

TITLE 175 HEALTH CARE FACILITIES AND SERVICES LICENSURE

CHAPTER 5 ADULT DAY SERVICE

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TITLE 175 HEALTH CARE FACILITIES AND SERVICES LICENSURE

CHAPTER 5 ADULT DAY SERVICE

5-001 SCOPE AND AUTHORITY: These regulations govern licensure of adult day services. The regulations are authorized by and implement the Health Care Facility Licensure Act, Neb. Rev. Stat. §§ 71-401 to 71-462.

5-001.01: These regulations apply to any person or legal entity providing care and an array of social, medical, or other support services for a period of less than 24 consecutive hours in a community-based group program to four or more persons who require or request such services due to age or functional impairment.

5-001.02: These regulations do not apply to:

1. Services provided under the Developmental Disabilities Services Act;
2. A person or legal entity who provides adult day service to three or fewer clients; or
3. Adult day service provided in a licensed facility to residents of that facility.

#### 5-002 DEFINITIONS

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

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

Administrator means the operating officer of an adult day service and may include such titles as administrator, chief executive officer, manager, superintendent, director or similar designation.

Adult day service (ADS) means a person or any legal entity which provides care and an array of social, medical, or other support services for a period of less than 24 consecutive hours in a community-based group program to four or more persons who require or request such services due to age or functional impairment.

Agreement of participation means a written agreement negotiated between the ADS and the client or designee which delineates:

1. The services to be provided within the scope of the ADS; and
2. The responsibilities of the client or designee.

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

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

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

Client means any person receiving care and services in an ADS.

Complaint means an expression of concern or dissatisfaction alleging violation of a licensure regulation.

Community based means serving individuals outside of the individual home or licensed facility at a defined location.

Completed application means an application that contains all the information specified in 75 NAC 5-003 and includes all required attachments, documentation, and the licensure fee.

Department means the Department of Health and Human Services.

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

Device means 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.

Direction and monitoring, means, for the purpose of medication administration, the acceptance of responsibility for observing and taking appropriate action regarding any desired effects, side

effects, interactions, and contraindications associated with the medication. Direction and monitoring may be done by a:

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

Director means the Director of Public Health of the Division of Public Health of the Department of Health and Human Services.

Drug means substances as defined in Neb. Rev. Stat. § 71-1,142.

Existing facility means an ADS whose construction or remodeling plans were approved by the Department prior to the effective date of 175 NAC 5.

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

Facility means the physical location where adult day services are provided.

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

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

Food code means the Nebraska 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.

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

Functional impairment means a condition marked by physical disabilities such as sensory loss, loss of mobility, incontinence, loss of speech, and, mental or emotional disabilities such as social isolation, depression, or behavioral disorders.

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

Health care practitioner means any individual credentialed under the Uniform Licensing Law or other laws of the State of Nebraska.

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

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

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

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

Medical services means those services that address the health concerns and/or needs of clients, including complex interventions within the scope of practice of the health care practitioner.

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

Medication administration means:

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

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

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

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

NAC means Nebraska Administrative Code.

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

New construction means a facility or a distinct part of a facility in which care and services is to be provided and which is enlarged, remodeled, or altered in any fashion or is built from the ground up on or after the effective date of 175 NAC 5.

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

Personal care (see definition of "Care".)

Physician means any person authorized to practice medicine in this state as provided in Neb. Rev. Stat. §§ 71-102 to 71-110.

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

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

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

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

Representative peer review organization means a utilization and quality control peer review organization as defined in section 1152 of the Social Security Act, 42 U.S.C. 1320c-1, as that section existed on September 1, 2007, and with which the Department has contracted as authorized in the Health Care Facility Licensure Act.

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

Screening tool means a simple interview or testing procedure to collect basic information on health status.

Service means an adult day care service.

Service plan means a written action plan based on assessment data that identifies the client's needs and the strategy for addressing care and/or services to meet those needs within the scope of the adult day service.

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

Social services means those activities that assist the client in carrying out his/her therapeutic activities as outlined in their agreement of participation.

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

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

Therapeutic activity means a professionally directed set of actions designed to improve or maintain or lessen the decline of physical, cognitive, or social functioning depending on the population served.

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

Unlicensed direct care staff means personnel who are not licensed or certified under the Uniform Licensing Law or other state laws governing the practice of health care and whose primary responsibility is to manage, supervise, and/or provide direct care to clients. Unlicensed direct care staff includes nursing assistants, medication aides, and other personnel with this responsibility and with job titles designated by the facility.

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

### 5-003 LICENSING REQUIREMENTS AND PROCEDURES

Any person intending to establish, operate, or maintain an ADS must first obtain a license from the Department. A facility must not hold itself out as an ADS or as providing health care services unless licensed under the Health Care Facility Licensure Act. An applicant for an initial or renewal license must demonstrate that the ADS meets the care, treatment, and operational and physical plant standards of 175 NAC 5.

5-003.01 Initial License: The initial license process occurs in two stages. The first stage consists of the applicant's submission of affirmative evidence of the ability to comply with the operational and physical plant standards contained in 175 NAC 5-006 and 175 NAC 5-007. The application is not complete until the Department receives documents specified in 175 NAC 5-003.01.

The second stage consists of the Department's review of the completed application together with an inspection of the ADS. The Department determines whether the applicant meets the standards contained in 175 NAC 5 and the Health Care Facility Licensure Act.

5-003.01A Applicant Responsibilities: An applicant for an initial ADS license must:

1. Intend to provide food, and care, treatment, maintenance, or related services in a group setting to persons who require or request such services due to age or functional impairment;
2. Comply with the applicable codes, guidelines, and standards specified in 175 NAC 5-007;
3. Submit a written application to the Department as provided in 175 NAC 5-003.01B;
4. Receive approval in writing, from the Department, of schematic and, if new construction, of construction plans; and

5. Notify the Department at least 30 working days prior to planned client occupancy.

5-003.01B Application Requirements: An applicant may construct an application or obtain an application form from the Department. The application must include:

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

16. For new construction of a facility, construction plans completed in accordance with The Engineers and Architects Regulation Act, Neb. Rev. Stat. §§ 81-3401 to 81-3455. An applicant may construct a project and/or certification document, or obtain a form from the Department. Construction plans must include the following:
  - a. Project name, description of the project with quantity and floor area information on bed, care, treatment, bathing, toileting, dining, and activity locations, building systems, medical equipment, street address, and contact person;
  - b. Site plan, floor plans, elevations, wall and building sections, construction details, plumbing and electrical diagrams, and construction component schedules;
  - c. Complete list of names, titles, and telephone numbers of other authorities reviewing or inspecting the construction;
  - d. Upon Department request, such additional information that may be required for review, such as structural and mechanical calculations, electrical system calculations, and product and equipment information; and
  - e. Certification, if any, from a licensed architect or engineer that the schematic plans, construction plans, and any revisions thereof meet the requirements of 175 NAC 5-007;
17. Planned occupancy date;
18. Copies of zoning approval from the relevant jurisdiction;
19. Occupancy certificates issued by the State Fire Marshal or delegated authority; and
20. The required licensure fee specified in 175 NAC 5-004.10.

5-003.01C Department Responsibilities: The Department will:

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

5-003.01D Denial of License: See 175 NAC 5-008.01 and 5-008.02 for grounds and procedures for the Department's denial of an initial license.

