

TITLE 175 HEALTH CARE FACILITIES AND SERVICES LICENSURE

CHAPTER 15 RESPITE CARE SERVICE

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TITLE 175 HEALTH CARE FACILITIES AND SERVICES LICENSURE

CHAPTER 15 RESPITE CARE SERVICES

15-001 SCOPE AND AUTHORITY: These regulations govern licensure of respite care services. The regulations are authorized by and implement the Health Care Facility Licensure Act, Neb. Rev. Stat. §§ 71-401 to 71 459.

15-001.01 These regulations apply to any person or any legal entity that provides short-term temporary care on an intermittent basis to persons with special needs when the person's primary caregiver is unavailable to provide such care unless exempted by 175 NAC 15-001.02.

15-001.02 These regulations do not apply to:

1. A person or any legal entity which is licensed under the Health Care Facility Licensure Act and which provides respite care services at the licensed location;
2. A person or legal entity which is licensed to provide child care to thirteen or more children under the Child Care Licensing Act, or which is licensed as a group home or child caring agency under Neb. Rev. Stat. §§ 71-1901 to 71-1906.03;
3. An agency that recruits, screens, or trains a person to provide respite care;
4. An agency that matches a respite care service or other providers of respite care with a person with special needs, or refers a respite care service or other providers of respite care to a person with special needs, unless the agency receives compensation for such matching or referral from the service or provider or from or on behalf of the person with special needs;
5. A person who provides respite care to fewer than eight unrelated persons in any seven day period in his or her home or in the home of the recipient of the respite care; or
6. A nonprofit agency that provides group respite care for no more than eight hours in any seven day period.

15-002 DEFINITIONS

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

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

Agency means an entity that hires and supervises staff who provide respite care services for compensation.

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

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

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

Caregiver means a parent, foster parent, family member, friend, or legal guardian who provides care for an individual.

Client means any person receiving care in a respite care service program/center.

Complaint means an expression of concern or dissatisfaction with the respite care service.

Completed application means an application that contains all the information specified in 175 NAC 15-003 and includes all required attachments, documentation, and the licensure fee.

Department means the Department of Health and Human Services.

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

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Device means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is prescribed by a medical practitioner and dispensed by a pharmacist or other person authorized by law to do so.

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

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

Evaluation means a written action plan based on the identified needs of the client and the strategy for providing care to meet those needs.

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

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

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

Food Code means the Nebraska Food Code as defined in Neb. Rev. Stat. § 81-2,244.01 and as published by the Nebraska Department of Agriculture, except for compliance and enforcement provisions.

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

Free-standing facility means the physical location where respite care services are provided, other than the client or caregiver's home.

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

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

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

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

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

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

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

NAC means Nebraska Administrative Code.

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

New construction means a facility or a distinct part of a facility in which care and treatment is to be provided and which is enlarged, remodeled or altered in any fashion or is built from the ground up on or after the effective date of 175 NAC 15.

Personal care (See definition of "Care".)

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

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

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

Provider means the person providing respite care services.

Related services means those activities that meet the health and safety needs of the client for the duration of the services.

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

Respite care service (RCS) means a person or any legal entity that provides short-term temporary care on an intermittent basis to persons with special needs when the person's primary caregiver is unavailable to provide such care.

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

Service means a respite care service.

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

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

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

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

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

15-003 LICENSING REQUIREMENTS AND PROCEDURES: Any person intending to establish, operate, or maintain a respite care service (RCS) that is required by law to be licensed must first obtain a license from the Department. A RCS must not hold itself out as a RCS or as providing health care services unless licensed under the Health Care Facility Licensure Act. The applicant must submit affirmative evidence of their ability to comply with the rules and regulations contained in 175 NAC 15. Respite care services may be provided in the following settings:

1. The home of the client;
2. The home of the caregiver or designee; or
3. A site that serves as a free-standing RCS facility.

15-003.01 Initial License

15-003.01A Applicant Responsibilities: An applicant for an initial RCS license must meet the following:

1. Intend to provide food, care, maintenance, or related services in a group setting or hire staff to perform these functions in the home of persons who require or request such services due to age or functional impairment;
2. Submit a written application to the Department as provided in 175 NAC 15-003.01B; and
3. Notify the Department at least 30 working days prior to planned client occupancy.

15-003.01A1 An applicant for a free-standing RCS site must also submit a floor plan that describes how the space will be used.

15-003.01B Application Requirements: An applicant may construct an application or obtain an application form from the Department. The application must include:

1. Full name of the service to be licensed, street and mailing address, telephone and facsimile number, if any;
2. Type of service to be licensed;
3. Name and address of the licensee;
4. Mailing address for the owner;
5. The preferred mailing address for receipt of official notices from the Department;
6. List of names and addresses of all persons in control of the RCS. The list must include all individual owners, partners, limited liability company members, and members of boards of directors owning or managing operations, and any other persons with financial interests or investments in the RCS. In the case of publicly held corporations, only those stockholders who own 5% or more of the company's stock must be listed;
7. The legal name of the individual or business organization (government, corporation, partnership, limited liability company, or other type) to whom the license should be issued and a statement that such individual or organization accepts the legal responsibility for compliance with these regulations;
8. Applicant's social security number if the applicant is an individual. To ensure social security numbers are not part of public records and are used only for administrative purposes, applicants may submit social security numbers in a separate document;
9. Applicant's federal employer identification number, if not an individual;
10. Signatures by:
  - a. The owner, if the applicant is an individual or partnership;
  - b. Two of its members, if the applicant is a limited liability company;
  - c. Two of its officers, if the applicant is a corporation; or
  - d. The head of the governmental unit having jurisdiction over the facility or services to be licensed, if the applicant is a governmental unit.
11. A copy of the registration as a foreign corporation filed with the Nebraska Secretary of State, if applicant is a foreign corporation; and
12. The required licensure fee specified in 175 NAC 15-004.08.

