility must have a written, detailed plan to access medical emergency services as a timely response to client emergencies.

19-006.16D Supervision of Nutrition: The facility must monitor clients assessed as having nutritional needs and provide appropriate care, treatment or referral to meet the identified nutritional needs.

19-006.16E Administration of Medication: Each facility must establish and implement policies and procedures to ensure that clients receive medications only as legally prescribed by a medical practitioner in accordance with the five rights and with prevailing professional standards.

19-006.16E1 Methods of Administration of Medication: When the facility is responsible for the administration of medication, it must be accomplished by the following methods:

19-006.16E1a Self-administration of Medications: Clients may be allowed to self-administer medications, with or without supervision, when the facility determines that the client is competent and capable of doing so and has the capacity to make an informed decision about taking medications in a safe manner. The facility must develop and implement policies to address client self-administration of medication, including:

1. Storage and handling of medications;
2. Inclusion of the determination that the client may self-administer medication in the client's individualized service plan; and
3. Monitoring the plan to assure continued safe administration of medications by the client.

19-006.16E1b Licensed Health Care Professional: When the facility uses a licensed health care professional for whom medication administration is included in the scope of practice, the facility must ensure the medications are properly administered in accordance with prevailing professional standards.

19-006.16E1c Provision of Medication by a Person other than a Licensed Health Care Professional: When the facility uses a person other than a licensed health care professional in the provision of medications, the facility must follow 172 NAC 95, Regulations Governing the Provision of Medications by Medication Aides and Other Unlicensed Persons and 172 NAC 96, Regulations Governing the Medication Aide Registry.

The facility must establish and implement policies and procedures:

1. To ensure that medication aides and other unlicensed persons who provide medications are trained and have demonstrated the minimum competency standards specified in 172 NAC 96-004;
2. To ensure that competency assessments and/or courses for medication aides and other unlicensed persons are provided in accordance with the provision of 172 NAC 96-005.
3. That specify how direction and monitoring will occur when the facility allows medication aides and other unlicensed

persons to perform the routine/acceptable activities authorized by 172 NAC 95-005 and as follows:

- a. Provide routine medication; and
 - b. Provision of medications by the following routes:
 - (1) Oral which includes any medication given by mouth including sublingual (placing under the tongue) and buccal (placing between the cheek and gum) routes and oral sprays;
 - (2) Inhalation which includes inhalers and nebulizers, including oxygen given by inhalation;
 - (3) Topical applications of sprays, creams, ointments, and lotions and transdermal patches;
 - (4) Instillation by drops, ointments, and sprays into the eyes, ears, and nose.
4. That specify how direction and monitoring will occur when the facility allows medication aides and other unlicensed persons to perform the additional activities authorized by 172 NAC 95-009, which include but are not limited to:
- a. provision of PRN medication;
 - b. provision of medications by additional routes including but not limited to gastrostomy tube, rectal, and vaginal; and/or
 - c. documented in client records.
5. That specify how competency determinations will be made for medication aides and other unlicensed persons to perform routine and additional activities pertaining to medication provision.
6. That specify how written direction will be provided for medication aides and other unlicensed persons to perform the additional activities authorized by 172 NAC 95-009.
7. That specify how records of medication provision by medication aides and other unlicensed persons will be recorded and maintained.
8. That specify how medication errors made by medication aides and other unlicensed persons and adverse reactions to medications will be reported. The reporting must be:

- a. Made to the identified person responsible for direction and monitoring;
- b. Made immediately upon discovery; and
- c. Documented in client records.

19-006.16E2 When the facility is not responsible for administration or provision, the facility must maintain responsibility for overall supervision, safety, and welfare of the client.

19-006.16E3 Reporting of Medication Errors: The facility must have policies and procedures for reporting any errors in administration or provision of prescribed medications. Any variance from the five rights must be reported as an error:

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

19-006.16E4 Storage of Medication: All medications must be stored in locked areas and stored in accordance with the manufacturer's instructions for temperature, light, humidity, or other storage instructions.

19-006.16E5 Access to Medication: The facility must ensure that only authorized staff who are designated by the facility to be responsible for administration or provision of medications have access to medications.

19-006.16E6 Medication Record: The facility must maintain records in sufficient detail to assure that:

1. Clients receive the medications authorized by a licensed health care professional; and
2. The facility is alerted to theft or loss of medication.

Each client must have an individual medication administration record which must include:

1. Identification of the client;
2. Name of the medication given;
3. Date, time, dosage and method of administration for each medication administered or provided; and the identification of the person who administered or provided the medication; and
4. Client's medication allergies and sensitivities, if any.

