

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

May 22, 2023
1:00 p.m. Central Time
Nebraska State Office Building – Lower Level
Meadowlark Conference Room
301 Centennial Mall South, Lincoln, Nebraska
Phone call information: 888-820-1398; Participant code: 3213662#

The purpose of this hearing is to receive comments on the proposed adoption of Title 175, Chapter 24 of the Nebraska Administrative Code (NAC) – PACE (Programs of All-Inclusive Care for the Elderly) Centers. The proposed adoption of this chapter establishes the definitions; standards; and requirements for all PACE (Programs of All-Inclusive Care for the Elderly) Centers. The standards and requirements set initial and renewal licenses and reinstatement from expired status; licensure fees and inspections; general requirements; notifications to the Department; supervision of parent and satellite locations; standards of operation and care; documentation and recordkeeping; and physical plant standards.

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

In order to encourage participation in this public hearing, a phone conference line will be set up for any member of the public to call in and provide oral comments. Interested persons may provide verbal comments in person or by participating via phone conference line by calling 888-820-1398; Participant code: 3213662#.

Interested persons may attend the hearing and provide verbal or written comments, or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals who are deaf or hard of hearing may call DHHS via the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 175	Prepared by: Pam Kerns
Chapter: 24	Date prepared: 3/10/2023
Subject: (PACE) Programs of All-Inclusive Care for the Elderly) Center Regulations	Telephone: 402 471-3651

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact:

State Agency: No.

Political Subdivision: No.

Regulated Public: Increase in cost for the regulated public is due to the addition of a pre-employment criminal background check for professionally licensed direct care staff. Since most licensees are currently conducting pre-employment criminal background checks for professionally licensed direct care staff, we anticipate only a slight increase in cost to the regulated public. The cost of a pre-employment criminal background check can vary based on the entity performing the check and the Department does not require licensees to report the number of staff employed. The Nebraska State Patrol public website shows a charge of \$15.50 for each criminal background check it conducts. Other entities have fees of \$12.50 to \$25.00 for a background check.

If indeterminable, explain why: N/A.

TITLE 175 HEALTH CARE FACILITIES AND SERVICES LICENSURE

CHAPTER 24 PACE (PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY)
CENTER REGULATIONS

001. SCOPE AND AUTHORITY. These regulations govern licensing of Programs of All-Inclusive Care for the Elderly (PACE) centers under the Health Care Facility Licensure Act, Nebraska Revised Statute (Neb. Rev. Stat.) §§ 71-401 to 71-476.

002. DEFINITIONS. Definitions set out in the Nebraska Health Care Facility Licensure Act, in the Medication Aide Act, in 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 abuse, sexual abuse, verbal abuse, or mental abuse, unreasonable confinement, cruel punishment, exploitation, or denial of care, treatment or services to a consumer.

002.02 ADULT DAY SERVICES COORDINATOR. An individual who is responsible for the daily management of adult day services.

002.03 AMBULATORY SURGICAL CENTER SERVICES COORDINATOR. An individual who is responsible for the daily management and coordination of ambulatory surgical center services.

002.04 BASIC THERAPEUTIC CARE. Basic health care procedures, including, but not limited to, measuring vital signs, applying hot and cold applications and nonsterile dressings, and assisting with, but not administering, internal and external medications which are normally self-administered. Basic therapeutic care does not include health care procedures which require the exercise of nursing or medical judgment.

002.05 CENTER. For the purpose of these licensure regulations has the same meaning as a PACE (Programs of All-Inclusive Care for the Elderly) center.

002.06 CENTER SERVICES. For purpose of these licensure regulations includes health clinic services, in-center dialysis services, ambulatory surgical center services, adult day services or Home Health Agency Services provided by the licensee.

002.07 CHEMICAL RESTRAINT. A psychopharmacologic drug that is used for discipline or convenience and is not required to treat medical symptoms.

002.08 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.

002.09 DIALYSIS. The process of removing waste products and excess fluid from the body when the kidneys are not able to adequately filter the blood.

002.10 DIRECT SUPERVISION. The responsible licensed health care professional is physically present in the consumer care, treatment and service area and is available to assess, evaluate and respond immediately.

002.11 DISRUPTIVE OR THREATENING BEHAVIOR. Behavior that jeopardizes the consumer's own health or safety, or the safety of others, or, consistent refusal by the consumer to comply with an individual plan of care or the terms of the enrollment agreement.

002.12 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.

002.13 HEALTH CLINIC SERVICES COORDINATOR. An individual who is responsible for the daily management and coordination of health clinic services.

002.14 HOME. The consumer's permanent or temporary residence, other than a hospital or a nursing home.

002.15 HOME CARE EQUIPMENT AND SUPPLIES. Equipment or supplies used in the consumer's home and needed by the consumer to maintain the consumer's highest level of function in the home.

002.16 HOME HEALTH AGENCY SERVICES. The provision of skilled nursing care, physical therapy, speech pathology, occupational therapy, respiratory care, home health aide services, social work services, intravenous therapy, or dialysis in the consumer's home.

002.17 HOME HEALTH AGENCY SERVICES COORDINATOR. An individual who is responsible for the daily management and coordination of Home Health Agency Services.

002.18 HOME HEALTH AIDE SERVICES. The use of a trained, supervised paraprofessional to provide one or more of the following: personal care, assistance with activities of daily living, or basic therapeutic care to a consumer in the consumer's home.

002.19 IN-CENTER DIALYSIS SERVICES COORDINATOR. An individual who is responsible for the daily management and coordination of in-center dialysis services.

