

## **(Former) Department of Public Institutions**

### **Regulations to be Repealed**

#### Title 202 Nebraska Administrative Code

Chapter 2: Rules for Providing Care, Treatment, and Training of Intellectually Disabled Persons under the Care of the Parent or Guardian When Such Person is Unable to Adapt to the Treatment Given in the Institutions

Chapter 3: Regulations Pertaining to Admission and Placement of Persons with Intellectual Disability

Chapter 4: Rules and Regulations Pertaining to Discipline of Intellectually Disabled Residents in Facilities of the Department of Public Institutions

Chapter 5: Rules and Regulations for the Promotion, Conditional Discharge, and Final Discharge of Juveniles in Facilities of the Department of Public Institutions

Chapter 6: Regulations Pertaining to the Rights of the Intellectually Disabled

## REPEAL

CHAPTER 2 - RULES FOR PROVIDING CARE, TREATMENT, AND TRAINING OF MENTALLY RETARDED PERSONS UNDER THE CARE OF THE PARENT OR GUARDIAN WHEN SUCH PERSON IS UNABLE TO ADAPT TO THE TREATMENT GIVEN IN THE INSTITUTIONS.

001 COST OF CARE, TREATMENT AND TRAINING: CHILD OR WARD UNABLE TO ADAPT.

001.01 A parent or guardian wishing to provide care, treatment and training for his child or ward and to be reimbursed therefor as provided under Section 83-1,144.01, R.S.Supp., 1974, shall make application to the Director of the Department of Public Institutions in writing.

Upon receipt of such application the Director of the Department of Public Institutions shall refer the application to the director of the appropriate State Institution who shall appoint a multi-disciplinary committee to review the application and report their findings. The applicant shall be invited to present his views, opinions and relevant facts to the committee. If it is determined by the committee that the person in such facility can no longer benefit by continued residence in the facility and the person is unable to adapt to the treatment in the facility, the committee shall also recommend methods for the care, treatment, and training of such person while in the care of his parent or guardian. The committee findings shall be forwarded by the facility director to the Director of the Department of Public Institutions for approval or denial. Action by the Director must be made within forty-five (45) days after receipt of the original application. After action by the Director of the Department of Public Institutions, one copy shall be transmitted to the Clerk of the appropriate county. Receipt of the approved findings shall constitute basis for application by the parent or guardian to the county of residence for reimbursement under Section 83-1,144.01, R.S.Supp., 1974.

The report of findings shall include the plan for the care, treatment, and training and the amount per day the facility would have been entitled to from the county if the person had not been released from the facility. The effective date for receiving reimbursement by the county shall be the date of approval by the Director of the Department of Public Institutions.

002 HEARINGS FOR AGGRIEVED.

002.01 Any parent or guardian as provided in Section 83-1,144.01, R.S.Supp., 1974, aggrieved by the findings of the Director of the Department of Public Institutions on eligibility may request a hearing by filing a written request or petition with the Director of Public Institutions. The cause or causes for the grievances and reasons for the redetermination request shall be stated thereon.

The Director will appoint an examiner for each such hearing which shall be scheduled to be held not more than thirty (30) days after receipt of the written request at the office of the Director, Department of Public Institutions, Folsom and Van Dorn Streets, Lincoln, Nebraska 68509.

Hearings will be held in the office of the Director of the Department of Public Institutions at Folsom and Van Dorn Streets, Lincoln, Nebraska 68509.

The examiner shall have the power to preside at such hearings, administer oaths, examine witnesses, take testimony and report the same to the Director. He shall also have power to compel the attendance of witnesses and the production of any papers, books, accounts, documents and testimony, and cause depositions of witnesses residing either within or without the State to be taken.

Said examiner may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs and he shall not be bound by the formal rules of evidence. He shall give effect to the rules of privilege recognized by law. He may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. A party may, however, request that such agency be bound by the rules of evidence applicable in the District Court by delivering to such agency at least three (3) days prior to the hearing a written request therefor which request shall include the requesting party's agreement to be liable for the cost incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing.

Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.

The Department of Public Institutions may take notice of general, technical, or scientific facts within its specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed. A party shall be afforded an opportunity to contest the facts so noticed. The department may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

The Director shall deliver his decision to the parent or guardian and county of residence within thirty (30) days after the conclusion of the hearing.

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REPEAL

CHAPTER 3-REGULATIONS PERTAINING TO ADMISSION AND PLACEMENT  
OF PERSONS WITH MENTAL RETARDATION

001 DEFINITIONS. Words used in this chapter shall have the following meaning unless otherwise specified within the context of the regulation in which they appear.

001.01 COMMUNITY-BASED MENTAL RETARDATION PROGRAM means any public or private agency that provides mental retardation services in a community setting.

001.02 COMMUNITY-BASED MENTAL RETARDATION REGION means the counties delineated in Neb. Rev. Stat. §§1,143.06 to form six separate geographical areas.

001.03 DEPARTMENT means the Department of Public Institutions.

001.04 FACILITY means the State residential center that provides services for persons with mental retardation (Beatrice State Developmental Center) and the units within the State psychiatric hospitals (Lincoln Regional Center and Hastings Regional Center) that are designated for providing services to persons with mental retardation.

001.05 LEGALLY AUTHORIZED REPRESENTATIVE means any person who has been invested by law with the power to act on behalf of a patient/resident in making the kind of decisions as required by these regulations. This term includes a guardian appointed by a court of competent jurisdiction in the case of an incompetent individual or minor; or a parent in the case of a minor; or a person acting under a valid Power of Attorney.

001.06 MENTAL RETARDATION means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior manifested before the person attains age twenty-two.

FILED  
*Allen J. Beermann*  
Secretary of State  
MAY 23 1985

APPROVED  
BY *Bob Conway*  
MAY 23 1985

APPROVED  
ROBERT M. SPIRE  
ATTORNEY GENERAL  
BY *[Signature]*  
DATE *March 27, 1985*

001.07 PATIENT/RESIDENT means any individual who because of his/her mental retardation is receiving developmental services in a facility.

001.08 PLAN OF IMPLEMENTATION means the Plan adopted by the U.S. District Court, Nebraska District on September 28, 1981, in the case of Horacek, Plaintiff and U.S.A. Plaintiff Intervenor vs. Thone, Defendant, CV 72-L-299.

001.09 REGIONAL DIRECTOR means the individual(s) identified in Neb. Rev. Stat. §83-1,143.07.

SOURCE: Neb. Rev. Stat. §84-901 et seq.

002 APPLICABILITY. The Beatrice State Developmental Center and the Hastings and Lincoln Regional Centers' mental retardation units shall comply with the provisions of these regulations.

SOURCE: Neb. Rev. Stat. §84-901 et seq.  
Neb. Rev. Stat. §83-1,149

003 PURPOSE. These regulations are issued to supercede and repeal the existing Rules and Regulations Concerning Applicable Procedures for Objections to Deinstitutionalization of Mentally Retarded Residents within Facilities of the Department of Public Institutions which were promulgated September, 1976.

003.01 The issuance of these regulations standardizes and clarifies the process for admission of patients/residents into, and for placement out of the facility into community-based mental retardation programs.

003.02 The issuance of these regulations reflects the principles on which the Plan of Implementation was developed for patient/resident movement between the facility and the community-based mental retardation programs and for service delivery.

003.03 The issuance of the regulations shall not preclude the facility's compliance with any applicable federal, state, and local laws and regulations.

SOURCE: Neb. Rev. Stat. §84-901 et seq.  
Neb. Rev. Stat. §83-1,149

004 PROCEDURES FOR ADMISSION. The facility shall, under the provisions of these regulations, admit or re-admit patients/residents to facilitate their maximum growth and development. Admissions to the facility are contingent on the availability of resources in the community-based mental retardation programs and the facility's capacity level.

004.01 The facility may admit persons with mental retardation upon application by their legally authorized representative.

004.01A The facility shall have on file an admission application for the person seeking admission. This application must specify:

004.01A1 Identifying information for the person to be admitted;

004.01A2 The name and address of the parents or guardian of the person to be admitted; and

004.01A3 The reasons for seeking admission.

004.01B The facility shall inform the applicant that the admission information supplied will be sent to the regional director of the responsible community-based mental retardation region for determination of the capacity within the geographical area of the region to provide services.

004.01C The facility shall send, within seven days of receipt of the application, the application or a notice of such to the regional director of the responsible community-based mental retardation region with a request that the region is to respond within 14 days as to the capacity within the geographic area of the region to serve the person seeking admission within 60 days.

004.01C1 When the regional director fails to provide a response, the facility shall notify the Office of Mental Retardation who shall follow-up with the region pursuant to 205 NAC 5-015.03A.

004.01C2 When the regional director's response states that the capacity exists within the geographical area of the community-based mental retardation region, the facility shall send, within seven days of the response, a notice to the applicant stating that the regional director should be contacted for processing the admission.

004.01C3 When the regional director's response states that the capacity does not exist within the geographical area of the community-based mental retardation region, the facility shall send within seven days of the response, a notice to the applicant stating that the person seeking admission is eligible for evaluation by the facility.

004.01D The facility shall conduct an evaluation to determine the person's level of disability and related service needs; and his/her appropriateness for admission to the facility.

004.01D1 The evaluation must include psychological, physical, social, educational, and any other assessments, needed for making such determinations.