19-006.16E7 Disposal of Medications: Medications that are discontinued by the licensed health care professional and those medications which are beyond their expiration date, must be destroyed. The facility must develop and

implement policies and procedures to identify who will be responsible for disposal of medications and how disposal will occur within the facility.

19-006.16E8 Medication Provision during Temporary Absences: When a client is temporarily absent from the facility, the facility must put medication scheduled to be taken by the client in a container identified for the client.

19-006.17 Food Service The facility must ensure food is of good quality, properly prepared, and served in sufficient quantities and frequency to meet the daily nutritional needs of each client. The facility must ensure that clients receive special diets when ordered by a licensed health care professional. Foods must be prepared in a safe and sanitary manner.

19-006.17A Menus: The facility must ensure that:

1. Meals and snacks are appropriate to the clients needs and preferences. A sufficient variety of foods must be planned and served in adequate amounts for each client at each meal. Menus must be adjusted for seasonal changes.
2. Written menus are based on the Food Guide Pyramid or equivalent and modified to accommodate special diets as needed by the client.
3. Records of menus as served are maintained for a period not less than 14 days.

19-006.17B Client Involvement in Food Service: When clients are involved in the food service of the facility, the facility must ensure that each client is trained so that nutritional adequacy and food safety standards are observed.

19-006.18 Record keeping Requirements: The facility must maintain complete and accurate records to document the operation of the facility and care and treatment of the clients.

19-006.18A Client Records: A record must be established for each client upon admission. Each record must contain sufficient information to identify clearly the client, to justify the care and treatment provided and to document the results of care and treatment accurately.

19-006.18A1 Content Each record must contain, when applicable, the following information:

1. Dates of admission and discharge;
2. Name of client;
3. Gender and date of birth;
4. Demographic information, including address and telephone number;
5. Physical description or client photo identification;

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6. Admission assessment information and determination of eligibility for admission;
7. Health screening information;
8. Individualized service plans;
9. Physician orders;
10. Medications and any special diet;
11. Significant medical conditions;
12. Allergies;
13. Person to contact in an emergency, including telephone number;
14. Fee agreement;
15. Documentation of care and treatment provided, client's response to care and treatment, change in condition and changes in care and treatment;
16. Discharge and transfer information;
17. Client rights; and
18. Referral information.

19-006.18B Client Record Organization: The facility must ensure that records are systematically organized to ensure permanency and completeness.

19-006.18B1 Record Entries: All record entries must be dated, legible and indelibly verified. In the case of electronic records, signatures may be replaced by an approved, uniquely identifiable electronic equivalent.

19-006.18B2 Confidentiality: The facility must keep records confidential unless medically contraindicated. Records are subject to inspection by authorized representative of the Department.

19-006.18B3 Retention: Client records must be retained for a minimum of two years.

19-006.18B4 Access: Client information and/or records may be released only with the consent of the client or client's designee or as required by law. When a client is transferred to another facility or service, appropriate information must be sent to the receiving facility or service.

19-006.18B5 Administrative Changes: If a facility changes ownership or administrator, all client records must remain in the facility. Prior to the dissolution of any facility, the Administrator must notify the Department in writing as to the location and storage of client records.

19-006.19 Discharge/Transfer Requirements

19-006.19A Discharge/Transfer Criteria: Facility must establish written discharge criteria which is used by the facility administrator or designee to determine appropriate discharge or transfer for each client. The criteria establishing basis for discharge must include:

1. Client no longer needs or desires services provided at the facility;
2. Client requires services or treatment not available at the facility;
3. Client behavior poses a threat to the health or safety of him or herself or to others and cannot be addressed with care and treatment available at the facility;
4. Nonpayment of fees in accordance with fee policy; and
5. Client violates house rules resulting in significant disturbance to other clients or members of the community.

19-006.19B Discharge Plan: Within the first 30 days of admission a discharge plan must be developed including:

1. Plan for follow up or continuing care; and
2. Documentation of referrals made for the client.

19-006.19C Discharge Summary: The facility must document a summary in the client record which includes description of client's progress under the individualized service plan and reason(s) for discharge or transfer from the facility.

19-006.19D Transfer: The facility must ensure the timely transfer of appropriate client record information as authorized by the client or designee by a signed release of information.

19-006.20 Infection Control: The facility must have a system for management of identified infections within the facility which includes the use of standard precautions for prevention of transmission of infections among clients and /or staff.

19-006.21 Safety Plan: The facility must have a system to identify and prevent the occurrence of hazards to clients. Examples of hazards to be identified and prevented are: dangerous substances, sharp objects, unprotected electrical outlets, extreme water temperatures, and unsafe smoking practices.