5-003.02 Renewal Licenses

5-003.02A Licensee Responsibilities: The licensee must submit a written application to the Department. The licensee may construct an application or obtain an application form from the Department. The licensure application must include:

1. Full name of the ADS to be licensed, street, and mailing address, telephone and facsimile number, if any;
2. The type of ADS to be licensed;
3. Name of the administrator;
4. Name and address of the facility owner(s);
5. Ownership type;
6. Mailing address for the owner;
7. The preferred mailing address for receipt of official notices from the Department;
8. List of names and addresses of all persons in control of the facility. The list must include all individual owners, partners, limited liability company members, and members of boards of directors owning or managing operations, and any other persons with financial interests or investments in the facility. In the case of publicly held corporations, only those stockholders who own 5% or more of the company's stock must be listed;
9. Legal name of the individual or business organization (government, corporation, partnership, limited liability company, or other type) to whom the license should be issued and a statement that such individual or organization accepts the legal responsibility for compliance with 175 NAC 5;
10. Applicant's Social Security number if the applicant is an individual. To ensure social security numbers are not part of public records and are used only for administrative purposes, applicants may submit social security numbers in a separate document;
11. Applicant's federal employer identification number, if not an individual;
12. Statement that the ADS will be:
  - a. A free-standing facility; or
  - b. Located in a licensed health care facility;
13. Signatures of:
  - a. The owner, if the applicant is an individual or partnership;
  - b. Two of its members, if the applicant is a limited liability company;
  - c. Two of its officers, if the applicant is a corporation;
  - d. The head of the governmental unit having jurisdiction over the facility to be licensed, if the applicant is a governmental unit;
14. Occupancy certificates issued by the State Fire Marshal or delegated authority dated within the 18 months prior to the license expiration date; and
15. The required licensure fee specified in 175 NAC 5-004.10.

5-003.02B Department Responsibilities: The Department will:

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

5-003.02C Refusal to Renew: See 175 NAC 5-008.01 and 5-008.02 for grounds and procedures for refusal to renew a license.

5-003.03 Reinstatement from Lapsed Status: An ADS requesting reinstatement of its lapsed license must submit to the Department an application for reinstatement and pay the required licensure fee specified in 175 NAC 5-004.10. The application must conform to the requirements specified in 175 NAC 5-003.02.

5-003.03A The Department will review the application for completeness and will decide if an onsite inspection is needed to determine compliance with the physical plant and the operation and care and services requirements of 175 NAC 5-006 and 5-007. The decision is based upon the following factors:

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

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5-003.03B When the Department decides that a reinstatement inspection is warranted, it will conduct an inspection in accordance with 175 NAC 5-005.

5-003.03C When the Department decides that a reinstatement inspection is not warranted and that the application is complete, it will reinstate the license.

5-003.03D Refusal to Reinstater: See 175 NAC 5-008.01 and 5-008.02 for grounds and procedures for refusal to reinstate a lapsed license.

5-004 GENERAL REQUIREMENTS

5-004.01 Separate License: An applicant must obtain a separate license for each type of health care facility or health care service that the applicant seeks to operate. All buildings in which care and services are provided must comply with 175 NAC 5-006, and if applicable, 175 NAC 5-007. A single license may be issued for a facility operating in separate buildings or structures on the same premises under one management.

5-004.01A Adult Day Service Settings: Adult Day Service may be delivered in either of the following settings:

5-004.01A1 Free-Standing Adult Day Service: An ADS license is required when four or more persons are receiving ADS in a location that is not licensed as another type of health care facility.

5-004.01A2 Adult Day Service in a Licensed Facility: A separate ADS license is required when a licensed facility provides ADS to four or more persons who do not reside at the licensed facility. The ADS must have separate, identifiable space available for ADS activities during the hours ADS is provided.

5-004.02 Single License Document: The Department may issue one license document that indicates the various types of health care facilities or health care services for which the entity is licensed.

5-004.03 Effective Date and Term of License: An ADS license expires on July 31 of each year.

5-004.04 License Not Transferable: A license is issued for the ADS, persons named in the application and the premises where the service is conducted, if appropriate, and is not transferable or assignable. Change of ownership (sale, whether of stock, title, or assets, lease, discontinuance of operations) or premises terminates the license. If there is a change of ownership and the ADS remains on the same premises, the inspection in 175 NAC 5-005 is not required. If an ADS changes premises, it must pass the inspection specified in 175 NAC 5-005.

5-004.05 Occupancy: The licensee must not serve more clients at one time than the maximum occupancy for which the facility is licensed.

5-004.06 Change of Ownership or Premises: The licensee must notify the Department in writing ten days before an ADS is sold, leased, discontinued or moved to new premises.

5-004.07 Notifications: An applicant or licensee must notify the Department in writing by electronic mail, facsimile, or postal service:

1. At least 30 working days prior to the date it wishes to increase the number of clients which the facility is licensed;
2. To request a single license document;
3. To request simultaneous facility or service licensure inspections for all types of licensure held or sought;
4. If new construction is planned, and submit construction plans prior to construction for Department approval prior to occupancy or use. The Department may accept certification from an architect or engineer in lieu of Department review;
5. Within 24 hours of any client death that occurred due to suicide or a violent act that occurred on the premises of the ADS, or the client's leaving the premises of the ADS without staff knowledge when departure presented a threat to the safety of the client or others;
6. Within 24 hours if an ADS has reason to believe that a client death was due to abuse or neglect by staff;
7. Within 24 hours of any facility fire requiring fire department response; or
8. Within 24 hours of an accident or natural disaster resulting in damage to the physical plant and having a direct or immediate adverse effect on the health, safety, and security of clients. This must include a description of the well-being of the facility's clients and the steps being taken to assure client safety, well-being, and continuity of care. The notification may be made by telephone if the accident or natural disaster has affected the facility's capacity to communicate.

5-004.08 Information Available to Public: The licensee must make available for public inspection upon request licenses, license record information, and inspection reports. This information may be displayed on the licensed premises.

5-004.09 Deemed Compliance

5-004.09A Accreditation: The Department may deem an applicant or licensee in compliance with 175 NAC 5-006 based on its accreditation as an Adult Day Service by the:

1. Joint Commission on Accreditation of Healthcare Organizations; or
2. Commission on Accreditation of Rehabilitation Facilities.

5-004.09A1 The applicant or licensee must request the Department to deem its ADS in compliance with 175 NAC 5-006 based upon its accreditation. The request must be:

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

5-004.09A2 Upon receipt of the request, the Department will deem the ADS in compliance with 175 NAC 5-006 and will provide written notification of its decision to the ADS within 10 working days of the receipt of the request.

5-004.09A3 The Department will exclude an ADS that has been deemed in compliance with 175 NAC 5-006 from the random selection of up to 25% of adult day services for compliance inspections under 175 NAC 5-005.04A. The ADS may be selected for a compliance inspection under 175 NAC 5-005.04B.

5-004.09A4 To maintain deemed compliance, the licensee must maintain the accreditation on which its license was issued. If the accreditation has been sanctioned, modified, terminated, or withdrawn, the licensee must notify the Department within 15 days of receipt of notification of the action. After notifying the Department, the ADS may continue to operate unless the Department determines that the facility no longer meets the requirements for deemed compliance. If the Department determines the facility no longer meets the requirements for deemed compliance, the facility is subject to inspections under 175 NAC 5-005.