004.01D2 The evaluation must be completed within 30 days of the regional director's response that the capacity does not exist within the geographical area of the region to serve the person seeking admission within 60 days.

004.01E The facility shall schedule an admission evaluation staffing and notify the responsible community-based mental

retardation region of the meeting date and time in order to facilitate placement planning by the region.

004.02 The facility may admit, upon request from the region, persons with mental retardation who are receiving services in a community-based mental retardation program in order to determine treatment alternatives for behavioral problems; or to provide medical care that the community-based mental retardation program and the facility have agreed can be best provided for at the facility. Such stays must not exceed 90 days; unless, at the end of this period, the community-based mental retardation program and the facility agree that continued services from the facility are needed.

004.02A The facility shall document that the community-based mental retardation program agrees to resume service delivery for the patient/resident at the conclusion of the service period.

004.02B The facility shall document a monthly contact with the community-based mental retardation program to relate the patient/resident's status so that the details for the return of the patient/resident to the community-based mental retardation program are jointly formulated.

004.02C The facility shall provide the community-based mental retardation program with a report at the conclusion of the service period and maintain such documentation at the facility.

004.03 The facility may admit a person with mental retardation upon approval by a physician who is not employed by or under contract with the facility. Such approval must be based upon a request made by the person's legally authorized representative.

004.03A The facility shall obtain from the physician, the patient/resident's identifying information and a description of the patient/resident's disabilities and daily care needs.

004.03B The facility shall, following admission, proceed with the provision of services as stipulated in 202 NAC 3-004.01D and E.

004.04 The facility shall provide residential and habilitative services to all patients/residents admitted under the provisions of 202 NAC 3-004.01, .02, and .03, in accordance with the programmatic and administrative requirements that are stipulated in regulations and standards for facility licensure, certification, and accreditation; and in the Department and the facility policies and procedures.

004.04A The facility shall maintain records that document all services provided.

004.04B The facility shall at the time of admission, provide a verbal explanation to the patient/resident and his/her legally authorized representative of the procedures for transfer from the facility to another Department facility; the procedures for placement from the facility to a community-based mental retardation program; and the procedures for objection to placement.

004.04B1 There shall be documentation of the verbal explanation.

004.04B2 There shall be documentation that the patient/resident and his/her legally authorized representative were informed that the written version of these procedures is available for review upon written request.

SOURCE: Neb. Rev. Stat. §84-901 et seq.

Neb. Rev. Stat. §83-385

Neb. Rev. Stat. §83-386

Neb. Rev. Stat. §83-387

Neb. Rev. Stat. §83-109

Neb. Rev. Stat. §83-338

Neb. Rev. Stat. §83-1,149

Neb. Rev. Stat. §83-1,152

Horacek, Plaintiff and U.S.A. Plaintiff Intervenor vs. Thone, Defendant, CV 72-L-299

005 PROCEDURE FOR PLACEMENT. Placement of patients/residents from a facility into a community-based mental retardation program may occur when suitable habilitative and treatment services and residential facilities exist to meet the patients/residents current needs as documented in an individualized habilitation plan. This must be accomplished through the efforts of a team composed of representatives from the facility and the community-based mental retardation program; and the patient/resident or his/her legally authorized representative.

005.01 The facility shall document on an annual basis, the provision of a written document that describes the patient/resident's developmental strengths, physical or medical handicapping conditions, and related service needs to the responsible regional director of the community-based mental retardation region, to enable the region to review and determine the availability of service options within the geographical area of the region to meet the patient/resident's needs.

005.01A The services specified in the written document must correspond to an identified treatment, habilitative, or residential care need that is currently being addressed by the facility.

005.01B The services specified must be by title and must not prescribe the methods, type, or schedule for implementation; nor prescribe the qualification of the provider.

005.02 The facility shall document the respective community-based mental retardation region's decision regarding the capacity within the geographical area of the region to provide services for the patient/resident within the coming year.

005.02A When the community-based mental retardation region has not responded to the facility within 30 days of the notification; or the response indicates that the patient/resident's service needs cannot be provided for within the region, the facility shall notify the Office of Mental



Retardation who shall follow-up with the region pursuant to 205 NAC 4-015.05.

005.02B When the community-based mental retardation region notifies the facility that the patient/resident's service needs can be provided for within the region, the facility shall schedule within 30 days of the region's response a placement planning meeting between representatives of the facility and the community-based mental retardation program; and the patient/resident or his/her legally authorized representative, and when appropriate the school district.

005.03 The facility shall maintain documentation of the placement planning meeting. Such documentation must include:

005.03A A review of the patient/resident's identified needs to clarify issues that relate to the possibility of his/her placement.

005.03B The service options that are available to meet the patient/resident's identifying needs.

005.03C The community-based mental retardation program's decision to pursue or discontinue placement planning for the patient/resident.

005.03D The due date for the community-based mental retardation program to submit a placement plan to the facility and to the patient/resident's legally authorized representative.

005.04 The facility shall, within 10 days of receipt of a placement plan submitted by the community-based mental retardation program, conduct a placement plan review in order to reach a consensus regarding placement.

005.04A There shall be documentation of the placement plan review; and this documentation must contain justification or support for a consensus that is either for or against placement.

005.04B There shall be documentation that a copy of the facility's placement plan review was sent, within five days of the review, to the community-based mental retardation program and to the patient/resident's legally authorized representative.

005.05 The facility shall schedule a placement meeting to occur within 30 days after sending the placement plan review. The placement meeting must include representatives from the facility and the community-based mental retardation program; and the patient/resident or his/her legally authorized representative. Each of these represented entities, regardless of the number of persons present for each, shall have one voice in the placement decision-making process.

005.06 The facility shall document the results of the placement meeting. This documentation must specify:

005.06A The decision either for or against placement as determined by agreement between at least two of the three respective entities.

005.06A1 When the decision is for placement, the facility and the community-based mental retardation program shall finalize the placement, following a ten day period within which the legally authorized representative may file an objection to this decision pursuant to 202 NAC 3-006. When an objection is filed, the patient/resident shall remain at the facility until the appeal procedure is exhausted.

005.06A2 When the decision is against placement, the community-based mental retardation program may appeal the decision pursuant to the 202 NAC 3-006.

005.06B That a placement follow-up report which provides the patient/resident's placement status will be sent to the facility and to the patient/resident's legally authorized representative within 60 days of the placement.

005.06B1 When the legally authorized representative is not satisfied with the placement, he/she may apply for the patient/resident to be re-admitted to the facility or file a grievance with the community-based mental retardation program following the procedures of 205 NAC 4-006.

SOURCE: Neb. Rev. Stat. §83-1,146  
Neb. Rev. Stat. §84-901 et. seq.  
Neb. Rev. Stat. §83-1,149

006 PROCEDURE FOR OBJECTION TO PLACEMENT. The legally authorized representative of a patient/resident, or a community-based mental retardation program shall be entitled to appeal a decision that is either for or against placement of a patient/resident from a facility into a community-based mental retardation program.

006.01 A patient/resident's legally authorized representative or community-based mental retardation program must file an objection to the action taken regarding placement with the Director of Public Institutions by certified mail within 10 working days of the action.

006.02 The Director of Public Institutions or his/her designee shall contact the aggrieved, within five working days, of receipt of the appeal to determine if the aggrieved desires a formal hearing.

006.03 If the aggrieved waives the formal hearing, the Director of Public Institutions may render his/her decision in writing and by certified mail to affirm or change the facility's decision within a reasonable time, not to exceed 30 days.

006.04 If the aggrieved requests a formal hearing, the Director of Public Institutions may appoint a hearing examiner who would preside at

such hearing, take testimony, and report the findings to the Director of Public Institutions who shall make the final decision.

006.05 The Director of Public Institutions decision will be sent by certified mail to the aggrieved within 30 days following completion of the hearing.

006.06 The aggrieved is entitled to appeal within 30 days of receipt of the Director of Public Institutions decision to the District Court of Lancaster County in accordance with Nebraska Revised Statute §§84-917 to 84-919.

SOURCE: Neb. Rev. Stat. §84-901 et. seq.  
Neb. Rev. Stat. §83-1,149

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APPROVED

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ATTORNEY GENERAL

BY: *[Signature]*  
Assistant Attorney General  
DATE: *March 27, 1985*

APPROVED:  
Date 5-23-85

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FILED

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MAY 23 1985

REPEAL

CHAPTER 4 - RULES AND REGULATIONS PERTAINING TO DISCIPLINE OF MENTALLY  
RETARDED RESIDENTS WITHIN FACILITIES OF THE DEPARTMENT OF PUBLIC INSTITUTIONS001 PRINCIPLES

An individual program plan should be developed for each person accepted for service, regardless of chronological age or developmental level. The plan should be based on individual assessment data and on other data that assist in understanding the resident's situation, it should be developed by the relevant staff of the facility serving the resident, and with the participation of the resident and his family. A plan developed prior to the onset of services by the facility should be reevaluated, so as to meet the current needs of the resident. Long- and short-term objectives should be stated separately and within a time frame, and they must be expressed in behavioral terms that provide measurable indices or progress, and that enable the effectiveness of interventions to be evaluated. The plan shall describe how the objectives will be achieved and the barriers that might interfere with the achievement of them, and state a schedule for achieving them.