002.20 INTRAVENOUS THERAPY. Initiating and monitoring therapy related to substances that are administered intravenously.

002.21 MEDICATION ERROR. The preparation, provision or administration of a medication which is not in accordance with a medical order, manufacturer's specifications regarding the

preparation and administration of the drug or biological; accepted professional standards and principles that apply to professionals providing services; or the 5 rights.

002.22 MEDICATION REMINDERS. Verbal reminders to a person to take the person's medication which does not include touching or handling of the medication or the container where the medication is stored. Medication reminders do not include administration or provision of medication as defined in the Medication Aide Act and 172 NAC 95 and 96.

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

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

002.25 PARENT CENTER. The Parent Center is located at the physical address where the licensee is issued the license, responsible for the care, treatment and services provided to consumers, implementation of the plan of care, and ensuring administrative and supervisory control of satellite locations.

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

002.27 PHYSICAL RESTRAINT. Any manual method or physical or mechanical device, material, or equipment attached or adjacent to the consumer's body that the consumer cannot remove easily and that restricts freedom of movement or normal access to the consumer's own body.

002.28 PRACTITIONER. A nurse practitioner, osteopathic physician, physician, or physician assistant.

002.29 SATELLITE LOCATION. An alternative care setting, which is a facility or service other than the consumer's home or the Parent Center, where the licensee provides consumers with Center Services. Satellite locations are a part of the Parent Center and share administration, supervision, and services with the Parent Center on a daily basis.

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

002.31 STAFF. An individual who is a direct or contracted employee of the Programs of All-Inclusive Care for the Elderly Center (PACE) Center.

002.32 SUPERVISION. The authoritative guidance which is given by a qualified person of the appropriate discipline. Supervision includes initial direction and periodic indirect and direct monitoring of services.

002.33 TRANSPORTATION SERVICES COORDINATOR. An individual who is responsible for the daily management of transportation services.

002.34 UNDUPLICATED CONSUMERS. The total number of consumers enrolled during the last 12 months, only counting each consumer once, no matter how many times the consumer was actually seen during the last 12 months.

002.35 VERBAL ABUSE. The use of oral, written, or gestured language including disparaging or derogatory terms to consumers or within hearing distance of the consumer or within the consumer's sight.

003. LICENSING REQUIREMENTS. To receive a license, an applicant must submit a complete application, and meet the requirements for a license set out in statute, in 175 NAC 1, and in this chapter.

003.01 LICENSURE FEES. The licensure fees are set out below:

(A) Initial license fees:

<u>(i) Health clinic services</u>	<u>\$ 600</u>
<u>(ii) Adult day services</u>	<u>\$ 300</u>
<u>(iii) Home Health Agency Services</u>	<u>\$ 650</u>
<u>(iv) In-center dialysis services</u>	<u>\$ 600</u>
<u>(v) Ambulatory surgical center services:</u>	
<u>(1) 1 operating or procedure room</u>	<u>\$1,250</u>
<u>(2) 2 to 3 operating or procedure rooms</u>	<u>\$1,350</u>
<u>(3) 4 or more operating or procedure rooms</u>	<u>\$1,450</u>

(B) Renewal license fees for all services except ambulatory surgical center services:

<u>(i) 1 to 50 total unduplicated consumers in the last 12 months</u>	<u>\$1,250</u>
<u>(ii) 51 to 100 total unduplicated consumers in the last 12 months</u>	<u>\$1,650</u>
<u>(iii) 101 or more total unduplicated consumers in the last 12 months</u>	<u>\$1,950</u>
<u>(iv) Ambulatory surgical center services:</u>	
<u>(1) 1 operating or procedure room</u>	<u>\$1,250</u>
<u>(2) 2 to 3 operating or procedure rooms</u>	<u>\$1,350</u>
<u>(3) 4 or more operating or procedure rooms</u>	<u>\$1,450</u>
<u>(v) All Ambulatory surgical center services must also pay an additional fee under the Outpatient Surgical Procedures Data Act, Neb. Rev. Stat. §§ 81-6,111 to 81-6,119, as follows:</u>	
<u>(1) 500 or fewer outpatient surgeries per year</u>	<u>\$ 275</u>
<u>(2) 501 to 2,000 outpatient surgeries per year</u>	<u>\$ 350</u>
<u>(3) More than 2,000 outpatient surgeries per year</u>	<u>\$ 425</u>

004. INSPECTIONS. Licensees must meet the inspection requirements in 175 NAC 1 and be available for unannounced, onsite inspections.

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

005.01 NOTIFICATIONS. An applicant or licensee must notify the Department electronically, in writing, or via facsimile of the following:

(A) Licensees providing health clinic services, in-center dialysis services, ambulatory surgical center services, or adult day services, must:

- (i) Meet notification requirements at 175 NAC 1-005.01 (A), (D), (E), (F), (G)(i) through (G)(v); and
- (ii) Notify the Department at least 30 working days before the facility would like to request:
 - (1) An increase in their license capacity;
 - (2) A change in the building;
 - (3) A change in the usage of the building;
 - (4) A change the approved geographical service area served;
 - (5) An addition or deletion of a satellite location; or
 - (6) A change in services.
- (B) Licensees providing Home Health Agency Service must:
 - (i) Meet notification requirements at 175 NAC 1-005.01 (A), (D), (E), (G)(i), G(iii);
 - (ii) Notify the Department at least 30 working days before the Home Health Agency Service would like to:
 - (1) Add a county; or
 - (2) Add a satellite location; and
 - (iii) Notify the Department within 24 hours of a consumer's death which occurred while staff were present, or scheduled to be present, in the consumer's home to provide care, treatment, or services and the consumer's death was due to:
 - (1) Suicide;
 - (2) A violent act;
 - (3) Drowning; or
 - (4) During or immediately after a restraint or seclusion was utilized.