15-003.01B1 An applicant for a free-standing RCS site must also include the following as part of the application:

1. Copies of zoning approval from the relevant jurisdiction; and
2. Occupancy certificates issued by the State Fire Marshal or delegated authority.

15-003.01C Department Responsibilities: The Department will:

1. Review the application for completeness;

2. Provide notification to the applicant of any information needed to complete the application;
3. Confirm, either by Department review or by accepting certification from an architect or engineer, that the schematic plans and, if new construction, the construction plans meet the standards of 175 NAC 15-007;
4. Upon receipt of the requested information, conduct an on-site inspection in accordance with 175 NAC 15-005 prior to the issuance of a license; and
5. Issue or deny a license based on the results of the initial inspection.

15-003.01D Denial of License: See 175 NAC 15-008.01 and 15-008.02 for grounds and procedures for the Department's denial of an initial license.

#### 15-003.02 Renewal Licenses

15-003.02A Licensee Responsibilities: Applications must include:

1. Full name of the service to be licensed, street and mailing address, telephone and facsimile number, if any;
2. Type of service to be licensed;
3. Name and address of the licensee;
4. Mailing address for the owner;
5. The preferred mailing address for receipt of official notices from the Department;
6. List of names and addresses of all persons in control of the RCS. The list must include all individual owners, partners, limited liability company members, and members of boards of directors owning or managing operations, and any other persons with financial interests or investments in the RCS. In the case of publicly held corporations, only those stockholders who own 5% or more of the company's stock must be listed;
7. The legal name of the individual or business organization (government, corporation, partnership, limited liability company, or other type) to whom the license should be issued and a statement that such individual or organization accepts the legal responsibility for compliance with 175 NAC 15;
8. Applicant's social security number if the applicant is an individual. To ensure social security numbers are not part of public records and are used only for administrative purposes, applicants may submit social security numbers in a separate document;
9. Applicant's federal employer identification number, if not an individual;
10. Signatures by:
  - a. The owner, if the applicant is an individual or partnership;
  - b. Two of its members, if the applicant is a limited liability company;
  - c. Two of its officers, if the applicant is a corporation; or

- d. The head of the governmental unit having jurisdiction over the facility or services to be licensed, if the applicant is a governmental unit; and
11. The required licensure fee specified in 175 NAC 15-004.08.

15-003.02A1 An applicant for a free-standing RCS site must also include as part of the application occupancy certificates issued by the State Fire Marshal or delegated authority dated within the 18 months prior to the license expiration date.

15-003.02B Department Responsibilities: The Department will:

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

15-003.02C Refusal to Renew: See 175 NAC 15-008.01 and 15-008.02 for grounds and procedures for refusal to renew a license.

15-003.03 Reinstatement from Lapsed Status: A RCS requesting reinstatement of its lapsed license must submit to the Department an application for reinstatement and pay the

required licensure fee specified in 175 NAC 15-004.08. The application must conform to the requirements specified in 175 NAC 15-003.02.

15-003.03A The Department will review the application for completeness and will decide if an onsite inspection is needed to determine compliance with the physical plant and the operation and care requirements of 175 NAC 15-006 and 15-007. The decision is based upon the following factors:

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

15-003.03B When the Department decides that a reinstatement inspection is warranted, it will conduct an inspection in accordance with 175 NAC 15-005.

15-003.03C When the Department decides that a reinstatement inspection is not warranted and that the application is complete, it will reinstate the license.

15-003.03D Refusal to Reinstatement: See 175 NAC 15-008.01 and 15-008.02 for grounds and procedures for refusal to reinstate a lapsed license.

## 15-004 GENERAL REQUIREMENTS

15-004.01 Effective Date and Term of License: A RCS license expires on October 31 of each year.

15-004.02 License Not Transferable: A license is issued only for the premises and persons named in the application and is not transferable or assignable. Change of ownership (sale, whether of stock, title, or assets, lease, discontinuance of operations) or premises terminates the license. If there is a change of ownership and the RCS remains on the same premises, the inspection in 175 NAC 15-005 is not required. If a RCS changes premises, it must pass the inspection specified in 175 NAC 15-005.

15-004.03 Occupancy: In free-standing RCS sites, a licensee must not serve more clients at one time than the maximum occupancy for which the RCS is licensed.

15-004.04 Change of Ownership or Premises: The licensee must notify the Department in writing ten days before a RCS is sold, leased, discontinued, or moved to new premises.

15-004.05 Notifications: An applicant or licensee must notify the Department in writing by electronic mail, facsimile, or postal service:

1. At least 30 working days prior to the date it wishes to increase the number of clients for which the RCS is licensed;
2. To request a single license document;

3. To request simultaneous facility or service licensure inspections for all types of licensure held or sought;
4. When there is a change in the building or the usage of the building that serves as a free-standing RCS site;
5. Within 24 hours of any client death that meets the following criteria:
  - a. For in-home RCS, the death occurred during the time staff were present;
  - b. For free-standing RCS, the death was due to suicide or a violent act that occurred on the premises of the RCS, or the client's leaving the premises of the RCS without staff knowledge when departure presented a threat to the safety of the client or others;
6. Within 24 hours if an RCS has reason to believe that a client death was due to abuse or neglect by staff;
7. Within 24 hours of any facility fire requiring a fire department response; or
8. Within 24 hours of an accident or natural disaster resulting in damage to the physical plant and having a direct or immediate adverse effect on the health, safety, and security of clients. This must include a description of the well-being of the facility's clients and the steps being taken to assure client safety, well-being, and continuity of care. The notification may be made by telephone if the accident or natural disaster has affected the facility's capacity to communicate.

15-004.06 Information Available to Public: The licensee must make available for public inspection upon request licenses, license record information, and inspection reports. This information may be displayed on the licensed premises.

15-004.07 Deemed Compliance

15-004.07A Accreditation: The Department may deem applicants or licensees in compliance with 175 NAC 15-006 based on their accreditation as a Respite Care Service by the Commission on Accreditation of Rehabilitation Facilities RCS.

