

TITLE 175 - HEALTH CARE FACILITIES AND SERVICES LICENSURE

CHAPTER 15 - RESPITE CARE SERVICES

001. SCOPE AND AUTHORITY. These regulations govern licensing of respite care services under the Health Care Facility Licensure Act, Nebraska Revised Statutes (Neb. Rev. Stat.) §§ 71-401 to 71-479.

002. DEFINITIONS. Definitions set out in the Health Care Facility Licensure Act, 175 Nebraska Administrative Code (NAC) 1, and the following apply to this chapter.

002.01 ABUSE. 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 consumer is abuse.

002.02 AGREEMENT OF PARTICIPATION. A written agreement negotiated between the respite care service and the consumer served or designee.

002.03 CAREGIVER. A caregiver, for the purpose of this chapter, has the same meaning as caretaker found in Neb. Rev. Stat. § 71-6721.

002.04 DEVICE. An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is prescribed by a medical practitioner and dispensed by a pharmacist or other person authorized by law to do so.

002.05 EVALUATION. A written action plan based on the identified needs of the consumer and the strategy for providing care to meet those needs.

002.06 EXPLOITATION. The taking of property of a consumer by means of undue influence, breach of a fiduciary relationship, deception, or extortion or by any unlawful means.

002.07 FOOD CODE. As defined in Neb. Rev. Stat. § 81-2,244.01 and as published by the Nebraska Department of Agriculture, except for compliance and enforcement provisions.

002.08 FREE-STANDING RESPITE CARE SERVICE FACILITY. The physical location where respite care services are provided, other than the consumer or caregiver's home is a free-standing respite care service facility.

002.09 MENTAL ABUSE. Humiliation, harassment, threats of punishment or deprivation, or other actions causing mental anguish.

002.10 NEGLECT. A failure to provide care, treatment, or services necessary to avoid physical harm or mental anguish of a consumer.

002.11 PHYSICAL ABUSE. Hitting, slapping, pinching, kicking, or other actions causing injury to the body.

002.12 SERVICE PLAN. A written action plan based on evaluation and assessment data that identifies the consumer's needs and the strategy for addressing care, treatment, and services to meet those needs within the scope of the respite care service.

002.13 SEXUAL ABUSE. Sexual harassment, sexual coercion, or sexual assault.

002.14 SUPERVISION. The daily observation and monitoring of the consumer by direct care staff and oversight of staff by the Administrator or Administrator's designee.

002.15 5 RIGHTS. The meaning found in Neb. Rev. Stat. § 71-6721.

003. LICENSING REQUIREMENTS. For all applications for initial licensure, renewal and reinstatement, an applicant or licensee must meet all requirements at 175 NAC 1-003, except for those items as shown below, must meet the setting requirements as shown below, and must include the licensure fees as shown below.

003.01 RESPITE CARE SERVICE SETTINGS. Respite care services may be provided in the following settings:

- (A) The home of the consumer;
- (B) The home of the caregiver or designee; or
- (C) A site that serves as a free-standing respite care service facility.

003.02 APPLICATION EXCEPTIONS. When respite care services are provided in the home of the consumer, caregiver or designee, the items shown at 175 NAC 1-003.02 are not required as part of the application.

003.03 INITIAL AND RENEWAL LICENSURE FEES. The fees for respite care services are set out below:

- (A) Programs that provide service through volunteers \$50
- (B) Programs with license capacity of 8-16 \$250
- (C) Programs with license capacity of 17-50 \$350
- (D) Programs with license capacity of 51 and up \$450

004. INSPECTIONS. When respite care services are provided in the home of the consumer, caregiver, or designee, the physical plant inspection requirements at 175 NAC 1-004 do not apply.