Methods of intervention for the achievement of the stated objectives must be specified. The individual program plan must be modified as goals and objectives are, or are not, attained. Review and appropriate revision of the plan must be a continuous and self-correcting process. The plan must help all concerned to coordinate their efforts and activities, so as to maximize services to the resident.

These regulations provide limitations and restrictions with respect to methods of intervention. Positive training methods are strongly emphasized, and shall be used in place of decelerating methods. Only in instances in which positive training methods have entirely failed to meet the current needs of the resident may decelerating methods, including time-out procedures and discipline, be used and in such cases strict limitations on their use are required under these regulations. Except for the prevention of physical injury, and for programming to take place in an appropriately orderly environment, such methods of intervention are tools in the implementation of an individual treatment plan and are to be used therefore for therapeutic purposes only.

These regulations in addition forbid entirely certain types of intrusive training methods and certain discipline.

002 STATEMENT OF RIGHTS

002.01 Each facility shall include in its policies the "Declaration of General and Special Rights of the Mentally Retarded" as adopted by the International League of Societies for the Mentally Handicapped.

002.02 Individual treatment and treatment plan requisites contained in the Department of Public Institutions' Regulations with respect to the Rights of the Mentally Disabled, requisites contained in the Joint Commission on Accreditation of Hospitals Standards for Residential Facilities for the Mentally Retarded, and these regulations which state minimum procedural and substantive

standards, shall be interpreted in a liberal manner in order to provide for the development and enhancement of a resident's self-concept through programs which promote adaptive behavior, and the concomitant achievement of success and security.

### 002.03 Notice of Regulations

002.03A Every resident shall be furnished with a copy of these rules and regulations, with a copy of a consumer booklet setting out these rules in simple language, and with a copy of his or her individualized treatment program. The receipt of these documents shall be acknowledged by the resident by his or her signature or mark and witnessed by a third person. Employees shall make a good-faith effort to insure that the resident comprehends the contents of these documents.

002.03B Copies of the rules and consumer booklet shall be sent to the parents or legal guardian of the resident.

002.03C The resident and the resident's parents or legal guardian shall be notified in writing of any amendment to either document.

### 003 APPLICABILITY OF THESE REGULATIONS

These regulations are applicable to all instances in which there is intervention to a problem behavior of a mentally retarded resident in a facility of the Department of Public Institutions.

### 004 INDIVIDUAL PROGRAM PLAN WITH RESPECT TO PROBLEM BEHAVIOR: POSITIVE REINFORCEMENT METHODS

004.01 Behavior management program or programs shall be developed by the resident's interdisciplinary team for the purpose of modifying problem behavior. In such case the team shall use positive reinforcement methods to the exclusion of other methods. Such positive reinforcement shall include the ignoring of inappropriation behavior with the concurrent reinforcement of appropriate behavior.

004.01A Whenever a behavior management program to weaken problem behavior is developed, using modification solely by way of positive reinforcement techniques, the team shall consider and document the following relevant facts and the conclusions therefrom:

004.01A1 Identification of the problem behavior in observable, measurable items;

004.01A2 Identification of the history of the problem behavior which will include: the onset of behavior; the occurrence pattern of the behavior, the previous programmatic attempts to modify the behavior, and the resident's response to previous programs;

004.01A3 A current baseline of the problem behavior which establishes the frequency of the behavior, the duration of the behavior, the location or circumstances in which the behavior is demonstrated, and the consequences or responses of staff, peers, and the resident to the behavior.

004.01B A behavior management program using positive reinforcement techniques shall be designed so that it will:

004.01B1 Teach the resident the circumstances under which the identified behavior would be appropriate, slightly modify the behavior for appropriateness, and/or replace the behavior with other behavior that is adaptive and appropriate;

004.01B2 Specify the behavioral objective of the program: specify the behavior to be decelerated and the behavior to be acquired in measurable, observable terms;

004.01B3 Specify the positive training method to be used: differential reinforcement, modeling, shaping, or other positive training procedures;

004.01B4 Specify the schedule, trainer, and data to be collected in order to assess progress toward the objectives;

004.01B5 Specify the behavioral criterion level for completion of the program;

004.01B6 Specify the date of the initiation of the program and the anticipated duration.

004.02 A behavior management program which has not met the goals of the program shall be reviewed and additional behavior management program or programs may be designated by the interdisciplinary team which will:

004.02A Teach the resident the circumstances under which the identified behavior would be appropriate, slightly modify the behavior for appropriateness, and/or replace the behavior with other behavior that is adaptive and appropriate;

004.02B Specify the behavioral objective of the program: specify the behavior to be decelerated and the behavior to be acquired in measurable, observable terms;

004.02C Specify the alternative positive training method to be used: differential reinforcement, modeling, shaping, or other positive training procedures;

004.02D Specify the schedule, trainer, and data to be collected in order to assess progress toward the objectives;

004.02E Specify the behavioral criterion level for completion of the program;

004.02F Inform the individual of the possible consequences of a behavior if it continues;

004.02G Request the individual to observe a more appropriate peer model;

004.02H Specify the date of the initiation of the program and the anticipated duration.

005 INDIVIDUAL PROGRAM PLAN WITH RESPECT TO PROBLEM BEHAVIOR: TIME-OUT METHOD

005.01 Whenever a behavior management program is developed by the resident's interdisciplinary team for the purpose of modifying substantial problem behavior, the team may use time-out in conjunction to positive reinforcement methods.

005.01A Such time-out involves moving the resident for a short period of time from an activity which is reinforcing the problem behavior to another area of the facility.

005.01B Seclusion, defined as the placement of a resident alone, in a locked room, not under direct observation and not as a part of a systematic time-out program shall not be employed.

005.02 Prior to the development of a behavior management program using time-out in conjunction with positive reinforcement techniques, the team shall consider and document the following relevant facts and the conclusions therefrom:

005.02A Identification of the problem behavior in observable, measurable terms;

005.02B An analysis of whether the problem behavior is substantial enough to warrant the use of time-out;

005.02C Identification of the history of the problem behavior which will include: the onset of behavior; the occurrence pattern of the behavior, the previous programmatic attempts to modify the behavior, the resident's response to previous programs;

005.02D A current baseline of the problem behavior which establishes the frequency of the behavior, the duration of the behavior, the location or circumstances in which the behavior is demonstrated, and the consequences or responses of staff, peers, and the resident to the behavior.

005.03 A behavior management program using time-out shall be designed so that it will:

005.03A Teach the resident the circumstances under which the identified behavior would be appropriate, slightly modify the behavior for appropriateness, and/or replace the behavior with other behavior that is adaptive and appropriate;

005.03B Specify the behavioral objective of the program: specify the behavior to be decelerated and the behavior to be acquired in measurable, observable terms;

005.03C Specify the positive training method to be used: differential reinforcement, modeling, shaping, or other positive training procedures;

005.03D Specify that time-out is to be used, including any requirements apart from those contained in these regulations;

005.03E Specify the schedule, trainer, and data to be collected in order to assess progress toward the objectives;

005.03F Specify the behavior criterion level for completion of the program;

005.03G Inform the individual of the possible consequences of a behavior if it continues;

005.03H Request the individual to observe a more appropriate peer model;

005.03I Specify the date of the initiation of the program and the anticipated duration, which shall be no longer than four weeks without a further evaluation by the treatment team.

005.04 Requisites: Prior to the development of such a program the interdisciplinary team shall consider and document that:

005.04A The behavior interferes with the habilitation program of the resident or another resident;

005.04B All reasonable positive reinforcement techniques have been systematically tried and have been demonstrated to be ineffective;

005.04C The time period is sufficiently proximate between the behavior and the time-out as will enable the resident to comprehend the causal relationship. In addition, such program shall prescribe that time-out shall never be used if at the time of its use the resident is unable to comprehend the connection between the behavior and the time-out;

005.04D The program provides that time-out is being used solely in order to remove the resident from an environment that is reinforcing a problem behavior to an environment which does not present the stimuli that continues to reinforce the behavior;



005.04E The program provides that time-out shall be terminated upon the cessation of the problem behavior and that in any event removal from a situation for time-out purposes shall not be for more than one hour and only under the direct observation of the person conducting the program;

005.04F The program has been reviewed and approved by the facility's Human Rights Committee.

006 INDIVIDUAL PROGRAM PLAN WITH RESPECT TO PROBLEM BEHAVIOR: LIGHT DISCIPLINE METHOD

006.01 Where prior behavior management programs have not met their goals with respect to the attempted modification of the problem behavior, the resident's interdisciplinary team may develop a management program prescribing the use of light discipline.

006.02 Whenever such a behavior management program to modify problem behaviors is developed by the use of light disciplinary methods, the team shall consider and document the following relevant facts and the conclusions therefrom:

006.02A Identification of the problem behavior in observable, measurable terms;

006.02B An analysis of whether the problem behavior is substantial enough to warrant the use of light discipline for deceleration and the reasons therefor;

006.02C Identification of the history of the problem behavior which will include: the onset of behavior; the occurrence pattern of the behavior; the previous programmatic attempts to modify the behavior; an analysis of the reason or reasons for previous failures;

006.02D A current baseline of the problem behavior which establishes the frequency of the behavior, the duration of the behavior, the location or circumstances in which the behavior is demonstrated, and the consequences or responses of staff, peers, and the resident to the behavior.

