

TITLE 404 COMMUNITY-BASED SERVICES FOR INDIVIDUALS WITH
DEVELOPMENTAL DISABILITIES

CHAPTER 6 PROVIDER OPERATED/CONTROLLED COMMUNITY BASED
RESIDENTIAL AND DAY SERVICE OPTION

6-001 SCOPE: This chapter governs the requirements for residential and day community based services for persons with developmental disabilities delivered at provider operated/controlled settings.

6-001.01 Only a certified specialized provider is eligible to provide day or residential services under this option. The specialized provider must:

1. Comply with the requirements in this chapter;
2. Comply with core requirements in 404 NAC 4; and
3. Comply with all applicable federal and state laws and regulations and local codes.

6-001.02 Day and residential services in this chapter are provided at various integrated community settings that are operated or controlled by a certified provider or the provider's employee or subcontractor or any entity owned or controlled by the provider. This is regardless of who owns or leases the property.

6-001.02A Each residential setting must:

1. Have no more than 3 individuals with developmental disabilities residing at the setting;
2. Be operated as a single setting and demonstrate that each residence operates independently; and
3. Be staffed when the residence offers continuous services.

6-001.03 These services may be continuous or intermittent, based on the individual's needs.

6-002 Inherent throughout all of the services and supports offered under this chapter, the provider must ensure:

1. Individuals are free from abuse, neglect, mistreatment, and exploitation;
2. Health, safety, and well-being of the individual is a priority;
3. Individuals are treated with consideration, respect, and dignity;
4. Individuals' preferences, interests, and goals are honored;
5. Individuals have daily opportunities to make choices and participate in decision making;
6. Activities are meaningful and functional for each individual;

7. Services are directed towards maximizing the growth and development of each individual for maximum community participation and citizenship;
8. Individuals live in a manner that is most inclusive;
9. Individuals experience being part of the community; and
10. Individuals are able to express their wishes, desires, and needs.

6-003 RESIDENTIAL AND DAY SERVICES: Residential and Day services offer habilitation, including services and supports and supervision as needed, designed to assist the individual in acquisition, improvement, and retention of skills necessary to enable him/her to live and work successfully and independently as possible in his/her home and the community.

6-003.01 Residential Services: Residential services take place where the individual lives or in the community and are directed at developing, improving, or maintaining the individual's health and personal skills that would typically occur in one's home.

6-003.02 Day Services: Day services are directed at developing, improving, or maintaining skills to maximize employment and inclusion.

6-003.02A An individual's day services must not be provided at a residential site, except in the following situations:

1. Due to health concerns documented by a physician that must be approved by the Department and time-limited;
2. If the individual is receiving retirement services; or
3. If the individual is preparing to participate in community work experiences and competitive employment.

6-004 GENERAL STANDARDS: In addition to the standards in 404 NAC 4, the provider must follow these standards.

6-004.01 Restrictive Measures: To the fullest extent possible, an individual's rights may not be suspended or restricted. In the event where a restrictive measure is considered:

1. The restrictive measure determined necessary for one individual must not affect other individuals who receive services in that setting;
2. The restrictive measure must not be used as punishment, for the convenience of staff, due to shortage of staff, as a substitute for habilitation, or as an element of a positive behavior support plan;
3. The restrictive measure must be the least restrictive and intrusive possible;
4. There must be a goal of reducing and eliminating the restrictive measure;
5. Prior to proposing a restrictive measure, there must be documented evidence that other less restrictive methods had been regularly applied by trained staff and failed; and
6. The individual or their legal representative, if applicable, must give consent to the restrictive measure;
7. The restrictive measure must be safe for the individual; and

8. The restrictive measure and these considerations must be documented in the IPP.

6-004.01A Review and Approval of Restrictive Measure: Prior to implementation of a restrictive measure, the provider must ensure review and approval by the IPP team and rights review committee as outlined in 404 NAC 4-011.

6-005 PSYCHOTROPIC MEDICATION

6-005.01 Psychotropic medications taken by the person due to diagnosed mental illness (a dual diagnosis of a severe and persistent mental illness in conjunction with a developmental disability) must:

1. Only be given as prescribed by a physician who has authority in his/her scope of practice to determine the diagnosis. PRN (as needed) psychotropic medications are prohibited;
2. Be reviewed by the IPP team to determine if the benefits outweigh the risks and potential side effects;
3. Be supported by evidence that a less restrictive and more positive technique had been systematically tried and shown to be ineffective;
4. Be reviewed by the rights review committee in accordance with 404 NAC 4-011. There must be an annual review by the prescribing physician and a semi-annual review by the IPP team of all psychotropic medications utilized. There must be clear and convincing evidence that the individual has a person-centered plan demonstrated by data and outcome measures;
5. Not be used as a way to deal with under-staffing; ineffective, inappropriate or other nonfunctional programs or environments;
6. Also have a positive behavioral supports plan established and in place to address those symptoms when they occur if symptoms reappear and the ongoing use of medication is no longer effective; and
7. Be monitored and documented on an ongoing basis by the provider to provide the IPP team and physician sufficient information regarding:
 - a. The effectiveness of and any side effects experienced from the medication;
 - b. Frequency and severity of symptoms; and
 - c. The effectiveness of the positive behavioral supports plan.

6-005.02 Psychotropic medications used solely for the purpose of modifying behaviors may only be used if in accordance with 404 NAC 6-005.01 (above) and:

1. There is a plan to reduce and eliminate the medication; and
2. The drug is used in conjunction with a positive behavioral supports plan as outlined in 404 NAC 4-005.03;

6-005.03 No positive behavioral supports plan is required when an individual is prescribed a medication that has the effect of behavior modification, but is prescribed for other reasons, as documented by a physician.

6-006 RESTRAINTS: The use of mechanical restraints is prohibited. If the provider agrees to serve an individual under 404 NAC 6 who has a physical restraint program in place at the time of the enactment of these regulations, then a program must be implemented within 180 days of enactment of these regulations which eliminates the use of such restraints. The use of physical restraints will be prohibited one year from the enactment of these regulations.

An emergency safety intervention utilized pursuant to a safety plan is allowed to respond to an emergency safety situation. This is different than physical restraint because it is not used as a behavioral consequence. In instances where the individual must be kept from harm (i.e., running into traffic, leaving a moving car or other serious, unusual or life-threatening actions by the individual), the provider must use their reasonable and best judgment to intervene to keep the individual from injuring him/herself or others. This may include hands-on guidance to safely protect the individuals and others from immediate jeopardy or physical harm.

These situations are not predictable, are unusual, and are usually not reoccurring. In any instances other than these, there must be a positive behavioral supports program in place to work with the individual on alternative positive displays of behavior that are incompatible with other negative behaviors.

All such incidents must be documented and reviewed by the individual's IPP team and rights review committee to ensure that the emergency safety intervention was appropriate rather than an instance of mechanical or physical restraint.

6-006.01 Prohibited Methods: The provider must prohibit the use of mechanical or physical restraints (except as noted above), aversive stimuli, corporal punishment, seclusion, verbal abuse, physical abuse, emotional abuse, denial of basic needs, discipline, or implementation of an intervention of an individual in services by another individual in services, or other means of intervention with the behavior that result in, or is likely to result in injury to the individual.

6-007 PHYSICAL LOCATION REQUIREMENTS: The provider must ensure that locations comply with the codes and regulations of the local jurisdiction and meet the needs of the individuals receiving services in those locations. Residences must have a home-like character.