005.02 EFFECTIVE DATE AND TERM OF LICENSE: The license expires on October 31 of each year.

005.03 CHANGE OF OWNERSHIP OR PREMISES. Change of ownership or premises terminates the license except that a change of premises for Home Health Agency Services does not terminate the license. If there is a change of ownership and the Parent Center and Satellite Locations remain on the same premises, the inspections in 175 NAC 1-004 and in 175 NAC 24-004 are not required. If there is a change of ownership and the Parent Center or Satellite Locations change premises, each new location must pass the inspection specified in 175 NAC 1-004 and in 175 NAC 24-004.

005.04 OCCUPANCY. A licensee providing care, treatment, or services must have separate areas to provide health clinic services, adult day services, in-center dialysis services, and ambulatory surgical center services. Each separate area must not serve more consumers at 1 time than the maximum capacity for which each of these separate areas is licensed and must not exceed the maximum occupancy shown on the State Fire Marshal's or their Delegated Authority's Certificate of Occupancy for each separate area.

005.05 SATELLITE LOCATIONS. Licensees who provide Center Services at a Satellite Location must meet 175 NAC 24 requirements and be approved by the Department for licensure, before providing care, treatment or services at the Satellite Location. The Parent Center is responsible for all care, treatment, and services provided at the Parent Center and Satellite Locations. All deficient practices cited at any Satellite Location or Parent Center apply to all locations under that licensee's Center license. A Satellite Location is not required to hold

a separate license but must meet supervision requirements for Satellite Locations as shown below. Satellite Locations must:

- (A) Be approved by the Department before becoming operational;
- (B) Provide only the services, as approved by the Department, for the Satellite Location;
- (C) Satellite Locations approved to provide Home Health Agency Services must provide the same full range of Home Health Agency Services as shown on the license within a portion of the total approved geographic area served by the Parent Center;
- (D) Be part of the Parent Center and share administration, supervision, and services with the Parent Center on a daily basis;
- (E) Be located sufficiently close to the Parent Center to share administration, supervision, and services with the Parent Center on a daily basis;
- (F) Have onsite supervisory visits by the Center's administrator or the Center administrator's designated person of the Parent Center at least once a month with documentation of these supervisory visits being maintained at the Parent Center location;
- (G) Maintain copies of all Center policies, procedures and forms at each Satellite Location;
- (H) Maintain complete clinical records for all Satellite Location consumer's care, treatment and services; and
- (I) Maintain in the Parent Center for all consumers receiving services from Satellite Locations the following:
 - (i) Consumer identifying information;
 - (ii) Name, address, and telephone number of consumer's practitioner;
 - (iii) Consumer diagnosis;
 - (iv) The services being provided to the consumer; and
 - (v) The above information must be maintained until the complete clinical record is either stored at the Parent Center or can be destroyed.

005.06 SIGNAGE. The licensee must place a sign, on the Center and Satellite Location entrance doors, which contains the Center's name and physical address as they appear on the Center's license issued by the Department.

006. CONSTRUCTION. An applicant who wants to provide or a licensee who is providing Center Services must meet all statutory and 175 NAC 1-006 requirements.

007. PHYSICAL PLANT. A licensee must maintain the facility or service it operates in a manner that is safe, clean and functional for the type of care, treatment, and services provided to the consumer. An applicant who wants to provide or licensee who is providing Center Services, must meet all requirements in statute, shown at 175 NAC 1-007, 175 NAC 24, and the additional requirements shown below:

- (A) Health clinic services must meet the physical plant requirements in 175 NAC 7;
- (B) Adult day services must meet physical plant requirements in 175 NAC 5;
- (C) In-center dialysis services must meet the physical plant requirements in 175 NAC 7; and
- (D) Ambulatory surgical center services must meet the physical plant requirements in 175 NAC 7.

008. RECORDKEEPING. The licensee must meet recordkeeping requirements set out in statute, in 175 NAC 1, and in these regulations.

008.01 CLINICAL RECORD REQUIREMENTS. The licensee must ensure complete and accurate records to demonstrate compliance with requirements in statute, in 175 NAC 1 and requirements set out in this chapter are kept and made available for inspection and copying by authorized representatives of the Department.

008.01(A) CONTENT. The consumer's clinical record must contain sufficient information to identify the consumer clearly, to justify the diagnosis, care, treatment, and services, and to document the results of care, treatment, and services accurately. The licensee must provide pertinent current and past medical history to the licensed personnel providing services on its behalf. All clinical records must contain the following:

- (i) Identification data, consent forms, and an active enrollment agreement signed and dated by the consumer or the consumer's designee;
- (ii) The name and address of the consumer's physicians and practitioners;
- (iii) The physician's or practitioner's signed order for Center Services and the practitioner-approved, and when required the physician-approved, written plan of care, must include, when appropriate to the services being provided:
 - (1) Medical diagnosis;
 - (2) Medication orders;
 - (3) Dietary orders;
 - (4) Activity orders; and
 - (5) Safety orders;
- (iv) Initial and periodic assessments and care plan by disciplines providing services;
- (v) Signed and dated admission, observation, progress, and supervisory notes;
- (vi) Diagnostic and therapeutic orders signed by the physician, practitioner, or medical practitioner;
- (vii) Reports of treatment and clinical findings;
- (viii) Disenrollment summary report; and
- (ix) Documentation of consumer disenrollment effective date approved by the Division of Medicaid and Long-Term Care within the Department.