19-006.22 Environmental Services: The facility must provide a safe, clean, and comfortable environment for clients which allows the client to use his/her personal belongings as much as possible. Every detached building on the same premises used for care and treatment must comply with these regulations.

19-006.22A Housekeeping and Maintenance: The facility must provide housekeeping and maintenance necessary to protect the health and safety of clients.

19-006.22A1 Facility's buildings and grounds must be kept clean, safe and in good repair.

19-006.22A2 The facility must take into account client habits and lifestyle preferences when housekeeping services are provided in the bedrooms/living area.

19-006.22A3 All garbage and rubbish must be disposed of in a manner as to prevent the attraction of rodents, flies, and all other insects and vermin. Garbage and rubbish must be disposed in a manner as to minimize the transmission of infectious diseases and minimize odor.

19-006.22A4 The facility must provide and maintain adequate lighting, environmental temperatures and sound levels in all areas that are conducive to the care and treatment provided.

19-006.22A5 The facility must maintain and equip the premises to prevent the entrance, harborage, or breeding of rodents, flies, and all other insects and vermin.

19-006.22B Equipment, Fixtures, Furnishings: The facility must provide equipment, fixtures and furnishings and maintain these things so they are clean, safe and in good repair.

19-006.22B1 The facility must provide equipment adequate for meeting the clients needs as specified in each client's individualized service plan.

19-006.22B2 The facility must furnish common areas and client sleeping areas with beds, chairs, sofas, tables, and storage items that are comfortable and reflective of client needs and preferences. The facility must provide furnishings. If the client chooses to use his/her own furnishings, the facility must reasonably accommodate the client's choice.

19-006.22B3 The facility must establish and implement a process designed for routine and preventative maintenance of equipment and furnishings to ensure that the equipment and furnishings are safe and functions to meet their intended use.

19-006.22C Linens: The facility must be responsible for providing each client with an adequate supply of clean bed, bath, and other linens as necessary for care and treatment. Linens must be in good repair.

19-006.22C1 The facility must establish and implement procedures for the storage and handling of soiled and clean linens.

19-006.22C2 When the facility provides laundry services, water temperatures to laundry equipment must exceed 160 degrees Fahrenheit or the laundry may be appropriately sanitized or disinfected by other acceptable methods.

19-006.22D Pets: The facility must make certain that any facility owned pet does not negatively affect clients. The facility must have policies and procedures regarding pets that include:

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

19-006.22E Environmental Safety: The facility must be responsible for maintaining the facility in a manner that minimizes accidents.

19-006.22E1 The facility must maintain the environment to protect the health and safety of clients by keeping surfaces smooth and free of sharp edges, mold and dirt; keeping floors free of unsafe objects and slippery or uneven surfaces and keeping the environment free of other conditions which may pose a potential risk to the health and safety of the clients.

19-006.22E2 The facility must maintain all doors, stairways, passageways, aisles or other means of exit in a manner that provides safe and adequate access for care and treatment.

19-006.22E3 The facility must provide water for bathing and hand washing at safe and comfortable temperatures to protect clients from the potential for burns and scalds.

19-006.22E3a The facility must establish and implement policies and procedures:

1. To determine the client's mental, physical, and psychological ability to protect himself or herself from injury due to hot water; and
2. To maintain, whether by means of plumbing devices or direct staff monitoring, water temperatures that accommodate client safety, comfort and preferences.

19-006.22E3b Water at bathing and hand washing fixtures must not exceed 125 degrees Fahrenheit.

19-006.22E4 The facility must establish and implement policies and procedures to ensure hazardous/poisonous materials are properly handled and stored to prevent accidental ingestion, inhalation, or consumption of the hazardous/poisonous materials by clients.

19-006.22E5 The facility must restrict access to mechanical equipment which may pose a danger to clients.

19-006.22F Disaster Preparedness and Management: The facility must establish and implement procedures to ensure that clients care and treatment, safety, and well-being are maintained during and following instances of natural disasters, disease outbreaks, or other similar situations.

19-006.22F1 The facility must establish plans to move clients to points of safety or provide other means of protection in case of fire, tornado, or other natural disasters or the threat of ingestion, absorption or inhalation of hazardous materials.

19-006.22F2 The facility must ensure that food, water, medicine and medical supplies, and other necessary items for care and treatment are available and obtainable from alternate sources.

19-006.22F3 The facility must establish plans to move and house clients in points of safety when the building or a portion of the building is damaged to the point it is uninhabitable. Damage may be due to fire, tornadoes or other disasters.

19-006.22F4 The facility must establish plans to provide for the comfort, safety, and well being of clients in the event of electrical or gas outage, heating, cooling or sewage systems failure, or loss or contamination of water supply.

