

Article 63 – Developmental Disabilities – Licensing Providers of Community Services

(Revised February 2010)

30-63-1. Definitions. (a) Words and phrases used in this article shall have the same meanings as set forth in K.S.A 39-1803, and amendments thereto. In addition, the following terms shall have the meaning ascribed to them in this regulation.

(1) "Agent" means any individual utilized by a provider to carry out any activity done by that provider, whether being paid or serving as a volunteer.

(2) "Commissioner" means the commissioner of mental health and developmental disabilities.

(3) "Commission" means the division of mental health and developmental disabilities within the department of social and rehabilitation services.

(4) "Department" means the department of social and rehabilitation services.

(5) "Person" means an individual with a developmental disability.

(6) "Provider" means a community services provider or any other entity required to be licensed pursuant to this article.

(7) "Services" means community services.

(8) "Support network" means the one or more individuals selected by a person or by the person and the person's guardian, if one has been appointed, to provide assistance and guidance to that person in understanding issues, making plans for the future, or making complex decisions.

(b) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A 75-3307b and K.S.A 1997 Supp. 39-1801, et seq.)

30-63-10. License required; exceptions. (a) Each individual, group, association, corporation, local government department, or local quasi-government agency providing services to persons 18 years of age or older in need of services greater than those provided in a boarding care home as defined in K.S.A. 39-923(a) (8), and amendments thereto, shall be licensed in accordance with the provisions of this article, except when those services are provided in or by any of the following:

(1) In a medical care facility, as defined and required to be licensed in K.S.A. 65-425 et seq. and amendments thereto;

(2) in a nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, or residential health care facility, or in a home plus setting, as defined and required to be licensed in K.S.A. 39-923 et seq. and amendments thereto;

(3) by a home health agency, as defined and provided for the licensing of in K.S.A. 65-5101 et seq. and amendments thereto; or

(4) in a manner so that the services constitute in-home services, funded under the federal home- and community- based services/mental retardation waiver or with state funding under terms like those of the federal home and community-based services/mental retardation waiver, and are provided in compliance with all of the following conditions:

(A) The services are directed and controlled by an adult receiving services, the parent or parents of a minor child receiving services, or the guardian of an adult receiving services.

(B) The person or person's representative directing and controlling the services selects,

trains, manages, and dismisses the individual or business entity providing the services and coordinates payment.

(C) The person or person's representative directing and controlling the services owns, rents, or leases the whole or a portion of the home in which services are provided.

(D) If any individual providing services also lives in the home in which services are provided, there is a written agreement specifying that the person receiving services will not be required to move from the home if there is any change in who provides services, and that any individual or business entity chosen to provide services will be allowed full and reasonable access to the home in order to provide services.

(E) The person receiving services does not receive services in a home otherwise requiring a license pursuant to these regulations.

(F) Any individual providing services is at least 16 years of age, or at least 18 years of age if a sibling of the person receiving services, unless an exception to this requirement has been granted by the commission, based upon the needs of the person receiving services.

(G) Any individual or business entity providing services receives at least 15 hours of prescribed training, or the person or person's representative directing and controlling the services has provided written certification to the community developmental disability organization (CDDO) that sufficient training to meet the person's needs has been provided.

(H) The person or person's representative directing and controlling the services has chosen case management from the CDDO or an agency affiliated with the CDDO. That case management may be limited, at the choice of the person or person's representative directing and controlling the services, to reviewing the services on a regular basis to ensure that the person's needs are met, annual reevaluation of continued eligibility for funding, and development of the person's plan of care.

(I) The person or person's representative directing and controlling the services cooperates with the CDDO's quality assurance committee and allows review of the services as deemed necessary by the committee to ensure that the person's needs are met. In addition, the person directing and controlling the services cooperates with the commission and allows monitoring of the person's services to ensure that the case manager and the CDDO's quality assurance committee have adequately reviewed and determined that the person's needs are met.

(J) The person or person's representative directing and controlling the services agrees to both of the following:

(i) If it is determined by the CDDO or the commission that the person receiving services is or could be at risk of imminent harm to the person's health, safety, or welfare, the person or person's representative directing and controlling the services shall correct the situation promptly.

(ii) If the situation is not so corrected, after notice and an opportunity to appeal, funding for the services shall not continue.

(b) Each license issued pursuant to this article shall be valid only for the provider named on the license. Each substantial change of control or ownership of either a corporation or other provider previously licensed pursuant to this article shall void that license and shall require a reapplication for licensure.

(Authorized by K.S.A. 39-1810 and K.S.A. 75-3304; implementing K.S.A. 39-1806 and K.S.A. 2008 Supp. 75-3307b; effective July 1, 1996; amended Oct. 1, 1998; amended Jan. 15, 2010.)

30-63-11. Two types of license; display. (a) Two types of license may be issued by the secretary pursuant to this article to operate as a provider. One type shall be a “full license,” and the other type shall be a “limited license.” Both types of license may be issued on a “temporary” or on a “with requirements” basis as specified in

K.A.R. 30-63-12.

