

5-000 PROVIDER REQUIREMENTS

5-001 General Standards: The following standards apply to all service agreements:

1. The proposed service(s) must meet the Manual's service definitions and must be purchasable;
2. All child care providers must have a Social Security number or FID number, whichever is appropriate, before completing an agreement;
3. The potential provider must not be the parent, stepparent, caretaker relative or foster parent, or subsidized adoptive parent of the minor child receiving child care nor the legal guardian, subsidized guardian, spouse, or minor child of the child care client;
4. The potential provider must not engage in or have an ongoing history of criminal activity that may be harmful or may endanger individuals for whom they provide services;
5. The potential provider must not have a history of incorrect and/or inaccurate billings whether intentional or unintentional for services that have been provided or have a criminal history of financial mismanagement; and
6. The provider must not have been disqualified from any HHS program for Intentional Program Violation within the last five years;
7. The provider must provide an environment that promotes the safety and well being of the children in care.

If the provider is an agency, Department staff must review agency policies regarding hiring and reporting to ensure that appropriate procedures regarding abuse or neglect are in place.

If the provider is an individual, Department staff must check the Abuse and Neglect Central Registries to determine if any substantiated reports of abuse or neglect by the provider exist. If the provider provides services in his/her own home, Department staff must also check the Abuse and Neglect Central Registries to determine if any substantiated reports of abuse or neglect by household members exist. If a report of abuse or neglect has been substantiated, Department staff must not contract with the individual provider. If a report of abuse or neglect concerning a current provider (or household member) as perpetrator is substantiated, staff must immediately terminate the provider agreement and notify case management.

5-001.01 Provider Agreement Standards: Before furnishing any service, each provider must sign Form CC-9B agreeing:

1. That service will not be paid through the Child Care Subsidy program before it is authorized by the worker;
2. To provide service only as authorized, in accordance with the Department's standards;
3. To submit Form HHS-5N, "Social Services Billing Document," after service is provided and within 90 days;

4. To accept social services reimbursement as payment in full for the contracted service(s) unless service is authorized on a sliding fee basis;
5. To accept a rate which is reasonable, necessary, and does not exceed the amount charged to private-paying persons;
6. To apply to social services clients the same standards applied to private-paying persons;
7. To retain authorizations, billing documents, and attendance records for four years to support and document all claims;
8. To allow federal, state, or local officials responsible for program administration or audit to review service records;
9. To permit federal, state, and local officials to monitor and evaluate the program by means such as inspecting the facility, observing service delivery, and interviewing staff members;
10. To keep current any state or local license required for service provision and maintain all licensing standards;
11. To respect every client's right to confidentiality and safeguard confidential information;
12. To not discriminate against any employee, applicant for employment, or social services program participant or applicant because of race, color, religion, sex, disability, or national origin;
13. To not assign or transfer the agreement to anyone else;
14. To understand and accept responsibility for the child's safety and property;
15. To continue to meet all standards pertaining to the service provided;
16. To operate a drug-free workplace;
17. To notify the appropriate Department case manager if a child(ren) does not attend the child care for more than three consecutive days;

18. Prohibit smoking within any part of an indoor child care facility; and
Note: If care is provided in the provider's or the child's home, smoking is prohibited when a client's child is present in any part of the home.
19. To allow Central Registry checks on himself/herself, or a family member, if appropriate, or if an agency, agree to allow Department staff to review agency policies regarding hiring and reporting to ensure that appropriate procedures regarding abuse, neglect, and law violations are in place.

5-001.02 Provider Age Qualifications: A service provider must be at least 19 years old except as described in the following regulations. Minors younger than 16 are not eligible to be providers.

5-001.02A Sixteen, Seventeen, or Eighteen-Year-Olds: Minors who are 16, 17, or 18 years of age may be approved as providers of Child Care Services if:

1. They would not be absent from school or a training program in order to provide service required;
2. They would not be absent from regular employment without employer permission in order to provide service required;
3. They are acceptable to the client; and
4. They are supervised by a parent or guardian.

