

This rule was filed as 7 NMAC 26.6.

TITLE 7 HEALTH
CHAPTER 26 DEVELOPMENTAL DISABILITIES
PART 6 REQUIREMENTS FOR DEVELOPMENTAL DISABILITIES COMMUNITY PROGRAMS

7.26.6.1 ISSUING AGENCY: Department of Health; Developmental Disabilities Division, 1190 Saint Francis Drive, Post Office 26110, Santa Fe, New Mexico 87502-6110, Telephone No. (505) 827-2574.
[12/05/86, 12/30/86, 7/14/89; 01/15/97; Recompiled 10/31/01]

7.26.6.2 SCOPE: These regulations apply to all community agencies who have entered into contracts and/or medicaid provider agreements with the health department, developmental disabilities division, to provide services to persons with developmental disabilities.
[12/05/86, 12/30/86, 7/14/89; 01/15/97; Recompiled 10/31/01]

7.26.6.3 STATUTORY AUTHORITY: Section 28-16-7 and 28-16-8, NMSA 1978, (the Developmental Disabilities Community Services Act) and in Section 9-7-6.F, NMSA 1978 (the Health and Environment Department Act).
[12/05/86, 12/30/86, 7/14/89; 01/15/97; Recompiled 10/31/01]

7.26.6.4 DURATION: Permanent.
[12/05/86, 12/30/86, 7/14/89; 01/15/97; Recompiled 10/31/01]

7.26.6.5 EFFECTIVE DATE: January 15, 1997, unless a later date is cited at the end of a Section or Paragraph.
[12/05/86, 12/30/86, 7/14/89; 01/15/97; Recompiled 10/31/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

7.26.6.6 OBJECTIVE:

- A. These regulations are being promulgated to promote and assure the provision of quality services to persons with developmental disabilities residing in community agencies.
- B. These regulations are being promulgated as part of a quality assurance initiative requiring all community agencies providing services to persons with developmental disabilities and contracting with the developmental disabilities division to be accredited by the commission on accreditation of rehabilitation facilities (CARF).
- C. This regulation repeals and supersedes HED Regulations 86-11 (BHSD) and 86-12 (BHSD) and HED 89 - 4 (BHSD).

[12/05/86, 12/30/86, 7/14/89; 01/15/97; Recompiled 10/31/01]

7.26.6.7 DEFINITIONS:

- A. "Adult" means an individual who has attained the age of eighteen (18) years.
- B. "Community agency" means any nonprofit or for profit corporation, tribal organization, unit of local government, or other organization which has entered into a contract with the department for the purpose of providing developmental disabilities services.
- C. "Community living setting" refers, for the purpose of these regulations, to a community living situation supervised by a community agency, which: 1) provides living arrangements for persons with a developmental disability; and 2) is located in the community. Such facilities may include licensed group homes, foster homes, family living situations, supported living situations, companion homes, semi-independent living and assisted living residences and/or similar residences or innovative residential settings. When personal care and respite services are the sole services provided to the individual, these services are not included under the definition for "community living setting" as long as they are provided in the individual's or family's personal home which is not under the direct auspices or control of the community agency.
- D. "Consent screening instrument" means the instruments or procedures for determining an adult's

ability to give informed consent to a residential placement as the department will designate.

E. “Court” means a New Mexico state district court.

F. “Department” means the New Mexico department of health.

G. “Developmental disability” means a severe chronic disability of a person which is attributable to a mental or physical impairment, including the result of trauma to the brain, or combination of mental and physical impairments; is manifested before the person attains age twenty-two; is likely to continue indefinitely; results in substantial functional limitations in three or more of the following areas of major life activity:

- (1) self-care;
- (2) receptive or expressive language;
- (3) learning;
- (4) mobility;
- (5) self-direction;
- (6) capacity for independent living;
- (7) economic self-sufficiency; and
- (8) reflects the person’s need for a combination and sequence of special interdisciplinary or generic

care treatment or other services that are of life-long or extended duration and which are individually planned and coordinated.

H. “Developmental delay” is defined as a discrepancy between chronological age, after correction for prematurity, and developmental age in one or more of the following areas of development: cognitive, communication, physical/motor (including vision and hearing), social/emotional, and/or adaptive.

(1) Eligibility: To be eligible for services, a child must demonstrate 25 percent or more discrepancy between chronological age, after correction for prematurity, and developmental age. The extent of the child’s delay must be documented. A determination of developmental delay shall not be based upon behavior related to cultural or language differences.

(2) Determination of developmental status: The determination of developmental status of the child in each of the developmental areas must be established through an interdisciplinary evaluation process which meets the criteria defined in Section 301 of “Policies, Procedures and Guidelines for the Family, Infant, Toddler Program (FIT)”. The procedures may include informed clinical opinion, norm-referenced/standardized measures, criterion-referenced/curriculum-based instruments, behavior checklists and adaptive behavior measures.