005. GENERAL REQUIREMENTS. The following requirements are applicable to all licensees.

005.01 NOTIFICATIONS. Notification requirements for respite care services include:

- (A) A Free-standing respite care service facility is only required to meet notification requirements at 175 NAC 1-005 (A), (D), (E), (F), (G)(i)

through (G)(v), and must notify the Department in writing at least 30 working days before the facility would like to increase license capacity, would like a change in the building, would like a change in location, or would like a change in the usage of the building; and

(B) A respite care service providing care, treatment or services in the home of the consumer, caregiver or designee, is only required to meet notification requirements at 175 NAC 1-005 (A), (D), (E), (G)(i), (G)(iii), must notify the Department in writing at least 30 working days before the facility would like to increase license capacity or would like a change in location, and must notify the Department in writing within 24 hours of a consumer's death which occurred while staff were providing, or scheduled to be providing, respite care services and the consumer's death was due to:

- (i) Suicide;
- (ii) A violent act;
- (iii) Drowning; or
- (iv) During or immediately after a restraint or seclusion was utilized.

005.02 EFFECTIVE DATE AND TERM OF LICENSE. A respite care service license expires on October 31 of each year.

005.03 CHANGE OF OWNERSHIP. Change of ownership or premises terminates the license. If there is a change of ownership and the respite care service remains on the same premises, the inspection in 175 NAC 1-004 and 175 NAC 15-004 is not required. If a respite care service changes premises, it must pass the inspection specified in 175 NAC 1-004 and 175 NAC 15-004.

005.04 OCCUPANCY. A free-standing respite care service must not serve more consumers at one time than the maximum occupancy for which the respite care service is licensed.

006. CONSTRUCTION. When respite care services are provided in the home of the consumer, caregiver, or designee, the construction requirements at 175 NAC 1-006 do not apply.

007. PHYSICAL PLANT. A free-standing respite care service must meet all requirements shown at 175 NAC 1-007 and the additional requirements below. When respite care services are provided in the home of the consumer, caregiver, or designee, the physical plant requirements at 175 NAC 1-007 and 175 NAC 15-007 do not apply.

007.01 ENVIRONMENTAL SERVICES. A licensee operating a free-standing respite care service facility must maintain a safe, clean, comfortable environment. Every detached building on the same premises used for care must comply with these regulations.

007.02 LINENS. Linens must be provided and maintained in good repair. A written policy must be implemented and revised, as necessary, to provide for the safe storage and handling of soiled and clean linens.

007.03 FOOD SERVICE. If food preparation is provided on site there must be dedicated space and equipment for the preparation and serving of meals. Such food preparation, serving, physical environment, and equipment must comply with the Food Code.

007.04 DESIGNED AND EQUIPPED. A site must be designed to meet the needs of consumers served. The licensee should consider factors such as appropriate and sufficient space, accessibility, equipment, furnishings, lighting, noise control, room temperatures, and ventilation.

007.05 LAUNDRY. If laundry services are provided the service may be provided by contract or on-site.

(A) CONTRACT. If contractual laundry services are used, areas for soiled linen awaiting pickup and separate areas for storage and distribution of clean linen must be provided and used.

(B) ON-SITE. If on-site laundry services are provided, areas dedicated to laundry that include a washer and dryer must be provided. In new construction, the licensee must provide a conveniently located sink for soaking and hand washing of laundry.

007.06 CONSUMER LIVING AREAS. Living areas must have beds, chairs, sofas, tables, and storage items that are comfortable and reflective of individual needs. A garage, barn, shed, or similar structure cannot be a consumer living area.

007.07 DINING AREAS. Adequate space for dining, socialization, and leisure activities must be provided.

007.08 BEDROOMS. If care is provided to individuals that exceeds 24 hours, consumer bedrooms must be provided and allow for sleeping, afford privacy, provide access to belongings, provide adequate storage, and accommodate the care provided to the consumer.

007.09 TOILET ROOMS. Toilet rooms with hand washing sinks that are adequate to meet the needs of the consumers served must be provided.

007.10 BATHING ROOMS. If care is provided to an individual exceeding 24 hours, a bathing room that is adequate to meet the needs of the consumer must be available. When provided, the bathing room must have a tub or shower. Tubs and showers used by consumers must be equipped with handgrips or other assistive devices as needed by the consumer.

007.11 ADDITIONAL SERVICES. If additional medical or therapy services are provided there must be adequate space to assure privacy and appropriate care.