15-004.07A1 The applicant or licensee must request the Department to deem its RCS in compliance with 175 NAC 15-006 based upon its accreditation. The request must be:

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

15-004.07A2 Upon receipt of the request, the Department will deem the RCS in compliance with 175 NAC 15-006 and will provide written notification of its decision to the RCS within ten working days of the receipt of the request.

15-004.07A3 The Department will exclude a facility that has been deemed in compliance with 175 NAC 15-006 from the random selection of up to 25% of

facilities for compliance inspections under 175 NAC 15-005.04A. The facility may be selected for a compliance inspection under 175 NAC 15-005.04B.

15-004.07A4 To maintain deemed compliance, the licensee must maintain the accreditation on which its license was issued. If the accreditation has been sanctioned, modified, terminated, or withdrawn, the licensee must notify the Department within 15 days of receipt of notification of the action. After notifying the Department, the RCS may continue to operate unless the Department determines that the RCS no longer meets the requirements for licensure under the Health Care Facility Licensure Act. If the Department determines the facility no longer qualifies for deemed compliance, the facility is subject to inspections under 175 NAC 15-005.

15-004.08 Fees: The licensee must pay fees for licensure and services as set forth below:

1. Initial and Renewal Licensure Fees for RCS:
  - a. Programs that provide RCS through volunteers \$ 50
  - b. Programs with license capacity of 8-16 \$250
  - c. Programs with license capacity of 17-50 \$350
  - d. Programs with license capacity of 51 and up \$450
2. Duplicate license: \$ 10
3. Refunds for denied applications:
  - a. If the Department did not perform an inspection, it will refund the license fee except for an administrative fee of \$25.
  - b. If the Department performed an inspection, the fee is not refunded.

15-005 INSPECTIONS: To determine compliance with operational, care, and physical plant standards, the Department inspects the RCS prior to and following licensure. The Department determines compliance through on-site inspections.

15-005.01 Initial Inspection: The Department will conduct an announced initial on-site inspection to determine compliance with 175 NAC 15-006 and 15-007. This inspection will be conducted within 30 working days, or later when requested by the applicant, of receipt of a completed application for an initial license. The Department will provide a copy of the inspection report to the RCS within ten working days after completion of an inspection.

15-005.02 Results of Initial Inspection

15-005.02A When the Department finds that the applicant fully complies with the requirements of 175 NAC 15-006 and 15-007, the Department will issue a license.

15-005.02B When the Department finds that the applicant has complied substantially but has failed to comply fully with the requirements of 175 NAC 15-006 and 15-007 and the failure(s) would not pose an imminent danger of death or physical harm to the client, the Department may issue a provisional license. The provisional license:

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

15-005.02C When the Department finds that the applicant has one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety or security of the clients in the RCS, the Department may send a letter to the service requesting a statement of compliance. The letter will include:

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

15-005.02D Statement of Compliance: The statement of compliance must indicate any steps that have been or will be taken to correct each violation and the estimated time necessary to correct each violation. Based on the statement of compliance, the Department will take one of the following actions:

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

15-005.02E When the Department finds that the applicant fails to meet the requirements of 175 NAC 15-006 and 15-007 and the failure(s) would create an imminent danger of death or serious physical harm, the Department will deny the license.

15-005.03 Physical Plant Inspections: The Department will conduct inspections for conformity with approved construction plans and physical plant standards of 175 NAC 15-007 at existing facilities, new facilities, or new construction prior to use or occupancy.

15-005.03A On-site progress inspections of the physical plant by qualified inspectors for conformance to construction documents and code requirements may occur at any time after construction has begun and prior to the concealment of essential components.

15-005.03B The Department will conduct an on-site final inspection of the physical plant. In lieu of an on-site final inspection by the Department, the Department may accept a certification from a licensed architect or engineer that the physical plant meets the requirements of the Health Care Facility Licensure Act and 175 NAC 15, and that the facility is complete and ready for occupancy in accordance with Department approved plans. The architect or engineer may construct a certification form or obtain a certification form from the Department. The process for the certification is as follows:

15-005.03B1 The certification must state:

1. Name of the architect or engineer;
2. Name of the professional entity with which he or she is affiliated, if any;
3. Address and telephone number;
4. Type of license held, the state in which it is held, and the license number;
5. Name and location of the facility;
6. Name(s) of the owner(s) of the facility;
7. That in new construction, the building structure and plumbing rough-in was inspected by a qualified inspector prior to the time these would be concealed and preclude observation.
8. That all new construction, care and treatment room sizes, hardware, building systems, and other safety equipment as appropriate are completed in accordance with approved construction plans; and
9. The facility is furnished, cleaned, and equipped for the care and services to be performed in compliance with 175 NAC 15-007, and approved for use and occupancy.

15-005.03B2 The certification must have attached to it:

1. Copies of documents from other authorities having jurisdiction verifying the facility meets the codes specified in 175 NAC 15-007.03A, and approved for use and occupancy;
2. Copies of certifications and documentation from equipment and building system installers stating with the sufficiency as allows for Departmental verification that all equipment and systems installed are operating and approved for use and occupancy; and
3. Schematic floor plans documenting actual room numbers or titles, and capacity, and life safety information.

15-005.04 Compliance Inspections: The Department may, following the initial licensure of a RCS, conduct an unannounced on-site inspection at any time it deems necessary to determine compliance with 175 NAC 15-006 and 15-007. The inspection may occur based on random selection or focused selection.

15-005.04A Random Selection: Each year the Department may conduct an inspection of up to 25% of the RCS based on a random selection of licensed RCS.

15-005.04B Focused Selection: The Department may conduct an inspection of a RCS when the Department is informed of one or more of the following:

1. An occurrence resulting in client death or serious physical harm to clients;
2. An occurrence resulting in imminent danger to or the possibility of death or serious physical harm to clients;
3. An accident or natural disaster resulting in damage to the physical plant and having a direct or immediate adverse effect on the health, safety, and security of clients;
4. The passage of five years without an inspection;
5. A complaint alleging violation of the Health Care Facility Licensure Act or 175 NAC 15;
6. Complaints that, because of their number, frequency, and type, raise concerns about the maintenance, operation, and management of the respite care services;
7. Financial instability of the licensee or of the licensee's parent company;
8. Outbreaks or recurrent incidents of physical health problems such as dehydration, pressure sores, or other illnesses;
9. Change of services, management, or ownership;
10. Change of the status of the accreditation on which licensure is based as provided in 175 NAC 15-004.07; and
11. Any other event that raises concerns about the maintenance, operation, and management of the RCS.