(b) Both licenses issued pursuant to this article shall be prepared by the commission.

(c) Each holder of a license shall prominently display the license in the holder’s principal place of business.

(d) A full license shall apply to all providers except those providers specified in subsection (e).

(e) A “limited license” shall apply to providers who provide services only to either one or two specified persons to whom the provider is related or with whom the provider has a preexisting relationship. The services shall be provided in the home of the person being served. A provider operating with a limited license shall be afforded greater flexibility in the means by which that provider is required to comply with all of the requirements of this article if the services are provided in a manner that protects the health, safety, and welfare of the specific person being served, as determined by the commission. (Authorized by and K.S.A. 39-1810 and K.S.A. 75-3304; implementing K.S.A. 39-1806 and K.S.A. 2008 Supp. 75-3307b; effective July 1, 1996; amended Jan. 15, 2010.)

30-63-12. Licensing procedure; requirements; duration of license. (a) Each provider required to be licensed pursuant to this article shall submit an application for an appropriate license to the commissioner, on a form provided by the commission.

(b) For a full license, each applicant shall provide the following:

(1) Certification that the applicant’s chief director of services, regardless of title, is qualified to develop and modify, if appropriate, a program of individualized services to be provided to persons as defined in K.A.R. 30-63-1, as evidenced by that individual’s having either of the following:

(A) A bachelor’s or higher degree in a field of human services awarded by an accredited college or university; or

(B) work experience in the area of human services at the rate of 1,040 hours of paid work experience substituted for a semester of higher education, which shall mean 15 undergraduate credit hours, with at least eight full-time semester’s worth of either satisfactorily passed education or work experience;

(2) certification that the applicant’s chief director of services, regardless of title, is qualified to supervise the delivery of a program of services to persons, as evidenced by that individual’s having one of the following:

(A) At least one year of experience in a senior management-level position with a licensed provider;

(B) at least two years of experience as either a case manager or a services manager with supervisory authority over at least two other individuals providing direct services to persons; or

(C) at least five years of experience delivering direct care services to persons;

(3) three letters of reference concerning the applicant’s chief director of services, regardless of title. Each letter written shall be by an individual knowledgeable both of the applicant and of the delivery of services to persons;

(4) evidence of completion of a background check meeting the requirements of the “SRS/CSS policy regarding background checks,” dated September 8, 2009 and hereby adopted by reference, done on the applicant’s chief director of services, regardless of title;

(5) a set of written policies and procedures specifying how the applicant intends to comply with the requirements of this article;

(6) a written business plan that shows how the applicant intends to market its services, to accommodate growth or retrenchment in the size of its operations without jeopardizing consumer health or safety issues, to respond to other risk factors as could be foreseeable in the specific case of that applicant, and to keep the operation fiscally solvent during the next three years, unless the application is for a renewal of a succession of licenses that the applicant has had for at least three years. In this case, the viability of the applicant’s operation shall be presumed, unless the commissioner determines that there is reason to question the viability of the licensed provider applying for license renewal and requires the submission of a written business plan despite how long the renewal applicant has been previously licensed; and

(7) if required of the applicant by the United States department of labor, a subminimum wage and hour certificate.

(c) For a limited license, each applicant shall provide the following:

(1) A description of the preexisting relationship with the one or two persons proposed to be provided services;

(2) documentation that the individual who will be chiefly responsible for providing services is qualified to do so, as evidenced by that individual’s having either of the following:

(A)(i) At least one year of work experience in providing services to a person; and

(ii) completion of the curriculum of studies designated by the commission and accessed through the commission’s web site; or

(B) the qualifications specified in paragraph (b)(1);

(3) evidence of completion of a background check meeting the requirements of the background check policy adopted by reference in paragraph (b)(4), done on the individual who will be chiefly responsible for the operations of the applicant;

(4) a written plan that shows how the applicant intends to comply with the requirements of this article applicable to the specific circumstances of the one or two persons to whom those services are proposed to be provided; and

(5) a written business plan that shows how the applicant intends to keep the applicant’s proposed provider operation fiscally solvent during the next three years, except as specified in this paragraph. If the application is for a renewal of a succession of licenses that the applicant has had for at least three years, the viability of the applicant’s operation shall be presumed, unless the commissioner determines that there is reason to question the viability of the licensed provider applying for license renewal and requires the submission of a written business plan, regardless how long the applicant has been previously licensed.

(d) Upon receipt of an application, the commission shall determine whether the applicant is in compliance with the requirements of subsection (b) or (c) and with this article.

(e) The applicant shall be notified in writing if the commission finds that the applicant is not in compliance with the requirements of subsection (b) or (c) or with this article.

(f) A temporary license or a temporary license with requirements may be issued by the secretary to allow an applicant to begin the operations of a new provider. A license with requirements may be issued by the secretary to allow a provider seeking renewal of a previously

issued license to continue operations. A license with requirements shall be designated as contingent upon the provider's developing, submitting to the commission, and implementing an acceptable plan of corrective action intended to bring the provider into continuing compliance with the requirements of this article.

