

IN THE DISTRICT COURT
OF LANCASTER COUNTY,
NEBRASKA

INTEGRATED LIFE CHOICES, INC., a Nebraska corporation, <i>Plaintiff,</i> v. NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES; and TONY GREEN, in his official capacity as the Director of the Division of Developmental Disabilities, <i>Defendants.</i>	Case No. CI 25-_____ COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
--	--

Plaintiff Integrated Life Choices, Inc. (“Integrated Life”), by and through undersigned counsel, brings this action against the Nebraska Department of Health and Human Services (“Department”) and Tony Green, in his official capacity as Director of the Division of Developmental Disabilities, and alleges as follows:

INTRODUCTION

1. This case challenges an executive agency’s unilateral imposition of a costly, unnecessary mandate issued without legislative authorization, public input, or basic procedural safeguards.

2. In February 2024, the Department issued Provider Bulletin 24-01 (the “Bulletin”), requiring all certified providers of developmental disability services to abandon their existing Emergency Safety Intervention training programs and adopt a single proprietary system, The Mandt System, by July 2025.

3. Providers who fail to comply with the Bulletin face decertification and loss of Medicaid funding—consequences that would effectively shut down most developmental disability service providers in Nebraska.

4. The Bulletin imposes a sweeping new obligation with severe consequences, but the Department never followed the rulemaking process required under the Nebraska Administrative Procedure Act. Nor did it provide any forum for affected providers, like Integrated Life, to challenge the rule or defend their already-approved training program.

5. Integrated Life is a statewide developmental disabilities service provider that has invested heavily in its customized, agency-approved curriculum specifically tailored to adults with intellectual and developmental disabilities. The mandate from the Department to replace Integrated Life's curriculum with the more generic Mandt System disrupts Integrated Life's operations, imposes unrecoverable costs, and threatens the quality of care it provides to vulnerable Nebraskans.

6. That threat became real on July 2, 2025, when the Department abruptly suspended all new client referrals to Integrated Life—a vital source of incoming clients and revenue—until it demonstrated compliance with the Bulletin. Faced with the immediate loss of this referral pipeline and the risk of long-term harm to its operations, Integrated Life began complying the next day to restore the flow of new clients.

7. This heavy-handed enforcement, undertaken without lawful authority or procedural safeguards, exemplifies why the Bulletin must be enjoined. The Department's enforcement of the Bulletin is unlawful, unfair, and unconstitutional. It exceeds the agency's statutory authority, violates the separation of powers, and deprives providers of due process. This Court should enjoin the Department from enforcing the Bulletin and reaffirm the fundamental principle that state agencies must follow the law before imposing binding new rules.

JURISDICTION AND VENUE

8. Integrated Life seeks a declaratory judgment under Neb. Rev. Stat. § 25-21,149 that the Bulletin: (a) violates Article II, Section 1 of the Nebraska Constitution (Separation of Powers) because it imposes binding obligations without legislative authorization or rulemaking; (b) violates due process under the Nebraska Constitution by depriving providers of a meaningful opportunity to contest the new mandate; and (c) is invalid under the Nebraska Administrative Procedure Act because it was adopted without required procedures and imposes substantive requirements beyond those authorized by existing regulations.

9. Integrated Life also seeks both permanent (Neb. Rev. Stat. § 25-1062) and temporary (Neb. Rev. Stat. § 25-1063) injunctive relief to prevent enforcement of the Bulletin, which unlawfully alters provider obligations under existing law and threatens loss of state certification and Medicaid funding.

10. This Court has jurisdiction over Integrated Life's claims and may grant the declaratory and injunctive relief requested under Article V, Section 9 of the Nebraska Constitution and Neb. Rev. Stat. §§ 24-302, 25-101, and 84-911.

11. Venue lies in this Court under Neb. Rev. Stat. § 25-403.01 because the Defendants reside or maintain offices in Lancaster County, and the challenged action occurred and is enforceable there.

PARTIES

12. Plaintiff Integrated Life Choices, Inc., is a Nebraska corporation that provides services to individuals with intellectual and developmental disabilities across the state. It is certified by the Department as a provider under the Medicaid Home and Community-Based Services Developmental Disabilities Waiver ("Disabilities Waiver"), a program authorized under § 1915(c) of the federal Social Security Act that allows states to use Medicaid funds for long-term services and supports in community settings rather than institutions.

