

TITLE 404 COMMUNITY-BASED SERVICES FOR INDIVIDUALS WITH
DEVELOPMENTAL DISABILITIES

CHAPTER 2 DEFINITIONS

Abuse means adult and child abuse as follows which is the level that requires reporting to outside authorities.

1. Adult Abuse: In accordance with Neb. Rev. Stat. § 28-351, in regard to adults: Abuse means any knowing, intentional, or negligent act or omission on the part of a caregiver, a vulnerable adult, or any other person which results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, exploitation, or denial of essential services to a vulnerable adult. In accordance with Neb. Rev. Stat. § 28-358, exploitation means the taking of property of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, or extortion, or by any unlawful means.

2. Child Abuse: In accordance with Neb. Rev. Stat. § 28-710, in regard to children: Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:

- a. Placed in a situation that endangers his /her life or physical or mental health;
- b. Cruelly confined or cruelly punished;
- c. Deprived of necessary food, clothing, shelter, or care;
- d. Left unattended in a motor vehicle if such minor child is six years of age or younger;
- e. Sexually abused; or
- f. Sexually exploited by allowing, encouraging, or forcing such person to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions.

Adult means, for the purposes of these regulations, an individual age 21 or older.

Annual Supports Plan (ASP) means a written plan developed by the individuals with the other members of his/her team that describes the services and supports to be provided to assist the individual to achieve his/her plan for the future. An ASP is required when the individual is participating in the Community Supports Plan. The ASP may also be referred to as the Individual Program Plan (IPP).

Appeal means a process by which a person or provider aggrieved by a final decision in a contested case or hearing seeks judicial review of the decision by a court of law, in accordance with the Administrative Procedure Act and regulations adopted by the Department of Health and Human Services.

Applicant means the individual, government, corporation, partnership, limited liability company or other form of business organization who applies for certification as a provider of specialized services.

Assessment means the process that identifies the preferences, skills, and needs of the person and the services, interventions, and support that would facilitate a healthy, safe and meaningful life.

Aversive stimuli means procedures that are punishing, physically painful, emotionally frightening, or deprivational or that have the potential to be a health or safety risk to individuals when they are used to modify behavior.

Center for Persons with Developmental Disabilities (CDD), as defined in Neb. Rev. Stat. §71-408, means a facility where shelter, food, and care, including habilitation, advice, counseling, diagnosis, treatment, or related services are provided for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who have developmental disabilities.

Certified provider means the person, government, corporation, partnership, limited liability company, or other form of business organization legally responsible for the operation of the provider entity and to whom the Department of Health and Human Services has issued a certification.

Certification means the approval by the Department of Health and Human Services to allow a Developmental Disabilities (DD) provider to deliver specialized services to individuals with developmental disabilities. Certification includes the approval process necessary to qualify a provider to receive public funding for the delivery of DD services.

CFR means the Code of Federal Regulations.

Child means, for the purposes of these regulations, an individual under the age of 21 years of age or an individual who will reach age 21 during the current school year.

Children's Waiver Family Services means services provided for individuals and families who are eligible for the Home and Community Based Waiver for Children with Developmental Disabilities and their Families. These services are respite services, homemaker services, habilitative child care, and home modifications, and may be provided by private individuals, community agencies, or specialized DD providers.

Choice means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, providers, goals and activities.

Complaint means an expression of concern or dissatisfaction.

Compliance means to act in accordance with the regulations.

Conflict of interest means a conflict between the private interests and the official responsibilities of a person in a position of trust.

Consensus means a decision to which all team members either agree or are willing to accept and support.

Contested case means a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing. Also referred to as “administrative hearing” or “fair hearing”.

Delegation, related to an unlicensed staff, means a registered nurse gives authority to unlicensed staff to perform non-complex nursing interventions. (See 404 NAC 4-004.07.)

Denial of essential services means essential services were denied or neglected to such an extent that actual physical injury or imminent danger of physical injury or death occurred. This includes, for example, denial or omission of providing food, clothing, toileting, essential medical treatment, or necessary supervision to keep an individual safe. Also see neglect.