(1) Findings made by the commission with regard to the implementation of a plan of corrective action shall be given to the provider in writing.

(2) Failure of a provider to be in compliance with the requirements of this article or to implement an acceptable plan of corrective action may be grounds for denial of a license whether or not a temporary license or a license with requirements has been issued.

(g) Based upon findings made by the commission regarding compliance with or the implementation of an acceptable plan of corrective action, the commissioner shall determine whether to recommend issuance or denial of the full or limited license applied for. The applicant shall be notified in writing of any decision to recommend denial of an application for a license. The notice shall clearly state the reasons for a denial. The applicant may appeal this denial to the administrative appeals section pursuant to article seven of these regulations.

(h)(1) A full or limited license issued pursuant to this article shall remain in effect for not more than two years from the date of issuance. The exact date on which the license expires shall be stated upon the license. However, the license shall earlier expire under any of the following circumstances:

(A) The license is revoked for cause.

(B) The license is voided.

(C) For a temporary license or a license with requirements, the license is superseded by the issuance of a full or a limited license as applied for.

(D) The license is voluntarily surrendered by the provider.

(2) Each license term shall be determined by the commissioner based upon the commission's findings regarding the history and strength of the applicant's provider operations, including evidence of the provider's having earned certification from a nationally recognized agency or organization that specializes in certifying providers of services.

(i) Each license with requirements shall specify the length of time for which the license is valid, which shall not exceed one year. Successive licenses with requirements may be issued by the secretary, but successive licenses with requirements shall not be issued for more than two years.

(j) Each temporary license shall be valid for six months. If, at the expiration of that six months, the licensee has not yet commenced providing services to any person but the licensee wishes to continue efforts to market the licensee's services, a successive temporary license may be issued for another six-month period. No further extensions of a temporary license shall be granted.

(k) A license previously issued shall be voided for any of the following reasons:

(1) Issuance by mistake;

(2) a substantial change of control or ownership, as provided for in K.A.R. 30-63-10(b); or

(3) for a limited license, the licensee's cessation of provision of services to the person or persons for whom the license was specifically sought and obtained.

(l) In order to renew a license, the licensee shall reapply for a license in accordance with this regulation.

(m) If a provider is licensed pursuant to this article on or before the effective date of the

amendments to this regulation, the requirements specified in either paragraphs (b)(1) and (b)(2) or paragraph (c)(2) shall not apply to any renewal request of that licensee made during the one-year period following the effective date of these amendments. (Authorized by K.S.A. 39-1810 and K.S.A. 75-3304; implementing K.S.A. 39-1806 and K.S.A. 2008 Supp. 75-3307b; effective July 1, 1996; amended Jan. 15, 2010.)

30-63-13. Compliance reviews; mediation; enforcement actions; emergency orders.

(a) At any time deemed necessary by the commissioner, a licensed provider may be reviewed by the commission to ensure continuing compliance with the requirements of this article.

(b) If a finding indicates that the licensed provider is not in compliance, the provider shall be given by the commissioner a written copy of the finding setting out each specific deficiency and a notice of the provider's right to seek mediation of any dispute regarding the finding.

(c) If the provider disagrees with any finding made by the commission, the provider may request mediation, in writing, within 14 days of receipt of the finding. An independent entity shall be selected by the commissioner and the provider to serve as the mediator, unless the parties are not able to agree upon a mediator, in which case an independent mediator shall be designated by the secretary. The mediator shall assist the parties in attempting to come to an agreement on the following:

- (1) The nature and extent of any noncompliance;
- (2) any course of corrective actions necessary to bring the provider into compliance;

and

- (3) a time limit within which the provider shall have to come into compliance.

(d)(1) Written notice may be issued by the commissioner to the provider of a determination of noncompliance under any of the following circumstances.

(A) The provider does not request mediation.

(B) Mediation does not resolve the issues.

(C) The commission finds that the provider has not complied with the requirements of this article by the deadline established in a mediated agreement or a deadline that has been extended by the commissioner for good cause.

(2) If the commissioner issues written notice to the provider of a determination of noncompliance in accordance with paragraph (d)(1), a written plan of correction from the provider shall be required by the commissioner, to be submitted within 14 days of receipt of the notice.

(3) If the commissioner determines that the provider has failed to satisfactorily comply with the plan of correction within 30 days of the date of the plan, or within a deadline that has been extended by the commissioner for good cause, any or all of the following enforcement actions may be imposed:

(A) Civil penalties in an amount not to exceed \$125.00 per day for each violation from the date specified by the commissioner within the notice until the provider comes into compliance. The date specified by the commissioner may be any date from or after 45 days following the date of the commissioner's notice requiring a plan of correction;

(B) an order that the provider shall cease providing specified services and shall make all necessary arrangements to have any person or persons then receiving services transferred to another provider. The order may include provisions requiring the provider to continue the

provision of those or other services until the transfer can be accomplished. The order shall remain in effect until the provider comes into compliance;

(C) suspension or revocation of the provider's license as provided for in K.A.R. 30-63-14.