19-007 PHYSICAL PLANT STANDARDS: All facilities must be designed, constructed, and maintained in a manner that is safe, clean, and functional for the type of care and treatment to be provided.

19-007.01 Support Areas: The facility may share the following support service areas among the detached structures, care and treatment areas, and with other licensed facilities.

19-007.01A Dietary

19-007.01A1 If food preparation is provided on site, the facility must dedicate space and equipment for the preparation of meals. If facility food services provide for more than 16 clients, the facility must comply with the Food Code.

19-007.01A2 A facility which provides food services for 16 or fewer clients or uses a food preparation area only for training or activity purposes, must develop and implement policies and procedures to ensure the following:

1. Automatic dishwasher has a final rinse cycle temperature not less

than 150 degrees Fahrenheit;

2. Foods are stored, prepared, transported and served at proper temperatures. Temperatures of potentially hazardous foods must be 45 degrees Fahrenheit or below or 140 degrees Fahrenheit or above at all times;
3. Food preparation and eating areas are maintained in a sanitary manner; and
4. All equipment and utensils, including dishes, glassware and silverware, used in the serving or preparation of food or drink for individuals are thoroughly cleaned after each use and stored in a manner to assure they are kept free of dust, insects, and contamination

19-007.01B Laundry: The facility must provide laundry services either by contract or on-site by the facility.

19-007.01B1 Contract: If contractual services are used, the facility must have areas for soiled linen awaiting pickup and separate areas for storage and distribution of clean linen.

19-007.01B2 On-site: If on-site services are provided, the facility must have areas dedicated to laundry,

19-007.01B2a If the facility provides a personal laundry area, it must be equipped with a washer and dryer for use by clients. In new construction, the facility must provide a conveniently located sink for soaking and hand washing of laundry.

19-007.01B2b If the facility processes bulk laundry, the laundry area must be divided into separate soiled (sort and washer areas) and clean (drying, folding, and mending areas) rooms.

19-007.01C Pharmaceutical: If the facility provides pharmacy services, as defined in the Practice of Pharmacy, Neb. Rev. Stat. Sections 71-1,142 to 71-1,147.61, those services must conform with the law.

19-007.01D House keeping Room The facility must have a room with a service sink and space for storage of supplies and housekeeping equipment.

19-007.02 Care and Treatment Areas: The facility must not share the following care and treatment areas among the detached structures or with a facility operated by another licensee. Care and treatment areas must comply with the following standards.

19-007.02A Staff Areas: The facility must provide the following staff support areas for each distinct group of care and treatment bedrooms.

1. Control point: an area or areas for charting and client records;

2. Medication station: an area for storage and distribution of drugs and routine medications. If the facility administers or provides medication, the facility must have a medication station. Distribution may be done from a medicine preparation room or area, from a self-contained medication dispensing unit, or by another system.
3. Utility area: a work area where clean materials are assembled. The work area must contain a work counter, a hand washing fixture, and storage facilities for clean supplies. If the area is used only for storage and holding as part of a system for distribution of clean and sterile supply materials, the work counter and hand washing fixtures may be omitted. A facility must have separate workrooms or holding rooms for soiled materials. A workroom for soiled materials must have a hand washing sink.
4. Equipment storage: space to store equipment, stretchers, wheelchairs, supplies, and linen out of the path of normal traffic.

19-007.03 Construction Standards: All facilities must be designed, constructed, and maintained in a manner that is safe, clean, and functional for the type of care and treatment to be provided. The standards for these facilities are set forth below.

19-007.03A Codes and Guidelines

19-007.03A1 New Construction: New construction must comply with the following codes and guidelines to provide a safe and accessible environment that is conducive to the care and treatment to be provided:

1. Building: The "Building Construction Act", Neb. Rev. Stat. Sections 71-6401 to 71-6407;
2. Plumbing: The "Plumbing Code", Neb. Rev. Stat. Section 18-1915;
3. Electrical: "State Electrical Act", Neb. Rev. Stat. Sections 81-2101 to 81-2145;
4. Elevators: The "American National Standard Safety Code for Elevators and Escalators", 230 NAC 1;
5. Boiler: The "Boiler Inspection Act", Neb. Rev. Stat. Sections 48-719 to 48-743, and regulations promulgated thereunder, 220 NAC 1-28; and
6. "Nebraska Accessibility Requirements" found at 156 NAC 1-12.

19-007.03A2 All Facilities: All facilities must comply with the following applicable codes and standards to provide a safe environment.