008.01(B) CENTRALIZED. All clinical information pertaining to the consumer's care must be centralized in the consumer's clinical record maintained by the Parent Center.

008.01(C) TIMELY ENTRIES. Entries into the consumer's clinical record for care, treatment, and services provided must be written within 24 hours and incorporated into the consumer's clinical record within 7 working days. When a medication administration record (MAR) is used by the licensee, entries into the consumer's medication administration record (MAR) must be made by the staff member who administered or provided the medication to the consumer immediately after administration or provision of the medication and incorporated into the consumer's clinical record within 7 working days.

008.01(D) PROVIDER IDENTIFICATION. Entries must be made by the person providing services, must contain a statement of facts personally observed, and must contain the information required by 175 NAC 1.

008.01(E) VERBAL ORDERS. All physician, practitioner, or medical practitioner verbal orders for care, treatment, services, and medications must be signed and incorporated into the clinical record within 30 days.

008.01(F) CONSUMER ROSTER. The licensee must maintain at the Parent Center one daily consumer roster which clearly identifies all consumers scheduled and accepted for care, treatment, or services. The consumer roster must include information necessary to identify each consumer and the care, treatment and services to be provided directly by the licensee, or through a contract with an entity holding a health care facility or service license, and the location where the care, treatment and services are to be provided.

008.01(G) CONSUMER TRANSFERS. If a consumer is transferred to another health care facility or service, information necessary or useful in care and treatment of the consumer must be promptly forwarded in writing to the appropriate facility or service with the consent of the consumer or the consumer's legal designee.

008.01(H) SATELLITE LOCATIONS. Licensees with satellite locations must maintain in the Parent Center for all consumers receiving services from satellite locations:

- (i) Consumer identifying information;
- (ii) Name, address, and telephone number of patient's practitioner;
- (iii) Patient diagnoses; and
- (iv) Description of services and location of where these services are to be provided to the consumer.

008.02 TRAINING RECORDS. The licensee must maintain records of each orientation and in-service or other training program, including the signature of staff attending, subject-matter of the training, the names and qualifications of instructors, dates of training, length of training sessions, and any written materials provided. The trainer must maintain an attendance roster or ensure trainee attendance signatures for virtual events.

008.03 EMPLOYMENT RECORD. A current employment record must be kept for each direct care and transportation staff person which includes:

- (A) The title of that individual's position, qualifications, and description of the duties and functions assigned to that position;
- (B) Evidence of licensure, certification, or approval, if required;
- (C) Performance evaluations made within 6 months of employment and annually thereafter; and
- (D) Post hire and pre-employment health history screening.

009. ENVIRONMENTAL SERVICES. Every building or space utilized for the care and treatment of the consumer must comply with the environmental services requirements set out in statute, in 175 NAC 1. Environmental service requirements do not apply to Home Health Agency Services.

010. STANDARDS OF OPERATION AND CARE. Each Center must be organized, managed, and administered by the licensee in a manner consistent with the size, resources, and type of services provided to ensure each patient receives necessary care, treatment and services in a safe manner and in accordance with current standards of practice, the Health Care Facility Licensure Act, the Uniform Credentialing Act, the Medication Aide Act, the regulations adopted under those Acts, physician, practitioner, and medical practitioner orders, the practitioner-approved, and when required the physician-approved, written plan of care, 175 NAC 1, this chapter, and as set out in this section.

010.01 LICENSEE. The licensee is responsible for implementing written policies and procedures to ensure compliance with statutes and regulations as per 175 NAC 1, the Health Care Facility Licensure Act, and this chapter and is responsible for making such available to staff and consumers. The licensee must ensure that all services are provided in accordance with accepted standards of practice and oversee the management and fiscal affairs of the Center. The licensee must require each staff to report any evidence of abuse, neglect, or exploitation of a consumer served by the Center in accordance with the Adult Protective Services Act or the Child Protection Act, as applicable. The licensee must ensure any suspected abuse, neglect, or exploitation is reported to and investigated by the administrator immediately upon discovery and notification.

010.01(A) DESIGNATE CENTER ADMINISTRATOR. The licensee must designate in writing 1 administrator, and 1 equally qualified back-up administrator, as described in 175 NAC 24 to carry out the policies, procedures, and directives of the licensee for all Center Services provided by the licensee.

010.01(B) POLICIES AND PROCEDURES. Written policies and procedures for the operation and administration of the Center must include:

- (i) Range of services to be provided;
- (ii) Approved geographic area served;
- (iii) Personnel policies, procedures, and job descriptions for each staff position, which includes minimum qualifications for the position;
- (iv) Criteria for enrollment, disenrollment, involuntary disenrollment, and transfer of consumers, which ensures only individuals whose needs can be met by the staff will be enrolled as consumers;
- (v) A process for authorized staff to obtain and incorporate written and verbal physician, practitioner, and medical practitioner diagnostic, therapeutic, and medication orders into the consumer's written plan of care;
- (vi) Consumer care policies and procedures;
- (vii) A process for disposal of controlled drugs maintained in the consumer's home when those drugs are no longer needed by the consumer or are expired; and
- (viii) A process for use and removal of records and the conditions for release of information.

010.02 ADMINISTRATION. The licensee has the responsibility to determine, implement, and monitor policies that govern the total operation and maintenance of the Center. The licensee must set out the duties and responsibilities of the administrator in writing. Whether employed, elected, contracted, or appointed, the administrator must report and be directly responsible to the licensee in all matters related to the maintenance, operation, and management of the Center. The Center must organize, manage, and administer its resources to assure each consumer admitted for services receives the necessary level of care, treatment, and services in a manner consistent with the consumer's needs and desires, in accordance with current standards of practice, and in accordance with statutory requirements, 175 NAC 1, and this chapter.