007.12 OUTDOOR AREAS. Any outdoor area for consumer usage must be equipped and situated for consumer safety and abilities.

008. RECORDKEEPING. All licensees must establish, implement, and update, as necessary, policies, procedures, and processes for recordkeeping.

009. ENVIRONMENTAL SERVICES. All licensees operating a free-standing respite care service must establish, implement, and update, as necessary, policies, procedures, and processes for environmental services.

010. STANDARDS OF OPERATION AND CARE. To provide adequate protection to consumers and to be in compliance with state statutes, all respite care services must meet the following requirements:

010.01 LICENSEE. The licensee must determine, implement, and monitor policies to assure that the service is administered and managed appropriately. The licensee's responsibilities include:

- (A) Maintain the respite care service's compliance with all applicable state statutes and relevant rules and regulations;
- (B) Ensure the quality of all services and care provided to consumers, whether furnished by the respite care service staff or through contract with the respite care service;
- (C) Ensuring consumers are provided with a stable and supportive environment, through respect for the rights of consumers and responsiveness to consumer needs;
- (D) Ensuring that staff levels are sufficient to meet the consumers' needs;
- (E) Monitoring policies and procedures to assure the appropriate administration and management of the respite care service; and
- (F) Designating an administrator who is responsible for the day-to-day management of the respite care service and defining the duties and responsibilities of the Administrator in writing.

010.02 ADMINISTRATOR. The licensee must designate an administrator and a backup administrator to be in charge of the day-to-day operation of the respite care service. In a free-standing respite care service site, the administrator or backup administrator must be onsite during the hours of operation. The administrator is responsible for planning, organizing, and directing the day-to-day operation of the respite care service. The administrator must report all matters related to the maintenance, operation, and management of the respite care service and be directly responsible to the licensee or to the person, or persons, delegated governing authority by the licensee. The administrator's responsibilities include:

- (A) Being responsible for the respite care service's compliance with rules and regulations;
- (B) Being responsible for the respite care service's promotion of consumer self-direction and participation in decisions which incorporate independence, individuality, privacy, and dignity;
- (C) Maintaining sufficient number of staff with appropriate training and skills to meet consumers' needs as defined in the consumer's agreement of participation and service plan;
- (D) Providing written personnel policies, job descriptions, and current

service policies and procedures all of which are consistent with prevailing professional and practice standards and that are made available to all personnel;

(E) Maintaining personnel and administrative records;

(F) Providing orientation for new staff, schedule in-service education programs and opportunities for continuing education for the staff;

(G) Designating a backup administrator to act in the administrator's absence who must be responsible for and accountable for management of the respite care service;

(H) Monitoring that agreements of participation and service plans are established, implemented, and revised, as necessary, to meet the consumers' needs;

(I) Monitoring staff, including contracted staff, identify and review incidents and accidents, consumer complaints and concerns, patterns, and trends in overall operation such as provisions of consumer care, treatment, and service, and take action to alleviate problems and prevent recurrence;

(J) Developing procedures that require the reporting of any evidence of abuse, neglect or exploitation of any consumer served by the respite care service in accordance with Neb. Rev. Stat. § 28-372 of the Adult Protective Services Act or in the case of a person under the age of 18, in accordance with Neb. Rev. Stat. § 28-711;

(K) Ensuring an investigation is completed on suspected abuse, neglect, exploitation, or misappropriation of money or property and take action to prevent recurrence until the investigation is completed;

(L) Ensuring written policies, procedures and forms are individualized for the respite care service and contain effective dates and revisions dates;

(M) Ensuring the respite care service maintains a copy of all active policies, procedures and forms which are available for staff use; and

(N) Ensuring the respite care service maintains a copy of all inactive policies, procedures, and forms for a minimum of 7 years after the document becomes inactive.

010.03 STAFF REQUIREMENTS. A sufficient number of staff with the required training and skills necessary to meet the consumers' requirements for assistance or provision of personal care, activities of daily living, health maintenance activities, supervision, and support health and safety must be maintained. Care to consumers must be provided in a safe and timely manner.

