

MINUTES OF THE HOUSE SELECT COMMITTEE ON DEVELOPMENTAL DISABILITIES.

The meeting was called to order by Chairperson Jo Ann Pottorff at 3:30 p.m. on February 5,, 1996 in Room 521-S of the Capitol.

All members were present except: Rep. JoAnn Flower
Rep. Carlos Mayans

Committee staff present: Patricia Pierron, Legislative Research Department
Emalene Correll, Legislative Research Department
Gordon Self, Revisor of Statutes
Marian F. Holeman, Committee Secretary

Conferees appearing before the committee: Dr. Darvin Hirsch, Director, Developmental Disabilities Service
Social & Rehabilitation Services (SRS)

Others attending: See attached list

Chairperson Pottorff welcomed the new Committee Member, Representative Geraldine Flaharty, and members introduced themselves.

Dr. Darvin Hirsch, Director of Developmental Disabilities for SRS, presented an update on the proposed regulations implementing the Developmental Disabilities Reform Act. A time frame and current draft of the proposed regulations were reviewed (Attachment 1). Social and Rehabilitation Services will explore the differing ideas from throughout the state regarding the perceived economic impact of the bill. It seems that different parts of the Act are affecting CDDOs differently in different locations. SRS is conducting a rate study, trying to "amalgamate" economic factors into an average for the state. InterHab is also tracking this data. John House, SRS Attorney who drafted these regulations was also present and responded to Committee Member's questions.

Members were advised there were no major concept changes in this draft. However, the format is different. Committee members' comments recognized that total agreement is a virtual impossibility, however, it was stated that they would like to see these rules and regulations implemented in order to find out how they are going to work. Explanation was provided regarding function of the Joint Committee on Administrative Rules and Regulations in relation to completion of this process, especially in terms of the "economic impact" issue. Dr. Hirsch and his department were congratulated on their work with the negotiating process.

Concerns were expressed regarding the "closure" issue. As people are moved out of institutions [a] are resources available, [b] how are resources going to be spent, and [c] how are CDDOs seeing themselves? It was stated that the intent of the Reform Act did not include spending money on "mini-institutions" or large group homes. Another concern is that the intent to move ahead in terms of focusing on services, quality of life and improving life issues vs. bricks has begun going back to bricks. Dr. Hirsch advised that at this time there is no methodology, unless it is through ICFMR, for SRS to support bricks and mortar. They are also striving to insure parents, and or others; i.e. guardians, will be making informed choices.

In the course of meetings with community agencies, one of the problems raised dealt with the fact that community agencies have been unable to obtain information about institutionalized people from their area when the guardians did not release that information. Current law says information can be transferred between hospitals without a release of information, but it cannot be transferred to community agencies. Proposed introduction of a bill concerning SRS institution and community care: communications: amending KSA 76-12b01 and 76-12b11 and repealing existing sections. Representative Ed McKechnie moved to introduce the proposed bill. Representative Gerald Geringer seconded the motion. Motion carried.

HB-2785 concerning developmental disabilities was reviewed. This bill came out of the interim Joint Committee on Developmental Disabilities. It is to correct strictly technical problems resulting from passage of

the Developmental Disabilities Reform Act. Page 11, line 5 contains an error. K.S.A. 19-3801 should read K.S.A. 39-1801. If it is a printer's error, it is not a committee problem. If it is a Revisor error then it will require an amendment. No conferees appeared to talk on the bill. Representative Geringer moved passage of HB-2785. Provide authority to the Revisor for correction of error on page 11 by Committee Report. If it is a printer's error recommend it be placed on the consent calendar. If it is not, then recommend passage as amended. Representative Flaharty seconded the motion. Motion carried.

Legislative Research Staff presented a brief report on activities of the Interim Joint Committee on Developmental Disabilities. For additional information please see the Interim Committee Report. Staff were not authorized for meetings except those in Lawrence and Topeka, therefore there is a need for additional information from those who did attend the other meetings in order to complete the Committee Report.

The Committee adjourned at 4:40 p.m. The next committee meeting will be on call.

Kansas Department of Social and Rehabilitation Services
Rochelle Chronister, Secretary

Select Committee on Developmental Disabilities

February 5, 1996

Chairman Pottorff, members of the Committee, I'm Darvin Hirsch, Director of Developmental Disabilities for SRS. Thank you for the opportunity to testify on behalf of Secretary Chronister.

Today the proposed regulations implementing DD Reform went to the Department of Administration to start the approval process. A copy is provided for your review.

I am also providing a copy of the Time Frame Schedule to be followed for proposed regulations to become effective on July 1, 1996.

We have a meeting tentatively scheduled for February 15 with the DD Reform Regulations Steering Committee to go over these with John House, the SRS attorney who wrote the draft sent to the Department of Administration. We hope this will provide us early feedback from the Steering Committee as well as enable them to interpret these to their constituents who may wish to comment during the public comment period.

We also plan to ask approximately five Executive Directors of CDDOs who operate under various conditions to meet with us and provide input as we develop and estimated economic impact statement which must be completed by March 1, 1996 and accompany the proposed regulations.

I will be happy to respond to any questions if I am able.

*House Select Comm. on Developmental
Disabilities
3-5-96
Attachment #1*

July 1, 1996 Regulations Time Frame Schedule

- Week of Jan. 22 Draft of proposed rules and regulations and economic impact statement due to Hope Burns.
- Week of Jan. 22 Meeting with Secretary of SRS, Chief Legal Counsel, Commissioner and designated staff to discuss proposed regulations.
- Feb. 5 Take rules and regulations to the Department of Administration to start the approval process.
- Feb. 26 Take rules and regulations to the Attorney General's office for approval.
- March 8 **The regulations must be approved by the Department of Administration and the Attorney General's office before the notice of open meeting containing the summary and economic impact statement is given to the Secretary of State's office for publication in the Kansas Register.**
- Copy of approved regulation(s) and summary shall be sent to the chairperson of the Joint Committee for Rules and Regulations, Secretary of State's office, and Legislative Research.
- Date to Be announced SRS appears before the Rules and Regulations Committee.
- March 21 Publication date for the Kansas Register giving the public the 60-day notice prior to the public comment hearing.
- May 24 Public Hearing. Comment hearing on rules and regulations.
- May 29 Special Open Meeting in the SRS Executive Conference Room to adopt rules and regulations.
- May 29 File rules and regulations and final summary and economic impact statement with the Secretary of State's office.
- June 13 15-day publication requirement before the regulations become effective.