1. The "Nebraska State Fire Code Regulations" found at 153 NAC 1; and
2. The Food Code except as noted in 175 NAC 19-007.01A.

19-007.03A3 Existing and New Facilities: Existing and new facilities must comply with the physical plant standards contained in 175 NAC 19-007. The

facility must maintain all building materials and structural components so that total loads imposed do not stress materials and components more than one and one-half times the working stress allowed in the building code for new buildings of similar structure, purpose or location.

19-007.03B Conflicts in Standards: In situations where the referenced codes and guidelines conflict with these regulations, the adopted rules and regulations of the Department and the Nebraska State Fire Marshal must prevail.

19-007.03C Interpretations: All dimension, sizes, and quantities noted herein must be determined by rounding fractions to the nearest whole number.

19-007.03D Floor area is the space with ceilings at least seven feet in height and excludes enclosed storage, toilets and bathing rooms, corridors and halls. The space beyond the first two feet of vestibules and alcoves less than five feet in width must not be included in the required floor area. In rooms with sloped ceilings, at least half of the ceiling must be at least seven feet in height. Areas where the ceiling is less than five feet in height must not be included in the required floor area.

19-007.03E: Dining areas must:

1. Have adequate light and ventilation;
2. Have tables and chairs that accommodate the clients' needs;
3. Have floor area of 15 square feet per client in existing and new facilities and 20 square feet per client in new construction;
4. Not be used for sleeping, offices or corridors; and
5. Be arranged so that all clients are able to eat meals at an appropriate time by having:
 - a. All clients eat at the same time;
 - b. Clients eat in different shifts; or
 - c. Open times for client meals.

19-007.03F Activity Areas: A facility must have space for client socialization and leisure time activities. Activity areas must:

1. Have furnishings to accommodate group and individual activities;
2. Have a floor area of at least 15 square feet per client residing in bedrooms and may be combined with dining areas;
3. Not be used for sleeping, offices, or as a corridor; and
4. Be available to all clients.

19-007.03G Bathing Rooms: The facility must provide a bathing room consisting of a tub and/or shower. Tubs and showers regardless of location must be equipped with hand grips or other assistive devices as needed or desired by the bathing client.

19-007.03G1 In new construction, a central bathing room must open off the corridor and contain a toilet and sink or have an adjoining toilet room.

19-007.03G2 Bathing Fixtures: The facility must have the following minimum number of bathing fixtures:

1. One fixture per 20 licensed beds in existing facilities; and
2. One fixture per eight licensed beds in new facilities and new construction.

19-007.03H Toilet Rooms: Facilities must have a toilet and sink adjoining each bedroom or shared toilet facilities may be provided as follows:

1. One fixture per eight licensed beds in existing facilities; and
2. One fixture per four licensed beds in new facilities and new construction.

19-007.03I Client Bedrooms: The facility must provide bedrooms which allow for sleeping, afford privacy, provide access to furniture and belongings, and accommodate the care and treatment provided to the client.

19-007.03I1: All client bedrooms must:

1. Be a single room located within an apartment, dwelling, or dormitory-like structure;
2. Be located on an outside wall with an operable window with a minimum glass size of 6 square feet per client. New construction must have windows that provide an unobstructed view of at least 10 feet;
3. Contain at least 35 cubic feet storage volume per client in dressers, closets or wardrobes; and
4. Allow, in multiple bedrooms, for an accessible arrangement of furniture which provides a minimum of 3 feet between beds.

19-007.03I2 All client bedrooms must not:

1. Be accessed through a bathroom, food preparation area, laundry, office, or another bedroom; or
2. Be located in any garage, storage area, shed or similar detached buildings;

19-007.03I3: The minimum floor space in client bedrooms is as follows:

19-007.03I3a Existing Facility:

1. For single bedrooms: 70 square feet.
2. For multiple bedrooms: 50 square feet per bed;

3. Apartments or dwellings: 120 square feet for one client plus 100 square feet for each additional client.

19-007.03I3b New Facility:

1. For single bedrooms: 70 square feet.
2. For multiple bedrooms: 50 square feet per bed, with a maximum of 4 beds per room.
3. Apartments or dwellings: 120 square feet for one client plus 100 square feet for each additional client.

19-007.03I3c New Construction:

1. For single bedrooms: 80 square feet.
2. For multiple bedrooms: 60 square feet per bed, with a maximum of 2 beds per room.
3. For apartments or dwellings: 150 square feet for one client plus 110 square feet for each additional client.