010.02(A) ADMINISTRATOR QUALIFICATIONS. The administrator and back-up administrator must:

- (i) Be a practitioner holding an active credential to practice as a physician in Nebraska;
- (ii) Be a registered nurse holding an active credential or authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska;
- (iii) Be a Nursing Home Administrator holding an active credential to practice as a Nursing Home Administrator in Nebraska; or
- (iv) Be an individual with:
 - (1) A bachelor's degree in health care administration, physical therapy, occupational therapy, speech-language pathology, respiratory therapy, or related field; and
 - (2) 2 years or more of full-time work experience in home health care or related health care program.

1010.02(B) ADMINISTRATOR RESPONSIBILITIES. The administrator is responsible for the management of all the Center's licensed locations and services to the extent authority is delegated by the licensee. An equally qualified person must be designated in writing to act as the back-up administrator in the absence of the administrator. The administrator has the following responsibilities:

- (i) Ensuring staff's compliance with all applicable statutes, regulations, and rules;
- (ii) Overseeing and being responsible for the provision and coordination of consumer care, treatment, and services;
- (iii) Organizing and directing the Center's ongoing functions;
- (iv) Maintaining communication between the licensee and staff;
- (v) Employing sufficient number of staff with appropriate training and skills to meet consumers' care, treatment, and service needs identified in consumers' written plan of care and in accordance with job descriptions;
- (vi) Implementing written personnel policies, job descriptions, and current agency policies and procedures;
- (vii) Ensuring written policies, procedures and forms are individualized for the Center and contain effective dates and revisions dates;
- (viii) Ensuring the Center maintains a copy of all active policies, procedures and forms and are available for staff use;
- (ix) Ensuring the Center maintains a copy of all active and inactive policies, procedures and forms for a minimum of 7 years;
- (x) Ensuring an investigation is completed on suspected abuse, neglect, exploitation, or misappropriation of money or property and take action to prevent recurrence and to protect all Center consumers from or the potential for such until the investigation is completed;
- (xi) Providing orientation for new staff, scheduled in-service education programs, and opportunities for continuing education of the staff;
- (xii) Maintaining appropriate personnel and administrative records;
- (xiii) Ensuring the completion, maintenance, and submission of reports and records as required by the Department; and
- (xiv) Ensuring satellite location staff are supervised by the administrator or the administrator's designated person of the Parent Center at least once a month. Documentation of these visits must be maintained at the Parent Center.

010.03 MEDICAL DIRECTOR. A licensee providing respiratory care services through a respiratory care practitioner must have a medical director and meet the requirements in Neb. Rev. Stat. § 38-3214.

010.04 STAFF REQUIREMENTS. The licensee must have sufficient staff with required training and skills to provide the services as approved on the Center license and as necessary to meet the needs of each consumer accepted for care, treatment or services in a safe and timely manner. Each licensee must verify and maintain evidence of the current, active licensure, registration, certification or other credential for each staff member. This must include verification prior to staff assuming assigned job duties, and evidence that such status is checked and maintained throughout the entire time of employment.

010.04(A) EMPLOYMENT. Each licensee must complete criminal and registry background checks on each direct care and transportation staff member and maintain evidence of the following:

010.04(A)(i) CRIMINAL BACKGROUND CHECKS. Completion of pre-employment criminal background checks through a governmental law enforcement agency or a private entity that maintains criminal background information.

010.04(A)(ii) REGISTRY CHECKS. Completion of pre-employment checks for adverse findings on the following Nebraska registries:

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

010.04(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 property.

010.04(A)(iv) ADVERSE FINDINGS. The licensee must not employ a person with adverse findings on the Sex Offender Registry or the Nurse Aide Registry.

010.04(A)(v) HEALTH STATUS. Written policies and procedures must be implemented and revised, as necessary, regarding the health status of each direct care and transportation staff member to prevent transmission of disease to consumers. A health screening for each direct care and transportation staff person is to be completed prior to the staff person having contact with or providing direct care, treatment, or services for consumers.

010.04(B) INITIAL ORIENTATION. An orientation program must be provided for all new staff and, as needed, for existing staff who are given new assignments. Such training must be documented in the employment record. The orientation program must include:

- (i) Job duties and responsibilities;
- (ii) Organizational structure;
- (iii) Consumer rights;
- (iv) Consumer care policies and procedures;
- (v) Personnel policies and procedures; and
- (vi) Reporting requirements for abuse, neglect, and exploitation in accordance with state law and with licensee's policies and procedures.

010.04(C) TRAINING. All staff must receive ongoing and specialized training in order to perform job responsibilities. Each licensee must provide training of staff to permit performance of particular procedures or to provide specialized care, whether as part of a training program or as individualized instruction.

010.04(D) INDIVIDUALS UNDER HOURLY OR PER-VISIT CONTRACTS. If individuals or entities under hourly or per-visit contracts are utilized there must be a written contract between the licensee and the individual or entity. The licensee must maintain a copy of all active and inactive contracts for seven years. The contract must include:

- (i) A statement that consumers are accepted for care only by the Parent Center;
- (ii) A description of the services and the manner in which and location where they are to be provided;
- (iii) A statement that the contractor must conform to all applicable Center policies, including those related to qualifications;
- (iv) A statement that the contractor is responsible for participating in the development of plans of care;
- (v) A statement that the services are controlled, coordinated, and evaluated by the Parent Center;
- (vi) The procedures for submitting clinical and progress notes, scheduling consumer care, and continuing periodic consumer evaluations; and
- (vii) The procedures for determining charges and reimbursement.