(e) A provider may appeal any enforcement action taken to the administrative appeals section pursuant to article seven of these regulations.

(f) If the commission additionally finds that the provider's noncompliance creates a situation of imminent danger to the health, safety, or welfare of any person or persons, an emergency order may be issued by the commissioner, making any provisions that the commissioner deems necessary for the immediate protection of the health, safety, or welfare of the person or persons. Written notice of any emergency order shall be given to the provider and shall specify the following:

- (1) The actions that the provider shall take;
- (2) the reason the commissioner has determined an emergency order is needed; and
- (3) notice that the provider will be given an emergency hearing regarding the emergency order by the administrative appeals section pursuant to article seven of these regulations if the provider makes a written request for a hearing within 15 days after receiving the order.

(g) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 1997 Supp. 39-1801, et seq.)

30-63-14. Revocation of a license; suspension. (a) Any license issued pursuant to this article may be suspended or revoked before the expiration date for failure of the provider to comply with the requirements of this article.

(b) A provider's license may be suspended during the revocation proceedings only upon a determination by the commissioner that the continued operation of the provider during the revocation proceedings would constitute an imminent danger to the health, safety or welfare of any person or persons who would be receiving services from the provider during the revocation proceedings. This determination shall be made in writing and clearly state the reasons for it.

(c) Before revocation of a provider's license, a written notice of the intent to revoke shall be sent to the provider by registered mail, along with a copy of the commissioner's determination to suspend the license during the revocation proceedings, if applicable. The notice shall:

- (1) specify the date the license shall be revoked if an appeal is not timely taken;
- (2) clearly state the reasons for the revocation of the license;
- (3) instruct the provider to immediately cease providing services if the commissioner has determined to suspend the license during the revocation proceedings; and

- (4) advise the provider that the revocation may be appealed to the administrative appeals section pursuant to article seven of these regulations, and that an appeal shall stay the revocation, but shall not stay any suspension of the license during the pendency of the appeal, except as may be provided for in any order issued after an emergency hearing held as a result of a request made under K.A.R. 30-63-13(f)(3).

(d) If at any time during the pendency of an appeal the commissioner finds that the provider now complies with all of the requirements of this article, and that it is in the best interests of the public that the revocation be withdrawn, the commissioner shall notify all parties to the revocation proceedings that the revocation action has been withdrawn and the appeal

proceedings shall be terminated.

(e) If, after notice to the provider of the commissioner's intent to revoke, the provider does not timely appeal, the license shall be revoked by the commission effective on the date stated within the notice.

(f) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et.seq.)

30-63-20. Mandated requirements. (a) In order to be eligible to be licensed as a provider, each applicant shall demonstrate that the applicant either complies with or can comply with all applicable requirements of this article and all applicable requirements of article 64.

(b) For good cause shown by an applicant, or by any person being served or proposed to be served by that applicant, one or more of the specific requirements of this article may be waived by the commissioner, and some other requirement or requirements that may be proposed by the applicant or person may be substituted by the commissioner, if the waiver or substitution would neither jeopardize the health, safety, or well-being of any person or persons served or proposed to be served by the applicant, nor substantially deviate from meeting the intent or purpose of the requirement or requirements being waived.

(c) Attainment of national accreditation by an applicant from an organization that evaluates and accredits providers of mental retardation or developmental disabilities services, or the recommendation of a local CDDO's quality assurance committee, shall be considered by the commissioner in determining compliance by the applicant with any one or more of the requirements of this article.

(Authorized by K.S.A. 39-1810 and K.S.A. 2005 Supp. 75-3307b ; implementing K.S.A. 39-1806; effective July 1, 1996; amended Oct. 1, 1998; amended Dec. 8, 2006.)

30-63-21. Person-centered support planning; implementation. (a) The provider shall prepare a written person-centered support plan for each person served that shall meet these requirements:

- (1) Be developed only after consultation with the following:
 - (A) The person;
 - (B) the person's legal guardian, if one has been appointed; and
 - (C) other individuals from the person's support network as the person or the person's guardian chooses;
- (2) contain a description of the person's preferred lifestyle, including describing the following:
 - (A) In what type of setting the person wants to live;
 - (B) with whom the person wants to live;
 - (C) what work or other valued activity the person wants to do;
 - (D) with whom the person wants to socialize; and
 - (E) in what social, leisure, religious, or other activities the person wants to participate;
- (3) list and describe the necessary activities, training, materials, equipment, assistive technology, and services that are needed to assist the person to achieve the person's preferred lifestyle;
- (4) describe how opportunities of choice will be provided, including specifying

means for the following:

(A) Permitting the person to indicate the person's preferences among options presented to the person, by whatever communication methods that person may possess, including a description of the effective communication methods utilized by the person;

(B) providing the necessary support and training to allow the person to be able to indicate the person's preferences, including a description of any training and support needed to fully participate in the planning process and other choice making; and

(C) assisting the person or the person's guardian to understand the negative consequences of choices the provider knows the person might make and that may involve risk to that person;