006.03 A behavior management program using light discipline alone or in conjunction with positive reinforcement and time-out shall be designed so that it will:

006.03A Teach the resident the circumstances under which the identified behavior would be appropriate, slightly modify the behavior for appropriateness, and/or replace the behavior with other behavior that is adaptive and appropriate;

006.03B Specify the behavioral objective of the program: specify the behavior to be decelerated and the behavior to be acquired in measurable, observable terms;

006.03C Specify the positive training method to be used: differential reinforcement, modeling, shaping, or other positive training procedures;

006.03D Specify that time-out is to be used, including any requirements apart from those contained in these regulations;

006.03E Specify the light discipline method to be used:

006.03E1 Verbal corrections

006.03E1a Warnings

006.03E1b Requests to terminate

006.03E2 Restrictions: Recreational

006.03E2a Denial of privileges or exclusion from recreational activities during the day of the problem behavior for not more than two hours.

006.03E2b Restriction to any residential living unit or within a living unit during the day of the problem behavior for not more than twelve hours, excluding normal sleeping time.

006.03F Specify the schedule, trainer, and data to be collected in order to assess progress toward the objectives;

006.03G Specify the behavioral criterion level for completion of the program;

006.03H Inform the individual of the possible consequences of a behavior if it continues;

006.03I Request the individual to observe a more appropriate peer model;

006.03J Specify the date of the initiation of the program and the anticipated duration, which shall be no longer than four weeks without a further evaluation by the treatment team.

006.04 Requisites: Prior to the development of such a program the interdisciplinary team shall consider and document the following:

006.04A That a treatment program designed to modify problem behavior by the imposition of disciplinary measures shall be undertaken only for therapeutic reasons and never as a means of punishment.

006.04B That in assessing whether to undertake a behavior management program the interdisciplinary team has determined that the behavior interferes substantially with the habilitation program of the individual and/or that the behavior

interferes with the habilitation program of another mentally retarded individual.

006.04C That in assessing whether to undertake a behavior management program which will include the use of discipline, the interdisciplinary team has taken into account that the contemplated program, according to generally accepted clinical methodology ought to give rise to a reasonable expectation that the discipline will be effective within a predetermined time period, that it will benefit the resident by preparing him or her for participation in a more advanced program, and that it will not have deleterious side effects.

006.04D That in developing a treatment program it shall prescribe what time period is sufficiently proximate between the behavior and the contemplated discipline in order that the resident will comprehend the casual relationship. Such treatment program shall prescribe that discipline will not be imposed if at the time of its imposition the resident is unable to comprehend the connection between the behavior and the discipline.

006.04E That in developing the program it shall be designed so that it is appropriate to the resident's level of functioning.

006.04F That in assessing what methods are not appropriate to weaken the problem behavior, the interdisciplinary team has specified the least restrictive alternative which may accomplish the goal.

006.04G That in assessing what methods are most appropriate to decelerate the problem behavior, the team assess the proposed method as it is expected to be used in light of how the same problem behavior is treated in other individuals with approximately the same characteristics so that individuals who are similarly situated shall be treated in the same manner, wherever feasible.

007 INDIVIDUAL PROGRAM PLAN WITH RESPECT TO PROBLEM BEHAVIOR:  
SUBSTANTIAL DISCIPLINE

007.01 Where prior behavior management programs have not met their goals with respect to the attempted modification of the problem behavior, the resident's interdisciplinary team may develop a management program prescribing the use of substantial discipline.

007.02 Whenever such a behavior management program to modify problem behaviors is developed, including modification by the use of substantial disciplinary methods, the team shall consider and document the following relevant facts and the conclusions therefrom:

007.02A Identification of the problem behavior in observable, measurable terms;

007.02B An analysis of whether the problem behavior is substantial enough to warrant the use of substantial discipline for deceleration and the reasons therefor;

007.02C Identification of the history of the problem behavior which will include: the onset of behavior; the occurrence pattern of the behavior; the previous programmatic attempts to modify the behavior; an analysis of the reason or reasons for previous failures;

007.02D A current baseline of the problem behavior which establishes the frequency of the behavior, the duration of the behavior, the location or circumstances in which the behavior is demonstrated, and the consequences or responses of staff, peers, and the resident to the behavior;

007.02E Identification, with respect to other residents who are at similar functioning levels who have similar problem behaviors which have not responded to positive reinforcement methods, of the least intrusive types and duration of disciplinary methods which have been successful.

007.03 A behavior management program using substantial discipline shall be designed so that it will:

007.03A Teach the resident the circumstances under which the identified behavior would be appropriate, slightly modify the behavior for appropriateness, and/or replace the behavior with other behavior that is adaptive and appropriate;

007.03B Specify the behavioral objective of the program: specify the behavior to be decelerated and the behavior to be acquired in measurable, observable terms;

007.03C Specify the positive training method to be used: differential reinforcement, modeling, shaping, or other positive training procedures;

007.03D Specify the use of time-out, if applicable including any requirements apart from those--contained in these regulations;

007.03E Specify the deceleration technique involving the use of substantial discipline to be used:

007.03E1 Restrictions: Recreational

Denial of privileges or exclusion from recreational activities for not more than twelve hours, excluding normal sleeping times.

007.03E2 Restrictions: Living Unit

Restriction to any residential unit for more than twelve hours, except for programmatic activities.

007.03F Specify the schedule, trainer, and data to be collected in order to assess the progress toward the objectives;

007.03G Specify the behavioral criterion level for completion of the program;

007.03H Inform the individual of the possible consequences of a behavior if it continues;

007.03I Request the individual to observe a more appropriate peer model;

007.03J Specify the date of the initiation of the program and the anticipated duration, which shall be no longer than two weeks without a further evaluation by the treatment team.

007.04 Requisites: Prior to the development of such a program the interdisciplinary team shall consider and document the following:

007.04A That a treatment program designed to modify problem behavior by the imposition of disciplinary measures shall be undertaken only for therapeutic reasons and never as a means of punishment.

007.04B That in assessing whether to undertake a behavior management program the interdisciplinary team has determined that the behavior interferes substantially with the habilitation program of the individual and/or that the behavior interferes with the habilitation program of another mentally retarded individual.

007.04C That in assessing whether to undertake a behavior management program which will include the use of discipline, the interdisciplinary team has taken into account that the contemplated program, according to generally accepted clinical methodology ought to give rise to a reasonable expectation that the discipline will be effective within a predetermined time period, that it will benefit the resident by preparing him or her for participation in a more advanced program, and that it will not have deleterious side effects.

007.04D That in developing a treatment program it shall prescribe what time period is sufficiently proximate between the behavior and the contemplated discipline in order that the resident will comprehend the casual relationship. Such treatment program shall prescribe that discipline will not be imposed if at the time of its imposition the resident is unable to comprehend the connection between the behavior and the discipline.

007.04E That in developing the program it shall be designed so that it is appropriate to the resident's level of functioning.

007.04F That in assessing what methods are not appropriate to weaken the problem behavior, the interdisciplinary team has specified the least restrictive alternative which may accomplish the goal.

007.04G That in assessing what methods are most appropriate to decelerate the problem behavior; the team assesses the proposed method as it is expected to be used in light of how the same problem behavior is treated in other individuals with approximately the same characteristics so that individuals who are similarly situated shall be treated in the same manner, wherever feasible.

007.05 No substantial discipline shall be imposed on a resident under his or her treatment plan unless there has been a determination that such discipline is warranted, after a hearing according to the procedures of 202 NAC 008 of these regulations.

008 HEARING PROCEDURES

008.01 Investigation

008.01A When a resident engages in behavior which has been identified in his or her treatment plan for modification, any employee who has notice of such behavior and who considers the behavior substantial shall notify the person designated in the particular unit as the investigating officer and the Superintendent and shall state the facts within his or her knowledge;

008.01B The investigating officer may conclude, either at his entire discretion or after consultation with others, that the matter is too insubstantial to merit a hearing, or that the behavior is not identified as being subject to modification in the resident's treatment plan. In such case the investigating officer shall dismiss the matter;

008.01C If the investigating officer concludes that the alleged behavior is subject to modification in the resident's treatment plan a hearing shall be scheduled, to determine the truth of the allegation and any treatment disposition prescribed by the treatment program;

008.01D The investigating officer, in addition to conducting the investigation, shall (1) record the names of witnesses, (2) inform the witnesses of the time and place of the hearing, (3) issue the notice of the hearing to the resident, (4) contact the hearing officer, and (5) inform the resident of the time and place of the hearing;

008.01E No witness to the alleged act or omission may serve as investigating officer.

008.02 Dismissal After Continuances.

If the hearing officer determines that the resident will not comprehend the connection between his or her alleged behavior by the time imposition of discipline would be timely, the hearing officer shall dismiss the matter and enter the reason for the dismissal upon the record.

008.03 Notice to the Resident

008.03A The investigating officer shall issue a written notice to the resident that:

008.03A1 states the time and place of the hearing;

008.03A2 describes with specificity the alleged act or omission;

008.03A3 lists the possible disciplinary measures to be taken, and;

008.03A4 informs the resident of the right to appeal.

008.03B If the resident is not capable of reading with comprehension, verbal or signing notice will be provided to each resident capable of understanding expressive communication.

008.03C The resident shall receive the written notice of the hearing at least one hour prior to the commencement of the hearing.

008.04 Prehearing Discipline

In all instances where a hearing is required, the resident shall not be subjected to prehearing discipline.