#### 15-005.05 Results of Compliance Inspections

15-005.05A When the inspection reveals violations that create imminent danger of death or serious physical harm or has direct or immediate adverse relationship to the health, safety, or security of the persons receiving respite care services. The Department will review the inspection findings within 20 working days after the inspection. If the evidence supports the findings, the Department will impose discipline in accordance with 175 NAC 15-008.03.

15-005.05B When the inspection reveals one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or security of the persons receiving respite care services, the Department may request a statement of compliance from the RCS. The statement of compliance must indicate any steps that have been or will be taken to correct each violation and the period of time estimated to be necessary to correct each violation. Based on the statement of compliance, the Department will take one of the following actions:

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1. If the service submits and implements a statement of compliance that indicates a good faith effort to correct the violations, the Department will not take any disciplinary action against the license;
2. If the RCS fails to submit and implement a statement of compliance, the Department will initiate disciplinary action against the RCS license, in accordance with 175 NAC 15-008; or
3. In making a determination to accept a statement of compliance or initiate or not initiate disciplinary action against the license, the Department may conduct a re-inspection within 90 days of the first inspection, or sooner as requested by the licensee.

15-005.06 Re-Inspections

15-005.06A The Department may conduct re-inspections to determine if a RCS fully complies with the requirements of 175 NAC 15-006 and 15-007. Re-inspection occurs:

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

15-005.06B Following a re-inspection, the Department may:

1. Convert a provisional license to a regular license;
2. Affirm that the provisional license is to remain effective;
3. Modify a disciplinary action in accordance with 175 NAC 15-008.02; or
4. Grant full reinstatement of the license.

15-006 STANDARDS OF OPERATION AND CARE: To provide adequate protection to clients and be in compliance with state statutes, all RCS licensed by the Department must meet the following:

15-006.01 Licensee: The licensee must determine, implement, and monitor policies to assure that the service is administered and managed appropriately. The licensee's responsibilities include:

1. Maintain the RCS's compliance with all applicable state statutes and relevant rules and regulations;
2. Ensure the quality of all services and care provided to clients, whether furnished by the RCS staff or through contract with the RCS;
3. Ensuring clients are provided with a stable and supportive environment, through respect for the rights of clients and responsiveness to client needs; and
4. Ensuring that staff levels are sufficient to meet the clients' needs.

15-006.02 Person in Charge: The RCS must designate a person to be in charge of the day to day operation of the RCS. In a free-standing RCS site, the person must be onsite during the hours of operation.

15-006.03 Staff Requirements: The RCS must maintain a sufficient number of staff with the required training and skills necessary to meet the client's requirements for assistance or provision of personal care, activities of daily living, health maintenance activities, supervision, and support health and safety. The service must provide care to clients in a safe and timely manner.

15-006.03A Employment Eligibility: Each RCS must ensure and maintain evidence of the following:

15-006.03A1 Criminal Background Checks: The RCS must complete pre-employment criminal background checks on each unlicensed direct care staff member through a governmental law enforcement agency or a private entity that maintains criminal background information.

15-006.03A2 Registry Checks: The RCS must check each unlicensed direct care staff for adverse findings on the following Nebraska registries:

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

15-006.03A3 The RCS must:

1. Determine how to use the criminal background and registry information, except for the Sex Offender Registry and Nurse Aide Registry, in making hiring decisions;
2. Decide whether employment can begin prior to receiving the criminal background and registry information; and
3. Document any decision to hire a person with a criminal background or adverse registry findings, except for the Sex Offender Registry and the Nurse Aide Registry. The documentation must include the basis for the decision and how it will not pose a threat to client safety or client property.

15-006.03A4 The RCS must not employ a person with adverse findings on the Sex Offender Registry, or on the Nurse Aide Registry regarding client abuse, neglect, or misappropriation of property.

15-006.03A5 Health Status: Each RCS must establish and implement policies and procedures regarding the health status of staff to prevent transmission of disease to clients. The RCS:

1. Must complete a health screening for each staff person prior to assuming job responsibilities; and
2. May, in its discretion, based on the health screening, require a staff person to have a physical examination.

15-006.03B Staff Training: The RCS must provide staff with sufficient training to meet client needs for care.

15.006.03B1 Orientation: The RCS must provide staff with orientation prior to the staff person having direct responsibility for care and services to clients. The training must include:

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

15-006.03B2 Ongoing Training: Each RCS must provide and maintain evidence of ongoing/continuous inservices or continuing education for staff. A record must be maintained including the date of the training, the topic, and participants.

15-006.03C Staffing Resources: The RCS must ensure that staffing resources and training are sufficient to meet the level of supervision and assistance with activities of daily living, personal care, and health maintenance activities that are required by the clients.

15-006.03C1 Supervision: The RCS must establish and implement policies and procedures regarding appropriate client supervision.

15-006.03D Employment Record: A current employment record must be maintained for each staff person. The record must contain at a minimum, information on orientation, inservices, employment eligibility information, and health history screening.

15-006.03E Provision of Respite Care Services: The RCS must provide staffing to ensure that services to clients are provided in a safe and timely manner to meet the needs of the client and in accordance with the instructions and direction of the caregiver.

15-006.04 Client Rights: Each RCS must protect and promote each client's rights. This includes the establishment and enforcement of written policies and procedures to ensure the operations of the RCS afford clients the opportunity to exercise their rights. At a minimum, each client must have the right to:

1. Respectful and safe care by competent personnel;
2. Be free from abuse, neglect, exploitation, and to be treated with dignity;
3. Receive respite care services without discrimination based upon race, color, religion, gender, or national origin;
4. Confidentiality of all records, communications, and personal information;
5. Be free of chemical and physical restraints; and
6. Be informed of changes in agency policies, procedures, and charges for service.