DRAFT

30-63-01 (1)

**Article 63.--DEVELOPMENT DISABILITIES: Licensing
of Providers of Community Services**

30-63-01 Scope. The regulations contained in this article govern the licensing of providers of community services (providers) and establish the minimum requirements those providers must meet. Regulations set forth in article 64 govern the establishment of community developmental disability organizations (CDDOs). CDDOs which provide direct services to persons with a developmental disability must also be licensed as a provider under this article. CDDO's which meet the further requirements set out in article 64 are then eligible to contract with the department to receive funding made available to carry out provisions of the developmental disabilities reform act (KSA 39-1801, et. seq.). Providers, CDDOs which are also providers, providers who become affiliates of a CDDO, and those CDDO's which contract with the department, constitute the statewide array of agencies which together offer a wide variety of community services to persons with developmental disabilities and from whom those persons can choose to receive the services they need. Regardless of whether a provider is also a CDDO, or becomes an affiliate of a CDDO by entering into a contract with that CDDO, or provides only services through private payer agreements, every provider who is subject to these regulations must be licensed in accordance with the procedures set forth in

these regulations and must comply with the requirements set out in this article.

(a) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing KSA 75-3307b and KSA 39-1801, et.seq.; effective P-_____.)

30-63-02 Definitions. (a) Words and phrases used in this article shall have the same meanings as those words and phrases are defined as meaning in K.S.A 39-1803. In addition thereto, the following terms are defined to mean.

(b) "agent" means any individual utilized by a provider to carry out any activity done by that provider, regardless of whether being paid or is serving as a volunteer;

(c) "commissioner" means the commissioner of mental health and developmental disabilities;

(d) "commission" means mental health and developmental disabilities within the department of social and rehabilitation services;

(e) "department" means the department of social and rehabilitation services;

(f) "person(s)" means an individual(s) with a developmental disability;

(g) "provider" means either a community services provider or any other entity required to be licensed pursuant to this article;

(h) "provider controlled site" means any building or structure, or any portion of any building or structure, which is owned, leased, or by contract made available to be operated by a provider, or by any individual or group of individuals who are employed by a provider or who serve as a board member for a

provider, or which is owned, leased or by contract made available to be operated by any corporation which is owned or controlled by any individual or group of individuals who are employed by a provider or who serve as a board member for a provider, within which or where services are provided;

(i) "services" means community services;

(j) "support network" means the one or more individuals selected by a person or by the person and the person's guardian, if one has been appointed, to provide assistance and guidance to that person in understanding issues, making plans for the future, or making complex decisions. Depending upon the specific circumstances or the issues which may be involved, these individuals would likely be selected from among family members, close personal friends, trusted professionals, certain agents of a provider from whom the person is receiving services, a case manager, a designated personal advocate, or the person's legally appointed guardian or conservator.

(k) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A 75-3307b and K.S.A 39-1801, et.seq.; effective P-_____.)

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

(1) in a medical care facility, as defined and provided for the licensing of in KSA 65-425, et. seq.;

(2) in a nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, residential health care facility or in a home plus setting, each as defined and provided for the licensing of in KSA 39-923, et.seq.;

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

(4) in a manner such that they constitute attendant care services, as defined in KSA 65-6201, and are provided to a person in their own home and as directed by that person.

(b) Any license issued pursuant to this article shall be valid only for the specific provider named on the license. Any substantial change of control or ownership of a corporation previously licensed pursuant to this article shall void that

license and require a reapplication for licensure.

(c) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing KSA 75-3307b and KSA 39-1801, et.seq.; effective P-_____.)

30-63-11. One type of license; display. (a) Only one type of license will be issued by the secretary pursuant to this article, that being a license to operate as a provider of community services.

(b) A license issued pursuant to this article shall be evidenced by a certificate prepared by the commission, which must be prominently displayed by the holder thereof in the holder's principle place of business and in a location where the public may take notice of it.

(c) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A 75-3307b and K.S.A 39-1801, et.seq.; effective P-
_____.)

30-63-12. Licensing procedure; provisional license; duration of license. (a) An application for a license issued pursuant to this article shall be submitted to the commissioner, in such manner and format as prescribed by the commission in instructions and forms as shall be made available for this purpose by the commission.

(b) Upon receipt of any application, the commission shall make findings as to whether or not the applicant is, or is deemed able to become, in compliance with the requirements provided for in this article.

(c) The provider shall be notified, in writing, of any findings made by the commission that the applicant is not in compliance, or not deemed able to become in compliance, with the requirements provided for in this article.

(d) The commissioner shall have the authority to issue a provisional license to begin or continue the operations of a provider contingent upon the provider developing and implementing an acceptable course of corrective action intended to bring the provider into continuing compliance with requirements provided for in this article.

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

(2) Failure of a provider to implement an acceptable course

of corrective action may be grounds for denial of a license whether or not a provisional license has been issued.

(e) Based upon findings made by the commission regarding compliance or the implementation of an acceptable course of corrective action, the commissioner shall have the authority to determine whether to issue or deny the license applied for. Any decision to deny a license shall be made in writing and clearly state the reasons for denial. Any denial may be appealed to the administrative appeals section pursuant to the provisions of article 7.

(f) Any license, other than a provisional license, issued pursuant to this article shall remain in effect for one year from the date of issuance, unless earlier revoked for cause; voided or voluntarily surrendered by the provider.

(g) Each provisional license issued shall specify the length of time it shall be valid for. The commissioner shall have the authority to issue successive provisional licenses.

(h) Renewal of a license issued pursuant to this article shall be done by an application for a license as provided for herein.

(i) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A 75-3307b and K.S.A 39-1801, et. seq.; effective P-

_____.)

30-63-13. Compliance reviews; mediation; enforcement actions; emergency orders. (a) At any time deemed necessary by the commissioner, a licensed provider may be reviewed by the commission to determine continuing compliance with the requirements provided for in this article.

(b) Any time a finding indicates a failure of a licensed provider to be in compliance, the commissioner shall give to the provider a written copy of the finding(s) setting out each specific deficiency.

(c) If the provider disagrees with any finding(s) made by the commission, the provider may request mediation, in writing, within 14 days of receipt of the finding(s). The commission and the provider shall together select an independent entity to serve as the mediator, or if the parties shall not be able to agree upon a mediator, the secretary shall designate an independent mediator. The mediator shall attempt to assist the parties to come to an agreement upon the nature and extent of any non-compliance, any course of corrective actions necessary to bring the provider into compliance, and a time limit within which the provider shall have to come into compliance.