5-004.10 Fees: The licensee must pay fees for licensure and services as set forth below:

1. Initial and renewal licensure fees for an ADS are:
  - a. Programs with license capacity of 4-16           \$200
  - b. Programs with license capacity of 17-50       \$250
  - c. Programs with license capacity of 51 and up   \$300
2. Duplicate license: \$10
3. Refunds for denied applications:
  - a. If the Department did not perform an inspection, it must refund the license fee except for an administrative fee of \$25.
  - b. If the Department performed an inspection, the fee is not refunded.

5-005 INSPECTIONS: To determine compliance with operational, care, services, and physical plant standards, the Department inspects the ADS prior to and following licensure. The Department determines compliance through on-site inspections, review of schematic and construction plans, and reports of qualified inspectors.

5-005.01 Initial Inspection: The Department will conduct an announced initial on-site inspection to determine compliance with 175 NAC 5-006 and 5-007. This inspection will

be conducted within 30 working days, or later when requested by the applicant, of receipt of a completed application for an initial license. The Department will provide a copy of the inspection report to the ADS within ten working days after completion of an inspection.

5-005.02 Results of Initial Inspection

5-005.02A When the Department finds that the applicant fully complies with the requirements of 175 NAC 5-006 and 5-007, the Department will issue a license.

5-005.02B When the Department finds that the applicant has complied substantially but has failed to comply fully with the requirements of 175 NAC 5-006 and 5-007 and the failure(s) would not pose an imminent danger of death or physical harm to the client, the Department may issue a provisional license. The provisional license:

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

5-005.02C When the Department finds that the applicant has one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety or security of the clients of the ADS, the Department may send a letter to the ADS requesting a statement of compliance. The letter will include:

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

5-005.02D Statement of Compliance: The statement of compliance must indicate any steps that have been or will be taken to correct each violation and the estimated time necessary to correct each violation. Based on the statement of compliance, the Department will take one of the following actions:

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

5-005.02E When the Department finds that the applicant fails to meet the requirements of 175 NAC 5-006 and 5-007 and the failure(s) would create an imminent danger of death or serious physical harm, the Department will deny the license.

5-005.03 Physical Plant Inspections: The Department will conduct inspections for conformity with approved construction plans and physical plant standards of 175 NAC 5-007 at existing facilities, new facilities, or new construction prior to use or occupancy.

5-005.03A On-site progress inspections of the physical plant by qualified inspectors for conformance to construction documents and code requirements may occur at any time after construction has begun and prior to the concealment of essential components.

5-005.03B The Department will conduct an on-site final inspection of the physical plant. In lieu of an on-site final inspection by the Department, the Department may accept a certification from a licensed architect or engineer that the physical plant meets the requirements of the Health Care Facility Licensure Act and 175 NAC 5, and that the facility is complete and ready for occupancy in accordance with Department approved plans. The architect or engineer may construct a certification form or obtain a certification form from the Department. The process for the certification is as follows:

5-005.03B1 The certification must state:

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

5-005.03B2 The certification must have attached to it:

1. Copies of documents from other authorities having jurisdiction verifying the facility meets the codes specified in 175 NAC 5-007.03A, and approved for use and occupancy;
2. Copies of certifications and documentation from equipment and building system installers stating with the sufficiency as allows for Departmental verification that all equipment and systems installed are operating and approved for use and occupancy; and

3. Schematic floor plans documenting actual room numbers or titles, and capacity, and life safety information.

5-005.04 Compliance Inspections: The Department may, following the initial licensure of an ADS, conduct an unannounced on-site inspection at any time it deems necessary to determine compliance with 175 NAC 5-006 and 5-007. The inspection may occur based on random selection or focused selection.

5-005.04A Random Selection: Each year the Department may conduct an inspection of up to 25% of the ADS based on a random selection of licensed adult day services.

5-005.04B Focused Selection: The Department may conduct an inspection of an ADS when the Department is informed of one or more of the following:

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

5-005.05 Results of Compliance Inspections

5-005.05A When the inspection reveals violations that create imminent danger of death or serious physical harm or has direct or immediate adverse relationship to the health, safety, or security of the persons receiving ADS, the Department will review the inspection findings within 20 working days after the inspection. If the evidence supports the findings, the Department will impose discipline in accordance with 175 NAC 5-008.03.

5-005.05B When the inspection reveals one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or security of the persons receiving ADS,

the Department may request a statement of compliance from the ADS. The statement of compliance must indicate any steps that have been or will be taken to correct each violation and the period of time estimated to be necessary to correct each violation. Based on the statement of compliance, the Department will take one of the following actions:

1. If the ADS submits and implements a statement of compliance that indicates a good faith effort to correct the violations, the Department will not take any disciplinary action against the ADS license;
2. If the ADS fails to submit and implement a statement of compliance, the Department will initiate disciplinary action against the ADS license. Such action will be in accordance with 175 NAC 5-008; or
3. In making a determination to accept a statement of compliance or initiate or not initiate disciplinary action against the license, the Department may conduct a re-inspection within 90 days of the first inspection, or sooner as requested by the licensee.

#### 5-005.06 Re-inspections

5-005.06A The Department may conduct re-inspections to determine if a facility fully complies with the requirements of 175 NAC 5-006 and 5-007. Re-inspection occurs:

1. After the Department has issued a provisional license;
2. Before a provisional license is converted to a regular license;
3. Before a disciplinary action is modified or terminated; or
4. After the Department receives a statement of compliance for cited violations.

5-005.06B Following a re-inspection, the Department may:

1. Convert a provisional license to a regular license;
2. Affirm that the provisional license is to remain effective;
3. Modify a disciplinary action in accordance with 175 NAC 5-008.02; or
4. Grant full reinstatement of the license.

5-006 STANDARDS OF OPERATION, CARE AND SERVICES: To provide adequate protection to clients and compliance with state statutes, an ADS must meet the following:

5-006.01 Licensee: The licensee must determine, implement and monitor policies to assure that the ADS is administered and managed appropriately. The licensee's responsibilities include:

1. Monitoring policies to assure the appropriate administration and management of the ADS;
2. Maintaining the ADS compliance by the ADS with all applicable state statutes and relevant rules and regulation;

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3. Ensuring the quality of all care and services provided to clients whether furnished by the ADS staff or through contract with the ADS;
4. Designating an administrator who is responsible for the day to day management of the ADS and defining the duties and responsibilities of the administrator in writing;
5. Notifying the Department in writing within five working days when a vacancy in the administrator position occurs, including who will be responsible for the position until another administrator is appointed;
6. Notifying the Department in writing within five working days when the vacancy is filled including an effective date and the name of the appointed administrator;
7. Ensuring clients are provided with a stable and supportive environment, through respect for the rights of clients and responsiveness to client needs;
8. Receiving periodic reports and recommendations regarding the quality assurance/performance improvement program;
9. Implementing programs and policies to maintain and improve the quality of client care and services based on quality assurance/performance reports; and
10. Ensuring that staff levels are sufficient to meet the clients' needs.

5-006.02 Administration: The administrator is responsible for planning, organizing, and directing the day to day operation of the ADS. The administrator must report all matters related to the maintenance, operation, and management of the ADS and be directly responsible to the licensee or to the person or persons delegated governing authority by the licensee. The administrator's responsibilities include:

1. Being responsible for the ADS's compliance with rules and regulations;
2. Being responsible for the ADS's promotion of client self-direction and participation in decisions which incorporate independence, individuality, privacy, and dignity;
3. Being on the premises a sufficient number of hours to permit adequate attention to the management of the ADS;
4. Maintaining sufficient number of staff with appropriate training and skills to meet clients' needs as defined in service agreements;
5. Providing written personnel policies, job descriptions, and current service policies and procedures that are made available to all personnel;
6. Maintaining appropriate personnel and administrative records;
7. Providing orientation for new staff, schedule in-service education programs and opportunities for continuing education for the staff;
8. Designating a substitute to act in his or her absence who must be responsible and accountable for management of the ADS;
9. Monitoring that agreements of participation and service plans are established and implemented;
10. Monitoring that facility staff identify and review incidents and accidents, client complaints and concerns, patterns and trends in overall operation such as provisions of client care and service, and take action to alleviate problems and prevent recurrence;
11. Developing procedures that require the reporting of any evidence of abuse, neglect or exploitation of any client served at the ADS 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; and
12. 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.