008.05 Time and Place

The hearing shall take place during the same day if possible, or if not, on the next business day after any employee acquires knowledge of behavior which has been identified for modification in the resident's treatment program.

The hearing shall be held either in a room set aside specifically for this procedure or in any room removed from the mainstream of activity.

008.06 Hearing Officer

Formal hearings are to be conducted by one or more qualified mental retardation professionals; none of whom shall be a member of the resident's program team. In no event shall an employee who witnessed or investigated the alleged act or omission serve as a hearing officer.

008.07 Continuance

The hearing officer shall grant a continuance in order that (1) the presence of a witness(es) may be secured, (2) the resident, if in a highly excited state of mind, may be provided an opportunity to regain his or her composure, or (3) the resident may have more time to prepare his or her evidence.

008.08 Hearing Officer's Duties

Duties of the hearing officer shall include but not be limited to:

008.08A opening the hearing;

008.08B entering into the record the notice of the hearing;

008.08C questioning the witnesses;

008.08D hearing the evidence;

008.08E protecting the interests of the resident;

008.08F making finding of facts and rendering a decision on the merits;

008.08G if appropriate imposing discipline in accordance with the resident's individualized treatment program;

008.08H notifying the resident of the appeal process;

008.08I preparing the record and transmitting it to the Superintendent;

008.08J notifying the parent or legal guardian if discipline was imposed;

008.08K closing the hearing.

The hearing officer shall enter a written decision in the record and the reasons for the determination. The decision shall include findings of fact in regard to whether the resident engaged in the alleged behavior, whether the alleged behavior was identified as subject for modification in a treatment program in the resident's individualized treatment plan, whether the behavior if so identified was substantial enough to warrant the imposition of discipline under the treatment plan, and if so what discipline was particularly prescribed for such behavior in the treatment plan. The decision shall also include the hearing officer's determination of whether the resident would be able to understand the connection between his or her behavior and any prescribed discipline.

008.09 Notice to Resident's Parents or Legal Guardian



The parents or legal guardian of the resident shall be notified in writing within five days of the imposition of discipline as a result of a disciplinary hearing. The notice shall include:

008.09A a copy of the notice supplied to the resident;

008.09B a copy of the decision of the hearing officer;

008.09C a detailed description of the discipline imposed, and;

008.09D a statement informing the parents or legal guardian that the decision or the amount of discipline imposed may be appealed to the Superintendent or that an action at law may be initiated.

008.10 Appeal

008.10A The resident or the parents or legal guardian of the resident may appeal the decision, the discipline imposed, or both to the Superintendent or his designee within twenty days after the hearing;

008.10B Any requested appeal will be heard within five days after notice of appeal is given by the resident, his parent or guardian. The Superintendent may stay the imposition of discipline;

008.10C A resident or the parents or legal guardian of a resident who appeals to the Superintendent shall be informed in writing of the appeal procedure contained in Neb. Rev. Stat. 84-917 (Reissue 1971).

009 INDIVIDUAL PROGRAM PLAN WITH RESPECT TO BEHAVIOR WHICH WILL CAUSE INJURY: INTERVENTION

009.01 For crisis situations in which a resident is so physically strong and behaviorally resistive that severe aggressive behavior must be eliminated before even more severe physical injury occurs, an interdisciplinary team, after due deliberations, including those described in 202 NAC 4-001 through 009 herein, may determine that the use of restraint or time-out for purposes of intervention to prevent injury to the resident or to another is absolutely necessary. The sole justification for such determination must be the fact that no other type of intervention which is less restrictive will accomplish the purpose of preventing physical injury.

009.02 Whenever such intervention is prescribed in a behavior management program the team shall consider and document the following relevant facts and the conclusions therefrom:

009.02A Identification of the problem behavior in observable, measurable terms;

009.02B An analysis of whether the problem behavior is substantial enough to warrant the use of restraint or time-out and the reasons therefor;

009.02C Identification of the history of the problem behavior which will include: the onset of behavior; the occurrence pattern of the behavior, the previous programmatic attempts to modify the behavior; an analysis of the reason or reasons for previous failures;

009.02D A current baseline of the problem behavior which establishes the frequency of the behavior; the duration of the behavior; the location or circumstances in which the behavior is demonstrated; and the consequences or responses of staff, peers, and the resident to the behavior.

009.02E Identification, with respect to other residents who are at similar functioning levels who have similar problem behaviors which have not responded to positive reinforcement methods, of the least intrusive types and duration of disciplinary methods which have been successful.

009.03 Requisites

009.03A The program shall prescribe whether time-out or restraint is the preferable method of intervention in instances in which intervention to prevent physical injury is absolutely necessary. Except for the protection of the resident or another from physical injury, there shall be no standing orders for restraint or time-out for intervention.

009.03B The requirements of Rules 19 and 20, Rights of the Mentally Disabled, shall be strictly followed.

009.03C Such program shall specify the date of the initiation of the program and the anticipated duration, which shall be no longer than two weeks without a further evaluation by the treatment team.

009.03D Such a behavior management program which authorizes the use of restraint and time-out for intervention shall be described in detail in the interdisciplinary team plan so that an assessment may be made by third parties. Such plan shall be assessed by the facility Human Rights Committee, the facility Research Committee, the Department of Welfare's Utilization Review Team, and the Joint Commission on Accreditation of Hospital's accreditation site team.

010 INTERVENTION WITHOUT PRIOR APPROVAL OF INTERDISCIPLINARY TEAM

010.01 Substantial Behaviors Which Interfere with Programming

010.01A Should a resident engage in a new problem behavior which has not been considered by the interdisciplinary team under the foregoing provisions, and such problem behavior

substantially interferes with the programming of the resident or another resident, the resident with the problem behavior may be excluded from programming during the day of the incident. The resident may be returned to programming during the day of the incident upon the cessation of the problem behavior, where feasible.

010.01B Notice of such action and the pertinent circumstances shall be promptly transmitted to the director of the unit, superintendent or chief executive officer or his or her designee, and the interdisciplinary team.

010.01C When used with a resident more often than once per week or one who repeats such behavior each week for more than two weeks, the interdisciplinary team shall, within one week of the second incident in the week or the third incident in a three week period, design and implement a behavior management program for the purpose of extinguishing the behavior which led to the exclusion from programming.

010.02 Prevention of Physical Injury: Crisis

010.02A Should a resident engage in behavior which causes or threatens to cause imminent physical injury to himself or another individual, immediate intervention in such crisis situation may be employed where necessary to prevent such harm. Such intervention may include the use of restraint or time-out. Notice of such action and the pertinent circumstances shall be promptly transmitted to the director of the unit, superintendent or chief executive officer or his designee, and the interdisciplinary team;

010.02B The requirements of Rules 19 and 20, Rights of the Mentally Disabled, shall be strictly followed;

010.02C Should a resident engage in such behavior, the interdisciplinary team shall schedule a staffing within one week of the incident.

010.03 Behavior Not Identified in Individual Treatment Plan in Behavior Modification Program Involving the Use of Discipline: No Imminent Physical Harm and No Interference with Programming.

No discipline shall be imposed upon any resident for any behavior unless behavior is a part of a behavior program in the resident's individual treatment plan. The sole exceptions are contained in 202 NAC 4-010.01A & B herein.

010.04 The following measures are entirely prohibited as disciplinary actions:

010.04A punishment, verbal threats or abuse by employees;

010.04B forfeiture of money or personal property;

010.04C the use of any drug for purposes other than those enumerated in current Standards for Residential Facilities for the Retarded, by the Join Commission on Accreditation of Hospitals, Standards 2.1.8.8, 2.1.8.8.1, and 2.1.8.8.1.1 which states as follows:

2.1.8.8

Medication shall not be used excessively, as punishment, for the convenience of staff, as a substitute for programs, or in quantities that interfere with a resident's habilitation program.

2.1.8.8.1

Psychotropic or behavior-modifying drugs shall be used only as an integral part of an individual program plan that is designed by an interdisciplinary team to lead to a less restrictive way of managing, and ultimately to the elimination of, the behaviors for which the drugs are employed.

2.1.8.8.1.1

The program plan must specify the behavior to be modified, a time-limited prescription by a licensed physician, and the data that are to be collected in order to assess progress toward the treatment objective.

010.04D aversive behavior modification;

010.04E isolation and seclusion which is defined as the placement of a resident alone, in a locked room, not under direct observation and not as a part of a systematic time-out program that meets all applicable Joint Commission on Accreditation of Hospital's standards;

010.04F restraint, except to prevent injury in a situation requiring intervention;

010.04G changes for more than a day in normal life activities which do not include changes in the time, frequency and opportunity to eat, sleep, and maintain personal hygiene;

010.04H temporary reassignment to a living unit.

011 DEFINITIONS

011.01 Adaptive: The effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of his age and cultural group. These aspects of the behavior are:

011.01A Maturation;

011.01B Learning; and/or

011.01C Social Adjustment

These three aspects of adaptation are of different importance as qualifying conditions of mental retardation for different age groups. There are levels of adaptive behavior defined by the American Association on Mental Deficiency, The Balthazar Scales of Adaptive Behavior, etc.

011.02 Baseline: The usual level of functioning proficiency or state of an individual with respect to a particular characteristic. The frequency of occurrence of a behavior before intervention or treatment.