(d) If no mediation is requested, or mediation is not able to resolve such issues, or the commission makes a finding that the provider has not come into compliance with the requirements provided for in this article by the deadline established within a

mediated agreement, or as that deadline may have been extended by the commissioner upon a finding of good cause to do so, the commissioner shall have the authority to issue written notice to the provider of a determination of non-compliance and to impose any one or more of the following enforcement actions:

(1) civil penalties in an amount not to exceed \$125.00 per day for each violation from that date forward until the provider comes into compliance;

(2) an order that the provider shall cease providing specified services and shall make any necessary arrangements to have any person(s) then receiving such services to be transferred to another provider, including provisions requiring the provider to continue the provision of those or other services until such transfer can be accomplished, which order shall remain in effect until the provider comes into compliance;

(3) suspension or revocation of the provider's license as provided for in KAR 30-63-14.

(e) Any such action may be appealed to the administrative appeals section pursuant to the provisions of article 7.

(f) If findings made by the commission additionally determine that the provider's non-compliance creates a situation of imminent danger to the health, safety or welfare of any person(s), the commissioner shall have the authority to issue an emergency order making such provisions as the commissioner deems

necessary for the immediate protection of the health, safety or welfare of such person(s). Written notice of any such emergency order shall be given to the provider, which shall specify:

(1) the actions required to be taken by the provider;

(2) the reasons for which the commissioner has determined an emergency order is necessitated; and

(3) that upon a written request therefore, made within 15 days of receipt of the order, the provider will be given an emergency hearing upon this issue by the administrative appeals section pursuant to the provisions of article 7.

(g) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et.seq.; effective P-

_____.)

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

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

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

(1) specify the date upon which the license shall be revoked if an appeal is not timely taken;

(2) clearly state the reasons for the revocation of the license;

(3) instruct the provider to immediately cease providing services if the commissioner has determined to suspend the

license during the revocation proceedings; and

(4) advise the provider that this revocation may be appealed to the administrative appeals section pursuant to the provisions of article 7, and that such an appeal shall suspend the revocation, but shall not suspend any suspension of the license during the pendency of the appeal, except as may be provided for in any order issued after an emergency hearing held as a result of a request made under KAR 30-63-13(e)(3), if applicable.

(d) If at any time during the pendency of an appeal the commissioner becomes satisfied that the provider has come into compliance with all of the requirements of this article, and that it is in the best interests of the public that the revocation be withdrawn, the commissioner shall notify all parties to the revocation proceedings that the revocation action has been withdrawn and the appeal proceedings shall then be terminated.

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

(f) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et.seq.; effective P-_____.)

30-63-20. Mandated requirements. (a) In order to be eligible to be licensed as a provider, an applicant must demonstrate that the applicant either does or can and will comply with all of the requirements provided for in this article.

(b) For good cause shown by an applicant, or by any person(s) being served or proposed to be served by that applicant, the commissioner shall have the authority to waive one or more of the specific requirements provided for in this article, and may substitute some other appropriate requirement(s) as may be proposed by the applicant or person(s), so long as in doing so the waiver or substitution would not jeopardize the health, safety or well being of that person or any other person(s) being served or proposed to be served by the applicant, nor substantially deviate from meeting the intent or purpose of the requirement(s) being waived.

(c) Attainment of national accreditation by an applicant may be considered by the commissioner in determining compliance by the applicant with certain of these requirements.

(d) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et.seq.; effective

P- _____.)

30-63-21. Person centered support planning; implementation.

(a) A written person centered support plan shall be prepared for each person served which shall:

(1) be developed only after consultation with the person, the person's legal guardian, if one has been appointed, and other individuals from the person's support network as the person or their guardian shall choose;

(2) contain a description of the person's preferred lifestyle describing:

(A) in what type of setting the person wants to live;

(B) with whom the person wants to live;

(C) what work or other valued activity the person wants to do;

(D) with whom the person wants to socialize; and

(E) in what social, leisure, religious or other activities the person wants to participate.

(3) list and describe the necessary activities, training, materials, equipment, assistive technology, and services which are needed to assist the person to achieve the person's preferred lifestyle;

(4) describe how opportunities of choice will be provided, including specifying means for:

(A) permitting the person to indicate his/her preferences among options presented to the person, by whatever communication

methods that person may possess;

(B) providing the necessary support and training to allow the person to be able to indicate the person's preferences and;

(C) assisting the person to understand the negative consequences of choices which the person might make and which may involve risk to that person, as identified within a risk evaluation.

(5) provide for the conducting of a risk evaluation whenever appropriate, which shall include an assessment of:

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

(B) the possible long and short term consequences which might result to the person as a result of an incident of poor decision making;

(C) the possible long and short term effects which might result to the person as a consequence of limiting or prohibiting the person in making a choice; and

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

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

(7) state a methodology by which the responsiveness of

services provided toward the achievement of the person's preferred lifestyle will be measured; and

(8) be approved, in writing, by the person or the person's guardian, if one has been appointed.

(b) Whenever two or more providers are providing services to the same person, each of those providers shall work together to prepare a single person centered support plan.

(c) This plan shall be regularly reviewed and revised as necessary to reflect:

(1) changes in the person's preferred lifestyle;

(2) effects upon the person resulting from implementation of the plan by the delivery of called for services; and

(3) achievement of goals contained within the plan.

(d) Services provided to the person shall be delivered in accordance with this person centered support plan.

(e) The effective date of this regulation shall be July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et.seq.; effective P-_____.)

30-63-22. Individual rights and responsibilities (a) A provider shall at all times encourage and assist every person served to understand and exercise their individual rights and to assume the responsibilities which accompany such rights.

(b) Each person served shall be guaranteed the same rights afforded to non-disabled individuals unless otherwise limited by provisions of law or court order. These rights include, but are not limited to:

(1) being free from physical or psychological abuse or neglect, and from financial exploitation;

(2) having control over their own financial resources;

(3) being able to receive, purchase, have and to use their own personal property;

(4) actively and meaningfully participating in decisions affecting their lives;

(5) privacy;

(6) being able to receive scheduled and unscheduled visitors and to communicate, associate and meet privately with family and friends of their own choice;

(7) being able to practice the religion or faith of their choice;

(8) being free from chemical restraint and from having restrictive procedures utilized upon them without their informed consent;

(9) not being required to work without consent and compensation, except where the person is living and being provided services outside of the home of a member of the person's family, and then only for the purposes of the upkeep of the person's own personal living space and of common living areas and grounds the person shares with others;

(10) being treated with dignity and respect; and

(11) receiving due process.

(c) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et.seq.; effective

P-_____.)

30-63-23. Medications; restrictive interventions; behavioral management committee. (a) Medications used to manage behavior and other restrictive behavioral interventions shall be used only when all other potentially effective, less restrictive alternatives have been tried and shown to be ineffective, or it has been determined by means utilizing the best professional clinical practice that such interventions would not likely be effective, and shall be used only when safeguards are in place to minimize risks related to their use.