19-007.03J Observation Areas for Seclusion and Time-out: If the facility provides behavior intervention methods such as seclusion or time-out, the facility must provide an area which:

1. Has appropriate temperature control, ventilation, and lighting;
2. Is void of unsafe wall or ceiling fixtures and sharp edges;
3. Has a way to observe the client, such as, an observation window or, if necessary, flat wall mirrors so that all areas of the room are observable by staff from outside of the room; and
4. Has a way to assure that the door cannot be held closed by the client in the room which could deny staff immediate access to the room.

19-007.03K Corridors: The facility corridors must be wide enough to allow passage and be equipped as needed by the clients with safety and assistive devices to minimize injury. All stairways and ramps must have handrails.

19-007.03L Doors: The facility doors must be wide enough to allow passage and be equipped with privacy, safety, and assistive devices to minimize client injury. All bedroom, toilet, and bathing room doors must provide privacy yet not create seclusion or prohibit staff access for routine or emergency care.

19-007.03L1 In new construction, the door of a toilet or bathing room with less than 50 square feet of clear floor area and dedicated to client use, must not swing inward.

19-007.03M Outdoor Areas: The facility must provide an outdoor area for client usage. It must be equipped and situated to allow for client safety and abilities.

19-007.03N Privacy: The facility must provide window coverings to ensure visual privacy for the client.

19-007.04 Building Systems: Facilities must have building systems that are designed, installed and operate in such a manner as to provide for the safety, comfort, and well being of the client.

19-007.04A Water and Sewer Systems: The facility must have and maintain an accessible, adequate, safe and potable supply of water. Where an authorized public water supply of satisfactory quantity, quality, and pressure is available, the facility must be connected to it and its supply used exclusively.

19-007.04A1 The collection, treatment, storage, and distribution potable water system of a facility that regularly services 25 or more individuals must be constructed, maintained, and operated in accordance with all provisions of the Nebraska Safe Drinking Water Act and Title 179, Regulations Governing Public Water Systems.

19-007.04A2 The collection, treatment, storage and distribution potable water system of a facility that serves less than 25 individuals on a regular basis must be maintained and operated as if it were a public water system in accordance with the Regulations Governing Public Water Systems, 179 NAC 2-002, 3 and 4. These facilities must report to the Department the result of all tests that indicate the water is in violation of the standards set out in 179 NAC 2-002 or 3. These facilities must construct all water wells in accordance with Title 178 NAC 12, Rules and Regulations Governing a Private Water Well.

19-007.04A3 The water distribution system must have anti-siphon devices, and air-gaps to prevent potable water system and equipment contamination.

19-007.04A4 The facility must provide continuously circulated filtered and treated water systems as required for the care and treatment equipment used in the facility.

19-007.04A5 Facilities must maintain a sanitary and functioning sewage system.

19-007.04B Hot Water System: The facility must maintain hot and cold water to all hand washing and bathing locations. The hot water system must have the capacity to provide continuous hot water in a temperature range as required by these regulations.

19-007.04C Heating and Cooling Systems: The facility must provide a heating and air conditioning system for the comfort of the client and capable of maintaining the temperature in client care and treatment areas as follows:

19-007.04C1 In existing and new facilities, the systems must be capable of

producing a temperature of at least 70 degrees Fahrenheit during heating conditions and no more than 85 degrees Fahrenheit during cooling conditions.

19-007.04C2 In new construction, the systems must be capable of producing a temperature of at least 75 degrees Fahrenheit during heating conditions and no more than 80 degrees Fahrenheit during cooling conditions.

19-007.04C3 In new construction, central air distribution and return systems must have filters.

19-007.04C4 Airflow must move from clean to soiled locations.

19-007.04D Ventilation System: All facilities must provide exhaust and clean air to prevent the concentrations of contaminants which impair health or cause discomfort to clients and employees.

19-007.04D1 Existing and new facilities must have adequate ventilation.

19-007.04D2 New construction must provide mechanical exhaust ventilation for windowless toilets, baths, laundry rooms, housekeeping rooms, kitchens and similar rooms that provides 5 air changes per hour in residential living areas.

19-007.04E Electrical System: The facility must have an electrical system that has sufficient capacity to maintain the care and treatment services that are provided and that properly grounds care and treatment areas.

19-007.04E1 New construction and new facilities must have ground fault circuit interrupters protected outlets in wet areas and within 6 feet of sinks.

19-007.04E2 All facilities must provide minimum average illumination levels as follows:

1. General purpose areas: 5 foot candles;
2. Personal care and dining areas: 20 foot candles; and
3. Reading and activity areas: 30 foot candles.