#### 5-006.03 Staff Requirements

5-006.03A Employment Eligibility: Each ADS must ensure and maintain evidence of the following:

5-006.03A1 Criminal Background Checks: The ADS must complete pre-employment criminal background checks on each unlicensed direct care staff member through a governmental law enforcement agency or a private entity that maintains criminal background information.

5-006.03A2 Registry Checks: The ADS must check each unlicensed direct care staff for adverse findings on the following registries:

1. Nurse Aide Registry;
2. Adult Protective Services Central Registry;
3. Central Register of Child Protection Cases; and
4. Nebraska State Patrol Sex Offender Registry.

5-006.03A3 The ADS must:

1. Determine how to use the criminal background and registry information, except for the Sex Offender Registry and the 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 client safety or client property.

5-006.03A4 The ADS must not employ individuals with adverse findings on the Sex Offender Registry, or on the Nurse Aide Registry regarding client abuse, neglect, or misappropriation of client property.

5-006.03A5 Health Status: The ADS must establish and implement policies and procedures regarding the health status of staff to prevent transmission of disease to clients. The ADS:

1. Must complete a health history screening for each staff person prior to their assuming job responsibilities.

2. May, at its discretion, based on results of the health history screening, require a physical examination.

5-006.03B Direct Care Staff Training: The ADS must ensure direct care staff receive training in order to perform job responsibilities. The ADS must provide for and maintain evidence of the following:

5-006.03B1 Orientation: The ADS must provide each direct care staff person with orientation of the ADS prior to the staff person having direct responsibility for care and services to clients. The training must include but is not limited to:

1. Job duties and responsibilities;
2. Client rights;
3. Client service agreements;
4. Infection control practices including handwashing techniques, personal hygiene, and disposal of infectious material;
5. Information on any physical and mental special care needs of the clients served by the ADS;
6. The ADS emergency procedures and information regarding advanced directives;
7. Personnel policies and procedures;
8. Client policies and procedures;
9. Information on abuse, neglect, and misappropriation of money or property of a client and reporting procedures; and
10. Disaster preparedness plans.

5-006.03B2 Ongoing Training: The ADS must provide and maintain evidence of ongoing/continuous in-services or continuing education for staff. The ADS must maintain a record including date, topic, and participants. Training must include, but is not limited to:

1. Infection control practices including handwashing techniques, personal hygiene, and disposal of infectious material;
2. The facility's emergency procedures and information regarding advanced directives;
3. Information on abuse, neglect, and misappropriation of money or property of a client and reporting procedures;
4. Disaster preparedness plans;
5. Client rights; and
6. Other topics determined by the program.

5-006.03C Staffing Resources: The ADS must ensure that staffing resources and training are sufficient to meet the level of supervision and assistance with activities of daily living, personal care and health maintenance activities that are required by the clients as defined in their client service agreement. The ADS staff must provide supervision and assistance in a safe and timely manner.

5.006.03C1 The ADS must have at least one staff person at the ADS at all times when clients are present to meet the needs of the clients as required by the agreement of participation and the service plan.

5-006.03D Employment Record: The ADS must maintain a current employment record for each staff person. The record must contain, at a minimum, information on background checks, orientation and in-service training, and health history screening.

5-006.04 Client Rights

5-006.04A The ADS must:

1. Inform clients of their rights in writing upon enrollment;
2. Ensure that clients are aware of their rights for the duration of their participation in the ADS;
3. Operate so as to afford the clients the opportunity to exercise their rights; and
4. Protect and promote client rights.

5-006.04B At a minimum, client rights include the right to:

1. Receive respectful and safe care from competent personnel;
2. Be free from abuse, neglect, exploitation, and treated with dignity;
3. Receive ADS without discrimination based upon race, color, religion, gender, national origin, or payer;
4. Voice complaints and grievances without discrimination or reprisal and have those complaints and grievances addressed;
5. Have all records, communications and personal information kept confidential;
6. Self-administer medications if it is safe to do so;
7. Be free of chemical and physical restraints;
8. Be informed of changes in agency policies, procedures, and charges for service or have his/her designee receive this information.

5-006.04C Designee Rights: At a minimum, designee rights include the right to:

1. Be informed of agency's policies, procedures, and charges for service;
2. Voice complaints and grievances without discrimination or reprisal against themselves or the client and have those complaints and grievances addressed;
3. Formulate advance directives and have the ADS comply with the directives unless the facility notifies the caretaker of their inability to do so; and
4. Be informed of client and designee rights during admission.

5-006.05 Complaints and Grievances: The ADS must establish and implement a process to address complaints and grievances. At a minimum, the process must include:

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1. A procedure for submission of complaints and grievances that is made available to employees, clients, or representatives;
2. Time frames and procedures for review of complaints and grievances and provision of a response;
3. A description of how information from complaints and grievances and responses is used to improve the quality of care and services for clients; and
4. A method to ensure that the telephone number and address of the Department is readily available to residents, employees, and others who wish to lodge complaints or grievances.

5-006.06 Consumer Satisfaction/Improvement: The ADS must develop and implement a process to measure consumer satisfaction.

5-006.07 Service Plan: The ADS must evaluate each client and must have a written service plan which identifies how particular services are to be provided to the client by the ADS. The plan must address the following basic needs of the client:

1. Health;
2. Psycho-social; and
3. Functional.

5-006.08 Admission and Discharge of Clients: The ADS must ensure that its admission and discharge practices meet the client's identified needs and conform with the program description.

5-006.08A Admission Criteria: The ADS must have written criteria for admission that includes each level of care and the components of care and services provided.

5-006.08B Admission Decisions: The ADS must ensure that the decision to admit a client is based upon its admission criteria and its capability to meet the identified needs of the client.

5-006.08C Agreement of Participation: The ADS must negotiate an agreement of participation with the client or designee.

5-006.08D Discharge Criteria: The ADS must have written criteria for dismissal of clients.

5-006.08E Discharge Decisions: The ADS must ensure that the decision to discharge a client is based upon its discharge criteria.

5-006.09 Activities: The ADS must:

1. Plan and provide activities that:
  - a. Meet the interests of clients;
  - b. Promote the physical, mental, and psychosocial well being of clients; and
  - c. Are ongoing.

2. Inform clients of the opportunity to participate; and
3. Post and otherwise make available to clients, information about ADS activities.

5-006.10 Program Description: The ADS must have a written program description that is available to staff, clients and their designees, and members of the public that explains the range of care and services activities provided. The description must include the following:

1. The mission statement, program philosophy or goals, and objectives;
2. The client population served, including age groups and other relevant characteristics;
3. The hours and days the ADS provides care and services;
4. Staff composition and staffing qualification requirements to sufficiently provide care and/or services to meet facility goals and objectives;
5. Staff job responsibilities for meeting care and services objectives;
6. System of referral for alternative services for those individuals who do not meet admission criteria;
7. The admission and discharge process, including criteria;
8. The client admission and ongoing assessment and evaluation procedures used by the program, including service plan process;
9. Plan for providing emergency care and services, including use of facility approved interventions to be used by staff in an emergency situation;
10. System governing the reporting, investigation, and resolution of allegations;
11. Client and designee rights and the system for ensuring client rights will be protected and promoted; and
12. The telephone number and address of the Department.