011.03 Behavior Modification: Precisely planned, systematic application of methods and experimental findings of behavioral science with intent of altering observable behaviors, including increasing, decreasing, extending, restricting, teaching, maintaining behaviors; some of the key concepts are:

011.03A Operant Behavior - behavior controlled by its consequences;

011.03B Respondent Behavior - (classical, Pavlovian) reflex behavior, elicited or controlled by its antecedent;

011.03C Positive Reinforcer - a stimulus which, when presented as a consequence of a response, increases or maintains the response;

011.03D Negative Reinforcer - an aversive stimulus which, if removed as a consequence of a response, increases or maintains the response;

011.03E Chain - two or more performances combined into a more complex sequence, and occurring in a determinate order;

011.03F Contingency - relationship between a given response and its environmental consequences;

011.03G Contingency Management - manipulation of environmental consequences of a given behavior in order to achieve a specific behavioral goal;

011.03H Differential Reinforcement - reinforcement of a response under one stimulus condition, but not under other stimulus conditions, (e.g., the low rate but not high rate of performance, for performance with one adult but not with another);

011.03I Schedule of Reinforcement - program designed for presentation of reinforcer; may be timed (Fixed or Variable interval) or number Fixed or Variable ratio;

011.03J Shaping - development of new behaviors through systematic plan of reinforcement for successive approximations of the behavioral goal;

011.03K Time Out - a period of time in which the individual in a contingency management program is removed from or denied the opportunity to obtain reinforcers.

011.04 Habilitation: The process by which the staff of the facility assists the resident to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and of his environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes but is not limited to programs of formal, structured education and treatment.

011.05 Interdisciplinary: An approach to diagnosis, evaluation, and individual program planning in which professional and other personnel participate as a team. Each participant, utilizing whatever skills, competencies, insights, and perspectives his particular training and experience provide, focuses on identifying the developmental needs of the resident and devising ways to meet them, without constraints imposed by assigning particular domains of behavior or development to particular disciplines only. Participants share all information and recommendations, so that a unified and integrated habilitation program plan is devised by the team. The interdisciplinary approach is contrasted with the multidisciplinary approach, in which each representative of a particular discipline or program views the resident only from the perspective assigned to his discipline or program; in which particular domains of resident development and behavior are often held to be the sole responsibility or prerequisite of particular professions or programs; and in which each representative of a discipline separately reports his findings and the recommendations that he proposes to implement as a result of them, more or less independently of the findings and recommendations reported by other representatives. A single individual may then use this accumulated knowledge to formulate a program plan.

011.06 Legal Incompetence: The legal determination that a resident is unable to exercise his full civil and legal rights, and that a guardian is required.

011.07 Living Unit: A resident-living unit that includes sleeping, dining, and activity areas.

011.08 Mental Retardation: Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period. There are generally four terms:

011.08A Mild Mental Retardation: a term used to describe the degree of mental retardation present when intelligence testing scores range between two and three standard deviations below the norm on the standardized intelligence scale.

011.08B Moderate Mental Retardation: a term used to describe the degree of mental retardation when intelligence testing scores range between three and four standard deviations below the norm on a standardized intelligence scale.

011.08C Severe Mental Retardation: a term used to describe the degree of mental retardation when intelligence testing scores range between four and five standard deviations below the norm on a standardized intelligence scale.

011.08D Profound Mental Retardation: a term used to describe the degree of mental retardation present in intelligence test scores below five standard deviations below the norm on a standardized intelligence scale.

011.09 Normalization Principle: The principle of helping the developmentally disabled to obtain an existence as close to the normal as possible, making available to them patterns and conditions of every-day life that are as close as possible to the norms and patterns of the mainstream of society. Specifically, the use of means that are as culturally normative as possible to elicit and maintain behavior that is as culturally normative as possible.

011.10 Rehabilitation: The process of improving an individual skill or level of adjustment with respect to an increased ability to maintain satisfactory independent or dependent functioning such as self care, employment, etc.

011.11 Seclusion: The placement of a resident alone, in a locked room, not under direct observation and not as a part of a systematic time-out program that meets all applicable Joint Commission on Accreditation of Hospital's Standards, shall not be employed.

011.12 Time-Out: A period of time in which the individual in a contingency management program is removed from or denied the opportunity to obtain reinforcers.

SOURCE: SECTION 83-390 (Reissue 1976).

REPEAL

CHAPTER 5 - RULES AND REGULATIONS FOR THE PROMOTION, CONDITIONAL DISCHARGE AND FINAL DISCHARGE OF JUVENILES IN FACILITIES OF THE DEPARTMENT OF PUBLIC INSTITUTIONS

PURPOSE

These regulations have been prepared to effectuate the legislative directive in section 43-210.02 R.R.S. 1943 (Reissue 1973) that: A child committed to any such institution shall be subject to the control of the superintendent thereof, and the said superintendent, with the advice and consent of the Department of Public Welfare or the Department of Public Institutions, whichever has supervision of the institution, shall adopt by-laws for the promotion, paroling and final discharge of inmates such as shall be considered mutually beneficial for the institution and the inmates; Provided, upon final discharge of any inmate such department shall file a certified copy of the discharge with the court which committed said inmate."

001 PLACEMENT FOR EVALUATION

Any facility of the Department which provides for the treatment and evaluation of juveniles shall accept a placement for evaluation when ordered by the Juvenile Courts of this State.

002 EVALUATION

The facility shall make within 30 days a complete evaluation of the juvenile as requested by the court. If in the opinion of the treatment team the evaluation will require more than 30 days the facility director will request authorization of the court for such additional periods of 30 days each as are necessary.

003 REPORT

A written report of the results of the evaluation shall be sent to the Juvenile Court.

004 COST FOR EVALUATION

All costs incurred in the placement for the evaluation, except for transportation costs to and from the facility shall be borne by the State of Nebraska.

005 PLAN FOR PROMOTION, CONDITIONAL DISCHARGE AND FINAL DISCHARGE

The facility director shall, for juveniles who have been caused to be placed in the facility for treatment or special care, require that an individual evaluation and plan be prepared. Such evaluation and plan shall consider and make recommendations dealing with the subject of promotion, conditional discharge and final discharge.

006 PROMOTION

The facility director upon the approval of the Medical Services Director shall promote and/or transfer a juvenile who has been caused to be placed in the facility for treatment or special care, to a less restrictive alternative



available in any facility of the Department of Public Institutions when he believes that such promotion and/or transfer is in the best interests of the youth and not injurious to the public welfare.

Juveniles who are in the custody of the department for evaluation shall not be promoted during the thirty day period of the evaluation, or such additional thirty-day periods as are necessary.

#### 007 CONDITIONAL DISCHARGE

The director of a facility shall release a juvenile who has been caused to be placed in the facility for treatment or special care, on conditional discharge when he believes that such release is in the best interests of the juvenile and not injurious to the public welfare. Every conditional discharge shall be made under the terms and conditions prescribed by the facility director, including:

007.01 A plan of treatment on an outpatient basis or,

007.02 A plan of treatment which does not contemplate hospital treatment but which has other prescribed conditions.

Juveniles who are in the custody of the department for evaluation shall not be conditionally discharged during the thirty-day period of the evaluation, or such additional thirty-day periods as are necessary.

Thirty days prior to the contemplated conditional discharge of any juvenile the Medical Services Director of the Department of Public Institutions or an official designated by him shall notify the Juvenile Court which caused the admission or which committed the juvenile of the fact of the impending scheduled conditional discharge, for whatever supervision the court deems advisable under the circumstances. Such notice shall include a statement of the relevant facts and the reasons supporting the decision to conditionally discharge.

#### 008 RETURN TO FACILITY

The facility director may, with the approval of the Medical Services Director, order that a conditionally discharged juvenile be returned to the facility, under the original order of the Juvenile Court.

#### 009 FINAL DISCHARGE

Prior to the end of one year from the date of admission, and not less frequently than every four months thereafter, the facility director with the advice of the Medical Services Director, shall consider for final discharge each juvenile who was caused to be originally admitted on action of a Juvenile Court whether in the facility or on parole. The Medical Services Director shall discharge such youth when any of the following occurs:

009.01 The order of the Juvenile Court has expired by its terms or by the attainment by the juvenile of the age of twenty years and no other medium of hold can be used to detain the person.

009.02 The juvenile no longer requires the custodial care, treatment and/or detention which caused the placement.

009.03 The maximum statutory sentence applicable to the crime for which the juvenile has been charged has expired, in cases where such charge is pending in a court of law other than in a Juvenile Court or in a County Court sitting as a Juvenile Court.

009.04 The juvenile, if he was caused to be admitted because of inability to stand trial, has no substantial chance of attaining the capacity to stand trial in the foreseeable future and is not a proper subject for commitment.

009.05 The Medical Services Director of the Department of Institutions deems discharge clinically suitable

Thirty days prior to the final discharge of any juvenile the Medical Services Director of the Department of Public Institutions, or any official designated by him, shall notify the Juvenile Court which caused the admission or which committed the juvenile, of the fact that discharge has been scheduled. Such notice shall include a statement of the relevant facts and the reasons supporting the decision to discharge.

Upon final discharge of any juvenile the Medical Services Director of the Department of Institutions shall send a certified copy of the discharge to the Juvenile Court which caused the admission or which committed the juvenile.

Annot. Section 43-206.02(4) R.R.S. 1943 (Cum. Supp., 1976); Section 43-210.02 R.R.S. 1943 (Reissue 1973); *Baxtrom v. Herold*, 383 U.S. 107 (1966); *Jackson v. Indiana*, 406 U.S. 715 (1972).