010.03(A) EMPLOYMENT ELIGIBILITY. Each licensee must maintain evidence of the following:

010.03(A)(i) CRIMINAL BACKGROUND CHECKS. Complete pre-employment criminal background checks are done on each direct care staff member through a governmental law enforcement agency or a private entity that maintains criminal background information.

010.03(A)(ii) REGISTRY CHECKS. A check is completed for each direct care staff for adverse findings on the following Nebraska registries:

- (1) Nurse Aide Registry;
- (2) Adult Protective Services Central Registry;
- (3) Central Register of Child Protection Cases; and
- (4) Sex Offender Registry.

010.03(A)(iii) HIRING DECISIONS. The licensee must:

- (1) Determine how to use the criminal background and registry information, except for the Sex Offender Registry and Nurse Aide Registry, in making hiring decisions;
- (2) Decide whether employment can begin prior to receiving the criminal background and registry information; and
- (3) Document any decision to hire a person with a criminal background or adverse registry findings, except for the Sex Offender Registry and the Nurse Aide Registry. The documentation must include the basis for the decision and how it will not pose a threat to consumer safety or consumer property.

010.03(A)(iv) ADVERSE FINDINGS. The licensee must not employ a person with adverse findings on the Sex Offender Registry or on the Nurse Aide Registry regarding consumer abuse, neglect, or misappropriation of property.

010.03(A)(v) HEALTH STATUS. Written policies and procedures must be implemented and revised, as necessary, regarding the health status of staff to prevent transmission of disease to consumers. The licensee:

- (1) Must complete a health screening for each staff person prior to the staff person having contact with or providing direct care, treatment, or services for consumers; and
- (2) May, in its discretion, based on the health screening, require a staff person to have a physical examination.

010.03(B) STAFF TRAINING. The licensee must provide staff with sufficient training to meet consumer needs for care.

010.03(B)(i) ORIENTATION. The licensee must provide staff with orientation prior to staff having direct responsibility for care and services to consumers. The training must include:

- (1) Job duties and responsibilities;
- (2) Consumer rights;
- (3) Consumer service agreements;
- (4) Infection control practices including hand washing techniques, personal hygiene, and disposal of infectious material;
- (5) Information on any physical and mental special care needs of the consumers;
- (6) Emergency procedures and information regarding advance directives;

- (7) Information on abuse, neglect, and misappropriation of money or property of a consumer and reporting procedures; and
- (8) Disaster preparedness plans.

010.03(B)(ii) ONGOING TRAINING. Ongoing in-services or continuing education for staff must be provided. A record of such education must be maintained and include the date of the training, the topic, and participants.

010.03(C) EMPLOYMENT RECORD. A current employment record must be maintained for each staff person. The record must contain at a minimum, information on orientation, in-services, employment eligibility information, and health history screening.

010.03(D) STAFFING RESOURCES. Written policies and procedures must be implemented and revised, as necessary, to provide appropriate supervision of consumers. Staffing resources and training must be sufficient to meet the level of supervision and provision of care, treatment, and services necessary to meet the consumers' needs and are provided in a safe and timely manner. Services must meet the needs of the consumer and be provided in accordance with instructions and directions from the caregiver.

010.03(D)(i) SUPERVISION. The licensee must establish, implement, and revise, as necessary, policies and procedures regarding appropriate consumer supervision.

010.04 CONSUMER RIGHTS. Consumer rights must be protected and promoted. Written policies and procedures must be implemented and revised, as necessary, to ensure consumers are given the opportunity to exercise his or her rights. At a minimum, each consumer must have the right to:

- (A) Respectful and safe care by competent personnel;
- (B) Be free from abuse, neglect, exploitation, and to be treated with dignity;
- (C) Receive respite care services without discrimination based upon race, color, religion, sex, age, ancestry, or national origin;
- (D) Confidentiality of all records, communications, and personal information;
- (E) Be free of chemical and physical restraints;
- (F) Voice complaints or grievances and suggest changes without fear of reprisal; and
- (G) Be informed of changes in policies, procedures, and charges for care, treatment, and services.