5-006.11 Policies and Procedures: The ADS must establish policies and procedures to implement its program as described in 175 NAC 5-006-10.

5-006.12 Annual Review: The ADS must review all elements of the written program description as listed in 175 NAC 5-006.10 at least annually. The ADS must document the results of the annual review. The ADS must include in the review process relevant findings from its quality assurance/performance improvement program for the purpose of improving client services and resolving problems in client care and services. The licensee must revise the program description, as necessary, to reflect accurately care and services the ADS is providing.

5-006.13 Administration or Provision of Medications: The ADS must establish and implement policies and procedures to ensure that clients receive medications only as legally prescribed by a medical practitioner in accordance with the five rights and with prevailing professional standards.

5-006.13A Methods of Administration of Medication: When the ADS is responsible for the administration of medication, it must be accomplished by the following methods:

5-006.13A1 Self-administration of Medications: Clients may be allowed to self-administer medications, with or without visual supervision, when the ADS

determines that the client is competent and capable of doing so and has the capacity to make an informed decision about taking medications in a safe manner. The ADS must develop and implement policies to address client self-administration of medication, including:

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

5-006.13A2 Licensed Health Care Professional: When the ADS uses a licensed health care professional for whom medication administration is included in the scope of practice, the ADS must ensure the medications are properly administered in accordance with prevailing professional standards.

5-006.13A3 Provision of Medication by a Person Other Than a Licensed Health Care Professional: When the ADS uses a person other than a licensed health care professional in the provision of medications, the ADS must follow 172 NAC 95, Regulations Governing the Provision of Medications by Medication Aides and Other Unlicensed Persons and 172 NAC 96, Regulations Governing the Medication Aide Registry.

The ADS must establish and implement policies and procedures:

1. To ensure that medication aides and other unlicensed persons who provide medications are trained and have demonstrated the minimum competency standards specified in 172 NAC 96-004;
2. To ensure that competency assessments and/or courses for medication aides and other unlicensed persons are provided in accordance with the provision of 172 NAC 96-005.
3. That specify how direction and monitoring will occur when the ADS allows medication aides and other unlicensed persons to perform the routine/acceptable activities authorized by 172 NAC 95-005 and as follows:
  - a. Provide routine medication; and
  - b. Provision of medications by the following routes:
    - (1) Oral, which includes any medication given by mouth including sublingual (placing under the tongue) and buccal (placing between the cheek and gum) routes and oral sprays;
    - (2) Inhalation, which includes inhalers and nebulizers, including oxygen given by inhalation;
    - (3) Topical applications of sprays, creams, ointments, and lotions and transdermal patches; and
    - (4) Instillation by drops, ointments, and sprays into the eyes, ears, and nose.

4. That specify how direction and monitoring will occur when the ADS allows medication aides and other unlicensed persons to perform the additional activities authorized by 172 NAC 95-009, which include but are not limited to:
  - a. Provision of PRN medication;
  - b. Provision of medications by additional routes including but not limited to gastrostomy tube, rectal, and vaginal; and/or
  - c. Documented in client records.
5. That specify how competency determinations will be made for medication aides and other unlicensed persons to perform routine and additional activities pertaining to medication provision.
6. That specify how written direction will be provided for medication aides and other unlicensed persons to perform the additional activities authorized by 172 NAC 95-009.
7. That specify how records of medication provision by medication aides and other unlicensed persons will be recorded and maintained.
8. That specify how medication errors made by medication aides and other unlicensed persons and adverse reactions to medications will be reported. The reporting must be:
  - a. Made to the identified person responsible for direction and monitoring;
  - b. Made immediately upon discovery; and
  - c. Documented in client records.

5-006.13B When the ADS is not responsible for medication administration or provision, the ADS must maintain responsibility for overall supervision, safety, and welfare of the client.

5-006.13C Reporting of Medication Errors: The ADS must have policies and procedures for reporting any errors in administration or provision of prescribed medications. The ADS must report any variance from the five rights as an error:

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

5-006.13D Storage of Medication: The ADS must store medications in locked areas and in accordance with the manufacturer's instructions for temperature, light, humidity, or other storage instructions.

5-006.13E Access to Medication: The ADS must ensure that only authorized staff who are designated by the ADS to be responsible for administration or provision of medications have access to medications.

5-006.13F Medication Record

5-006.13F1 The ADS must keep records in sufficient detail to assure that:

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

5-006.13F2 The ADS must keep an individual medication administration record for each client. This record must include:

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

5-006.13G Disposal of Medications: The ADS must destroy medications that are discontinued by the licensed health care professional and those medications which are beyond their expiration date. The ADS must develop and implement policies and procedures to identify who will be responsible for disposal of medications and how disposal will occur.

5-006.13H Medication Provision During Temporary Absences: The ADS must put medication scheduled to be taken by the client in a container identified for the client when a client is temporarily absent from the ADS.

5-006.14 Food Service: The ADS must provide food service as specified in the client service agreement and may include special diets.

5-006.14A Menus: When the ADS provides food service, meals and snacks must be appropriate to the client's needs and preferences and must meet daily nutritional requirements.

5-006.14A1 The ADS must plan and write based on the Food Guide Pyramid, or equivalent, and modified to accommodate special diets and texture adaptations needed by clients. The ADS must make menus accessible to clients and designees.

5-006.14B Food Safety: The ADS must store, prepare, protect, serve and dispose of food in a safe and sanitary manner and in accordance with the Food Code.

5-006.14B1: If clients are involved in food service, the ADS must train clients on food safety.

5-006.15 Record Keeping Requirements: The ADS must maintain records and reports in such a manner to ensure accuracy.

5-006.15A Client Records: The ADS must ensure a permanent record for all clients. The ADS must establish the record within five working days of enrollment.

5-006.15A1 Content: Client records must contain information that includes, but is not limited to:

1. Date of enrollment;
2. Name of client;
3. Gender;
4. Date of birth;
5. Client services agreement;
6. Licensed practitioner's orders where applicable;
7. Significant medical condition;
8. Medications and any special diet;
9. Allergies;
10. Any unusual event or occurrence;
11. Person to contact in emergency situations;
12. Designated physician or registered nurse;
13. Advance directives if available; and
14. Quarterly documentation of assistance with activities of daily living, personal care, health maintenance activities, or supervision, if these are required by the client.

5-006.15A2 Retention: The ADS must maintain and preserve client records for a minimum of two years.

5-006.15A3 Confidentiality: The ADS must keep client records confidential and available only for use by authorized persons or as otherwise permitted by law. The ADS must make records available for examination by authorized representatives of the Department.

5-006.15A4 Access: The ADS must release client information and records only with consent of the client or designee or as permitted by law.

5-006.15A5 Destruction: The ADS may destroy client records after two years. The ADS must use effective protective measures such as shredding, incineration, electronic deletion, or equally effective methods when it destroys client records.

5-006.16 Environmental Services: If the ADS provides service to clients in a building it owns, manages or uses, it must do so in a safe, clean, comfortable environment. Every detached building on the same premises used for care and services must comply with these regulations:

5-006.16A Housekeeping and Maintenance: The ADS must provide the necessary housekeeping and maintenance to protect the health and safety of the clients.