19-007.05 Waivers: The Department may waive any provision of these regulations relating to construction or physical plant requirements of a mental health center upon proof by the licensee satisfactory to the department that:

1. The waiver would not unduly jeopardize the health, safety, or welfare of the client;
2. The provision would create an unreasonable hardship for the facility; and

3. The waiver would not cause the State of Nebraska to fail to comply with any applicable requirements of Medicare or Medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

19-007.05A Unreasonable Hardship: In evaluating the issue of unreasonable hardship, the Department must consider the following:

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

19-007.05B Waiver Terms and Conditions: A waiver may be granted under terms and conditions and for a period of time applicable and appropriate to the waiver, including:

1. Waivers that are granted to meet the special needs of a client remain in effect as long as required by the client.
2. Waivers may be granted for a period of time that ends at the time the conditions of approval no longer exist.
3. Waivers may be granted to permit a facility time to come into compliance with the physical plan standards for a period of one year. Upon submission of proof of ongoing progress, the waiver may be continued for an additional year.
4. The facility must submit a written request to the Department for waiver of any construction or physical plant requirements set forth in 175 NAC 19-007.

19-007.05C Denial of Waiver: If the Department denies a facility's request for waiver, the facility may request an administrative hearing as provided in the Administrative Procedure Act and the Department's rules and regulations adopted and promulgated under the APA.

19-008 DENIAL, REFUSAL TO RENEW, AND DISCIPLINARY ACTION

19-008.01 Grounds for Denial, Refusal to Renew, or Disciplinary Action

19-008.01A The Department may deny or refuse to renew a mental health center facility license for failure to meet the requirements for licensure, including:

1. Failing an inspection specified in 175 NAC 19-005;

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2. Having had a license revoked within the two-year period preceding an application; or
3. Any of the grounds specified in 175 NAC 19-008.01B.

19-008.01B The Department may take disciplinary action against a mental health center facility license for any of the following grounds:

1. Violation of any of the provisions of the Health Care Facility Licensure Act or 175 NAC 19;
2. Committing, permitting, aiding, or abetting the commission of any unlawful act;
3. Conduct or practices detrimental to the health or safety of a client or employee;
4. A report from an accreditation body sanctioning, modifying, terminating, or withdrawing the accreditation of the facility;
5. Failure to allow an agent or employee of the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure access to the facility for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of these departments;
6. Discrimination or retaliation against a client or employee who has submitted a complaint or information to the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure;
7. Discrimination or retaliation against a client or employee who has presented a grievance or information to the office of the state long term care ombudsman;
8. Failure to allow a state long term care ombudsman or an ombudsman advocate access to the facility for the purposes of investigation necessary to carry out the duties of the office of the state long term care ombudsman;
9. Violation of the Emergency Box Drug Act;
10. Failure to file a report of payment or action taken due to a liability claim or an alleged violation required by Neb. Rev. Stat. Section 71-168.02;
11. Violation of the Medication Aide Act; or
12. Failure to file a report of suspected abuse or neglect as required by Neb. Rev. Stat. Sections 28-372 and 28-711.

19-008.02 Procedures for Denial, Refusal to Renew or Disciplinary Action

19-008.02A If the Department determines to deny, refuse renewal of, or take disciplinary action against a license, the Department must send a notice to the applicant or licensee, by certified mail to the last address shown on its records. The notice must state the determination, including a specific description of the nature of the violation and the statute or regulation violated, and the type of disciplinary action pending.

19-008.02B The denial, refusal to renew, or disciplinary action must become final 15 days after the mailing of the notice unless the applicant or licensee, within this 15 day period, makes a written request to the Director for an informal conference or an administrative hearing.

19-008.02C Informal Conference

19-008.02C1 At the request of the applicant or licensee, the Department must hold an informal conference within 30 days of the receipt of the request. The conference must be held in person, or by other means, at the request of the applicant or licensee. If the pending action is based on an inspection, the Department's representative at the conference must not be the individual who did the inspection.

19-008.02C2 Within 20 working days of the conference, the Department representative must state in writing the specific reasons for affirming, modifying, or dismissing the notice. The representative must send a copy of the statement to the applicant or licensee by certified mail to the last address shown in the Department's records and a copy to the Director.

19-008.02C3 If the applicant or licensee successfully demonstrates at the informal conference that the deficiencies should not have been cited in the notice, the Department must remove the deficiencies from the notice and rescind any sanction imposed solely as a result of those cited deficiencies.

19-008.02C4 If the applicant or licensee contests the affirmed or modified notice, the applicant or licensee must submit a request for hearing in writing to the Director within five working days after receipt of the statement.

19-008.02D When an applicant or a licensee contests the notice and requests a hearing, the Department must hold a hearing in accordance with the Administrative Procedures Act (APA) and with the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. sections 33-139 and 33-139.01.