010.05 DESIGNEE AND CAREGIVER RIGHTS. Each designee or caregiver must have the right to:

- (A) Be informed of any changes in the respite care service description as indicated in 175 NAC 15-010.07;
- (B) Voice complaints without discrimination or reprisal against

- themselves or the consumer and have those complaints addressed;
- (C) Be informed of consumer and designee or caregiver rights during admittance; and
- (D) Be informed of changes in policies, procedures, and charges for care, treatment, and services.

010.06 DESIGNEE RIGHTS. Each designee must have the right to formulate advance directives and have the licensee comply with the directives unless the licensee notifies the consumer or designee of an inability to do so as required by law.

010.07 SERVICE DESCRIPTION. A written description which explains the range of respite care services that can be provided must be available to staff, consumers, caregivers, designees, and members of the public. The description must include the following:

- (A) Goals and objectives of the licensee;
- (B) Hours and days when care is provided;
- (C) Description of the types of consumers to be served, including age, sex, care needs, and any other relevant characteristics;
- (D) Composition of staff and his or her qualifications;
- (E) Job responsibilities of staff; and
- (F) The system used for the reporting, investigating, and resolving allegations of consumer abuse, neglect, and exploitation.

010.08 ADMISSION, EVALUATION, ASSESSMENT, AND DISCHARGE OF CONSUMERS. Written policies and procedures must be implemented and revised, as necessary, for consumer admission and discharge, consumer evaluation, and development of a written, consumer-specific agreement of participation and service plan. The plan must be developed with consumer or designee participation.

010.08(A) ADMISSION CRITERIA & DECISIONS. The licensee must have written criteria for admission that includes each level and components of care, treatment and services provided. The decision to admit a consumer must be based upon the admission criteria and the capability to meet the identified needs of the consumer.

010.08(B) AGREEMENT OF PARTICIPATION. The license must develop and have an agreement of participation with the consumer or designee. This agreement must be updated, as needed, to ensure it meets the consumers' needs. This agreement must meet the following requirements:

- (i) The service to be provided within the scope of the respite care service; and
- (ii) The responsibilities of the consumer or designee.

010.08(C) SERVICE PLAN. The licensee must evaluate each consumer, and when necessary, have the consumer assessed by a licensed professional of the appropriate discipline, and must have a written service plan which identifies how care, treatment, and services are to be

provided to the consumer by the licensee to meet the consumers' needs. The service plan must be updated, as needed, to ensure it meets the consumers' needs. The service plan must have a strategy for addressing care, treatment, and services to meet those needs within the scope of the respite care service and must address the following basic needs of the consumer:

- (i) Health;
- (ii) Psychosocial; and
- (iii) Functional.

010.08(D) DISCHARGE CRITERIA AND DECISIONS. The licensee must have written criteria for the discharge of consumers. The decision to discharge a consumer must be based upon the licensee's discharge criteria.

010.09 ADMINISTRATION OR PROVISION OF MEDICATIONS. Consumers must receive medications only as legally prescribed by a medical practitioner in accordance with the 5 rights and with prevailing professional standards.

010.09(A) METHODS OF ADMINISTRATION OF MEDICATION. When the licensee is responsible for the administration of medication, it must be accomplished by the following methods:

010.09(A)(i) SELF-ADMINISTRATION OF MEDICATIONS. Consumers may be allowed to self-administer medications, with or without visual supervision, when the licensee determines that the consumer is competent and capable of doing so and has the capacity to make an informed decision about taking medications in a safe manner. Written policies and procedures must be implemented and revised, as necessary, regarding self-administration of medication and must include the following:

- (1) Storage and handling of medications;
- (2) The licensee's written determination that the consumer may self-administer medication in the consumer's individualized service plan; and
- (3) Monitoring the consumer's individualized service plan to assure continued safe administration of medications by the consumer.

010.09(A)(ii) LICENSED HEALTH CARE PROFESSIONAL. When the licensee uses a licensed health care professional for whom medication administration is included in the scope of practice, the licensee must ensure the medications are properly administered in accordance with prevailing professional standards and state and federal law.