(5) describe when it is necessary to do so, to the person and the person's support network, how the preferred lifestyle might be limited because of imminent significant danger to the person's health, safety, or welfare based on an assessment of the following:

(A) The person's history of decision-making, including any previous experience or practice the person has in exercising autonomy, and the person's ability to learn from the natural negative consequences of poor decision-making;

(B) the possible long- and short-term consequences that might result to the person if the person makes a poor decision;

(C) the possible long- and short-term effects that might result to the person if the provider limits or prohibits the person from making a choice; and

(D) the safeguards available to protect the person's safety and rights in each context of choices;

(6) prioritize and structure the delivery of services toward the goal of achieving the person's preferred lifestyle;

(7) contribute to the continuous movement of the person towards the achievement of the person's preferred lifestyle. In evaluating this outcome, the provider may include assessments made by professionals and shall perform either of the following:

(A) Include consideration of the expressed opinions of the person, the person's legal guardian, if one has been appointed, and other individuals from the person's support network; or

(B) account for the following:

(i) The financial limitations of the person and the provider;

(ii) the supports and training needed, offered, and accepted by the person; and

(iii) matters identified in paragraph(a)(5). Next best options may be considered as responsive if the person cannot specifically have what the person prefers due to limitations identified by this methodology; and

(8) be approved, in writing, by the person or the person's guardian, if one has been appointed. Requirements for approval from or consultation with the person's guardian shall be considered to have been complied with if the provider documents that it has taken reasonable measures to obtain this approval or consultation and that the person's guardian has failed to respond.

(b) Whenever two or more providers provide services to the same person, the providers shall work together to prepare a single person-centered support plan. Each provider shall be responsible for the preparation and implementation of any portion of the plan relating to its services. The person, the guardian if one has been appointed, a member of the person's support

network, or a provider shall take the lead coordination role in preparation of the plan, and a designation of that person or entity shall be noted in the plan.

(c) The provider shall regularly review and revise the plan, by following the same procedures as set out above, whenever necessary to reflect any of the following:

- (1) Changes in the person's preferred lifestyle;
- (2) achievement of goals or skills outlined within the plan; or
- (3) any determination made according to the methodology provided for in paragraph (a)(7) above that any service being provided is unresponsive.

(d) The provider shall deliver services to the person only in accordance with the person's person-centered support plan.

(e) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 1997 Supp. 39-1801, et seq.)

30-63-22. Individual rights and responsibilities. (a) Each provider shall at all times encourage and assist each person served to understand and exercise the person's individual rights and to assume the responsibilities that accompany these rights.

(b) Each person served shall be guaranteed the same rights afforded to individuals without disabilities. These rights may be limited only by provisions of law or court order, including guardianship, conservatorship, power of attorney or other judicial determination. These rights shall include the following:

- (1) Being free from physical or psychological abuse or neglect, and from financial exploitation;
- (2) having control over the person's own financial resources;
- (3) being able to receive, purchase, have, and use the person's personal property;
- (4) actively and meaningfully making decisions affecting the person's life;
- (5) having privacy;
- (6) being able to associate and communicate publicly or privately with any person or group of people of the person's choice;
- (7) being able to practice the religion or faith of the person's choice;
- (8) being free from the inappropriate use of a physical or chemical restraint, medication, or isolation as punishment, for the convenience of a provider or agent, in conflict with a physician's orders or as a substitute for treatment, except when physical restraint is in furtherance of the health and safety of the person;
- (9) not being required to work without compensation, except when the person is living and being provided services outside of the home of a member of the person's family, and then only for the purposes of the upkeep of the person's own living space and of common living areas and grounds that the person shares with others;
- (10) being treated with dignity and respect;
- (11) receiving due process; and
- (12) having access to the person's own records, including information about how the person's funding is accessed and utilized and what services were billed for on the person's behalf.

(c) Each provider shall train its agents regarding the rights specified in subsection (b). In addition, each provider shall offer training at least annually regarding these rights and effective ways to exercise them to each person served, to the guardian if one has been appointed,

and to the person's parent and other individuals from each person's support network.

(Authorized by K.S.A. 39-1810 ; implementing K.S.A. 39-1802 and K.S.A. 39-1806; effective July 1, 1996; amended Oct. 1, 1998; amended Dec. 8, 2006.)

30-63-23. Medications; restrictive interventions; behavioral management committee. (a) A provider shall take proactive and remedial actions to ensure appropriate, effective, and informed use of medications and other restrictive interventions to manage behavior or to treat diagnosed mental illness. These actions shall be taken before the provider initiates the use of any medication or other restrictive intervention to manage behavior, unless the needs of the person served clearly dictate otherwise and the provider documents that need. Otherwise, these actions shall be taken promptly following the initiation of, or any change in, the use of any medication or other restrictive intervention to manage behavior or to treat diagnosed mental illness.