5-001.02B Parental Permission: A provider age 18 or younger (unless s/he is an emancipated minor) must obtain the signature of his/her parent or legal guardian on Form CC-9B. For the definition of an emancipated minor, see 392 NAC 1-003.

5-001.03 Social Security Tax Withholding

5-001.03A Introduction: In some situations, the Department withholds Social Security taxes (Federal Insurance Contribution Act, FICA) from provider payments. Individual in-home service providers (e.g., in-home child care and homemaker) who are not self-employed are considered employees of the client for whom they provide service. The Department, upon receiving a signed Form IRS-2678, "Employer Appointment of Agent," acts on behalf of these clients to withhold mandatory FICA taxes and pay the client's matching tax share to the IRS.

Note: The Department does not withhold federal or state income tax or federal unemployment insurance tax from any provider payment.

5-001.03B Definitions:

Affected Clients/In-Home Services: The employee's share of Social Security tax is withheld from provider payments only when in-home child care is provided.

Affected Providers: In-home providers authorized to provide in-home service who are not affiliated with an agency and are not self-employed are subject to FICA withholding.

Earnings Taxed for Social Security: Affected providers are subject to Social Security tax payment for each calendar year in which they are paid a specified amount for services provided to one client. The earnings limit is adjusted annually. The Department withholds this tax from all payments to affected providers.

Self-Employed Providers: Individuals who file Social Security taxes on their own behalf are considered self-employed. They are identified by an FID number rather than a Social Security number.

Social Security Tax Rates: The Department remits to the IRS an amount equal to the current Social Security tax rate for specified "in-home" services. Half of this amount is withheld from the provider as the employee's share; the other half is provided by the Department on behalf of the client employer.

5-001.04 Provider Release of Information and Statement of Criminal History: Individual providers must sign a release of information and statement, identifying any felony or misdemeanor convictions and/or pending criminal charges. This statement must include details, dates, and disposition (e.g., parole, probation, incarceration, fine, community service, etc). The provider must include minor traffic violations only if the provider will provide transportation services. If the provider will be providing services in his/her home, the provider must also provide this information for all household members age 19 or older.

5-001.04A General Criminal History: Department staff must not have a Child Care Provider Agreement with a potential individual provider if a history of convictions for misdemeanor or felony actions that endanger the health and safety of any client is indicated. This includes crimes against a child or vulnerable adult, crimes involving intentional bodily harm, crimes involving the illegal use of a controlled substance, or crimes involving moral turpitude on the part of the potential provider.

5-001.04A1 Special Criminal History: Department staff must deny or terminate service provider approval when conviction has occurred in the following areas:

1. Child pornography;
2. Child or adult abuse;
3. Driving under the influence: two or more DUI charges are pending, or convictions have occurred within the last five years, or two of any combinations of DUI charges pending or convictions occurred within the last five years;
4. Domestic assault;
5. Shoplifting after age 19 and within the last three years;
6. Felony fraud within the last ten years;
7. Misdemeanor fraud within the last five years;
8. Termination of provider status for cause from any DHHS program within the last ten years;
9. Possession of any controlled substance within the last five years;
10. Possession of a controlled substance with intent to deliver within the last ten years;
11. Felony or misdemeanor assault without a weapon in the last ten years;
12. Felony or misdemeanor assault with a weapon in the last 15 years;
13. Prostitution or solicitation of prostitution within the last five years;
14. Felony or misdemeanor robbery or burglary within the last ten years;
15. Rape or sexual assault; or
16. Homicide.

Pending charges must be reviewed by Department Resource Development to determine whether the client's safety is in jeopardy. Other convictions must be considered using the guidance in 392 NAC 5-001.04A and weighted to similar offenses included in this list.