15-006.04A Designee/Caregiver Rights: At a minimum, each designee/caregiver must have the right to:

1. Be informed of any changes in the RCS description as indicated in 175 NAC 15-006.05;
2. Voice complaints without discrimination or reprisal against themselves or the client and have those complaints addressed;
3. Be informed of client and designee/caregiver rights during admittance; and
4. Be informed of changes in agency policies, procedures, and charges for service.

15-006.04B Designee Rights: At a minimum, each designee must have the right to formulate advance directives and have the RCS comply with the directives unless the RCS notifies the designee of their inability to do so.

15-006.04C Complaints: Each RCS must establish and implement a process of addressing all complaints received from clients, caregivers, designees, employees, and others. The process must include, but is not limited to:

1. A procedure for submission of complaints that is made available to employees, clients, or designee/caregivers; and
2. Time frames and procedures for review of complaints and provision of responses to address complaints.

15-006.05 Respite Care Service Description: The RCS must have a written description that is available to staff, clients, caretakers, designees, and members of the public that explains the range of respite care services that can be provided. The description must include the following:

1. The goals and objectives of the RCS;
2. The hours and days when care is provided;
3. The description of the types of clients to be served, including age, gender, care needs, and any other relevant characteristics;

4. The composition of staff and their qualifications;
5. The job responsibilities of staff; and
6. The system used for the reporting, investigating, and resolving allegations of client abuse, neglect, and exploitation.

15-006.06 Evaluations: The RCS must evaluate each client and have a written agreement with the client or designee to delineate the services to be provided to meet the needs identified in the evaluation. The agreement must contain the following basic components:

1. Who will provide the service;
2. Where the service will be provided; and
3. Disclosure of liability insurance held by the RCS, if any, and what the coverage provides.

15-006.07 Administration or Provision of Medications: Each RCS must establish and implement policies and procedures to ensure that clients receive medications only as legally prescribed by a medical practitioner in accordance with the five rights and with prevailing professional standards.

15-006.07A Methods of Administration of Medication: When the RCS is responsible for the administration of medication, it must be accomplished by the following methods:

1. Self-Administration of Medications: Clients may be allowed to self-administer medications, with or without visual supervision, when the RCS determines that the client is competent and capable of doing so and has the capacity to make an informed decision about taking medications in a safe manner. The RCS must develop and implement policies to address client self-administration of medication, including:
  - a. Storage and handling of medications;
  - b. Inclusion of the determination that the client may self-administer medication in the client's individualized service plan; and
  - c. Monitoring the plan to assure continued safe administration of medications by the client.
2. Licensed Health Care Professional: When the RCS uses a licensed health care professional for whom medication administration is included in the scope of practice, the RCS must ensure the medications are properly administered in accordance with prevailing professional standards.
3. Provision of Medication by a Person Other Than a Licensed Health Care Professional: When the RCS uses a person other than a licensed health care professional in the provision of medications, the RCS must follow 172 NAC 95, Regulations Governing the Provision of Medications by Medication Aides and Other Unlicensed Persons and 172 NAC 96,

Regulations Governing the Medication Aide Registry where applicable.  
The RCS must establish and implement policies and procedures:

- a. To ensure that medication aides and other unlicensed persons who provide medications are trained and have demonstrated the minimum competency standards specified in 172 NAC 96-004;
- b. To ensure that competency assessments and/or courses for medication aides and other unlicensed persons are provided in accordance with the provision of 172 NAC 96-005;
- c. That specify how direction and monitoring will occur when the RCS allows medication aides and other unlicensed persons to perform the routine/acceptable activities authorized by 172 NAC 95-005 and as follows:
  - (1) Provide routine medication; and
  - (2) Provision of medications by the following routes:
    - (a) Oral, which includes any medication given by mouth, including sublingual (placing under the tongue) and buccal (placing between the cheek and gum) routes and oral sprays;
    - (b) Inhalation, which includes inhalers and nebulizers, including oxygen given by inhalation;
    - (c) Topical applications of sprays, creams, ointments, lotions, and transdermal patches; and
    - (d) Instillation by drops, ointments, and sprays into the eyes, ears, and nose;
- d. That specify how direction and monitoring will occur when the RCS allows medication aides and other unlicensed persons to perform the additional activities authorized by 172 NAC 95-007, which include but are not limited to:
  - (1) Provision of PRN medication;
  - (2) Provision of medications by additional routes including but not limited to gastrostomy tube, rectal, and vaginal; and/or
  - (3) Participation in monitoring;
- e. That specify how competency determinations will be made for medication aides and other unlicensed persons to perform routine and additional activities pertaining to medication provision;
- f. That specify how written direction will be provided for medication aides and other unlicensed persons to perform the additional activities authorized by 172 NAC 95-007;
- g. That specify how records of medication provision by medication aides and other unlicensed persons will be recorded and maintained; and

- h. That specify how medication errors made by medication aides and other unlicensed persons and adverse reactions to medications will be reported. The reporting must be:
  - (1) Made to the identified person responsible for direction and monitoring;
  - (2) Made immediately upon discovery; and
  - (3) Documented in client records.

15-006.07B When the RCS is not responsible for medication administration or provision, the RCS must maintain responsibility for overall supervision, safety, and welfare of the client.

15-006.07C Reporting of Medication Errors: When the RCS provides for medication administration or provision, the RCS must have policies and procedures for reporting any errors in administration or provision of any medications by the service or its employee(s). Any variance from the five rights must be reported as an error:

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

15-006.07D Storage of Medication: Except when the respite care service is provided in the client's home, all medications must be stored in secured areas and stored in accordance with the manufacturer's instructions for temperature, light, humidity, or other storage instructions. If children under the age of 13 are being served, all medications must be locked.