5-006.16A1 The ADS buildings and grounds must be kept clean, safe, and in good repair.

5-006.16A2 The ADS must dispose of garbage and rubbish in a manner to prevent the attraction of rodents, flies, and all other insects and vermin. The ADS must dispose of garbage so as to minimize the transmission of infectious diseases and minimize odor.

5-006.16A3 The ADS must maintain adequate lighting, environmental temperatures, and sound levels in all areas that are conducive to the care provided.

5-006.16A4 The ADS must maintain and equip the premises to prevent the entrance, harborage, or breeding of rodents, flies, and all other insects and vermin.

5-006.16B Equipment, Fixtures, Furnishings: The ADS must keep the equipment, fixtures, and furnishings used in the ADS clean, safe and in good repair.

5-006.16B1 The ADS must establish and implement a process for routine and preventative maintenance of equipment and furnishings to ensure that the equipment and furnishings are safe and function to meet the intended use.

5-006.16C Bed and Bath Linens: When the ADS provides bed and bath linens, it must maintain an adequate supply of clean linens in good repair.

5-006.16C1 The ADS must establish and implement procedures for the storage and handling of soiled and clean linens.

5-006.16D Pets: The ADS must take all reasonable steps to prevent any ADS owned pet from negatively affecting clients. The ADS must have policies and procedures regarding pets that include:

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

5-006.16E Environmental Safety: The ADS is responsible for maintaining the facility in a manner that minimizes accidents.

5-006.16E1 The ADS must maintain the facility environment to protect the health and safety of residents by keeping surfaces smooth and free of sharp

edges, mold, or dirt, keeping floors free of objects and slippery or uneven surfaces, and keeping the environment free of other conditions which may pose a potential risk.

5-006.16E2 The ADS must maintain facility doors, stairways, passageways, aisles, or other means of exit in a manner that provides safe and adequate access.

5-006.16E3 The ADS must provide and maintain water for handwashing, bathing, if bathing services are provided, at a safe and comfortable temperature to protect clients from potential burns or scalds. Water temperature must not exceed 120 degrees Fahrenheit.

5-006.16E4 The ADS must ensure hazardous/poisonous materials used by the facility are properly handled and stored to prevent accidental ingestion, inhalation, or consumption of the hazardous/poisonous materials by clients.

5-006.16F Disaster Preparedness and Management: The ADS must establish and implement disaster preparedness plans and procedures to ensure that client care, safety, and well-being are provided and maintained during and following instances of natural (tornado, flood, etc.) or other disasters, disease outbreaks, or other similar situations causing clients to remain at the ADS. Such plans and procedures must address and delineate:

1. How the ADS will maintain the proper identification of each client to ensure that care coincides with the client's needs;
2. How the ADS will move clients to points of safety or provide other means of protection when all or part of the building is damaged or uninhabitable due to natural or other disaster;
3. How the ADS will protect clients during the threat of exposure to the ingestion, absorption, or inhalation of hazardous substances or materials;
4. How the ADS will provide food, water, medicine, medical supplies, and other necessary items for care in the event of a natural or other disaster; and
5. How the ADS will provide for the comfort, safety, and well-being of clients in the event of 24 or more consecutive hours of:
  - a. Electrical or gas outage;
  - b. Heating, cooling, or sewer system failure; or
  - c. Loss or contamination of water supply.

### 5-007 PHYSICAL PLANT STANDARDS

If care is provided to clients in a building owned, managed, or used by the ADS, the following regulations apply. The facility must be designed, constructed, and maintained in a manner that is safe, clean, and functional for the type of care and services to be provided. The physical plant standards for facilities, which include support services, care and services areas, construction standards, building systems and waivers, are set forth below.

5-007.01 Support Areas: The facility may share the following support service areas among detached structures, care and services areas, or with other licensed facilities.

5-007.01A Dietary: If food preparation is provided on site, the ADS facility must dedicate space and equipment for the preparation of meals. Food service physical environment and equipment must comply with the Food Code. Facilities providing food services for 16 or fewer participants, or used only for training or activity purposes, must comply with the Food Code, except that:

1. Instead of a three compartment food preparation and handwashing sink, a two compartment sink may be used for clean up, dishwashing, and hand washing;
2. Instead of a final rinse cycle temperature of not less than 160 degrees Fahrenheit, an automatic dishwasher may have a final rinse cycle temperature not less than 150 degrees Fahrenheit;
3. Instead of storage space for food items and cooking and serving utensils no less than six inches above the floor, such space must be four inches or more above the floor; and
4. Service sink and indirect waste plumbing connections are optional.

5-007.01B Laundry: If the facility provides laundry services, these services may be provided by contract or on-site by the facility.

5-007.01B1 Contract: If contractual services are used, the facility must provide and use areas for soiled linen awaiting pickup and separate areas for storage and distribution of clean linen.

5-007.01B2 On-site: If on-site services are provided, the facility must have areas dedicated to laundry.

5-007.01C Waste Processing: The facility must provide areas to collect, contain, process, and dispose of waste produced within the facility in such a manner as to prevent the attraction of rodents, flies, and all other insects and vermin, and to minimize the transmission of infectious diseases.

5-007.02 Construction Standards: ADS facilities must be designed, constructed, and maintained in a manner that is safe, clean, and functional for the type of care and services to be provided. The standards for such facilities are set forth as follows.

5-007.02A Codes and Guidelines

5-007.02A1 New Construction: New construction must comply with the following codes and guidelines to provide a safe and accessible environment that is conducive to the care and services to be provided:

1. Building: Building Construction Act, Neb. Rev. Stat. §§ 71-6401 to 71-6407;
2. Plumbing: Plumbing Ordinance or Code, Neb. Rev. Stat. § 18-1915;
3. Electrical: State Electrical Act, Neb. Rev. Stat. §§ 81-2101 to 81-2143;
4. Elevators: Nebraska Elevator Code, Neb. Rev. Stat. § 48-418.12 and Department of Labor Regulations, 230 NAC 1;
5. Boiler: Boiler Inspection Act, Neb. Rev. Stat. §§ 48-719 to 48-743;
6. Accessibility: Nebraska Accessibility Requirements, State Fire Marshal Regulations, 156 NAC 1 to 12; and
7. Energy: Nebraska Energy Code, Neb. Rev. Stat. §§ 81-1608 to 81-1626, for construction initiated on or after July 1, 2005.

5-007.02A2 All Facilities: All facilities must comply with the following applicable codes and standards to provide a safe environment.

1. Fire Codes: Nebraska State Fire Code Regulations, State Fire Marshal, 153 NAC 1; and
2. The Food Code, Neb. Rev. Stat. § 81-2,244.01, as published by the Nebraska Department of Agriculture, except for compliance and enforcement provisions.

5-007.02A3 Existing and New Facilities: Existing and new facilities must comply with the physical plant standards contained in 175 NAC 5-007. The facility must maintain all building materials and structural components so that total loads imposed do not stress materials and components more than one and one-half times the working stresses allowed in the building code for new buildings of similar structure, purpose, or location.

5-007.02B Conflicts in Standards: In situations where the referenced codes and guidelines conflict with these regulations, the adopted rules and regulations of the Department and the Nebraska State Fire Marshal prevails.

5-007.02C Interpretations: All dimension, sizes, and quantities must be determined by rounding fractions to the nearest whole number.