5-001.05 Driving Record: The driving record must be verified for any provider who transports child care children. A provider who will be transporting children is not allowed any DUI convictions in the last eight years, and must not have more than three points assigned against his/her driver's license. Each provider's past eight year driving history must be considered. If there is a pattern of having points assigned against the provider's license each year, a license has been suspended or revoked, or the provider has any major traffic violations, the provider must not be approved to transport children.

5-001.06 Agency Decision to Enter into a Provider Agreement: In determining whether to enter into a Provider Agreement, the Department will evaluate whether a provider meets all the standards contained in Title 392. No individual or agency has a right to a Provider Agreement with the Department.

5-001.07 Provider Hearing Right: Child care providers do not have the right to appeal Department decisions, except when an overpayment has been assessed (see 392 NAC 5-005).

5-002 Provider Standards for In-Home Child Care: Each provider of in-home child care must:

1. Be at least age 19 or meet the special conditions described in 392 NAC 5-001.02 ff;
2. Sign a Form CC-9B, "Child Care Provider Agreement";
3. Have no obligation to perform housekeeping activities;
4. Sign Form CC-0350, "In-Home Day Care Self-Certification Checklist";

5. Not engage in or have an ongoing history of behaviors which are harmful to or which may endanger the health or morals of children including a conviction for, an admission of, or substantial evidence of crimes against child(ren), crimes involving intentional bodily harm, crimes involving the illegal use of controlled substances, or crimes involving moral turpitude;
Note: The Department in reviewing an application where there is a conviction for, an admission of, or substantial evidence of crimes against child(ren), crimes involving intentional bodily harm, crimes involving the illegal use of controlled substances, or crimes involving moral turpitude by the caregiver will not approve or allow an approval to remain in effect if these circumstances have current and direct bearing on the provider's ability to provide and/or show that children would be placed at risk.
6. On request, provide written permission for the Department to request criminal history information from law enforcement or criminal justice agencies and the name(s) by which s/he has been known;
7. Demonstrate the physical, mental, and emotional capacity to provide care for children. A statement from a medical professional may be requested if there is reasonable cause to question the provider's capacity to provide care;
8. Provide continual supervision of children;
9. Discuss with the parent/guardian the hours of care, care for ill children, disciplinary practices, meals, snacks, napping schedules, and toilet training practices (if applicable) before care is provided;
10. Dispense prescription or non-prescription medication only with prior written permission and written instructions from the child's parent/guardian;
11. Make arrangements with the parent/guardian on how to handle medical and other emergency situations; and
12. Develop a plan for the evacuation of children from the home in emergencies such as fire or tornado.

5-003 Provider Standards for License-Exempt Family Child Care Homes: If a provider is to become a license-exempt vendor to care for three or fewer children and chooses not to become registered as a Family Child Care Home, the provider must complete Form CC-0351, "Approved Family Day Care Self-Certification Checklist." This form (and Form CC-9B) may be completed by mail or during a home or office visit.

The local office may make a home visit, announced or unannounced, to determine compliance with these requirements.

Each provider of license-exempt family child care must:

1. Be at least 19 years old or meet the requirements at 392 NAC 5-001.02B;
2. Provide care for a maximum of 6 children. The provider's children, grandchildren, or foster children count in the maximum if they are age 12 or younger. A child(ren) age 13 or older is included in the maximum if the provider is being paid to provide child care for the child, either from a private payer or the Department. The Department will pay for a maximum of:
 - a. Three children from different families; or
In addition, the provider may have a maximum of 3 of his/her own children, grandchildren, or foster children age 12 or younger in the home. Care for these children will not be paid.

- b. Six children from one family. The provider must not have other children, grandchildren, or foster children age 12 or younger.
 - c. Included in the limits in 2a and b are a maximum of 2 infants (children 17 months or younger), including any infant children of the provider.
3. Not engage in or have an ongoing history of, nor have other household members who engage in or have an ongoing history of, behaviors which are harmful to or which may endanger the health or morals of children. It is understood that the Department, in reviewing an application where there is a conviction for, an admission of, or substantial evidence of crimes against child(ren), crimes involving intentional bodily harm, crimes involving the illegal use of controlled substances, or crimes involving moral turpitude by the caregiver or any other household member, will not approve or allow an approval to remain in effect if these circumstances have current and direct bearing on the provider's ability to provide care and/or show that children would be placed at risk.