010.04(E) INTERDISCIPLINARY TEAM. The licensee must designate an interdisciplinary team composed of individuals who provide, direct and supervise the care, treatment and services offered by the licensee.

010.04(E)(i) COMPOSITION OF THE TEAM. The interdisciplinary team must include at least the following individuals who are employees or contracted staff of the Center and who hold a Nebraska license or credential, when required:

- (1) Practitioner;
- (2) Registered nurse;
- (3) Certified, master's level social worker;
- (4) Physical therapist;
- (5) Occupational therapist;
- (6) Recreational therapist or activity coordinator;
- (7) Dietitian;
- (8) Home Health Agency Services Coordinator; and

- (9) A medical director when respiratory care services are provided through a respiratory care practitioner.

010.04(E)(ii) ROLE OF THE TEAM. The interdisciplinary team is responsible for:

- (1) Participation in consumer initial assessments and reassessments;
- (2) Participation in the establishment and approval of the initial written plan of care for each consumer;
- (3) Provision or supervision of Center care, treatment, and services; and
- (4) Periodic review and updating of the written plan of care for each consumer.

010.04(F) PRE-ENROLLMENT SCREENING, ENROLLMENT, AGREEMENTS, DENIALS, RENEWALS, AND DISENROLLMENT. The licensee must implement written criteria, policies, and procedures for pre-enrollment screening of prospective consumers, enrollment, enrollment agreements, enrollment denials, enrollment renewals, disenrollment and involuntary disenrollment for consumers. The licensee must:

- (i) Have a written, individualized enrollment agreement, signed and dated by the consumer or the consumer's designee, for each consumer with effective date, expiration date, consumer's identifying information, and all Center Services to be provided by the licensee;
- (ii) Have documentation of the consumer's disenrollment date approved by the Division of Medicaid and Long-Term Care within the Department; and
- (iii) Document all efforts made to prevent involuntary disenrollment for a consumer who engages in disruptive or threatening behavior.

010.04(G) INTERDISCIPLINARY TEAM INITIAL COMPREHENSIVE ASSESSMENT AND PLAN OF CARE. An initial comprehensive assessment must be completed by the interdisciplinary team for each consumer, independent of any pre-enrollment screening or assessment by the interdisciplinary team, by the effective date shown in the consumer's signed and dated enrollment agreement. The reason for any delays in completing the initial comprehensive assessment must be documented in the consumer's care plan and progress notes. At a minimum, the interdisciplinary team members who conduct the initial assessment in person with the consumer are the practitioner, registered nurse, certified master's level social worker, physical therapist, occupational therapist, recreational therapist or activities coordinator, dietitian, Home Health Agency Services Coordinator, and when respiratory care services are provided through a respiratory care practitioner, by a medical director. Upon completion of the interdisciplinary team member's assessment, the interdisciplinary team promptly consolidates the discipline-specific assessments into a single written plan of care for each consumer through discussion in interdisciplinary team meetings and consensus of the entire interdisciplinary team for final approval and signature by the interdisciplinary team practitioner and, when respiratory care services are provided through a respiratory care practitioner, for final approval and signature by the medical director. Initial comprehensive assessment must include the following:

- (i) Physical and cognitive function and ability;
- (ii) Medication use;
- (iii) Participant and caregiver preferences for care;
- (iv) Socialization and availability of family support;
- (v) Current health status and treatment needs;

- (vi) Nutritional status;
- (vii) Home environment, including home access and egress;
- (viii) Participant behavior;
- (ix) Psychosocial status;
- (x) Medical and dental status; and
- (xi) Participant language and cultural needs.

010.04(H) SEMIANNUAL REASSESSMENTS AND REVISIONS TO THE PLAN OF CARE. The interdisciplinary team practitioner, registered nurse, certified master's level social worker, and recreational therapist or activities coordinator, and, when respiratory care services are provided through a respiratory care practitioner, the medical director must conduct periodic health reassessments and reevaluate each consumer's care plan, including defined outcomes and make changes as necessary, on a semiannual basis. Other interdisciplinary team members or specialty practitioners actively involved in the development or implementation of the consumer's care plan must also conduct the semiannual reassessment. The interdisciplinary team practitioners conduct the reassessment in person and meet to consolidate the reassessment findings into the care plan for final approval and signature by the interdisciplinary team practitioner and, when respiratory care services are provided through a respiratory care practitioner, the medical director.

010.04(I) ANNUAL REASSESSMENTS AND REVISIONS TO THE PLAN OF CARE. The interdisciplinary team's physical therapist, occupational therapist, dietitian, Home Health Agency Services Coordinator, and, when respiratory care services are provided through a respiratory care practitioner, the medical director must conduct in-person consumer annual reassessments. Other interdisciplinary team members or specialty practitioners actively involved in the consumer's care plan must also conduct an in-person consumer annual reassessment. The interdisciplinary team members who conduct the reassessment must meet to consolidate the reassessment findings into the revised care plan for final approval and signature by the interdisciplinary team practitioner and, when respiratory care services are provided through a respiratory care practitioner, the medical director.