(b) Medications shall only be used in conjunction with other positive programming and shall not be used as a substitute for such programming or as a form of restraint. The following safeguards shall be observed whenever medications are utilized to manage behavior:

(1) Informed consent must have been given by the person, or the person's legal guardian, if one has been appointed, to the use of each medication before that medication is authorized to be used;

(2) a medication shall be administered only as prescribed and authorized:

(i) to reduce specific targeted behavior(s) identified in the person's record, and for which a written plan exists and is being implemented to teach alternative positive behaviors intended to reduce the need for reliance on such medication(s);

or

(ii) for the treatment of a diagnosed mental or other illness and in conjunction with such other treatment or care as may be specified for that illness;

(3) a methodology is specified and utilized to measure and record the severity of and the frequency of occurrence of the specified behavior(s) for which a medication is prescribed; and such information is reviewed for the purposes of determining appropriateness, effectiveness and dosage with each renewal of the prescription;

(4) key members of the person's support network must be designated to regularly monitor the person's response to the medication, and to aid the person in communicating pertinent information regarding the medication's effects upon the person to the physician prescribing the medication;

(5) reductions in the medication's dosage and usage must be planned and implemented on a specified basis, unless such reductions are contraindicated by information presented by the person or by key members of the person's support network, including any treating physician or psychiatrist.

(c) Restrictive behavioral interventions shall only be used in conjunction with other positive programming and shall not be used as a substitute for such programming. The following safeguards shall be observed whenever restrictive behavioral

interventions are utilized to manage behavior:

(1) Each proposed program of restrictive behavioral intervention must be approved by designated key members of the person's support network and by the provider's behavior management committee before its utilization;

(2) informed consent must have been given by the person, or the person's legal guardian, if one has been appointed, before any program of restrictive behavioral intervention is authorized to be used;

(3) the intervention may be used only as intended to decrease specific targeted behavior(s) identified in the person's record, and for which a written plan exists and is being implemented to teach alternative positive behaviors intended to reduce the need for reliance on such restrictive behavioral interventions;

(4) a methodology is specified and utilized to measure and record the severity of and the frequency of occurrence of the specific behavior(s) targeted by the program and the circumstances under which the intervention is utilized; and such information is regularly reviewed for the purposes of determining the appropriateness and effectiveness of the program;

(5) key members of the person's support network must be designated to regularly monitor the person's response to the use of the program, and aid the person in communicating pertinent

information regarding the person's reactions to the use of the program to the provider's behavioral management committee;

(6) the provider's behavioral management committee must periodically reconsider approval of the program, and require its modification or discontinuance as appropriate.

(d) A provider's behavioral management committee shall:

(1) consist of a fixed number of individuals, no less than one-third of whom shall be otherwise unassociated with the provider; and

(2) be charged to:

(A) review any proposed restrictive behavioral intervention program ;

(B) approve each program prior to its authorization;

(C) periodically and as the committee shall establish whenever requested to do so by any party, review and reapprove a program for continued authorization; and

(D) make any suggestions or recommendations the committee deems warranted with regard to any such program or in general as to the provider's utilization or implementation of such programs.

(e) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3007b and K.S.A. 39-1801, et.seq.; effective

P-_____.)

30-63-24. Individual health. (a) Each person served shall be assisted, as necessary, in receiving the medical and dental services which the person has access to and which may be required to meet the person's specific health care needs, including, but not limited to:

(1) scheduling and receiving preventative examinations and physicals;

(2) drills or practices for obtaining emergency services;

(3) the development of individualized procedures for the administration of medications and other treatments, including training for self-medication or administration; and

(4) obtaining necessary supports, such as adaptive equipment, and speech, hearing, physical or occupational therapies, as appropriate.

(b) Administration of medications and performance of nursing tasks or activities by non-licensed personnel shall be done in conformance with the provisions of K.S.A. 65-1124.

(c) Staff shall be trained and responsible to implement the service provider's written policies and procedures for carrying out medication administration, including self-administration by any person, medication checks and reviews, emergency medical procedures, and all other health care tasks.

(d) Whenever two or more providers are providing services to the same person, each of those providers shall work together in

meeting the health care needs of the person.

(e) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et.seq.; effective

P-_____.)

30-63-25. Nutrition assistance. (a) Except where services are being provided to a person living in the home of a member of that person's family, each person served shall be assisted in having daily access to a well-balanced, nutritious diet, including at least 3 meals and supplementary snacks consistent with the provisions of KAR 30-63-21 regarding opportunities of choice. Persons being served who live in the home of a family member shall be assisted similarly to the extent any meals are provided outside of that home setting.

(b) All modified or special diet meals served shall be served in a form consistent with both the person's needs and desires, and in accordance with any medical directions with regard thereto.

(c) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801 et.seq.; effective P-_____.)

30-63-26. Staffing; abilities; staff health. (a)

Professional and direct service staff shall be provided in numbers sufficient to meet the support and service needs of all persons being served.

(b) Each employee shall be able to perform his/her job duties prior to working independently without oversight by another trained staff person.

(c) Each employee shall consistently satisfactorially perform his/her assigned job duties throughout the term of their employment.

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

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

(f) All staff shall be responsible for monitoring their personal individual health and avoiding circumstances in which they risk exposing persons to whom they are providing services to contagious disease or other health endangerment.

(g) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-

3307b and K.S.A. 39-1801, et.seq., effective

P-_____.)

30-63-27. Emergency preparedness. Every agent of each provider shall be: (a) trained in general fire, safety and emergency procedures;

(b) trained and able to effectively and efficiently evacuate any building within which they are providing services, including knowing alternative exit routes, methods of accounting for persons who might be present in the building at any time, and a designated meeting place outside the building to which all persons will go in the event of an evacuation;

(c) trained and able to effectively and efficiently seek shelter within any building within which they are providing services in the event of a tornado or other dangerous storm;

(d) trained and able to respond effectively and efficiently to other emergency conditions, such as power outages or flooding.

(e) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et.seq.; effective

P-_____.)

30-63-28. Abuse; neglect; exploitation. (a) Whenever abuse, neglect, or exploitation is suspected, appropriate action shall be taken immediately to ensure that any specifically involved person(s) and all others are protected while an investigation is conducted.

(b) Every agent shall be responsible for exercising such authority as they may have for the purposes of the prevention of abuse, neglect, or exploitation of each person served.

(c) All agents, persons, parents, guardians and other individuals from each person's support network shall be made knowledgeable about how to contact the appropriate state agency charged with providing adult protective services whenever abuse, neglect, or exploitation is suspected or witnessed.