15-006.07E Access to Medication: Except when the RCS is provided in the client's home, the RCS must ensure that only authorized staff who are designated by the RCS to be responsible for administration or provision of medications have access to medications.

15-006.07F Medication Record: The RCS must maintain records with sufficient detail to assure that:

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

15-006.07F1 Individual Client Record: Each client must have an individual medication administration record which must include:

- 1. Identification of the client;
- 2. Name of the medication given;

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

15-006.08 Food Service: If the RCS provides food service, meals and snacks must be appropriate to the client's needs and preferences, and must meet daily nutritional requirements.

15-006.08A Menus: Menus must be planned and written based on the Food Guide Pyramid or equivalent and modified to accommodate special diets and texture adaptations as needed by the client. Menus must be made accessible to clients, caregivers, and designees.

15-006.08B Food Storage: The RCS must store, handle and dispose of food in a safe and sanitary manner and in accordance with the Nebraska Food Code.

15-006.09 Client Information: Each RCS must obtain written, accurate client information from the caregiver. Client information must be kept confidential.

15-006.09A Content: Client records must contain, when applicable, the following information:

1. Name of client;
2. Gender of client;
3. Date of birth of client;
4. Licensed practitioner's orders where applicable;
5. Significant medical conditions;
6. Medications and any special diet;
7. Allergies;
8. Person to contact in emergency situations;
9. Designated physician or registered nurse; and
10. Advance directives if available.

15-006.09B Client Identification: The RCS must establish policies and procedures for client identification when there are multiple clients at a site.

15-006.10 Disaster Preparedness and Management: The RCS must establish and implement disaster preparedness plans and procedures to ensure that client care, safety, and well-being are provided and maintained during and following instances of natural (tornado, flood, etc.) or other disasters, disease outbreaks, or other similar situations causing clients to remain at the RCS. Such plans and procedures must address and delineate:

1. How the RCS will maintain the proper identification of each client to ensure that care coincides with the client's needs;

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

**15-007 PHYSICAL PLANT CONSTRUCTION AND MAINTENANCE STANDARDS FOR FREE-STANDING RESPITE CARE SERVICE:** Free-standing RCS must be designed, constructed, and maintained in a manner that is safe, clean, and functional for the type of care to be provided. If the respite care service is provided in either the home of the client, caregiver or designee, this section does not apply.

**15-007.01 Environmental Services:** A RCS must maintain a safe, clean, comfortable environment. Every detached building on the same premises used for care must comply with these regulations.

**15-007.01A Housekeeping and Grounds Maintenance:** The RCS must provide the necessary housekeeping and maintenance to protect the health and safety of the clients, as follows:

1. The buildings and grounds must be kept clean, safe, hazard-free, and in good repair.
2. All garbage and rubbish must be disposed of in such a manner as to prevent the attraction of rodents, flies, and all other insects and vermin. Garbage must be disposed in such a manner as to minimize the transmission of infectious diseases and minimize odor.
3. The RCS must maintain adequate lighting, environmental temperatures, and sound levels in all areas that are conducive to the care provided.
4. The RCS must maintain and equip the premises to prevent the entrance, harborage, or breeding of rodents, flies, and all other insects and vermin.

15-007.01B Equipment, Fixtures, Furnishings and Linens: The RCS must provide and maintain all equipment, fixtures, and furnishings clean, safe, and in good repair, as follows:

1. The RCS must establish and implement policies for routine and preventative maintenance of equipment and furnishings to ensure that such equipment and furnishings are safe and function to meet the intended use.
2. When bed and bath linens are provided by the RCS, the RCS must maintain an adequate supply of clean linens in good repair.
3. The RCS must establish and implement procedures for the storage and handling of soiled and clean linens.

15-007.01C Food Service: If food preparation is provided on site, the RCS must dedicate space and equipment for the preparation and serving of meals. Such food preparation, serving, physical environment, and equipment must comply with the Nebraska Food Code.

15-007.01D Pets: The RCS must assure any RCS-owned pet does not negatively affect persons. The RCS must have policies and procedures regarding pets that include:

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

15-007.01E Environmental Safety: The RCS is responsible for maintaining the RCS in a manner that minimizes accidents as follows:

1. The RCS must maintain the environment to protect the health and safety of persons by keeping surfaces smooth and free of sharp edges, mold, or dirt, keeping floors free of objects and slippery or uneven surfaces, and keeping the environment free of other conditions which may pose a potential risk.
2. The RCS must maintain all doors, stairways, passageways, aisles, or other means of exit in a manner that provides safe and adequate access for care.
3. The RCS must provide and maintain water for bathing and handwashing at a safe and comfortable temperature to protect persons from potential burns or scalds. Water temperature must not exceed 125 degrees Fahrenheit.
4. The RCS must ensure hazardous/poisonous materials or potentially hazardous materials utilized by the respite care service are properly handled and stored to prevent accidental ingestion, inhalation, or consumption of the hazardous/poisonous materials by persons.

5. The RCS must ensure access to a non-coin operated telephone that is maintained in working order. Emergency numbers must be accessible near the telephone.
6. The RCS must develop and implement a written procedure to ensure prompt, routine, and preventive cleaning and maintenance of the premises.
7. The RCS must keep facilities clean, maintained in good repair, and free of rodents and other pests.

15-007.01F Designed and Equipped: The RCS site must be designed to meet the needs of clients served. The RCS must consider factors such as appropriate and sufficient space, equipment, furnishings, lighting, noise control, room temperatures, and ventilation.

15-007.01G Accessible and Usable: The RCS must be accessible and appropriate to meet the needs of the client.