The Department will conduct background checks on the provider and household members with the Child Abuse and Neglect Central Register and the Adult Protective Services Central Registry. The Department may request background information on the provider or household members from law enforcement or criminal justice agencies. The provider will, if requested, provide written permission for the Department to request criminal history information and the name(s) by which s/he and members of the household have been known;

- 4. Demonstrate the physical, mental, and emotional capacity to provide care for children. A statement from a medical professional may be requested if there is reasonable cause to question the provider's capacity to provide care;
- 5. Not conduct other employment during the hours s/he is providing care for children;
- 6. Ensure children will always be supervised;
- 7. Arrange with another person, age 16 or older, to substitute for the caregiver in an emergency;
- 8. Notify parents/guardians of child(ren) in care when care will/has been provided by a substitute caregiver;
- 9. Discuss with the parent/guardian hours of care, care for ill children (if provided), disciplinary practices, meals, snacks, napping schedules, and toilet training practices (if applicable) before care is provided;
- 10. During the hours of operation, the home must be open to announced and unannounced visits by parents of all children for whom care is being provided. Parents must always have access to their children at all times their children are in care;
- 11. Have an operable telephone available for use within the home;

12. Maintain a record of the parent/guardian's work and home phone numbers and the phone number of the child(ren)'s physician;
13. Keep emergency numbers within easy access near the telephone;
14. In the case of a medical emergency, call 911 or the local medical emergency phone number;
15. Keep areas and equipment where care is provided clean and in good repair;
16. Have operable utilities, i.e., electricity, heat, water;
17. Serve nutritious meals and snacks to children in care;
18. Keep cooking and eating areas and equipment clean and in good repair;
19. Store perishable foods served to child care children in covered containers;
20. Have a sufficient number of safe, age-appropriate play materials available for the child care child(ren)'s use;
21. Have first aid supplies available, but inaccessible to children. Supplies are to include fever thermometer, soap, bandaids, gauze, tape, and scissors;
22. Dispense prescription and non-prescription medications only with prior written permission and written instructions from the child's parent/guardian;
23. Keep firearms, medications and poisons, furnace and water heater inaccessible to children;
24. Develop and practice an evacuation plan with the children for use in emergencies such as fire or tornado. A plan must also be developed to handle medical emergencies;
25. Have available at least 35 square feet of indoor child care space for each child in care;
26. Provide and use clean and comfortable napping and sleeping arrangements for the children in care;
27. Maintain the home, including toilet facilities, clean and in good repair;
28. Maintain the home to be free from fire hazards such as exposed wiring, storage of combustibles near a fire source (furnace, water heater, stove), and blocked exits;
29. Develop an emergency procedure to reach children should they become locked into an area of the home which can be locked;
30. Maintain proper vaccinations for household pets susceptible to rabies;
31. Maintain an outdoor play area free of safety hazards;
32. When transporting children, use age appropriate restraints which comply with state law; and
33. During evening care, have children age 7 or younger sleep only on a floor level where an adult is present.

5-003.01 Child Abuse/Neglect Report: If the potential provider indicates on Form CC-0351 that a child abuse/neglect report has been filed, the worker must review the child protective service investigation report. The worker must not approve the provider if the report indicates behaviors which might endanger the health, safety, or morals of children under care.

5-003.02 Provider Receiving Treatment: If the potential provider indicates on Form CC-0351 that s/he is receiving treatment for mental illness, drug addiction, or alcoholism, the worker must obtain a statement from a physician or licensed or certified mental health practitioner, to verify that the problem will not interfere with the provider's ability to care for children.

5-004 Application: A worker assigned resource development responsibilities must conduct a face-to-face interview with each potential provider.