010.04(J) PERIODIC AND UNSCHEDULED HEALTH REASSESSMENTS AND REVISIONS TO THE PLAN OF CARE. In addition to the semiannual and annual consumer reassessments, the following situations must trigger a consumer reassessment:

- (i) When a consumer experiences a significant change in health or psychosocial status, the interdisciplinary team practitioner, registered nurse, certified master's level social worker, physical therapist, occupational therapist, recreational therapist or activities coordinator, dietitian, Home Health Agency Services Coordinator, and, when respiratory care services are provided through a respiratory care practitioner, the medical director must conduct an in-person consumer reassessment and update the written plan of care based on the reassessment findings for final approval and signature by the interdisciplinary team practitioner and, when respiratory care services are provided through a respiratory care practitioner, the medical director; and
- (ii) When a consumer or a consumer's designee believes the consumer needs to initiate, eliminate, or continue a particular service, the interdisciplinary team

members will determine the pertinent practitioners to conduct the in-person consumer reassessment, and, when respiratory care services are provided through a respiratory care practitioner, the medical director must also reassess. If the requested change is approved by the interdisciplinary team, the consumer's written plan of care must be updated for final approval and signature by the interdisciplinary team practitioner, and, when respiratory care services are provided through a respiratory care practitioner, by the medical director. The licensee must have procedures for documenting receipt of such requests, timely resolution, and timely consumer or designee notification of the interdisciplinary team's decision. The interdisciplinary team's decision should be communicated in writing to the consumer as soon as possible, but no later than 72 hours after receiving the consumer's or their designee's request.

010.05 CONSUMER RIGHTS. The licensee must implement a bill of rights that will be equally applicable to all consumers. The licensee must provide the consumer or designee a written notice of the consumer's rights before providing care, treatment or services to the consumer. Documentation showing the consumer or designee has received and understands the intent of the consumer's rights is to be maintained as set out in 175 NAC 1.

010.05(A) RIGHTS. The consumer has the right to:

- (i) Choose the Center that provides his or her care;
- (ii) Participate in the planning of his or her care and to receive appropriate instructions and education regarding the plan, prior to the care being provided and as changes are made in the written plan of care;
- (iii) Request information about his or her diagnosis, prognosis, and treatment, including alternatives to care and risks involved, in terms consumers and their families or designees can readily understand;
- (iv) Refuse care, treatment, or services and to be informed of possible health consequences of this action;
- (v) Care given without discrimination as to race, color, creed, sex, age, or national origin;
- (vi) Be admitted for service only if the licensee has the ability to provide safe, professional care at the level of intensity needed and to reasonable continuity of care;
- (vii) Confidentiality of all records, communications, and personal information;
- (viii) Review all health records pertaining to the consumer, unless, the practitioner or medical director has documented otherwise in the medical record;
- (ix) Receive both an oral and written explanation regarding involuntary disenrollment. Consumers must receive at least a 2-week notice prior to termination of services. When a consumer is involuntarily disenrolled by the practitioner's or physician's written order, a 2-week notice is not required. A 2-week notice is not required when consumer services are being terminated based on an unsafe care environment in the consumer's home, consumer non-compliance with the plan of care, or failure to pay for services rendered;
- (x) Voice complaints or grievances and suggest changes in service or staff without fear of reprisal or discrimination. Complaints made by the consumer or designee received by the licensee regarding care or treatment must be investigated. The licensee must document both the existence and the resolution of the complaint.

The consumer or designee must be informed of the outcome and resolution of the complaint or grievance;

- (xi) Be fully informed of policies and charges for services prior to receiving care;
- (xii) Be free of verbal, physical, and psychological abuse and to be treated with dignity;
- (xiii) Have his or her property treated with respect; and
- (xiv) Receive information regarding advance directives.

010.05(B) ADVANCE DIRECTIVES. The licensee is to inform and distribute written information to the consumer or designee, in advance, concerning its policies on advance directives, including a description of applicable state law on advance directives.

010.05(C) CONSENT. A consumer or designee whose home is to be visited by an authorized representative of the Department must be notified by the licensee or the Department before the visit, to ascertain a verbal consent for the visit. A written consent form clearly stating that the consumer voluntarily agrees to the visit must be presented to and signed by the consumer or designee prior to observation of care or treatment by the Department representative. The licensee must arrange this visit. All consumers have the right to refuse to allow an authorized representative of the Department to enter his or her home for the purposes of assessing the provision of home health services.

010.06 CONSUMER CARE, TREATMENT AND SERVICES. Consumer care, treatment, and services provided by the licensee must include:

- (A) A practitioner's order for care, treatment, or services to be provided for each consumer;
- (B) A written plan of care devised by a registered nurse or qualified professional of the appropriate discipline after an initial consumer assessment at the Center or the consumer's home;
 - (i) The written plan of care must be approved by the consumer's practitioner within 30 calendar days of the effective date shown in the consumer's signed and dated enrollment agreement; and
 - (ii) The written plan of care must be reviewed with each interdisciplinary team assessment and as often as the severity of the consumer's condition requires; and
- (C) A licensee that provides more than one of the Center Services to a single consumer is responsible for coordination of those services to assure that the services effectively complement one another and support the objectives in the written plan of care.

010.07 ADMINISTRATION OR PROVISION OF MEDICATIONS. Consumers must receive medications only as legally prescribed by a medical practitioner, in accordance with the practitioner-approved, and when required the physician-approved, written plan of care, the 5 rights, and prevailing professional standards.

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

010.07(A)(i) SELF-ADMINISTRATION OF MEDICATIONS. Consumers must be allowed to self-administer medications, with or without 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.

The licensee must implement written policies to address consumer self-administration of medication, including:

- (1) Storage and handling of medications;
- (2) Inclusion of the determination that the consumer may self-administer medication in the consumer written plan of care; and
- (3) Monitoring the plan to assure continued safe administration of medications by the consumer.