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

- (1) directly to the appropriate state agency; or
- (2) in accordance with the provider's written policy for reporting such. No provider may prohibit an agent from reporting any incident of suspected abuse, neglect or exploitation directly to the appropriate state agency.

(e) All agents shall fully cooperate with any state agency

which might be conducting any investigation resulting from such a report .

(f) No individual shall be employed who is known by a provider to have had a conviction for or a prior employment history of abuse, neglect, or exploitation of children or vulnerable adults.

(g) All laws, regulations and procedures related to the reporting of or protecting from abuse, neglect, or exploitation shall be adhered to.

(h) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et.seq.; effective

P-_____.)

30-63-29. Records (a) Records shall be maintained for each person served and shall include:

- (1) any application or agreement for services;
 - (2) any financial agreement(s) made between the provider and the person;
 - (3) incident/accident reports, as applicable;
 - (4) a health profile, including notations regarding the person's health status, any medications the person takes , and any other special medical or health considerations which might exist for that person, and which shall be reviewed for accuracy by a licensed medical practitioner at least every two years;
 - (5) Basic Assessment and Service Information System (BASIS) documents and other evaluation materials;
 - (6) person centered support plan(s);
 - (7) plan(s) of care for recipients of the Home and Community Based Services for Persons Who Are Mentally Retarded or Developmentally Disabled (HCBS/MR) program;
 - (8) releases of information, authorizations for publication, and consents for emergency and other medical treatment(s); as applicable, and
 - (9) a discharge summary, as applicable;
- (b) All such records shall be maintained confidentially and not released except as authorized in writing by the person, their legal guardian,

if one has been appointed, or as otherwise authorized by law, or as necessary to comply with the requirements provided for in this article.

(c) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et.seq.; effective P-_____.)

30-63-30. Physical facilities (a) Each provider controlled site shall be maintained in a manner so as to be in compliance with all applicable health, occupancy, fire and life safety codes and the provider shall be able at all times to show:

(A) evidence of annual inspection of the premises by the Fire Marshall or a designee, and

(B) certificates of compliance, whenever such certificates are issued by any inspecting agency.

(b) All facilities within which services are provided shall:

(1) have on site appropriate fire and safety equipment, in good repair and readily accessible;

(2) have any combustible or flammable materials kept upon the premises properly stored;

(3) be clean and well maintained;

(4) be safe and secure;

(5) have any furniture or equipment within the facility be in good repair and working order;

(6) maintain a comfortable temperature and have adequate ventilation;

(7) maintain adequate lighting;

(8) be free of insect and rodent infestation;

(9) have main routes of travel kept free of obstacles and stored materials; and

(10) have appropriate assistive devices installed and any

necessary structural modifications made in order to make the facility meet the needs of persons with physical disabilities.

(c) All facilities within which services are provided and where a person lives, excluding where those services are provided in the home of a family member of the person, shall:

(1) be maintained in a manner so as to be in compliance with all health and sanitation codes applicable to family dwellings;

(2) be adequately sized to meet the living space needs of the person(s) residing there as well as the additional space needs of staff working within the premises, specifically including appropriate space(s) for:

- (A) meal preparation;
- (B) dining;
- (C) sleeping;
- (D) bathing, toileting and handwashing;
- (E) recreation and day living; and
- (F) storage of personal items;

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

(e) Each facility used for job training or production work shall be maintained in a manner so as to be in compliance with any applicable occupational health or safety code or regulation,

including any provisions applicable to any equipment or machinery located or utilized within that facility.

(f) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801 et.seq.; effective

P-_____.)

30-63-31. Registration with the community developmental disability organizations (CDDOs). (a) At anytime a provider does not have an affiliation contract in force with the CDDO for that service area, the provider shall register with the CDDO, listing the types of services that the provider provides and shall periodically give notice to the CDDO of the provider's current availability to offer services to persons desiring such.

(b) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et.seq.; effective

P-_____.)

**Article 64.--DEVELOPMENTAL DISABILITIES: Community
Developmental Disability Organizations (CDDOs)**

30-64-01 Scope. (a) The regulations contained in this article govern the establishment of community developmental disability organizations (CDDOs) and set forth the further requirements CDDOs must meet in order to be eligible to contract with the department to receive funding provided to carry out provisions of the developmental disabilities reform act. (K.S.A. 39-1801, et.seq.)

(b) CDDOs which also provide services directly to persons with developmental disability must also be licensed as a provider of community services pursuant to the provisions of article 63.

(c) Contracting CDDOs are the central element in the organized network of community services providers envisioned by the reform act.

(1) It is the contracting CDDO's responsibility to serve as the focal point for the coordination and enhancement of community services. Whether those services are provided directly by the CDDO, or through contracts made between the CDDO and an affiliating provider, the CDDO is responsible for ensuring that the needs of persons with developmental disabilities from their service area are met in a manner that is responsive to those needs and with efficiency. The specific means by which each CDDO does this is largely left to the descretion of that CDDO. Other

requirements are included for the purposes of meeting the reform act's mandate that CDDOs assist the secretary in establishing an organized and planned system for the delivery of community services across the State.

(d) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 19-4001 and K.S.A. 39-1801, et.seq.; effective P-_____.)

30-64-02 Definitions. Words and phrases used in this article shall have the same meanings as those words and phrases are defined as meaning in KSA 39-1803 or as defined in article 63. In addition thereto, the following terms are defined to mean: (a) "home county" means any one or more of the counties of residence of family members of a person with developmental disability who are actively involved with that person, of the person's guardian, or of individuals from the persons support network who have been selected by the person or the person's guardian, if one has been appointed for the purposes of providing the person a home county.

(b) "service area" means the counties from which a CDDO receives funding pursuant to KSA 19-4001, et.seq.

(c) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et.seq.; effective P-_____.)

30-64-10. Currently established and recognized community mental retardation centers (CMRCS) now recognized as community developmental disability organizations (CDDOs). (a) Each CMRC organized pursuant to the provisions of KSA 19-4001, et. seq., currently established and operating as of the effective date of this regulation is hereby recognized as a CDDO with a service area the same as the CMRC was previously recognized for.

(b) The effective date of this regulation shall be on and after July 1, 1996. Authorized by and implementing K.S.A. 19-4001 and K.S.A. 39-1801, et.seq.; effective P-_____.)

30-64-11. Establishment of new community developmental disability organizations (CDDOs). (a) No new CDDO may be established if its proposed service area is already being served by one or more existing CDDOs except in compliance with the provisions of this article.

(b) No existing CDDO may alter its existing service area to include an area already being served by one or more existing CDDOs except in compliance with the provisions of this article.