13. Defendant Nebraska Department of Health and Human Services is an agency of the State of Nebraska. It oversees and regulates the provision of public health, social services, and Medicaid-funded programs, including services for individuals with intellectual and developmental disabilities. The Department is responsible for administering Nebraska's Disabilities Waiver program, which certifies providers and controls access to waiver-funded services statewide.

14. Defendant Tony Green is the Director of the Division of Developmental Disabilities within the Department and is named in his official capacity. Green, as Director of the Division of Developmental Disabilities, approved and directed issuance of the Bulletin, and is responsible for overseeing its enforcement.

FACTS

Integrated Life's Proven, Individualized Approach to Care

15. Integrated Life is a Nebraska-based provider of services for adults with intellectual and developmental disabilities, founded in 2006 to help clients live independently and engage meaningfully in their communities.

16. Integrated Life operates a statewide network of programs, including 24-hour residential care in group homes, supported employment to build workplace skills, behavioral health supports for individuals with complex needs, and community-based day services that foster social inclusion and personal growth.

17. These services, funded primarily through Nebraska's Disabilities Waiver program, depend on Integrated Life maintaining certification from the Department.

18. A critical component of Department certification is Emergency Safety Intervention training. This intervention is defined as the use of physical restraint or separation as an immediate response to an Emergency Safety Situation, which is "[u]nanticipated behavior by a participant that places the participant or others at serious threat of violence or injury if no intervention occurs, and that calls for an

emergency safety intervention.” 404 Neb. Admin. Code § 2-001. Intervention training prepares staff to manage such behavioral crises—such as aggression, self-harm, or patient elopement—while prioritizing client safety and dignity, and employee and community safety.

19. Since 2021, Integrated Life has relied on its custom-designed Emergency Safety Intervention training curriculum, referred to as “Core Supports” by Integrated Life. The curriculum, which the Department approved, is tailored to the needs of Integrated Life’s adult clients in community-based settings like group homes and workplaces.

20. Consistent with Integrated Life’s mission to provide individualized care that respects each client’s unique needs, its curriculum emphasizes person-centered responses—interventions tailored to each client’s unique behavioral patterns, communication style, and personal history.

The Department’s Unlawful Imposition of the Mandt-Only Requirement

21. On February 5, 2024, the Department, through its Division of Developmental Disabilities under Director Tony Green, issued the Bulletin, stating: “The Division of Developmental Disabilities has determined that The Mandt System is the only system that will be accepted for use with ESI.”

22. The Mandt System is a for-profit, generalized training program designed for both children and adults to teach staff how to prevent, de-escalate, and manage aggressive or dangerous behaviors in health care, education, and human services settings. The program requires certification of trainers, at an approximate cost of \$3,000 per trainer every two years. Certified trainers must then train all relevant employees, with an additional fee of about \$9 per employee trained.

23. The Bulletin mandated that by July 1, 2025, all Department-certified providers submit revised policies and trainer certifications for

The Mandt System.

24. This sweeping new requirement was issued without statutory authority or compliance with the Nebraska Administrative Procedure Act’s notice-and-comment rulemaking requirements under Neb. Rev. Stat. §§ 84-901 et seq., depriving providers of the opportunity to weigh in on a costly and disruptive change.

25. In doing so, the Department and Director Green also disregarded the flexibility built into existing regulations. The state’s emergency safety intervention training rule, 404 Neb. Admin. Code § 4-003.03(F)(iii), requires only “Division-approved emergency safety intervention techniques” and does not authorize mandating a single proprietary system.

26. The Department’s willingness to stretch its authority beyond statutory and regulatory limits is not new. The agency’s use of provider bulletins to impose binding mandates without rulemaking is already under scrutiny. In *Nebraska Association of Service Providers v. Nebraska Department of Health and Human Services*, Case No. CI 24-4438 (Lancaster Cnty. Dist. Ct.), a provider group challenged another Department-issued bulletin, arguing it similarly imposes regulatory requirements without APA compliance.

27. Although that case was voluntarily dismissed for procedural reasons, it nevertheless reflects the Department’s practice of bypassing legislative and procedural checks to bind providers through informal guidance.

28. In response to these practices, Senator Dan Quick introduced Legislative Bill 565 in the 2025 Nebraska Legislature, which, as amended by AM239, sought to rescind guidance documents issued by the Division of Developmental Disabilities after July 1, 2022, pause new bulletins until July 1, 2027, unless required for federal compliance, and require agencies to assess their fiscal impact.

29. The bill stalled in committee, but it underscores growing legislative concern over the Department’s use of bulletins to impose costly mandates without public input or accountability.

30. The rollout of the Bulletin further illustrates these concerns. The Department issued the bulletin without advance notice to anyone.