010.07(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.

010.07(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 comply with the Medication Aide Act, its implementing regulations, and this chapter.

010.07(B) ADVERSE REACTIONS AND MEDICATION ERRORS. Each licensee must report any adverse reactions to a medication by the consumer and any medication errors in administration or provision of prescribed medications to the consumer's practitioner immediately upon discovery. A written report of the adverse reaction and medication error must be completed immediately upon discovery and kept in the consumer's record. Errors include any variance from the 5 rights or the prescription.

010.08 SERVICES PROVIDED BY DIRECT CARE STAFF. The licensee must ensure uncredentialed direct care staff and medication aides are not allowed to have unsupervised contact with consumers or to provide care, treatment or services for consumers prior to meeting the following requirements:

- (A) Documentation of successful completion of training and competency testing for all care, treatment, and services to be provided by the staff member;
- (B) Consumer-specific, written instructions for staff to provide care, treatment, or services. These written instructions must be prepared, and updated as often as the severity of the consumer's condition requires, but at least every 62 days by the licensed health care professional responsible for direction and supervision of the uncredentialed direct care staff. The licensee must have a written process for incorporating these written instructions into the consumer's practitioner-approved, and when required the physician-approved, written plan of care prior to the staff member using the written instructions;
- (C) Documentation of supervision by a licensed health care professional, of the appropriate discipline, as required in the Uniform Credentialing Act and related regulations. The supervising professional must ensure supervision occurs more frequently when the consumer's condition or the experience level of the staff requires increased supervision to ensure the consumer's health and safety are protected;
- (D) Staff must only provide care, treatment and services allowed by law; and

- (E) Uncredentialed direct care staff providing home health aide services in the consumer's home, must meet the applicable home health aide requirements in 175 NAC 14.

010.09 HEALTH CLINIC SERVICES. Licensees who provide health clinic services, must have a separate area used only for the provision of health clinic services and meet the requirements in the Health Care Facility Licensure Act, 175 NAC 1, this chapter, and 175 NAC 7 except as shown below:

- (A) The Center's administrator and back-up administrator must also be the administrator and back-up administrator for health clinic services.

010.10 ADULT DAY SERVICES. Licensees who provide adult day services, must have a separate area used only for the provision of adult day services and meet the requirements in the Health Care Facility Licensure Act, 175 NAC 1, this chapter, and 175 NAC 5 except as shown below:

- (A) The Center's administrator and back-up administrator must also be the administrator and back-up administrator for adult day services.

010.11 HOME HEALTH AGENCY SERVICES. Licensees who provide Home Health Agency Services, must ensure a registered nurse is available or on call to the staff during all hours that skilled nursing care, home health aide services, or medication aide services are provided and must meet the requirements in the Health Care Facility Licensure Act, 175 NAC 1, this chapter, and 175 NAC 14 except as shown below:

- (A) The Center's administrator and back-up administrator must also be the administrator and back-up administrator for Home Health Agency Services;
(B) The branch office requirements must meet Satellite Location requirements as set out in this chapter;
(C) When the licensee provides Home Health Agency Services at a Satellite Location, the licensee must provide the same Home Health Agency Services shown on the license at the Satellite Location;
(D) Consumer initial assessments and reassessments must meet the requirements set out in this chapter for consumer initial assessments and reassessments; and
(E) Updates to the consumer's written plan of care must meet the requirements set out in this chapter for updates to the consumer's written plan of care.

010.12 IN-CENTER DIALYSIS SERVICES. Licensees who provide in-center dialysis services, must have a separate area used only for the provision of in-center dialysis services, must satisfy the Centers for Medicare and Medicaid (CMS) requirements and all the elements of the conditions for coverage as an end-stage renal disease facility at 42 Code of Federal Regulation (CFR) Part § 494 Subparts A, B, C and D, at 42 CFR § 405.2101, Subpart U, and at 42 CFR § 494.62, the condition for coverage for emergency preparedness, meet the requirements in the Health Care Facility Licensure Act, 175 NAC 1, this chapter, and 175 NAC 7, except as shown below:

- (A) The Center's administrator and back-up administrator must also be the administrator and back-up administrator for in-center dialysis services.

010.13 AMBULATORY SURGICAL CENTER SERVICES. Licensees who provide ambulatory surgical center services, must have a separate area used only for the provision of

ambulatory surgical center services, must satisfy all the elements of the Centers for Medicare and Medicaid (CMS) conditions for coverage for an ambulatory surgical center as set out in 42 CFR § 416 Subparts A through C and 42 CFR § 416.54, the condition for coverage for emergency preparedness meet the requirements in the Health Care Facility Licensure Act, 175 NAC 1, this chapter, and 175 NAC 7, except as shown below:

- (A) The Center's administrator and back-up administrator must also be the administrator and back-up administrator for ambulatory surgical center services.

010.14 TRANSPORTATION SERVICES. A licensee providing transportation services must meet all applicable requirements in 175 NAC 1 and the requirements below:

- (A) Staff in each vehicle must have a functioning cellular telephone or other functioning two-way voice communication device with them for use in an emergency;
- (B) When a consumer has a condition that requires registered nurse observation or assessment, there must be at least two staff members on the transporting vehicle at all times, one of whom must be a registered nurse;
- (C) When a consumer requires a ventilator power source, the back-up power source must be checked before transport to confirm the power source is operational and has sufficient charge to ensure uninterrupted ventilator service during transport; and
- (D) Transportation staff who do not hold an active credential under the Uniform Credentialing Act must meet direct care staff requirements.