19-008.02D1 On the basis of evidence presented at the hearing, the Director must affirm, modify, or set aside the determination. The Director's decision must:

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

19-008.02D2 An applicant or a licensee's appeal of the Director's decision must be in accordance with the Administrative Procedure Act.

19-008.03 Types of Disciplinary Action

19-008.03A The Department may impose any one or a combination of the following types of disciplinary action against the licensee:

1. A fine not to exceed \$10,000 per violation;
2. A prohibition on admissions or re-admissions, a limitation on enrollment, or a prohibition or limitation on the provision of care or treatment;
3. A period of probation not to exceed two years during which the mental health center may continue to operate under terms and conditions fixed by the order of probation;
4. A period of suspension not to exceed three years during which the mental health center may not operate; and
5. Revocation which is a permanent termination of the license. The licensee may not apply for a license for a minimum of two years after the effective date of the revocation.

19-008.03B In determining the type of disciplinary action to impose, the Department must consider:

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

19-008.03C If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the Department may take additional disciplinary action as described in 175 NAC 19-008.03A.

19-008.03D Temporary Suspension or Temporary Limitation: If the Department determines that clients are in imminent danger of death or serious physical harm, the Director may:

1. Temporarily suspend or temporarily limit the facility license, effective when the order is served upon the facility. If the licensee is not involved in the daily operation of the facility, the Department must mail a copy of

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- the order to the licensee, or if the licensee is a corporation, to the corporation's registered agent;
2. Order the immediate removal of residents; and
 3. Order the temporary closure of the facility pending further action by the Department.

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

19-008.03D1 The Department must conduct the hearing in accordance with the Administrative Procedure Act and the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. sections 33-139 and 33-139.01.

19-008.03D2 If a written request for continuance of the hearing is made by the licensee, the Department must grant a continuance, which may not exceed 30 days.

19-008.03D3 On the basis of evidence presented at the hearing, the Director must:

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

If the Director does not reach a decision within 90 days of the date of the temporary suspension or temporary limitation, the temporary suspension or temporary limitation will expire.

19-008.03D4 Any appeal of the Department's decision after hearing must be in accordance with the APA.

19-008.04 Reinstatement from Disciplinary Probation, Suspension, and Re-licensure Following Revocation

19-008.04A Reinstatement at the End of Probation or Suspension

19-008.04A1 Reinstatement at the End of Probation: A license may be reinstated at the end of probation after the successful completion of an inspection, if the Department determines an inspection is warranted.

19-008.04A2 Reinstatement at the End of Suspension: A license may be reinstated at the end of suspension following:

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1. Submission of an application to the Department for renewal that conforms to the requirements of 175 NAC 19-003.02;
2. Payment of the renewal fee as specified in 175 NAC 19-004.10; and
3. Successful completion of an inspection.

The Department must reinstate the license when it finds, based on an inspection as provided for in 175 NAC 19-005, that the facility is in compliance with the operation, care, treatment, and physical plant requirements of 175 NAC 19-006 and 19-007.

19-008.04B Reinstatement Prior to Completion of Probation or Suspension

19-008.04B1 Reinstatement Prior to the Completion of Probation: A licensee may request reinstatement prior to the completion of probation and must meet the following conditions:

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

19-008.04B2 Reinstatement Prior to Completion of Suspension: A licensee may request reinstatement prior to the completion of suspension and must meet the following conditions:

1. Submit a petition to the Department stating:
 - a. The reasons why the license should be reinstated prior to the suspension completion date; and
 - b. The corrective action taken to prevent recurrence of the violation(s) that served as the basis of the suspension;
2. Submit a written renewal application to the Department as specified in 175 NAC 19-003.02;
3. Pay the renewal fee as specified in 175 NAC 19-004.10; and
4. Successfully complete an inspection.

19-008.04B3 The Director must consider the petition submitted and the results of the inspection or investigation conducted by the Department and:

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

19-008.04B4 The Director's decision is final 30 days after mailing the decision to the licensee unless the licensee requests a hearing within the 30-day period. The requested hearing must be held according to rules and regulations of the Department for administrative hearings in contested cases.

19-008.04C Re-Licensure After Revocation: A facility license that has been revoked is not eligible for re-licensure until two years after the date of revocation.

19-008.04C1 A facility seeking re-licensure must apply for an initial license and meet the requirements for initial licensure in 175 NAC 19-003.01.

19-008.04C2 The Department must process the application for re-licensure in the same manner as specified in 175 NAC 19-003.01.

Approved by the Attorney General: December 2, 2003
Approved by the Governor: December 17, 2003
Filed by the Secretary of State: December 17, 2003

Effective date: December 22, 2003