15-007.01H Building Codes and Zoning: The RCS site must maintain documentation of compliance with Nebraska State Fire Code Regulations found at Title 153 NAC 1, and with applicable local zoning requirements. All new construction of a free-standing respite care service site must comply with:

1. Building: Building Construction Act, Neb. Rev. Stat. §§ 71-6401 to 71-6407;
2. Plumbing: Plumbing Ordinance or Code, Neb. Rev. Stat. § 18-1915;
3. Electrical: State Electrical Act, Neb. Rev. Stat. §§ 81-2101 to 81-2145;
4. Elevators: Nebraska Elevator Code, Neb. Rev. Stat. § 48-418.12 and Department of Labor Regulations, 230 NAC 1;
5. Boiler: Boiler Inspection Act, Neb. Rev. Stat. §§ 48-719 to 48-743;
6. Accessibility: Nebraska Accessibility Requirements, State Fire Marshal Regulations, 156 NAC 1-12; and
7. Energy: Nebraska Energy Code, Neb. Rev. Stat. §§ 81-1608 to 81-1626, for construction initiated on or after July 1, 2005.

15-007.01I Laundry: If the RCS provides laundry services, the service may be provided by contract or on-site.

15-007.0111 Contract: If contractual laundry services are used, the RCS must provide and utilize areas for soiled linen awaiting pickup and separate areas for storage and distribution of clean linen.

15-007.0112 On-Site: If on-site laundry services are provided, the RCS must have areas dedicated to laundry that include a washer and dryer. In new construction, the RCS must provide a conveniently located sink for soaking and hand washing of laundry.

15-007.02 (Reserved)

15-007.03 Client Living Areas: The RCS must ensure that living areas are furnished with beds, chairs, sofas, tables, and storage items that are comfortable and reflective of individual needs. The provider must not use a garage, barn, shed, or similar structure as a client living area.

15-007.03A Dining Areas: The RCS must ensure adequate space for dining, socialization, and leisure activities.

15-007.03B Bedrooms: If care is provided to individuals that exceeds 24 hours, the RCS must provide client bedrooms which allow for sleeping, afford privacy, provide access to belongings, provide adequate storage, and accommodate the care provided to the client.

15-007.03C Toilet Rooms: The RCS must provide toilet rooms with handwashing sinks that are adequate to meet the needs of the clients served.

15-007.03D Bathing Rooms: A RCS must provide a bathing room if care is provided to an individual exceeding 24 hours that is adequate to meet the needs of the client. When provided, the bathing room must consist of a tub and/or shower. Tubs and showers used by persons must be equipped with handgrips or other assistive devices as needed by the client.

15-007.03E Additional Services: If the RCS provides additional medical or therapy services, there must be adequate space provided to assure privacy and appropriate care.

15-007.03F Outdoor Areas: Any outdoor area for client usage provided by the RCS must be equipped and situated to allow for client safety and abilities.

15-007.04 Building Systems: The RCS must ensure that building systems are designed, installed, and operate in such a manner as to provide for the safety, comfort, and well-being of each individual.

15-007.04A Water System: The RCS must have and maintain an accessible, adequate, safe, and potable supply of water. Where an authorized public water supply of satisfactory quantity, quality, and pressure is available, the RCS must be connected to it and its supply used exclusively.

15-007.04B Sewage System: The RCS must maintain a sanitary and functioning sewage system.

15-007.04C Heating and Cooling System: The RCS must maintain a functioning heating and cooling system with clean filters which is capable of maintaining indoor room temperature within a normal comfort range of 75 to 85 degrees Fahrenheit.

15-007.04D Ventilation System: The RCS must ensure exhaust and clean air to prevent the concentrations of contaminants, which impair health or cause discomfort to individuals and employees.

15-007.04E Electrical System: The RCS must have an electrical system that has sufficient capacity to maintain the services that are provided and that properly protects individuals from electrical hazards. The RCS must have ground fault circuit interrupters protected outlets in wet areas within 6 feet of sinks.

15-007.04F Lighting System: The RCS must ensure adequate lighting for individuals' comfort and needs and to assure safety and reduce risk of accidents in all used rooms, hallways, interior stairways, outside steps, interior and outside doorways, porches, ramps, and fire escapes.

15-007.05 Waivers: The Department may waive any provision of 175 NAC 15-007 relating to construction or physical plant requirements of a RCS upon proof by the licensee satisfactory to the Department:

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

15-007.05A Unreasonable Hardship: In evaluating the issue of unreasonable hardship, the Department will consider the following:

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

15-007.05B Waiver Terms and Conditions: Any waiver may be granted under the terms and conditions and for such period of time as are applicable and appropriate to the waiver. Terms and conditions and period of waiver include but are not limited to:

1. Waivers that are granted to meet the special needs of a resident remain in effect as long as required by the resident;
2. Waivers may be granted for a period of time that ends at the time the conditions of approval no longer exist;
3. Waivers may be granted to permit a RCS time to come into compliance with the physical plant standards for a period of one year. Upon submission of proof of ongoing progress, the waiver may be continued for an additional year; and

4. An applicant or licensee must submit a request for waiver of any construction or physical plant requirements set forth in 175 NAC 15. An applicant for a waiver may construct a request for waiver form or obtain a form from the Department.

15-007.05C Denial of Waiver: If the Department denies a RCS's request for waiver, the RCS may request an administrative hearing as provided in the Administrative Procedure Act (APA) and the Department's rules and regulations adopted and promulgated under the APA.

## 15-008 DENIAL, REFUSAL TO RENEW, OR DISCIPLINARY ACTION

### 15-008.01 Grounds for Denial, Refusal to Renew, or Disciplinary Action

15-008.01A The Department may deny or refuse to renew a RCS license for failure to meet the requirements for licensure, including:

1. Failing an inspection specified in 175 NAC 15-005;
2. Having had a license revoked within the two-year period preceding an application; or
3. Any of the grounds specified in 175 NAC 15-008.01B.

15-008.01B The Department may take disciplinary action against a RCS license for any of the following grounds:

1. Violation of any of the provisions of the Health Care Facilities Licensure Act or 175 NAC 15;
2. Committing, permitting, aiding, or abetting the commission of any unlawful act;
3. Conduct or practices detrimental to the health or safety of a client or employee;
4. A report from an accreditation body sanctioning, modifying, terminating, or withdrawing the accreditation of the RCS;
5. Failure to allow an agent or employee of the Department access to the RCS for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the Department;
6. Discrimination or retaliation against a client or employee who has submitted a complaint or information to the Department;
7. Failure to file a report of payment or action taken due to a liability claim or an alleged violation required by Neb. Rev. Stat. § 71-168.02;
8. Violation of the Medication Aide Act; or
9. Failure to file a report of suspected abuse or neglect as required by Neb. Rev. Stat. §§ 28-372 and 28-711.

