

TITLE 404 COMMUNITY-BASED SERVICES FOR INDIVIDUALS WITH  
DEVELOPMENTAL DISABILITIES

CHAPTER 1 SCOPE AND AUTHORITY

1-001 SCOPE: This title governs community-based services for individuals with developmental disabilities (DD).

1-002 LEGAL AUTHORITY: The following state and federal laws and regulations give legal authority to the Department of Health and Human Services for the establishment, administration, and implementation of these regulations:

1. Developmental Disabilities Services Act (DDSA) (Neb. Rev. Stat. §§ 83-1201 to 83-1226);
2. Nebraska Medical Assistance Program (Neb. Rev. Stat. §§ 68-901 to 68-949);
3. Title XIX of the Social Security Act, including Section 1915(c) of the Social Security Act (Medicaid HCB Waiver);
4. 42 CFR 440.180 and Part 441, Subpart G; and
5. The Health and Human Services Act (Neb. Rev. Stat. §§ 81-3110 to 81-3124).

1-003 ALTERNATIVE COMPLIANCE PROCEDURE: Unless otherwise specified in these regulations, the Department has the discretion to authorize alternative methods of compliance with any standards or compliance procedures specified in these regulations when the method of compliance meets the purpose and intent of any regulation.

1-003.01 To apply for alternative compliance with a regulation, a provider/or designee must submit a written request to the Department. The written request must include:

1. The citation of the specific part of the regulation for which alternative compliance is being requested;
2. The rationale supporting the request for alternative compliance;
3. If appropriate, activities or performance criteria to replace the requirement of the regulation and the date the provider is expected to attain alternative compliance;
4. The signature of the director; and
5. Authorization from the provider's governing board/or designee to request a alternative compliance.

1-003.02 The Department may grant the request for alternative compliance when the provider's proposal meets the following conditions:

1. It is consistent with the intent of the specified regulation;
2. It conforms to good and customary administrative, management, and programmatic practices;
3. It protects the rights, health, safety, and well-being of the persons receiving services; and
4. It does not relieve the provider of the responsibility to comply with other pertinent regulatory requirements.

1-003.03 The Department will issue a written decision regarding a request for alternative compliance to the provider within 30 calendar days following the receipt of the request. When a request for alternative compliance is granted:

1. It will be for a specified time period not to exceed the duration of the certification period for which the alternative compliance is requested;
2. A provider must receive written authorization from the Department prior to implementing the proposal for alternative compliance; and
3. A provider must meet all the conditions prescribed by the Department in granting the request for alternative compliance. Failure to comply with the specified conditions will automatically void the authorization for alternative compliance.

1-003.04 A provider aggrieved by a decision to deny a request for alternative compliance has the right to contest the decision. When a provider requests a hearing, the Department will hold a hearing in accordance with the Department's rules and regulations adopted and promulgated under the Administrative Procedure Act (APA).