5-007.02D Floor Area: Floor area is the space with ceilings at least seven feet in height and excludes areas such as enclosed storage, toilets and bathing rooms, corridors and halls. The space beyond the first two feet of vestibules and alcoves less than five feet in width must not be included in the required floor area. In rooms

with sloped ceilings, at least half of the ceiling must be at least seven feet in height with areas less than five feet in height, not included in the required floor area.

5-007.02E Dining areas must:

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

5-007.02F Activity Areas: A facility must have space for client socialization, resting, and leisure time activities. Activity areas must:

1. Have furnishings to accommodate group and individual activities;
2. Not be used for sleeping, offices, or as a corridor;
3. Be available to all clients; and
4. In new construction, have 60 square feet per person.

5-007.02G Toilet Fixtures: The ADS must provide one toilet fixture for every ten clients. Handwashing sinks must be conveniently located near the toilet fixtures. In new construction a toilet room must be located no more than 40 feet from program and activity areas.

5-007.02H Sleeping Areas: If clients are served overnight, the ADS must provide a sleeping area which affords privacy, provides access to furniture, and accommodates the care provided to the participants. Sleeping rooms:

1. Must not be located in any garage, storage area, shed, or similar detached buildings; and
2. Must not be accessed through a bathroom, food preparation area, laundry, or bedroom.

5-007.02I Examination and Therapy Rooms: If provided, each examination and therapy room must have sufficient space. In new construction, each examination and therapy room must have a minimum floor area of 80 square feet and a minimum of 3 feet clear dimension around 3 sides of the examination table or chair. In new construction, each examination and therapy room must provide at least one handwashing sink equipped with towels and soap dispenser.

5-007.02J Participant Storage: The facility must provide adequate storage for client belongings.

5-007.02K Corridors: The facility corridors must be wide enough to allow passage

and be equipped as needed by the participants with safety and assistive devices to minimize injury. All stairways and ramps must have handrails.

5-007.02L Doors: The facility doors must be wide enough to allow passage and be equipped for privacy, safety, and with assistive devices to minimize client injury.

5-007.02L1 Toilet and bathing room doors must provide privacy yet not create seclusion or prohibit staff access for routine or emergency care.

5-007.02L2 In new construction, the door of a toilet and bathing room with less than 50 square feet of clear floor area and dedicated to client use, must not swing inward.

5-007.02M Outdoor Areas: If the facility provides an outdoor area for client use, it must be equipped and situated to allow for client safety and abilities.

5-007.02N Bathing Rooms: If the facility provides bathing services, the facility must have a bathing room with a tub and/or shower. Tubs and showers used by clients must be equipped with handgrips or other assistive devices as needed by the clients. The bathing room must not directly open into a dining/kitchen area.

5-007.03 Building Systems: The facility must have building systems designed, installed and operated in such a manner as to provide for the safety, comfort, and well being of the client.

5-007.03A Water and Sewer Systems: The facility must have and maintain an accessible, adequate, safe, and potable supply of water. Where an authorized public water supply of satisfactory quantity, quality, and pressure is available, the facility must be connected to it and its supply used exclusively.

5-007.03A1 The collection, treatment, storage, and distribution potable water system of a facility that regularly serves 25 or more individuals must be constructed, maintained, and operated in accordance with all provisions of the Nebraska Safe Drinking Water Act and Title 179 Regulations Governing Public Water Systems.

5-007.03A2 The collection, treatment, storage, and distribution potable water system of a facility that serves less than 25 individuals on a regular basis must be maintained and operated as if it were a public water system in accordance with the Regulations Governing Public Water Systems, 179 NAC 2-002, 3 and 4. These facilities must report to the Department the result of all tests that indicate the water is in violation of the standards set out in 179 NAC 2-002 or 3. Such facilities must construct all water wells in accordance with 178 NAC 12, Water Well Construction, Pump Installation, and Water Well Decommissioning Standards.

5-007.03A3 The water distribution system must be protected with anti-siphon devices, and air-gaps to prevent potable water system and equipment

contamination.

5-007.03A4 The facility must maintain a sanitary and functioning sewage system.

5-007.03B Hot Water System: The facility must have a hot water system with the capacity to provide continuous hot water temperatures as required by these regulations.

5-007.03C Heating and Cooling Systems: The facility must provide a heating and air conditioning system for the comfort of the participant and capable of producing temperatures in participant care and treatment areas as follows:

5-007.03C1 In existing and new facilities the systems must be capable of producing a temperature of at least 70 degrees Fahrenheit during heating conditions and a temperature that does not exceed 85 degrees Fahrenheit during cooling conditions.

5-007.03C2 In new construction the systems must be capable of producing a temperature of at least 75 degrees Fahrenheit during heating conditions and a temperature that does not exceed 80 degrees Fahrenheit during cooling conditions.

5-007.03C3 In new construction the central air distribution and return systems must be equipped with filters.

5-007.03D Ventilation System: The facility must provide exhaust and clean air to prevent the concentrations of contaminants which impair health or cause discomfort to participants and employees.

5-007.03D1 Existing facilities must have adequate ventilation.

5-007.03D2 New construction and new facilities must provide mechanical exhaust ventilation for windowless toilets, baths, laundry rooms, housekeeping rooms, kitchens, and similar rooms at 5 air changes per hour.

5-007.03E Electrical System: The facility must have an electrical system that has sufficient capacity to maintain the care and treatment services that are provided and that properly grounds care and treatment areas.

5-007.03E1 New construction and new facilities must have ground fault circuit interrupters protected outlets in wet areas and within 6 feet of sinks.

5-007.03E2 The facility must provide adequate and appropriate levels of illumination in all areas of the facility.

5-007.04 Waivers: The Department may waive any provision of 175 NAC 5 relating to construction or physical plant requirements of an ADS if the ADS satisfactorily proves to the Department:

1. That the waiver would not unduly jeopardize the health, safety, or welfare of the persons residing in the facility;
2. That the provision would create an unreasonable hardship for the facility; and
3. That the waiver would not cause the State of Nebraska to fail to comply with any applicable requirements of Medicare or Medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

5-007.04A Unreasonable Hardship: In evaluating the issue of unreasonable hardship, the Department will consider the following:

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

5-007.04B Waiver Terms and Conditions A waiver may be granted under the terms and conditions and for such period of time as are applicable and appropriate to the waiver. Terms and conditions and period of waiver include but are not limited to:

1. Waivers that are granted to meet the special needs of a participant remain in effect as long as required by the participant;
2. Waivers may be granted for a period of time that ends at the time the conditions of approval no longer exist;
3. Waivers may be granted to permit an ADS facility time to come into compliance with the physical plan standards for a period of one year; Upon submission of proof of ongoing progress, the waiver may be continued for an additional year;
4. An applicant or licensee must submit a request for waiver of any construction or physical plant requirements set forth in 175 NAC 5; and
5. An applicant for a waiver may construct a request for waiver form or obtain a form from the Department.

5-007.04C Denial of Waiver: If the Department denies an ADS request for waiver, the ADS may request an administrative hearing as provided in the Administrative Procedure Act (APA) and the Department's rules and regulations adopted and promulgated under the APA.

5-008 DENIAL, REFUSAL TO RENEW, OR DISCIPLINARY ACTION

5-008.01 Grounds for Denial, Refusal to Renew, or Disciplinary Action

5-008.01A The Department may deny or refuse to renew an ADS license for failure to meet the requirements for licensure, including:

1. Failing an inspection specified in 175 NAC 5-005;
2. Having had a license revoked within the two-year period preceding an application; or
3. Any of the grounds specified in 175 NAC 5-008.01B.