(c) A proposal to establish a new CDDO shall be accompanied by an application for a license to operate as a provider of community services, in compliance with the provisions contained in article 63, unless the organization, corporation or agency proposed as the new CDDO is already so licensed, or unless the proposed new CDDO does not intend to provide community services itself.

(d) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 19-4001 and K.S.A. 39-1801, et.seq.; effective P-_____.)

30-64-12. Application for approval of a proposal to establish a new community developmental disability organization or to re-align the service area of one or more existing CDDOs; requirements. (a) Written application for approval of a proposal to establishment of a new CDDO, or to re-align the service area of any existing CDDO, shall be made to the commissioner and shall include:

(1) A description of the service area or areas to be created: and

(2) copies of the establishing resolution(s) adopted pursuant to KSA 19-4001 by the affected board or boards of county commissioners and subject to the secretary's approval as provided for in KSA 19-4001.

(b) a statement of the problems thought to exist with the current structure of community services for persons with developmental disability within that service area or areas and how the new or re-aligned CDDO(s) will address those problems;

(c) a description of what specific services the new or re-aligned CDDO(s) will provide;

(d) a plan for how any other community services needs of the proposed service area will be met;

(e) a description of the planned structure of governance, organization, staffing and fiscal management procedures which shall be utilized by the new or re-aligned CDDO;

(f) a long range financial plan detailing how the new or re-aligned CDDO proposes to finance itself during an initial five-year period;

(g) a statement of the anticipated fiscal and service impacts this new or re-aligned CDDO will have on all other affected service areas of the state;

(h) an endorsement of the proposal by the governing board(s) and chief executive officer(s) of any affected existing CDDOs, or an explanation of why such has not or can not be obtained; and

(i) written comments received from the public and a summary of public comments made at a public hearing held for the purpose of receiving comments concerning the proposal. The commission must have been consulted in advance of this public hearing and given approval of the procedures to be utilized in obtaining such public comments.

(j) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 19-4001 and K.S.A. 39-1801, et.seq.; effective P-_____.)

30-64-13. Approval or disapproval of a proposal to establish a new community developmental disability organization or to re-align the service area of one or more existing CDDOs.

(a) Prior to the approval or disapproval of a proposal to establish a new CDDO, or to re-align the service area of one or more existing CDDOs, the materials submitted and required by K.A.R. 30-64-12 shall be reviewed by the commission. Additional comments from consumer and advocacy organizations or representatives, other interested individuals and agencies, and licensed providers in and near the proposed new or re-aligned service area(s) may be received or sought out as the commission deems appropriate.

(b) The commissioner shall approve or disapprove of the proposal and shall notify the applicant of that determination in writing, clearly stating the reasons why if disapproved.

(c) Any decision to disapprove a proposal to establish a new CDDO or to re-align the service area of one or more existing CDDOs may be appealed to the administrative appeals section pursuant to the provisions of article 7.

(d) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 19-4001 and K.S.A. 39-1801. et.seq.; effective P-_____.)

30-64-20 Contracting community developmental disability organizations; requirements; enforcement actions. (a) Each CDDO established pursuant to the provisions of this article desiring to contract with the secretary pursuant to the provisions of the developmental disabilities reform act (KSA 39-1801, et.seq.) shall comply with the further provisions of this article.

(b) Any CDDO having entered into such a contract with the secretary, but failing thereafter to maintain compliance with the further provisions of this article, may be subject to one or more of the following enforcement actions as may be more particularly provided for in the contract:

(1) suspension of part or all of the provided for contract payments until the violation is corrected;

(2) civil penalties in an amount not to exceed \$125.00 per day for each violation from that date forward until compliance is achieved;

(3) cancellation of the contract.

(c) The effective date of this regulations shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et.seq.; effective P-_____.)

30-64-21 Service area applicable management procedures, development by the CDDO. (a) The governing board of each CDDO desiring to contract with the secretary shall develop written management procedures, subject to approval by the commissioner, which shall specify how the further requirements provided for in this article will be met within that service area by the CDDO and, as applicable, by affiliating providers.

(b) At least 30 days prior to their final adoption, these procedures shall be presented to the service area's council of community members organized pursuant to K.A.R. 30-64-22(c) who shall be given the opportunity to provide written comment upon them to the board, and any such comments shall be included with the procedures when they are submitted to the commissioner.

(c) At least 30 days prior to their final adoption, these procedures shall be presented to interested parties and the public at a public hearing held for the purposes of receiving comments upon these procedures, or other means may be utilized to solicit and receive comments about these procedures from interested parties and the public at least 30 days prior to their final adoption. The board shall summarize any such comments received and include them with these procedures when they are submitted to the commissioner.

(d) Approval of these procedures by the commissioner must be obtained before the CDDO may be awarded a contract by the

secretary. Any changes the CDDO desires to make to these procedures after their approval shall be made in compliance with the procedures provided for above and must be approved by the commissioner, in writing, before those changes can become effective.

(e) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et.seq; effective P-_____.)

30-64-22. Implementation responsibilities of CDDOs. Each contracting CDDO shall be responsible to: (a) implement the approved service area procedures provided for in K.A.R. 30-64-21;

(b) collect and report to the secretary, upon such forms or in such formats as the commission shall specify, all information requested by the commission for the purposes of allowing the secretary to insure effective service delivery, fiscal accountability and networking cooperation in the provision of community services, including, but not limited to:

(1) information required by the Basic Assessment and Services Information System (BASIS);

(2) copies of the plans of care detailing home and community based services to be provided to persons served by that program;

(3) copies of independent financial audits obtained by the CDDO, as well as any management letters generated as a result of such audits; and

(4) any other information or records the CDDO may have which the commission may need in order to monitor how services are provided in the CDDO's service area;

(c) organize a council of community members;

(d) ensure that all services are provided in a manner which:

(1) provides to all persons equal access to services, including to persons currently residing in any ICF/MR or

institution but referred to the CDDO for possible services;

(2) enables persons or the person's guardian, if one has been appointed, to choose their provider; and

(3) promotes the efficient delivery of services within the service area.

(e) ensure that each provider entering into an affiliating agreement with the CDDO and operating within the CDDO's service area shall abide by the management procedures applicable to that service area as established by the CDDO pursuant to K.A.R. 30-64-21. In meeting this requirement, the CDDO may establish a procedure which would allow the CDDO to refuse to enter into an affiliation agreement with any provider:

(1) which refuses to accept a reimbursement rate for services to be provided which is at least equal to that established by the secretary and applying to the CDDO;

(2) has established a pattern or practice of failing or refusing to abide by the service area management procedures established by the CDDO pursuant to K.A.R. 30-64-21; or

(3) if the CDDO can demonstrate to the satisfaction of the secretary that being required to enter into such an affiliating agreement would seriously jeopardize the CDDO's ability to fulfill its responsibilities under these regulations or pursuant to its contract with the secretary.