Developmental disability, as defined in Neb. Rev. Stat. § 83-1205, means:

1. An intellectual disability (mental retardation); or
2. A severe, chronic disability other than an intellectual disability or mental illness; which:
 - a. Is attributable to a mental or physical impairment other than a mental or physical impairment caused solely by mental illness;
 - b. Is manifested before the age of twenty-two years;
 - c. Is likely to continue indefinitely; and
 - d. Results in:
 - (1) In the case of a person under three years of age, at least one developmental delay; or
 - (2) In the case of a person three years of age or older, a substantial limitation in three or more of the following areas of major life activity, as appropriate for the person's age:
 - (a) Self-care;
 - (b) Receptive and expressive language development and use;
 - (c) Learning;
 - (d) Mobility;
 - (e) Self-direction;
 - (f) Capacity for independent living; and
 - (g) Economic self-sufficiency.

Department means the Division of Developmental Disabilities of Department of Health and Human Services.

Director means the person hired by, reporting to, and authorized by the certified provider to direct the day-to-day activities of the provider agency/organization. The director may also be identified as the administrator, executive director, chief executive officer, program administrator, or other similar terms.

Director of Developmental Disabilities means the Director of the Division of Developmental Disabilities.

Discovery, for purposes of hearings, means requests for disclosures of information by interrogatory, deposition, requests to admit or deny written statements of facts, and motions to produce documents.

Documentation means the provision of written, dated, and signed evidence.

Emergency safety situation means unanticipated behavior by an individual that places the individual or others at serious threat of violence or injury if no intervention occurs and that requires an emergency safety intervention.

Emergency safety intervention means the use of physical restraint or separation as an immediate response to an emergency safety situation.

Emotional abuse means humiliation, harassment, threats of punishment or deprivation, sexual coercion, intimidation, resulting in emotional harm or emotional anguish.

Exploitation means to obtain by deception, intimidation, or undue influence with the intent to deprive the individual of: the individual's money, property, body, work, or sexually including taking pictures.

Extended Family Home means a residential living arrangement where an individual pays room and board, and the Department pays for residential services. The family may be an individual surrogate family who is an employee of the DD provider or who subcontracts with the DD provider to deliver residential services.

Family member means the parent, spouse, or child of the individual in services or a person of the same relation by marriage.

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

Governing board means the person or entity controlling the provider, when applicable.

Hearing means a process on matters related to the initiation, change, or termination or the refusal to initiate, change, or terminate the determination of eligibility for specialized services or the evaluation or placement of the person or the provision or specialized services or records relating to these issues.

Hearing officer means an individual appointed to preside at an administrative hearing.

Individual means the person receiving services.

Individual Education Program (IEP) means the written statement, generated by the school system, for a child with a verified disability (see 92 NAC 51-007) which specifies the special education and related services necessary to assure that the child receive a free, appropriate public education.

Individual and Family Support Plan (IFSP) means a written plan developed by the interdisciplinary team with and for a child with a developmental disability which describes the services to be provided, the frequency of those services, and the type of provider for the services needed to support the family and maintain the child's placement with the family or in the community. An IFSP is required when services are funded by the Home and Community-Based Waiver for Children with Developmental Disabilities and Their Families. The IFSP may be developed in conjunction with the IEP for children receiving special education or other community services. The IFSP may also be referred to as the Individual Program Plan (IPP).

Individual Program Plan (IPP) means a written plan developed by the individual with the other members of his/her interdisciplinary team, known as the IPP team, that describes the services to meet the assessed needs. The IPP may be developed in conjunction with the IEP for children receiving special education or other community services. The IPP may also include the IFSP or the ASP.

Individual Support Options (ISO) means community-based supports that are defined as either Supported Living or Supported Day. Either or both may be offered to the same individual who is eligible for developmental disability services.

Informal dispute resolution means an informal meeting to provide an interested party including the individual receiving services or his/her legal representative and the Department an opportunity to exchange information specific to a contested decision.

Informed choice means an individual's voluntary, well-considered decision made on the basis of options, information, and understanding. The decision-making process should result in a free and informed decision by the individual about whether s/he desires supports and services and which services s/he needs.

Integrated community employment means a service that assists an individual in maintaining competitive employment in an integrated work setting with on-going support services.

Intellectual disability means mental retardation as defined in Neb. Rev. Stat. § 83-381(1).

Intrusive technique means any procedure or intervention that is imposed or enforced on an individual receiving services that is seen as undesirable by the individual or controls the individual's choices or actions.

Legal representative means any person who has been vested by law with the power to act on behalf of the person receiving services in making decisions as required by these regulations. This term includes a guardian appointed by a court of competent jurisdiction or a parent in the case of a minor.

Mechanical restraint means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the individual's body. Devices used to provide support for the achievement of functional body position or proper balance, and devices used for specific medical and surgical (as distinguished from behavioral) treatment are excluded.