5-008.01B The Department may take disciplinary action against an ADS license for any of the following grounds:

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

5-008.02 Procedures for Denial, Refusal to Renew or Disciplinary Action

5-008.02A If the Department determines to deny, refuse renewal of, or take disciplinary action against a license, the Department will send a notice to the

applicant or licensee, by certified mail to the last address shown on its records. The notice will state the determination, including a specific description of the nature of the violation and the statute or regulation violated, and the type of disciplinary action pending.

5-008.02B The denial, refusal to renew, or disciplinary action is to become final 15 days after the mailing of the notice unless the applicant or licensee, within the 15 day period, makes a written request to the Director for an:

1. Informal conference with a representative peer review organization;
2. Informal conference with the Department; or
3. Administrative hearing.

5-008.02C Informal Conference

5-008.02C1 At the request of the applicant or licensee, the peer review organization or the Department will hold an informal conference within 30 days of the receipt of the request. The conference will be held in person, or by other means, at the request of the applicant or licensee.

If the pending action is based on an inspection, the Department's representative at the conference will not be the individual who did the inspection.

5-008.02C2 Within 20 working days of the conference, the peer review organization or the Department representative will report in writing to the Department the conclusion regarding whether to affirm, modify, or dismiss the notice and the specific reasons for the conclusion, and provide a copy of the report to the Director and the applicant or licensee.

5-008.02C3 If the applicant or licensee successfully demonstrates at the informal conference that the deficiencies should not have been cited in the notice, the Department will remove the deficiencies from the notice and the deficiency statement and rescind any sanction imposed solely as a result of those cited deficiencies.

5-008.02C4 Within ten working days after receiving the report under 175 NAC 5-008.02C2, the Department will consider the report and affirm, modify, or dismiss the notice and state the specific reasons for not adopting the conclusion of the peer review organization or the Department representative as stated in the report. The Department will provide the applicant or licensee with a copy of the decision by certified mail to the last address shown in the Department's records.

5-008.02C5 If the applicant or licensee contests an affirmed or modified notice, the applicant or licensee must submit a request for hearing in writing to the Director within five working days after receipt of the decision.

5-008.02C6 The Department will collect a fee from any applicant or licensee requesting an informal conference with a representative peer review organization to cover all costs and expenses associated with the conference.

5-008.02D When an applicant or a licensee contests the notice and requests a hearing, the Department will hold a hearing in accordance with the Administrative Procedures Act (APA) and with the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. §§ 33-139 and 33-139.01.

5-008.02D1 On the basis of evidence presented at the hearing, the Director will affirm, modify, or set aside the determination. The Director's decision will:

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

5-008.02D2 An applicant or a licensee's appeal of the Director's decision must be in accordance with the APA.

#### 5-008.03 Types of Disciplinary Action

5-008.03A The Department may impose any one or a combination of the following types of disciplinary action against the license:

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

5-008.03B In determining the type of disciplinary action to impose, the Department will consider:

1. The gravity of the violation, including the probability that death or serious physical or mental harm will result;
2. The severity of the actual or potential harm;
3. The extent to which the provisions of applicable statutes, rules, and regulations were violated;

4. The reasonableness of the diligence exercised by the ADS in identifying or correcting the violation;
5. Any previous violations committed by the ADS; and
6. The financial benefit to the ADS of committing or continuing the violation.

5-008.03C If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the Department may take additional disciplinary action as described in 175 NAC 5-008.03A.

5-008.03D Temporary Suspension or Temporary Limitation: If the Department determines that clients are in imminent danger of death or serious physical harm, the Director may:

1. Temporarily suspend or temporarily limit the ADS license, effective when the order is served upon the ADS. If the licensee is not involved in the daily operation of the ADS, the Department will mail a copy of the order to the licensee, or if the licensee is a corporation, to the corporation's registered agent;
2. Order the immediate removal of clients; and
3. Order the temporary closure of the ADS pending further action by the Department.
4. In the event of the Director orders the temporary closure of the ADS:
  - a. The licensee must provide a list of all current clients and designees to the Department, including names, addresses and telephone numbers;
  - b. The Department will notify the designee of each client served in the ADS program of the action; and
  - c. The Department will notify the current clients and designees of the outcome of the action.

5-008.03D1 The Department will simultaneously institute proceedings for revocation, suspension, or limitation of the license, and will conduct an administrative hearing no later than ten days after the date of the temporary suspension or temporary limitation.

5-008.03D2 The Department will conduct the hearing in accordance with the APA and the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. §§ 33-139 and 33-139.01.

5-008.03D3 If a written request for continuance of the hearing is made by the licensee, the Department will grant a continuance, which may not exceed 30 days.

5-008.03D4 On the basis of evidence presented at the hearing, the Director will:

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

5-008.03D5 If the Director does not reach a decision within 90 days of the date of the temporary suspension or temporary limitation, the temporary suspension or temporary limitation expires.

5-008.03D6 Any appeal of the Department's decision after hearing must be in accordance with the APA.

5-008.04 Reinstatement from Disciplinary Probation, Suspension, and Re-licensure Following Revocation

5-008.04A Reinstatement at the End of Probation or Suspension

5-008.04A1 Reinstatement at the End of Probation: A license may be reinstated at the end of probation after the successful completion of an inspection, if the Department determines an inspection is warranted.

5-008.04A2 Reinstatement at the End of Suspension: A license may be reinstated at the end of suspension following:

1. Submission of an application to the Department for renewal that conforms to the requirements of 175 NAC 5-003.02;
2. Payment of the renewal fee as specified in 175 NAC 5-004.10; and
3. Successful completion of an inspection.

The Department will reinstate the license when it finds, based on an inspection as provided for in 175 NAC 5-005, that the facility is in compliance with the operation, care, services, and physical plant requirements of 175 NAC 5-006 and 5-007.

5-008.04B Reinstatement Prior to Completion of Probation or Suspension

5-008.04B1 Reinstatement Prior to the Completion of Probation: A licensee may request reinstatement prior to the completion of probation and must meet the following conditions:

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

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2. Successfully complete any inspection that the Department determines necessary.

5-008.04B2 Reinstatement Prior to Completion of Suspension: A licensee may request reinstatement prior to the completion of suspension and must meet the following conditions:

1. Submit a petition to the Department stating:
  - a. The reasons why the license should be reinstated prior to the suspension completion date; and
  - b. The corrective action taken to prevent recurrence of the violation(s) that served as the basis of the suspension;
2. Submit a written renewal application to the Department as specified in 175 NAC 5-003.02;
3. Pay the renewal fee as specified in 175 NAC 5-004.10; and
4. Successfully complete an inspection.

5-008.04B3 The Director will consider the petition submitted and the results of any inspection or investigation conducted by the Department and:

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

5-008.04B4 The Director's decision is final 30 days after mailing the decision to the licensee unless the licensee requests a hearing within the 30-day period. The requested hearing will be held according to rules and regulations of the Department for administrative hearings in contested cases.

5-008.04C Re-Licensure After Revocation: An ADS license that has been revoked is not eligible for re-licensure until two years after the date of revocation.

5-008.04C1 An ADS seeking re-licensure must apply for an initial license and meet the requirements for initial licensure in 175 NAC 5-003.01.

5-008.04C2 The Department will process the application for re-licensure in the same manner as specified in 175 NAC 5-003.01.

Approved by the Attorney General	6/3/08
Approved by the Governor	6/11/08
Filed with the Secretary of State	6/11/08
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