(f) The effective date of this regulation shall be on and

after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et.seq.; effective P-_____.)

30-64-23 Single point of application, determination and referral. Each contracting CDDO shall develop and implement a means by which the CDDO shall become the single point of application, eligibility determination and referral for persons desiring to receive community services within the service area of that CDDO. Procedures shall be established for: (a) distributing, completing, accepting and processing the uniform statewide application for community services, as published by the commission;

(b) determining if the applicant meets the definitional criteria to be considered a person with a disability as defined in KSA 39-1803;

(c) informing persons of the types and availability of community services provided within the service area and of the licensed providers existing within the service area and how they may be contacted;

(d) assisting persons to decide what community services they may wish to obtain or would accept within the next year from the date of their application;

(e) assisting persons in accessing the community services of their choice; and

(f) maintaining a list of persons who have made application to the CDDO for community service and been determined eligible, and allowing access to this list by the licensed providers in the

service area who have entered into affiliation agreements with the CDDO.

(g) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et.seq.; effective P-_____.)

30-64-24 Case management. (a) Each contracting CDDO shall develop and implement a means by which case management shall be provide to every person receiving services and who requests it. Case management shall assist the person and the person's support network to identify, select, obtain, coordinate, and use both paid services and natural supports as may be available to enhance the person's independence, integration, and productivity consistent with the person's capabilities and preferences as outlined in the person's person centered support plan. Case management shall further include, but shall not be limited to:

(1) assessment, including an ongoing process for the determination of a person's preferred lifestyle, their current and potential strengths, and the resources which are available to the person, though both formal and informal evaluation;

(2) support planning, including the development, ongoing updating and reviewing of the person's person centered support plan, based upon assessment information and with the participation of the person's support network;

(3) support coordination, including arranging for and securing the provision of supports outlined in the person's person centered support plan, and the development of natural community support systems;

(4) advocacy, including pursuing means for gaining access to needed services and entitlements, and seeking modification of

service systems when necessary to increase accessibility and appropriateness to the needs of the person; and

(5) assuring transition and portability, including the planning for and arranging for services to follow the person in the person's:

- (i) moving from school to the adult world;
 - (ii) moving from an institution to community alternatives;
 - (iii) moving from one kind of service setting to another kind of service setting;
 - (iv) moving from one provider to another provider; and
 - (v) moving from one service area to another service area.
- (b) Case management shall be provided by case managers who shall:

(1) have been selected to provide this service by the person being served, or by the person's guardian, if one has been appointed;

(2) not provide any other direct service to persons except case management;

(3) not be supervised by anyone responsible for the provision or supervision of direct services to persons; and

(4) have a minimum of six months experience in the field of developmental disabilities services and a bachelor's degree or additional relevant experience in the field which may be substituted for the degree at the rate of six months of

experience for each semester substituted;

(5) complete at least 78 clock hours of training in topics specified by the commission within their first year of serving as a case manager and at least 38 clock hours of additional training in each following year;

(6) receive credit for comparable training received prior to implementation of these regulations;

(7) have the opportunity to demonstrate to the satisfaction of the commission specific knowledge and performance competencies which may be substituted in lieu of training in those areas; and

(8) carry a caseload of no more than 25 persons, or if employed by a provider hiring more than one case manager, then the total number of the cases carried by all of these case managers shall average to no more than 25 persons per case manager.

(c) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et. seq.; effective P-_____.)

30-64-25. Uniform access to services. (a) Each contracting CDDO shall develop and implement a means to insure that no provider otherwise qualified to provide services as may be needed by a person discriminates in the selection for, or delivery of, services to that person because of the severity of their disability, except if the secretary shall determine that the person is a clear and present danger to self or to the community and for that reason is inappropriate for community services.

(b) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et.seq.; effective P-_____.)

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30-64-26. Quality enhancement responsiveness(a) Each contracting CDDO shall develop and implement a means to insure that every service provided by the CDDO or by any affiliate shall be:

(1) provided as specified within, and in a manner that is responsive to, the person centered support plan which that service is being provided pursuant to;

(2) provided in such a manner so as to offer to the person being served opportunities of choice; and

(3) performed in a manner so as to ensure that all of the person's rights are observed and protected.

(b) A service can be considered to be responsive only if it contributes to the continuous movement of the person towards the achievement of the person's preferred lifestyle, as determined by the methodology established within the person's person centered support plan. This methodology may include assessments made by professionals, but must include consideration of the expressed opinions of the person, the person's legal guardian, if one has been appointed, and other individuals from the person's support network; and shall account for:

(1) the financial limitations of the person and the provider,

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

(3) matters identified in the risk evaluation.

Next best options may be considered as responsive if the person cannot specifically have what he/she prefers due to limitations identified by this methodology.

(c) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et.seq; effective P-_____.

30-64-27 Quality assurance. (a) Each contracting CDDO shall develop and implement a means to assure the quality of the services being provided to persons being served by the CDDO or by an affiliate, which shall include, but shall not be limited to, providing for on-site monitoring no less than once every 30 calendar days by an entity or individual independent of the actual provider of the service to determine that:

(1) services which are paid for are delivered; and

(2) services which are delivered are paid for in accordance with the terms of any agreement or contract as may have been made concerning such, including the meeting of any responsibilities belonging to the person being served or of third parties on the person's behalf.

(b) Services are being provided in a manner which meets the requirements provided for in article 63.

(c) The provider is affording the persons being served all of their legally protected rights.

(d) The provider is reporting any suspicions of abuse, neglect, or exploitation to the appropriate state agency, and has corrected or is actively in the process of correcting the cause of any confirmed violation.

(e) All required employee and employer taxes and withholdings are being paid promptly and as required, including, but not limited to, social security withholding, federal and

state income tax withholding, and workers' compensation assessments.

(f) The provider is adequately covered for liability, including carrying adequate liability insurance and workers' compensation coverage.

(g) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et.seq.; effective P-_____.)

30-64-28 Continuity and portability of services. Each contracting CDDO shall develop and implement a means by which the CDDO shall insure that: (a) persons who have applied for, accepted and begun receiving community services shall continue to receive services consistent with their person centered support plan, so long as funding support for those services continues, or until the person, or their legal guardian, if one has been appointed, requests that services be discontinued.

(b) If the person moves from one service area to another, that the tiered rate of reimbursement established for that person is transferred to their new service area.

(c) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et.seq.; effective P-_____.)