I. “Established condition” is defined as a diagnosed physical, mental or neurobiological condition which has a high probability of resulting in developmental delay. A delay in development may or may not be exhibited at the time of the diagnosis. Examples of an “established condition” include, but are not limited to: down’s syndrome, and other chromosomal abnormalities associated with delays in development; congenital and postnatal conditions associated with delays in developmental, such as sensory impairments (including vision and hearing), inborn errors of metabolism, myelomeningocele, cerebral palsy, fetal alcohol syndrome, non-febrile seizures, malignancy of the brain or spinal cord, acquired immune deficiency syndrome (AIDS), hydrocephaly, and infections such as cytomegalovirus (CMV), herpes or encephalitis; neurobiological conditions such as autism or other pervasive developmental disorders.

(1) Eligibility: The determination of the presence of an established condition is identified by a physician or other primary health care provider. The diagnosis of the condition(s) establishes eligibility.

(2) Determination of developmental status: The determination of developmental status of the child in each of the developmental areas must be established through an interdisciplinary evaluation process which meets the criteria defined in Section 301 of “Policies, Procedures and Guidelines for the Family, Infant, Toddler Program (FIT)”.

J. A “Biological or medical risk for developmental delay” is the presence of early medical conditions which are known to produce developmental delays in some children. Examples of “biological or medical risk” include, but are not limited to, the following medical conditions: pre-term birth of less than 32 weeks gestation; very low birth weight (less than 1500 grams or 3 pounds, 4 ounces); periventricular intraventricular hemorrhage (PIVH); periventricular leukomalacia (PVL); hypoxic ischemic encephalopathy (birth asphyxia); chronic lung disease (CLD) of prematurity or bronchopulmonary dysplasia (BPD); prenatal exposure to drugs or medications or other teratogens known to be associated with developmental delays; failure to thrive; chronic otitis media.

(1) Eligibility: The determination of the presence of biological/medical risk condition(s) is identified by a physician or other primary health care provider (PHCP). The diagnosis of the condition(s) establishes eligibility.

(2) Determination of developmental status: The determination of developmental status of the child in

each of the developmental areas must be established through an interdisciplinary evaluation process which meets the criteria defined in Section 301 of “Policies, Procedures and Guidelines for the Family, Infant, Toddler Program (FIT)”.

K. An “Environmental risk for developmental delay” is the presence of physical, social and/or economic factors in the environment which pose a substantial threat to development. Examples of “environmental risk” are usually a combination of more than one factor which may include, but are not limited to: Parental developmental disabilities or psychiatric disorders; parental substance abuse; child abuse or neglect; homelessness; exposure to domestic or other episodes of violence.

(1) Eligibility: The determination of the presence of eligible environmental risk factors must be established by a multi-agency team.

(2) Determination of developmental status: The determination of developmental status of the child in each of the developmental areas must be established through an interdisciplinary evaluation process which meets the criteria defined in Section 301 of “Policies, Procedures and Guidelines for the Family, Infant, Toddler Program (FIT)”.

L. “Guardian” means for purposes of these regulations a guardian, limited guardian or guardian ad litem as defined in Section 45-1-201 NMSA 1978 or as may be subsequently amended.

M. “Person” or “person served” means individuals with “developmental disabilities”, “developmental delay”, “established condition” or “at risk for developmental delay (biological/medical risk and/or environmental risk)” as defined within these regulations, currently receiving or waiting to receive services.

[12/05/86, 12/30/86, 7/14/89, 01/15/97; Recompiled 10/31/01]

7.26.6.8 ELIGIBILITY FOR SERVICES:

A. Community agencies shall establish clearly written criteria for eligibility which correspond with the definitions of “developmental disability”, “developmental delay” and “at risk for developmental delay” as defined within these regulations:

B. Community agencies shall have written procedures for notifying the person(s) served of their eligibility status.

[12/05/86, 12/30/86, 7/14/89, 01/15/97; Recompiled 10/31/01]

7.26.6.9 CONSENT SCREENING FOR PERSONS ENTERING COMMUNITY LIVING FACILITIES:

A. Prior to admission into a community living setting, community agencies shall convene an interdisciplinary team (IDT) to determine if the person served has the ability to consent to a residential placement or is likely to need consent screening. This determination and its justification is to be documented in writing. If the IDT determines:

(1) that the person served does not need consent screening, then the person served should at this point be given the option to accept or reject the community agency’s services.

(2) that the person served needs consent screening, the ability to consent should then be determined using the consent screening instrument.

B. The community living setting will have a written review process that provides an expedient means to re-evaluate the person’s ability to give consent. The process shall describe steps in the procedure and timelines governing the procedure.