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

Mistreatment means behavior or provider practices that result in any type of individual exploitation such as financial, sexual, or criminal.

NAC means Nebraska Administrative Code.

Neglect means the failure or omission by one's self, a caregiver, or another person with a duty to supply or provide essential services which are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness.

Non-complex nursing interventions means those actions which can safely be performed according to exact directions, do not require alteration of the standard procedure, and for which the results and response of the individual receiving services are predictable. Unlicensed staff are allowed to perform these when delegated by a registered nurse.

Non-specialized services means services provided for individuals with developmental disabilities delivered by a provider of the individual's choosing.

Objective assessment process (OAP) means the method to determine the level of funding for services based on an individual's strengths and needs. The objective assessment process is designed and implemented by the Department to ensure equitable distribution of fiscal resources based on a standardized assessment.

Physical injury means harm, pain, illness, impairment of physical function, or damage to body tissue.

Physical restraint means any manual physical holding of, or contact with an individual that restricts the individual's freedom of movement.

Plan of improvement means a written document outlining the provider's strategies to address any areas found to be out of compliance with applicable standards in 404 NAC found during certification or service reviews.

Positive Behavioral Supports (PBS) means supports that emphasize positive approaches directed towards maximizing the growth and development of each individual.

Provider operated setting means a location where day or residential services are provided to individuals. The setting is operated or controlled by a certified provider or the provider's employee or subcontractor or any entity owned or controlled by the provider. This is regardless of who owns or leases the property.

Provision of medication means the component of the administration of medication that includes giving or applying a dose of a medication to an individual and includes assisting an individual in giving or applying such medication to him/herself. "Provision of medication" are those components of administration of medication that include providing medications for another person according to the five rights. Provision of medication does not include observing, monitoring, reporting, and otherwise taking appropriate action regarding desired effects, side

effects, interactions, and contraindications associated with the medication, or recording the provision of the medication.

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

Psychotropic Medication means any medication prescribed specifically to treat mental illness and associated symptoms. The major classes of psychotropic medication are antipsychotic (neuroleptic), antidepressant, antianxiety, antimania, stimulant, and sedative or hypnotic. Other miscellaneous medications are considered to be a psychotropic medication when they are specifically prescribed to treat a mental illness.

Restraint means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual. Includes medication used solely to control or alter behavior, physical intervention, or mechanical device used to restrict the movement, normal function of a portion of the person's body or control the behavior of a person receiving services. Devices used to provide support for the achievement of functional body position or proper balance, and devices used for specific medical and surgical (as distinguished from behavioral) treatment are excluded.

Rules of evidence means the rules of court procedure which govern the admissibility of evidence at trials and hearings.

Seclusion means the involuntary confinement of an individual alone in a room or an area from which the individual is physically prevented from having contact with others or leaving. See "emergency safety intervention". Seclusion is prohibited.

Service coordination means activities conducted on behalf of individuals with developmental disabilities and their families to help them access developmental disability services and other services not funded by the Department. Service coordination ensures that services are responsive to the preferences and needs of the individual and that services promote the independence, interdependence, productivity, and inclusion of individuals receiving services. In Nebraska's home and community-based waivers for persons with developmental disabilities, service coordination is referred to as case management.

Setting means a location where habilitation, services, and supports are delivered.

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

Slot means the waiver designation for the services received by a single individual.

Specialized services means services provided for individuals with developmental disabilities delivered by a certified provider under contract with the Department.

Supported day means day supports for three or fewer individuals as a non-facility based option. Supported day is defined as a setting where a majority of those present are other paid or non-paid adults without disabilities in a typical community setting. These include day supports including but not limited to integrated community and regular employment, volunteer or self-

employment, and other inclusive non-facility participatory activities that bring monetary or social value to a person's life.

Supported living means supports provided in the community for an individual eligible for developmental disability services. Supported living services are provided to three or fewer persons in a residence that is under the control and direction of the individual(s). The residence must be in a community integrated setting. These community integrated settings are under the control of the individual or an entity that is separate from the provider of services. The services and supports provided are person-centered and may range from intermittent to 24 hours/day intensive supports.

Supports means those services provided to the individual to meet identified needs that may not be met through programs, such as appointments, medication administration, further evaluations, assistance, supervision, and health services. The provision of these services, as well as the frequency and discipline responsible for providing the services, must be specified in the IPP.

Verbal abuse means the use of oral, written, or gestured language that willfully includes disparaging and derogatory terms to individuals served.