30-64-29 Gatekeeping. (a) Each contracting community developmental disability organization (CDDO) shall develop and implement a means by which the CDDO will provide to persons who have been proposed for admission to any privately operated ICF/MR or to any state institution a way for:

(1) the CDDO to determine whether the person proposed for admission has a developmental disability, and if so, if the minimum number of persons prescribed to be served by the terms of the CDDO's contract with the secretary are currently being served or if available funding is sufficient to provide for payment for community services for that person should it be determined that community services can meet the needs of that person.

(2) determining whether the proposed admission to a ICF/MR is appropriate prior to that admission by:

(A) determining if currently available community services could meet the needs of the person as identified in the person's person centered support plan;

(B) insuring that the person and key individuals from the person's support network are fully appraised regarding all available community services which might meet the needs of the person;

(C) offering the person appropriate community services as may be available based upon the determinations made pursuant to paragraph (a) above, and

(D) providing to the department or other appropriate state agencies the information which is developed in response to the requirements of (1) through (3) above and which may be needed by each such agency in order to make the appropriate determinations required by any pre-screening or reimbursement rules of any applicable public sources funding program(s).

(b) annually assisting persons supported by public funds and living in private ICFs/MR located in the CDDO service area to review the appropriateness of their placement by:

(1) completing a screening and submitting the data specified by the secretary to be collected during this screening to the secretary upon such forms as the commission shall publish;

(2) determining if community services are available which could meet the needs of the person as identified in their person centered support plan;

(3) explaining and offering available community services which might meet the person's person centered support plan needs; and

(4) forwarding information about the person to the CDDO for each county which is considered a home county of that person, for the purposes of allowing those CDDOs to determine if services might be obtained there.

(c) reviewing the application for placement in a state mental retardation institution of persons from the service area

of that CDDO for the purposes of:

(1) determining if currently available community services could meet the needs of the person;

(2) fully appraising the person and their support network regarding all available community services;

(3) offering the person appropriate community services as available; and

(4) Forwarding the results of these findings and actions to the state mental retardation institution to which admission is being sought and to the commission .

(d) Bringing to the attention of the secretary any person who would present a clear and present danger to themselves or to others by remaining in the community.

(e) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et.seq.; effective P-_____.)

30-64-30. Statewide waiting list. (a) Each contracting CDDO shall develop and implement a means by which persons who have applied for services, been determined eligible for services, and who have agreed to accept services within the next year following the date of their application, but who can not now be provided those services by either the CDDO, or any affiliate, because the prescribed number of persons to be served as established within the contract with the secretary are already being served, or because supporting funding is not available, will be:

(1) Assisted in his/her current setting by any means the CDDO can provide in order to avoid as much as possible a crisis from developing occasioned by family or other circumstances until services can be arranged to be provided by the CDDO or an affiliate.

(2) Referred to other community agencies which may be able to provide any type of support or assistance appropriate to the needs of that person until services can be arranged to be provided by the CDDO or an affiliate.

(3) reported to the secretary as waiting for services; and

(4) Contacted no less than annually from their initial date of application to redetermine their continued need for services.

(b) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-

1801, et.seq.; effective P-_____.)

30-64-31 Council of community members. (a) A council of community members organized pursuant to K.A.R. 30-64-22(c) shall consist of individuals selected by:

(1) the persons with developmental disabilities, or their family members or legal guardians, who are being provided community services in the service area of that community developmental disability organization (CDDO), or who have applied for such services; and

(2) The CDDO and the various affiliating providers within that services area.

(b) In order for a quorum to exist at any meeting of the council, at least 51% of those individuals present and qualified to vote shall:

(1) be persons being served, or family members of persons being served, or legal guardians of persons being served; and

(2) Not also be an employee or paid consultant to any provider, nor a member of the board of directors of any provider.

(c) have the right to express opinions and make suggestions and recommendations to the governing board of the CDDO concerning any services issue, including, but not limited to, the types of services being offered by the various providers within the service area, and the manner in which those services are being provided;

(d) be responsible for the development and implementation of

the dispute resolution procedures required by the provisions of K.A.R. 30-64-29;

(e) meet at least quarterly and at such other times as necessary to fulfill its responsibilities for dispute resolution pursuant to the provisions of K.A.R. 30-64-29.

(f) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and Implementing K.S.A. 39-1801, et.seq.; effective P-_____.)

30-64-32 Dispute resolution. (a) Each contracting CDDO shall implement the dispute resolution procedures as developed by the council of community members for the purposes of allowing for persons being served by the CDDO or by an affiliate a means for resolving disputes which may arise between the person, or their legal guardian, if one has been appointed, or other individuals from the person's support network and the CDDO, an affiliate, or any other component of the community services system, shall provide:

(1) opportunity for the intervention into the dispute by a third party mediator who has no decision making authority and is impartial to the issues being discussed; or

(2) alternatively, a process that affords a person an avenue of appeal both within and external to their provider.

(b) A mechanism whereby any fees charged by a mediator can be shared equally between the parties to the mediation, but with provision so that a person shall not be denied mediation services solely because of an inability to pay the applicable fee.

(c) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et.seq.; effective P-_____.)

30-64-33 Fiscal management. (a) Each contracting CDDO shall expend the funds received pursuant to its contract with the secretary only in accordance with the terms of that contract and the provisions of this article.

(b) No funds received through this contract shall be used to supplant funds previously received from local tax levies made pursuant to provisions of KSA 19-4004, and amendments thereto.

(c) All funds received by a contracting CDDO shall be subject to audit and review by the department.

(d) No funds received through this contract may be transferred from the CDDO to any other entity, except pursuant to the terms of that contract, or as otherwise expressly authorized in advance, in writing, by the department.

(e) The effective date of this regulation shall be on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et.seq.; effective P-_____.)

30-64-34 Annual budget planning report. (a) Each contracting CDDO shall annually, on or before April 1 preceding each state fiscal year, submit to the commissioner a budget report, in a format as specified by the commissioner, for the fiscal year following the next state fiscal year which shall specify:

(1) the number of persons who have applied for and been found eligible to receive community services, the types of services those persons would need to be provided, and the expected costs of providing those services during the fiscal year being planned based upon the average reimbursement rate established by the secretary to apply to the next fiscal year; and

(2) the number of persons from the service area of that CDDO who are residing in institutions and who are not accounted for in paragraph (1).

(b) The CDDO may request, in writing, an extension of the deadline to submit this report. The request must include justification of the need for an extension and must be received by the commissioner on or before April 1.

(c) Failure of the CDDO to submit this report by the deadline established may result in the secretary's refusal to contract with that CDDO in the next fiscal year or the withholding of contract payments until receipt of a report.

(d) The effective date of this regulation shall be on and

after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et.seq.; effective P-_____.)