(b) These proactive and remedial actions shall include all the following:

(1) **Safeguards**, which shall include initial and ongoing assessment and responsive modifications that may be needed to ensure and document the following, in consultation with the person, the person's guardian, and the person's support network:

(A) All other potentially effective, less restrictive alternatives have been tried and shown ineffective, or a determination using best professional clinical practice indicates that less restrictive alternatives would not likely be effective;

(B) positive behavior programming, environmental modifications and accommodations, and effective services from the provider are present in the person's life;

(C) voluntary, informed consent has been obtained from the person or the person's guardian if one has been appointed, after a review of the risks, benefits, and side effects, as to the use of any restrictive interventions or medications; and

(D) medications are administered only as prescribed, and no "PRN" (provided as needed) medications are utilized without both the express consent of the person or the person's guardian if one has been appointed, and per usage approval from the prescribing physician or another health care professional designated by the person or the person's guardian if one has been appointed;

(2) **management**, which shall include initial and ongoing assessment and responsive modifications that may be needed to ensure and document the following:

(A)(i) When restrictive intervention or medication is being used to manage specific behaviors, those behaviors are documented as to the frequency and objective severity of occurrence;

(ii) the provider periodically reviews and reports to the person, the person's guardian if one has been appointed, the person's support network, and the physician prescribing any medication to manage behavior, the frequency and objective severity of the specific behaviors, and the effectiveness of the restrictive intervention or medication and any side effects experienced from any medication used to manage specific behaviors, in conjunction with safeguard measures; and

(iii) the provider recommends to the person, the person's guardian if one has been appointed, the person's support network, and the physician prescribing any medication to manage behavior, reducing the use of the restrictive intervention or medication being used to manage specific behaviors, when appropriate, based upon the documented effectiveness of those efforts in

conjunction with safeguard measures; or

(B) when medication is used to treat specifically diagnosed mental illness, the medication has been prescribed and is being managed by a psychiatrist who is periodically provided information regarding the effectiveness of and any side effects experienced from the medication. The prescription and management may be by a physician, rather than a psychiatrist, only when requested and agreed to by the person or the person's guardian if one has been appointed, and when based upon the documented need of the person; and

(3) **review** by a behavior management committee established by the provider, which shall meet these criteria:

(A) Be made up of a selected number of persons served, guardians of persons served, family members of persons served, interested citizens, and providers, at least 1/3 of whom shall be otherwise unassociated with the provider; and

(B) periodically review the use of medications and other restrictive interventions to manage behavior or to treat diagnosed mental illness, to ensure that the provisions of this regulation are met and to report to the provider each instance in which the committee determines that any provision of this regulation has not been met. The provider shall immediately correct any instance of noncompliance reported by the behavior management committee.

(c) Requirements for consent from or consultation with the person's guardian shall be considered to have been complied with if the provider documents that it has taken reasonable measures to obtain the consent or consultation and that the person's guardian has failed to respond.

(d) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 1997 Supp. 39-1801, et seq.)

30-63-24. Individual health. (a) A provider shall assist each person served, as necessary, in obtaining the medical and dental services to which the person has access and that may be required to meet the person's specific health care needs, including the following:

- (1) Scheduling and receiving preventative examinations and physicals;
- (2) practicing for obtaining emergency services;
- (3) developing individualized procedures for the administration of medications and other treatments, including training for self-medication or administration; and
- (4) obtaining necessary supports, including adaptive equipment, and speech, hearing, physical, or occupational therapies, as appropriate.

(b) Non-licensed personnel shall administer medications and perform nursing tasks or activities in conformance with the provisions of K.S.A. 65-1124, and amendments thereto.

(c) A provider shall train staff who shall be responsible to implement the service provider's written policies and procedures for carrying out medication administration, including the following:

- (1) Self-administration by any person;
 - (2) medication checks and reviews;
 - (3) emergency medical procedures; and
 - (4) any other health care task.
- (d) Whenever two or more providers provide services to the same person, the providers shall work together to meet the health care needs of the person. The person, the guardian if one has been appointed, a member of the person's support network, or a provider may take the lead coordination role, and a designation of that person or entity shall be noted in the person-centered

support plan.

(e) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 1997 Supp. 39-1801, et seq.)

30-63-25. Nutrition assistance. (a) Except when a provider is providing services to a person living in the home of a member of that person's family, the provider shall assist each person served in obtaining daily access to a well-balanced, nutritious diet consistent with the provisions of K.A.R. 30-63-21 regarding opportunities of choice. If a person being served lives in the home of a family member, a provider shall assist that person similarly with any meals provided outside of that home setting.

(b) A provider that serves a person meals shall serve each modified or special diet meal in a form consistent with both the person's needs and desires and any medical directions with regard thereto.

(c) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 1997 Supp. 39-1801, et seq.)

30-63-26. Staffing; abilities; staff health. (a) A provider shall provide professional and direct service staff in numbers sufficient to meet the support and service needs of each person being served.

(b) Each employee shall be able to perform the employee's job duties before working without oversight by another trained staff person.

(c) Each employee shall consistently satisfactorily perform the employee's assigned job duties throughout the term of the employee's employment.

(d) Staff who have been certified by a recognized training agency to give CPR and first aid shall be available in sufficient numbers whenever persons being provided services are present.