FILED

1-3-85

REPEAL

CHAPTER 6 - REGULATIONS PERTAINING TO THE RIGHTS OF THE MENTALLY DISABLED.

001 DEFINITIONS. Words used in this chapter shall have the following meanings unless otherwise specified within the context of the regulation in which they appear.

001.01 DEPARTMENT means the Department of Public Institutions.

001.02 FACILITY means either the state psychiatric hospitals (Hastings Regional Center, Lincoln Regional Center, and Norfolk Regional Center) or the state residential center for persons with mental retardation (Beatrice State Developmental Center).

001.03 GUARDIAN means an individual appointed by a court of competent jurisdiction to serve in that capacity or the parent of a minor unless a guardian has been appointed for the minor.

001.04 PATIENT/RESIDENT means an individual that receives services in a facility that is operated by the Department for persons with mental illness and/or mental retardation.

001.05 RIGHTS mean any power, privilege, or immunity to which one is justly entitled as granted or secured by either the Constitutions or laws of the United States of America or the State of Nebraska.

SOURCE: Neb. Rev. Stat. §84-901 et seq.

FILED  
Allen J. Beermann  
Secretary of State

JAN 3 1985

APPROVED  
Paul L. Douglas  
ATTORNEY GENERAL  
By \_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL  
Date \_\_\_\_\_

APPROVED:  
Date 1-3-85  
Bob Kerrey  
Governor

002 APPLICABILITY. Facilities that serve persons with mental illness and/or mental retardation shall comply with the provisions of these regulations.

SOURCE: Neb. Rev. Stat. §84-901 et seq.  
Neb. Rev. Stat. §81-112

003 PURPOSE. These regulations are issued to ensure the protection of the rights of persons admitted to or residing in the Department's facilities.

003.01 These regulations provide the Department's mandate for facilities to comply with applicable laws and regulations that set forth patient/resident's rights.

003.02 These regulations provide the Department's standards/criteria for guiding facilities in the development of administrative and programmatic policies and procedures for management of patient rights.

003.03 These regulations pertain to the management of patient/resident rights that are afforded by the source documents contained in 202 NAC 6-004.

SOURCE: Neb. Rev. Stat. §84-901 et seq.  
Neb. Rev. Stat. §81-112

004 PATIENT/RESIDENT RIGHTS. The facility shall ensure the protection of the rights of each patient/resident as afforded by, and in the manner in which such rights are stipulated in applicable laws, regulations and standards for licensure, certification and accreditation.

004.01 The facility shall provide each patient/resident and his/her guardian, if any, with a copy of the Department's Patients/Residents' Rights Handbook. The handbook must include the rights that are common to all persons voluntarily admitted or involuntarily committed to the facility.

004.02 The facility shall develop policies and procedures that govern the presentation of patient/resident's rights to the patient/resident. Such policies and procedures must specify:

004.02A The methods used to present the rights to patients/residents. These methods must include special procedures for those patients/residents who have communication barriers (e.g., deafness, non-English speaking, illiteracy).

004.02B The timeframe within which the rights are presented. This timeframe must not exceed 48-hours from the time of admission to the facility

004.02C The person/discipline/department responsible for presentation of the rights to the patient/resident.

004.02D The standard locations for displaying the patient/resident's rights throughout the facility.

004.02E The standard location for documentation of the patient/resident's receipt of the rights.

004.03 The facility shall develop policies and procedures that govern restriction of a patient/resident's rights as necessitated by his/her mental condition and/or treatment/habilitation needs or considerations. Such policies and procedures must specify:

004.03A The requirements that the facility mandates for all its units/departments/disciplines to follow when a patient/resident's rights are restricted. These requirements must comply with the specifications of applicable regulations and standards, and must include but are not limited to:

004.03A1 A delineation of facility staff who have authority to, and responsibility for imposing restrictions;

004.03A2 The documentation requirements; and

004.03A3 The specification of guidelines used to ensure consistency in application of restrictions throughout the facility.

- SOURCE: Neb. Rev. Stat. §83-1001 et seq. (Nebraska Mental Health Commitment Act).  
Neb. Rev. Stat. §83-1101 et seq. (Mental Retardation Commitment Act).  
Neb. Rev. Stat. §83-357 (Liberty Restricted of Mentally Ill).  
Neb. Rev. Stat. §83-381(3) (Residential Facility for the Mentally Retarded).  
Neb. Rev. Stat. §20-148 (Civil Rights).  
42 CFR §§ 405.1036, 1037, 1038 (Medicare Certification).  
42 CFR § 441.100 et seq. (Medicaid Certification for Individuals Age 65 or Over in Institutions for Mental Diseases).  
42 CFR § 441.150 et seq. (Inpatient Psychiatric Services For Individuals Under Age 21 in Psychiatric Facilities or Programs).  
42 CFR § 442.403 (Residents' Civil Rights).  
42 CFR § 442.404 (Residents' Bill of Rights).  
42 CFR § 442.405 (Delegation of Rights and Responsibilities).  
 Joint Commission on Accreditation of Hospitals (Applicable Type and Edition of Standards).

Plan of Implementation, October, 1980.

005 LEGAL COMPETENCE. The facility shall presume that all voluntarily admitted or involuntarily committed patients/residents are legally competent unless determined to be incompetent by a court of proper jurisdiction.

005.01 The facility shall maintain documentation of any court authorization used to restrict the rights of a patient/resident.

SOURCE: Neb. Rev. Stat. §83-1066(1)  
Neb. Rev. Stat. §83-390

006 VOTING. The facility shall make voting provisions available to patients/residents who are eligible to vote.

006.01 The facility shall specify in its policies and procedures the methods used to obtain and disseminate absentee ballots to patients/residents who express a desire to vote.

SOURCE: Neb. Rev. Stat. §§ 32-1048, 83-390, and 83-1066.

007 PATIENT/RESIDENT LABOR. The facility shall compensate each patient/resident for the performance of any labor. For the purpose of this regulation, LABOR means any task or activity that a patient/resident performs to contribute to the operation and maintenance of the facility, the economic benefit of another person or agency, or for which the facility would otherwise employ someone. Such activities must not include personal housekeeping or vocational treatment or habilitation activities.

007.01 The facility shall document a patient/resident's agreement to perform labor. This agreement must:

007.01A Be approved by the patient/resident's treatment team.

007.01B Not exceed 20 hours of labor per week for a patient/resident.

007.01C Indicate that the patient/resident is informed that the labor agreement can be terminated by the patient/resident upon notice to the person in charge of the labor area.

007.01D Not apply to personal housekeeping or vocational treatment or habilitation activities; the latter of which is covered by 29 U.S.C.A. §214 of the Fair Labor Standards Act.

007.02 The facility shall document the amount of compensation for labor performed by a patient/resident.

007.02A Compensation for persons transferred from the Department of Correctional Services facilities to a psychiatric hospital must be provided at the rate specified in the Administrative Regulations of the Department of Correctional Services.

007.02B Compensation for patients/residents not covered under 202 NAC 6-007.02A must be made in accordance with 29 U.S.C. 201 et seq., Fair Labor Standard Act of 1938, as amended. (In the case of National League of Cities vs. Usery, 426 U.S. 833 (1976), the United States Supreme Court held that the provisions of the Fair Labor Standards Act, which Congress had

amended in 1974 was to extend the Act's minimum wage and maximum hour provisions to almost all employees of states and their political sub-divisions, was invalid to the States because it impaired the States' "ability to function effectively within a federal system." In Neb. Rev. Stat. §48-1202(3)(d) (R.R.S. 1943), this exemption is reiterated when it excludes from the minimum wage requirement "any individual employed by the United States, or by the state or any political sub-division thereof." However, it is the policy of the Department of Public Institutions that compensation for labor by patients/residents not covered under 202 NAC 6-007.02A must be in accordance with the minimum wage of the Fair Labor Standards Act.)

007.02B1 A patient/resident may waive compensation for up to 5-hours of labor per week. In such cases, the facility shall have a written waiver from the patient/resident. Such waiver must provide at least the following information:

007.02B1a The type of labor the patient/resident performs.

007.02B1b The dates the waiver becomes effective and ends.

007.02B1c A statement, acknowledged by the patient/resident, that he/she has been informed that the waiver of compensation can be revoked at the discretion of the patient/resident.

007.02B1d The number of hours per week that the patient/resident will perform labor without compensation.

SOURCE: Neb. Rev. Stat. §48-1202(2).  
29 U.S.C. 201 et seq.  
 National League of Cities vs. Usery, 426 U.S. 833 (1976).

008 RELIGIOUS WORSHIP. The facility shall not deny patients/residents the opportunity for religious worship.

008.01 The facility shall develop policies and procedures that govern the provision of religious worship opportunities. These policies and procedures must specify:

008.01A That a patient/resident's right to attend group religious worship may be restricted by the patient/resident's treatment team when he/she poses a threat to the physical safety of himself/herself or others; when the patient/resident's behavior disrupts the order of the worship; or when such attendance is contraindicated by the treatment/habilitation needs or considerations.

008.01B The manner in which opportunities for religious worship are provided. This must include the frequency and type(s) of worship.

008.01C That no patient/resident shall be ordered or compelled to participate in religious activities. (Neb. Rev. Stat. §83-182 Prisoners, participation in a religious activities).