If the provider does not meet standards at the time of the initial visit or interview but is willing to correct the deficiency within a reasonable period of time, the worker continues the application process when proof of compliance is received.

5-004.01 Conflict of Interest: No employee of the Department or its subdivisions may be approved as a service provider if s/he is in a position to influence his/her own approval or utilization.

5-004.02 Worker Relatives as Providers: Service staff members must not approve, reapprove, evaluate, negotiate provider agreements with, or authorize service provision from, providers to whom they are related. In situations where a relative-provider is the only resource, staff must request prior Central Office approval.

5-004.03 Service Provider Agreements: The following guidelines govern service provider agreements:

1. The provider must obtain any necessary registration or child care license before signing an agreement.
2. Each provider must have a service provider agreement in effect before service can be authorized for purchase.
3. Staff must evaluate and approve or disapprove all service providers located within the unit's jurisdiction.
4. Service provider agreements are effective up to 12 months, are not back-dated, and must be completed and signed by all parties on or before the effective date. The agreement may be made effective with the client's request for a specific provider but no earlier than the date of receipt of the application.
5. Changes in service provider agreements require renegotiation of the agreement. Address changes which do not affect the service location do not require a new agreement.
6. Notice of any change in services, units, or unit rates proposed by either the provider or the service agency must be given as soon as possible.

5-004.04 Agreement Completion: When a potential provider has met all necessary requirements, the worker:

1. Establishes rates and terms of service with the provider and completes the agreement, stating any provider limitations; and
2. Enters the provider on N-FOCUS.

5-004.05 Multiple Facilities: There are two methods by which a provider with more than one service facility can be evaluated and approved or disapproved. The unit(s) involved and the provider decide which option to use.

5-004.05A Option 1: A separate agreement may be negotiated with each facility. This option must be used if the facilities:

1. Will bill separately; or
2. Charge different rates for the same service.

5-004.05B Option 2: One agreement may be negotiated, listing all the facilities.

5-004.06 Provider Evaluation

5-004.06A Resource Development Responsibilities: The worker must:

1. Hold a face-to-face evaluation interview with each potential provider at least annually;
2. Annually visit each facility in which services are provided outside of the client's home; and
3. Assess the health and safety of service provision at least once during the agreement period by observing service delivery, visiting the service facility, interviewing the provider, or interviewing a client served by the provider.

For the exception for license-exempt providers, see 392 NAC 5-004.06A2.

5-004.06A1 Licensed Child Care Providers: After the initial agreement process, subsequent renewals may be conducted by phone, mail, or office visit.

5-004.06A2 License-Exempt Child Care Providers: The worker must visit the provider's home when the provider initially signs up with the Department. This visit must be conducted within 90 days of the completion of the provider agreement. Then the worker must make at least one home visit within the next 36 months if the provider:

1. Has no negative reports;
2. Has no billing problems; and
3. The supervisor is in agreement.

If there are negative reports, billing problems, or the supervisor feels it is necessary, the worker must make an annual home visit.

5-004.06B Secondary Agreements: Site visits are not required for facilities with secondary agreements. The service provider must ensure that providers with secondary agreements meet all standards and requirements.

5-005 Provider Overpayments: The Department must take all reasonable steps necessary to promptly correct overpayments.

The Department will send a letter to the provider informing the provider that there is an overpayment, giving the provider the opportunity to discuss the overpayment with a Department representative, and informing the provider of his/her right to appeal the existence or amount of the overpayment. The provider has 45 days to appeal the overpayment.

If the provider does not appeal or contact the Department to work out a repayment agreement, the overpayment will be recouped from future billings for the same or different children, or from another service.

When the evidence clearly establishes that a provider willfully over-billed the Department, the worker will refer the provider to the Special Investigations Unit, Central Office; or in the Omaha Office, to the Omaha Special Investigation Unit. Any information, documentation, investigative reports, etc., that are developed or obtained will be shared with other programs within the HHS System and with appropriate state agencies such as the Department of Education.