(e) All staff or consultants representing themselves as professionals subject to national, state, or local licensing, certification or accreditation standards shall be in compliance and maintain compliance with those standards.

(f) Each staff member shall monitor the member's personal health and avoid circumstances in which the member risks exposing a person to whom the member is providing services to contagious disease or other health endangerment.

(g) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et seq.)

30-63-27. Emergency preparedness. (a) Each agent of each provider shall be:

(1) trained in general fire, safety and emergency procedures;
(2) trained and able to effectively and efficiently evacuate any building within which the agent is providing services, including knowing:

(A) alternative exit routes;

(B) methods of accounting for persons who might be present in the building at any time;
and

(C) a designated meeting place outside the building to which all persons will go in the event of an evacuation;

(3) trained and able to effectively and efficiently seek shelter in any building within which the agent is providing services, in the event of a tornado or other dangerous storm; and

(4) trained and able to respond effectively and efficiently to other emergency conditions, including power outages or flooding.

(b) This regulation shall effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et.seq.)

30-63-28. Abuse; neglect; exploitation. (a) Whenever any agent of a provider suspects that abuse, neglect, or exploitation is or has taken place, that agent shall immediately take appropriate action to ensure that any specifically involved person or persons and all others are protected while an investigation is conducted.

(b) Each agent shall exercise any authority that the agent has for the purpose of the prevention of abuse, neglect, or exploitation of each person served.

(c) A provider shall regularly conduct training and take other steps to ensure that any agent, person, parent, guardian, and any other individual from each person's support network is advised about how to contact the appropriate state agency charged with providing adult protective services whenever abuse, neglect, or exploitation is suspected or witnessed.

(d) The provider shall immediately report any incident of suspected abuse, neglect, or exploitation of which the provider has become aware to the appropriate state agency charged with providing adult protective services. Any agent shall immediately report any incident of suspected abuse, neglect, or exploitation, in either manner:

(1) Directly to the appropriate state agency; or

(2) in accordance with the provider's written policy for reporting an incident. A provider shall inform each agent that any report of an incident of suspected abuse, neglect, or exploitation may be made directly or anonymously to the appropriate state agency, shall ensure that each agent has ready access to the phone number for making any report, and shall take no steps to interfere with an agent making any report directly or anonymously.

(e) Each agent shall fully cooperate with any state agency conducting an investigation resulting from a report of abuse, neglect, or exploitation.

(f) A provider shall not employ any individual who is known by a provider to have had a conviction for or a prior employment history of abuse, neglect, or exploitation of children or vulnerable adults.

(g) A provider shall adhere to all laws, regulations, and procedures related to the reporting of, protecting from, and correcting the cause of abuse, neglect, or exploitation.

(h) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 1997 Supp. 39-1801, et seq.)

30-63-29. Records (a) A provider shall maintain records for each person served. These records shall include the following:

- (1) any application or agreement for services;
- (2) any financial agreement made between the provider and the person;
- (3) any incident or accident reports;
- (4) a health profile, which shall be reviewed for accuracy by a licensed medical practitioner at least every two years, and shall include the following:
 - (A) notations regarding the person's health status;
 - (B) any medications the person takes; and

- (C) any other special medical or health considerations which might exist for that person;
- (5) basic assessment and service information system (BASIS) documents and other evaluation materials;
- (6) the person's person-centered support plan;
- (7) the plan of care for recipients of the home and community based services for persons who are mentally retarded or developmentally disabled program (HCBS/MR);
- (8) releases of information, authorizations for publication, and consents for emergency and other medical treatment; as applicable; and
- (9) a discharge summary, if applicable.
- (b) A provider shall maintain each record confidentially and shall not release any record except:
 - (1) as authorized in writing by the person or the person's legal guardian, if one has been appointed;
 - (2) as otherwise authorized by law; or
 - (3) as necessary to comply with the requirements of this article.
- (c) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et.seq.)

30-63-30. Physical facilities. (a) A provider shall maintain each site in which services are provided to any person and that is owned, leased, or made available by contract to be operated by a provider, any employee or board member of a provider, or any entity owned or controlled by a provider, a provider's employee or a provider's board member, so that the site shall meet these requirements:

- (1) Have appropriate fire and safety equipment that is in good repair and is kept on site and readily accessible;
- (2) not have any combustible or flammable materials kept in an unsafe location;
- (3) be kept clean and well maintained;
- (4) be kept safe and secure;
- (5) have furniture and equipment in good repair and working order;
- (6) be capable of maintaining a comfortable temperature and adequate ventilation;
- (7) have adequate lighting;
- (8) be free of insect and rodent infestation;
- (9) have main routes of travel that are kept free of obstacles and stored materials;
- (10) have appropriate assistive devices and any necessary structural modifications so that the facility meets the needs of persons with physical disabilities;
- (11) be sufficiently sized to meet the living space needs of the person or persons residing there as well as the additional space needs of staff working within the premises, specifically including appropriate space or spaces for the following:
 - (A) Meal preparation;
 - (B) dining;
 - (C) sleeping;
 - (D) bathing, toileting, and hand washing;
 - (E) recreation and day living; and
 - (F) storage of personal items; and
- (12) meet the needs of each person being served, consistent with the preferred lifestyle of the person or persons; and

(13) be in compliance with all applicable fire and life safety, health, sanitation, and occupancy codes.