008.02 The facility must document in the client record any restriction of religious worship opportunities. Such documentation must include:

008.02A The nature of and reason(s) for the restriction.

008.02B The signature(s) of the person(s) authorizing the restriction.

008.02C The duration of the restriction.

008.02D The timeframe within which the restriction is reviewed for modification.

SOURCE: Neb. Rev. Stat. §83-357 (Liberty Restricted)  
Neb. Rev. Stat. §83-1066(6)  
Neb. Rev. Stat. §83-390

009 COMMUNICATION. The facility shall permit patients/residents to communicate in person, by mail or telephones in an uncensored manner to persons of their choice unless such communication is contraindicated by the patient/resident's mental condition, treatment/habilitation needs or considerations, or prohibited by applicable law.

009.01 The facility shall develop policies and procedures that govern the patient/resident's exercise of the right to communicate. These policies and procedures shall specify:

009.01A That a patient/resident's communication in person with visitors can be restricted by the patient/resident's treatment team if there is evidence of the exchange or use of contraband or weapons; or other items adaptable to induce bodily harm.

009.01B That the patient/resident's communication by mail or telephone can be restricted by the patient/resident's treatment team if there is evidence of written or verbal threats to others.

009.01C The provisions made to allow for visitations to take place in a private area.

009.01D The provisions made for patients/residents to receive and send mail. These provisions must allow for the facility to supply each patient/resident, not otherwise supplied, with suitable writing materials and postage, at the state's expense, sufficient for writing at least one letter per week.



009.01E The provisions made for patients/residents to receive and make telephone calls. The facility may hold the patient/resident responsible for the cost of telephone calls.

009.02 There must be documentation in the patient/resident's record of restrictions placed on the patient/resident's right to uncensored communication. Such documentation must include:

009.02A The nature of and reason(s) for the restriction.

009.02B The signature(s) of the person(s) authorizing the restriction.

009.02C The duration of the restriction.

009.02D The timeframe within which the restriction is reviewed for modification.

SOURCE: Neb. Rev. Stat. §83-314.  
Neb. Rev. Stat. §83-357.

010 PATIENT/RESIDENT FUNDS. The facility shall manage the funds of patients/residents when such management is requested by either the patient/resident or his/her guardian or conservator.

010.01 The facility shall deposit all funds of patients/residents in an interest bearing account.

010.01A Funds may be withheld from the patient/resident's account and kept on-hand by the facility for the patient/resident's use.

010.02 The facility shall maintain accurate records of each patient/resident's funds. These records must document:

010.02A All deposits, withdrawals and reasons for the withdrawals.

010.02B The principal and interest.

010.03 The facility shall, on a quarterly basis, provide the patient/resident or his/her guardian with a statement of the fund balances and expenditures.

010.04 The facility shall obtain the written consent, except as otherwise provided by law, of the patient/resident or his/her guardian prior to the release of financial information.

010.04A There must be documentation of consent for release of financial information in the patient/resident's record.

SOURCE: Neb. Rev. Stat. §84-901 et seq.

011 PATIENT/RESIDENT'S RIGHT TO REFUSE TREATMENT. The facility shall provide for mental and physical health treatment of each patient/resident in accordance with an individual treatment plan. However, when a patient/resident refuses treatment, the facility shall adhere to conditions of these regulations.

011.01 Emergency Treatment. The facility shall use practices that are generally accepted in providing for the physical and mental health care needs of patients/residents during emergencies.

011.01A The facility may administer psychoactive medication, restraints, and/or seclusion to voluntarily admitted or involuntarily committed patients/residents without their consent in emergencies. For purposes of this regulation, EMERGENCY means the exhibition of any behavior by the patient/resident that causes or has the potential of causing, if not prevented, harm to the patient/resident's life, health, or safety; or the life, health, or safety of others in the presence of such behavior.

011.01A1 The facility shall develop and implement policies and procedures that govern the use of psychoactive medication, seclusion, and/or restraint in emergencies. Such policies and procedures must be in accordance with regulations and standards that are applicable to the facility's licensure, certification and/or accreditation.

011.01A2 The facility shall document the use of psychoactive medications, seclusion, and/or restraints in the patient/resident's records in the manner specified in regulations and standards that are applicable to the facility's licensure, certification and/or accreditation. Such documentation must at least include:

011.01A2a The specific reason(s) for emergency use of such procedures.

011.01A2b The order authorizing the use of such procedures during an emergency.

011.01A2c The time for which the procedures remained in effect.

011.01B The facility shall administer or make provisions for physical health treatment of voluntarily admitted or involuntarily committed patients/residents, without their consent, in medical emergencies. For purposes of this regulation, MEDICAL EMERGENCY means the presence of a condition or ailment(s) that requires an immediate medical procedure to save a patient/resident's life or to prevent permanent impairment of his/her health.

011.01B1 The facility shall document the reason(s) that obtaining consent for the medical procedure was

impossible. Such reasons may include but are not limited to: legal incompetence; lack of guardianship; inability to locate guardian within appropriate time span.

011.01B2 The facility shall document that a medical emergency existed. Such documentation may include but is not limited to: a full explanation of the physical condition or ailment that existed; results of diagnostic procedures; or results of medical consultation.

011.02 Non-Emergency Treatment. The facility shall use practices that are generally accepted in providing for the physical and mental health care of patients/residents during non-emergencies.

011.02A The facility may administer psychoactive medication that is essential, in the judgment of the medical health professional in charge of such treatment, to an involuntarily committed patient/resident without the consent of the patient/resident to prevent him/her from causing self-injury or inflicting injury upon others, or to improve his/her condition as indicated.

011.02A1 The facility shall document in the patient/resident's record the reason(s) for psychoactive medication administration as a necessary part of a patient/resident's treatment. Such reasons must include either one or a combination of the following:

011.02A1a A statement that the patient/resident is incapable, without psychoactive medication, of participating in any treatment plan available at the facility that will give him/her a realistic opportunity of improving his/her condition.

011.02A1b A statement from the treating physician that the patient/resident's condition is likely to improve within a significantly shorter time period than could be expected if psychoactive medication was not used.

011.02A1c A statement that there is a significant possibility that the patient/resident will harm himself/herself or others before improvement of his/her condition is realized if psychoactive medication is not administered.

011.02B The facility may discharge a voluntarily admitted patient/resident who refuses or whose guardian refuses treatment when such treatment is necessary to improve the patient/resident's condition.

011.02B1 The facility shall document the patient/resident's refusal to consent to treatment.

011.02B2 The facility shall document the explanation given to the patient/resident regarding the use of the treatment modality in question. Such explanation must include:

011.02B2a The nature of the resident/patient's condition;

011.02B2b The reason for prescribing a particular treatment modality;

011.02B2c The risks or benefits of the treatment modality;

011.02B2d The alternatives to such treatment.

SOURCE: Federal Regulations and Guidelines, Director of Nursing Manual, National Law Publishing, May 1983.  
Common Laws.  
Neb. Rev. Stat. §83-1066(3).  
Administrative Bulletin No. 78-3, Division of Mental Health and Hospital, New Jersey, March 1, 1976.

012 GRIEVANCE PROCEDURES. The facility shall expedite the settlement of grievances filed by patients/residents. For purposes of this regulation, GRIEVANCE means a written expression of a complaint against or dissatisfaction with an action taken by the facility which, in the opinion of a patient/resident, violates his/her rights afforded by the conditions of his/her residency at or admission to the facility.

012.01 A patient/resident or his/her legal guardian shall file a written grievance to the chief executive officer of the facility within 30 days of the occurrence of the action grieved. The filing of a grievance will not subject a patient/resident to any type of disciplinary sanction or other adverse action.

012.01A When the facility is requested to transmit a grievance document, such must be done without alteration, interference, or delay.

012.01B The facility shall not subject a patient/resident to any type of disciplinary sanction or other adverse action as a result of his/her filing a grievance.

012.01C The facility shall keep on hand a supply of Grievance Forms and make these available for patient/resident use.

012.02 The chief executive officer or his/her designee shall conduct a review of the action grieved, prepare a written report containing the results of the review and proposed resolution, and provide a written response to the grievant within 15 days of receipt of the grievance. This time period may be extended by the Chief Executive Officer when additional time is necessary for adequate investigation, providing prior approval is granted by the Director of Medical Services and the patient/resident is notified in writing of such extension.

012.03 A patient/resident who wishes to appeal the action stipulated in the chief executive officer's response shall do so to the Director of Public Institutions. This appeal may include any additional information as deemed necessary by the patient/resident.

012.03A When the facility is requested to transmit an appeal document, such must be done without alteration, interference, or delay.

012.03B The facility shall keep on hand a supply of Appeals Forms and make these available for patient/resident use.

012.04 The Director or his/her designee shall, upon review of information compiled by the facility and/or resulting from additional review, respond to the grievant's appeal within 30 days of receipt of the appeal.

012.05 The grievance procedures herein contained shall not preclude a patient/resident's filing of other legal remedies including habeas corpus actions or claims under the Tort Claims Act.

SOURCE: Neb. Rev. Stat. §84-901 et seq.

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APPROVED  
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ASSISTANT ATTORNEY GENERAL  
Date December 12, 1984

FILED  
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Secretary of State  
JAN 3 1985

APPROVED:  
Date 1-3-85  
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Governor