### 15-008.02 Procedures for Denial, Refusal to Renew, or Disciplinary Action

15-008.02A If the Department determines it is necessary to deny, refuse renewal of, or take disciplinary action against a license, the Department will send a notice to

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

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

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

15-008.02C Informal Conference

15-008.02C1 At the request of the applicant or licensee, the peer review organization or the Department will hold an informal conference within 30 days of the receipt of the request. The conference will be held in person, or by other means, at the request of the applicant or licensee.

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

15-008.02C2 Within 20 working days of the conference, the peer review organization or the Department representative will report in writing to the Department the conclusion regarding whether to affirm, modify, or dismiss the notice and the specific reasons for the conclusion, and provide a copy of the report to the Director and the applicant or licensee.

15-008.02C3 If the applicant or licensee successfully demonstrates at the informal conference that the deficiencies should not have been cited in the notice, the Department will remove the deficiencies from the notice and the deficiency statement and rescind any sanction imposed solely as a result of those cited deficiencies.

15-008.02C4 Within ten working days after receiving the report under 175 NAC 15-008.02C2, the Department will consider the report and affirm, modify, or dismiss the notice and state the specific reasons for the decision, including, if applicable, the specific reasons for not adopting the conclusion of the peer review organization or the Department representative as stated in the report. The Department will provide the applicant or licensee with a copy of the decision by certified mail to the last address shown in the Department's records.

15-008.02C5 If the applicant or licensee contests an affirmed or modified notice, the applicant or licensee must submit a request for hearing in writing to the Director within five working days after receipt of the decision.

15-008.02C6 The Department will collect a fee from any applicant or licensee requesting an informal conference with a representative peer review organization to cover all costs and expenses associated with the conference.

15-008.02D Administrative Hearing: When an applicant or a licensee contests the notice and requests a hearing, the Department will hold a hearing in accordance with the Administrative Procedures Act (APA) and with the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. §§ 33-139 and 33-139.01.

15-008.02D1 On the basis of evidence presented at the hearing, the Director will affirm, modify, or set aside the determination. The Director's decision will:

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

15-008.02D2 An applicant or a licensee's appeal of the Director's decision must be in accordance with the APA.

### 15-008.03 Types of Disciplinary Action

15-008.03A The Department may impose any one or a combination of the following types of disciplinary action against the license:

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

15-008.03B In determining the type of disciplinary action to impose, the Department will consider:

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

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

15-008.03C If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the Department may take additional disciplinary action as described in 175 NAC 15-008.03A.

15-008.03D Temporary Suspension or Temporary Limitation: If the Department determines that clients are in imminent danger of death or serious physical harm, the Director may:

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

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

15-008.03D1 The Department will conduct the hearing in accordance with the APA and the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. §§ 33-139 and 33-139.01.

15-008.03D2 If the licensee makes a written request for continuance of the hearing, the Department will grant a continuance, which may not exceed 30 days.

15-008.03D3 On the basis of evidence presented at the hearing, the Director will:

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

If the Director does not reach a decision within 90 days of the date of the temporary suspension or temporary limitation, the temporary suspension or temporary limitation will expire.

15-008.03D4 Any appeal of the Department's decision after hearing must be in accordance with the APA.

15-008.04 Reinstatement from Disciplinary Probation or Suspension, and Re-Licensure After Revocation

15-008.04A Reinstatement at the End of Probation or Suspension

15-008.04A1 Reinstatement at the End of Probation: A license may be reinstated at the end of probation after the successful completion of an inspection, if the Department determines an inspection is warranted.

15-008.04A2 Reinstatement at the End of Suspension: A license may be reinstated at the end of suspension following:

1. Submission of an application to the Department for renewal that conforms to the requirements of 175 NAC 15-003.02 ;
2. Payment of the renewal fee as specified in 175 NAC 15-004.08; and
3. Successful completion of an inspection.

The Department will reinstate the license when it finds, based on an inspection as provided for in 175 NAC 15-005, that the RCS is in compliance with the operation, care, treatment, and physical plant requirements of 175 NAC 15-006 and 15-007.

15-008.04B Reinstatement Prior to Completion of Probation or Suspension

15-008.04B1 Reinstatement Prior to the Completion of Probation: A licensee may request reinstatement prior to the completion of probation and must meet the following conditions:

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

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2. Successfully complete any inspection the Department determines necessary.

15-008.04B2 Reinstatement Prior to Completion of Suspension: A licensee may request reinstatement prior to the completion of suspension and must meet the following conditions:

1. Submit a petition to the Department stating:
  - a. The reasons why the license should be reinstated prior to the suspension completion date; and
  - b. The corrective action taken to prevent recurrence of the violation(s) that served as the basis of the suspension;
2. Submit a written renewal application to the Department as specified in 175 NAC 15-003.02;
3. Pay the renewal fee as specified in 175 NAC 15-004.08; and
4. Successfully complete an inspection.

15-008.04B3 The Director will consider the petition submitted and the results of any inspection or investigation conducted by the Department and:

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

15-008.04B4 The Director's decision is final 30 days after mailing the decision to the licensee unless the licensee requests a hearing within the 30-day period. The requested hearing will be held according to rules and regulations of the Department for administrative hearings in contested cases.

15-008.04C Re-Licensure After Revocation: A RCS license that has been revoked is not eligible for re-licensure until two years after the date of revocation.

15-008.04C1 A RCS seeking re-licensure must apply for an initial license and meet the requirements for initial licensure in 175 NAC 15-003.01.

15-008.04C2 The Department will process the application for re-licensure in the same manner as specified in 175 NAC 15-003.01.

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