010.09(A)(iii) PROVISION OF MEDICATION BY A PERSON OTHER THAN A LICENSED HEALTH CARE PROFESSIONAL. When the licensee uses a person other than a licensed health care professional in the provision of medications, the licensee must only use individuals who are

registered medication aides and must comply with the regulations set out in 175 NAC 95 and 175 NAC 96.

010.09(B) MAINTAIN OVERALL SUPERVISION, SAFETY, AND WELFARE OF CONSUMERS. When the licensee is not responsible for medication administration or provision, the licensee still retains responsibility for overall supervision, safety, and welfare of the consumer.

010.09(C) REPORTING OF MEDICATION ERRORS AND ADVERSE REACTIONS TO A MEDICATION BY THE CONSUMER. When the licensee provides for medication administration or provision, the licensee must implement, and revise, as necessary, policies and procedures for reporting any adverse reactions to a medication by a consumer and any medication errors in administration or provision of any medications to the consumer. Such reports must be made to the consumer, the consumer's designee, and the consumer's licensed practitioner immediately upon discovery and a written report of the adverse reaction and medication error prepared. Errors must include any variance from the 5 rights and any variance between the prescription and the administration or provision of the medication.

010.09(D) STORAGE OF MEDICATION. Except when the respite care service is provided in the consumer's home, 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. If children under the age of 13 are being served, all medications must be locked.

010.09(E) ACCESS TO MEDICATION. Except when the respite care service is provided in the consumer's home, the licensee must only permit authorized staff who are designated by the licensee to be responsible for administration or provision of medications have access to medications.

010.09(F) MEDICATION RECORD. The licensee must maintain medication records with sufficient detail to assure that:

- (i) Consumers receive the medications authorized by a licensed health care professional;
- (ii) The respite care service is alerted to theft or loss of medication; and
- (iii) An individual medication administration record is maintained for each consumer. This record must include:
 - (1) Identification of the consumer;
 - (2) Name of the medication given;
 - (3) Date, time, dosage, and method of administration for each medication administered or provided;
 - (4) Identification of the person who administered or provided the medication;
 - (5) Any refusal by the consumer; and
 - (6) Consumer's medication allergies and sensitivities, if any.

010.09(G) DISPOSAL OF MEDICATIONS. The licensee must destroy medications that are discontinued by the licensed health care professional and those medications which are beyond the expiration date. The licensee must develop, implement, and revise, as necessary, policies and procedures to identify who will be responsible for disposal of medications and how disposal will occur in compliance with state and federal law.

010.10 FOOD SERVICE. Food must be served as specified in the consumer service plan, agreement of participation, and may include special diets. When the licensee provides food service, meals and snacks must be appropriate to the consumer's needs and preferences and must meet daily nutritional requirements.

010.10(A) MENUS. When the licensee provides food service, menus must be planned and written based on the Food Guide Pyramid, or equivalent, and modified to accommodate special diets and texture adaptations as needed by the consumers. Menus must be made accessible to consumers, caregivers, and designees.

010.10(B) FOOD SAFETY. The licensee must store, prepare, protect, serve, and dispose of food in a safe and sanitary manner and in accordance with the Food Code. If consumers are involved in food service, the licensee must train consumers on food safety.

010.11 CONSUMER INFORMATION. The licensee must obtain written, accurate consumer information from the consumer and caregiver. The licensee must ensure a permanent record for all consumers. The record must be established prior to the provision of care, treatment, or services for each consumer and contain documentation completed immediately after the provision of such.

010.11(A) RECORDS. Consumer records must contain information as required in 175 NAC 1 and the following additional information:

- (i) Significant medical conditions;
- (ii) Medications and any special diet;
- (iii) Designated physician or registered nurse;
- (iv) Consumer's agreement of participation;
- (v) Consumer's service plan;
- (vi) Any unusual event or occurrence; and
- (vii) Daily documentation of assistance with activities of daily living, personal care, health maintenance activities, or supervision, when provided for the consumer.

010.11(B) CONSUMER IDENTIFICATION. The licensee must implement, and revise, as necessary, a system for identifying a consumer when there are multiple consumers at a site.