C. If the person served is found able to give consent then they should have the option to accept or reject the community agency’s services.

D. At any time the person served or guardian believes the person served has the ability to give consent, they can have their consent status reviewed and request a new consent screening.

E. The need for consent screening should be reviewed by the IDT at least once a year.

(1) If the person served did not pass the consent screening at the time of the initial admission, then the consent screening must be administered within one year and annually thereafter.

(2) If the person served was able to give consent, the IDT will be required to review the need to administer the consent screening instrument when it has reasonable grounds for believing that the client may no longer be capable of providing consent.

[12/05/86, 12/30/86, 7/14/89, 01/15/97; Recompiled 10/31/01]

7.26.6.10 ADMISSION TO COMMUNITY LIVING SETTINGS:

A. If the person served is found able to consent and agrees to be admitted to the community living-setting they shall record their signature or make other appropriate designation of approval on the admissions document.

B. If the person served is found able to consent and the IDT indicates that the person served would benefit from placement in a community-living setting, but the person served refuses such placement attempt, then the person served may be admitted only upon involuntary commitment under Sections 43-1-13 NMSA 1978, or 43-1-11 NMSA 1978 and 43-1-12 NMSA 1978 of the New Mexico Mental Health and Developmental Disabilities Code.

C. If the person served is found not able to give consent and the IDT indicates that the person served would benefit from placement in a community-living setting, then the program may not admit the person without the consent of a guardian legally authorized to provide or withhold such consent. The exception would be in the case of an emergency admission for a period not to exceed ninety (90) days, pursuant to Section 107 of these Regulations [now 7.26.6.12 NMAC].

[12/30/86, 7/14/89; 01/15/97; Recompiled 10/31/01]

7.26.6.11 WAITING LIST: The department shall maintain an up-to-date waiting list consisting of all persons who need placement in a community living-setting, but are not yet placed in a community living setting. Any program with an opening in a community living-setting may select any person from the waiting list of persons from the developmental disabilities bureau of the department who has been evaluated for admission to the community living-setting. A person should not be admitted to a community living setting unless the community agency agrees to serve that person.

[12/30/86, 7/14/89, 01/15/97; Recompiled 10/31/01]

7.26.6.12 EMERGENCY SERVICES:

A. Services in a community living setting may be provided on an emergency basis to any person believed to be developmentally disabled when a community agency determines that there is imminent danger that the physical health or safety of the person will be seriously impaired if the services are not provided, and that the normal admissions procedure, including consent screening and evaluation, cannot be accomplished in time to avoid danger.

B. When emergency services are provided, the community agency should document the nature of the emergency resulting in services being provided.

C. When the person served is receiving emergency services, the community agency should evaluate the person in a timely manner to determine if the person served will continue to receive services from their community agency.

D. Emergency services should not be provided for more than seven days unless an evaluation has begun, or, for more than twenty-one (21) days in total, unless a court or the department orders otherwise.

[12/30/86, 7/14/89, 01/15/97; Recompiled 10/31/01]

7.26.6.13 NOTICE OF THE DEATH OF A PERSON SERVED:

A. The agency shall have policies and procedures regarding the death of a person under supervision of the agency. These policies and procedures shall include:

- (1) staff responsibilities and protocols for handling the immediate situation;
- (2) person(s) to be notified and procedure for notification;
- (3) provisions for disposal of estate and person's funds, when person has no relevant person(s) to perform these duties.

B. If termination of services is the result of a person's death, the following information shall be prepared for the person's file and sent to the department:

- (1) time and date of person's death;
- (2) cause of death;
- (3) circumstances surrounding death;
- (4) medical/autopsy report;
- (5) summary of any follow-up findings relating to the death.

[7/14/89; 01/15/97; Recompiled 10/31/01]

7.26.6.14 CARF STANDARDS MANUAL FOR ORGANIZATIONS SERVING PEOPLE WITH DEVELOPMENTAL DISABILITIES: Community agencies governed by these regulations are required to meet applicable provisions of the most current edition of the "CARF Standards Manual for Organizations Serving People

with Disabilities”. Sections of the CARF standards may be waived by the Department when deemed not applicable to the services provided by the community agency.
[7/14/89; 01/15/97; Recompiled 10/31/01]

HISTORY OF 7.26.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

HED 83-6 (BHSD), Program Standards For Developmental Disabilities Community Agencies, 8/9/83.

HED 86-11 (BHSD), Program Standards For Developmental Disabilities Community Agencies, 12/5/86.

HED 86-12 (BHSD), Regulations Governing Procedures For Admission To And Habilitation In Community Living Facilities, 12/30/86.

HED 89-4 (BHSD), Program Standards For Developmental Disabilities Community Programs, 7/14/89.

History of Repealed Material: [Reserved]