(b)(1)A provider shall monitor each facility in which services are provided, but that is not included in subsection (a) above, to determine whether or not the facility meets these requirements:

(A) Is maintained in compliance with all applicable fire and life safety, health, sanitation, and occupancy codes; and

(B) is of sufficient size and is equipped and stocked to permit the provider to provide the necessary services, activities, and training required by the person-centered support plan of any person being served at that site.

(2) If the provider is made aware of circumstances that create a violation of any fire and life safety, health, sanitation, or occupancy code, or that place a person's health, safety, or welfare in imminent danger, or if the provider determines that the facility fails to meet any required standard as specified by any person's person-centered support plan, the provider shall perform the following:

(A) Notify the person's support network of the nature of the deficiency; and

(B) implement any necessary corrective action by appropriate means, including any appropriate revisions to the person's person-centered support plan.

Each facility intended to accommodate eight or more persons or in which eight or more persons are living shall be licensed by the Kansas department of health and environment as a lodging establishment pursuant to K.S.A. 36-501, et seq., and amendments thereto.

A provider shall maintain each facility used for job training or production work in compliance with any applicable occupational health or safety code or regulation, including any provisions applicable to any equipment or machinery located or used within that facility.

(e) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 1997 Supp. 39-1801, et seq.)

30-63-31. Registration with the community developmental disability organizations (CDDOs). (a) Anytime a provider does not have an affiliation agreement in force with the CDDO for that service area, the provider shall:

(1) register with the CDDO, listing the types of services that the provider provides; and

(2) periodically give notice to the CDDO of the provider's current availability to offer services.

(b) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et seq.)

30-63-32. Case management. (a) Each community services provider providing case management services shall perform the following:

(1) Develop and implement policies and procedures concerning the provision of case management services that are consistent with the requirements of this regulation;

(2) provide those services in a manner meeting all applicable requirements of this article; and

(3) ensure that all case management services are provided by case managers who meet the following requirements:

(A) No case manager shall provide any other direct service except case management

services to any person receiving any other type of direct service from the same agency that employs the case manager;

(B) no case manager shall be supervised by anyone directly responsible for the provision of any other type of direct service provided to any person or responsible for supervision of those services;

(C) each case manager shall comply with the division's "rules of conduct for case managers serving people with developmental disabilities," as adopted on October 25, 2003, and hereby adopted by reference;

(D) each case manager shall maintain documentation that shows that within 90 calendar days of either the case manager's initial employment or following an announcement by the division posted upon the division's web site of a revision of the division's required assessment, whichever comes later, the case manager has completed and passed the required assessment that has been established by the division and that has been included in the division's case management-related training; and

(E) each case manager shall have the following documented qualifications:

(i) A minimum of six months of full-time experience in the field of human services; and
(ii) either a bachelor's degree or additional full-time experience in the field of developmental disabilities services, which may be substituted for the degree at the rate of six months of full-time experience for each missing semester of college.

(b) Case management services shall assist the person and the person's support network to identify, select, obtain, coordinate, and use both paid services and natural supports that are available to that person to enhance the person's independence, integration, and productivity consistent with the person's capabilities and preferences as outlined in the person's person-centered support plan. Case management services shall include the following:

(1) Assessment, including an ongoing process for the identification of the person's needs, the determination of a person's preferred lifestyle, and the resources that are available to the person, through both formal and informal evaluation methods;

(2) (A) Support planning, with the participation of the person and the person's support network, including the development or assistance in the development, updating, and reviewing of the person's person-centered support plan and any related service or support plan, building upon assessment information to assist the person in meeting the person's needs and achieving the person's preferred lifestyle; and

(B) providing assistance to the person in being knowledgeable about the types and availability of community services and support options, in receiving information regarding the rights of persons served pursuant to the developmental disabilities reform act and implementing regulations, the content of which shall be approved by the commission, and in obtaining the community services and supports of the person's choice;

(3) support coordination, including the following:

(A) Arranging for and securing supports outlined in the person's person-centered support plan; and

(B) developing and accessing natural supports and generic community support systems, including pursuing means for gaining access to needed services and entitlements, and seeking modification of service systems when necessary to increase the accessibility to those systems by the person;

(4) monitoring and follow-up, including ongoing activities that are necessary to ensure

that the person-centered support plan and related supports and services are effectively implemented and adequately addressing the needs of the person; and

(5) assisting transition and portability, including the planning of and arranging for services to follow the person when the person moves between any of the following:

- (A) From school to the adult world;
- (B) from an institution to community alternatives;
- (C) from one kind of service setting to another kind of service setting;
- (D) from one provider to another provider; or
- (E) from one service area to another service area. (Authorized by K.S.A. 39-1810; implementing K.S.A. 39-1805 and 39-1806; effective May 30,2008.)