31. Even The Mandt System was caught unaware. When the Department issued the Bulletin in February 2024, The Mandt System was in the middle of transitioning its training program (from “Mandt 2.0” to “Mandt 3.0”). The agency thus committed all providers to adopt a training program that was still undergoing significant revision—an unstable foundation for a costly mandate.

32. The problem intensified when Mandt 3.0 was not released until January 2025, less than six months before the Bulletin’s compliance deadline.

33. The Department’s actions caused providers like Integrated Life other problems. For example, in March 2024—less than a month after the Bulletin was issued—the Department offered “mini-grants” to cover the \$2,249 base certification fee for Mandt 2.0 trainer instruction, with awards prioritized for early applicants. But this incentive prompted providers, including Integrated Life, to begin certification months before the July 2025 deadline and before Mandt 3.0 was available.

34. As a result, four of Integrated Life’s ten trainers completed Mandt 2.0 certification, only to learn they must now repeat the process for Mandt 3.0 at an additional cost of roughly \$3,000 per trainer.

35. Further, the mini-grant covered only the base training fee and did not offset other significant expenses such as travel, lodging, and lost productivity—costs that have since grown as The Mandt System increased its prices. The Department provided no grandfathering or transitional guidance, compounding the financial burden and underscoring the mandate’s arbitrary and burdensome impact.

Integrated Life’s Proven Curriculum Better Served Its Clients

36. The Mandt System is designed for both children and adults, but it does not account for the distinct physical, behavioral, and

communication needs of adults with intellectual and developmental disabilities. In Integrated Life's experience, techniques geared toward children, such as close-contact holds, can increase the risk of injury and escalate distress for adult clients.

37. By contrast, Integrated Life's Core Supports curriculum is tailored to their adult clients, incorporating techniques such as holds that maintain protective distance to avoid headbutts and safeguard staff extremities. This adult-specific approach preserves client dignity, protects employee safety, and has contributed to Integrated Life's track record of reducing both ESI incidents and workers' compensation claims.

38. Until recently, the Department's own policy recognized that different providers may need different ESI approaches to best serve their populations. For example, in an earlier Department Bulletin (Provider Bulletin 20-07), the agency required each provider to submit its ESI curriculum for individualized review and approval—allowing flexibility for multiple compliant systems. Integrated Life's adult-focused curriculum was approved under that process and has remained in use ever since. The new Bulletin (Provider Bulletin 24-01) abruptly reverses this longstanding policy by revoking prior approvals and mandating a single proprietary system without notice, explanation, or formal rulemaking.

The Department Mandate Threatens Integrated Life's Operations and the People It Serves

39. The Department's reversal is particularly striking because it cannot point to any federal statute, regulation, or federal guidance from the Centers for Medicare & Medicaid Services requiring exclusive use of The Mandt System, or any specific ESI program. The mandate is purely a state-level creation, underscoring that the decision to override prior approvals was entirely the agency's own, without external legal or practical necessity.

40. By enforcing this purely state-created mandate, the Department has put Integrated Life's core operations at risk. Integrated Life initially declined to comply with the Bulletin, maintaining that the mandate was unlawful, and continued to operate under its approved Core Supports curriculum. However, Integrated Life's ability to operate depends on a steady stream of referrals from the Department for new clients eligible under Nebraska's Developmental Disabilities Waiver program—much like a patient who cannot see a specialist without a primary care doctor's referral. *See* Neb. Dep't of Health & Human Servs., Div. of Developmental Disabilities HCBS Provider Policy Manual 84, 106 (updated July 1, 2025), <https://dhhs.ne.gov/Guidance%20Docs/DHHS-DD%20Policy%20Manual.pdf> (explaining that referrals are required for services).

41. These referrals are the primary gateway for individuals to enter Integrated Life's services and are a critical source of revenue to sustain its programs statewide. Without them, Integrated Life cannot replace clients who exit services due to aging out, moving, or changes in care needs, causing immediate financial strain and jeopardizing Integrated Life's long-term viability.

42. On July 2, 2025, the Department, through Director Green, notified Integrated Life that it was suspending all new client referrals for Disability Waiver services until Integrated Life demonstrates compliance with the Bulletin, effectively cutting off the pipeline of new clients and jeopardizing its certification and Medicaid funding. For example, shortly before the suspension, Integrated Life had completed a sixty-day intake process to place a new resident, a process requiring significant coordination with the client's family and support network. The suspension nearly derailed that placement, illustrating the immediate disruption to Integrated Life's operations and its ability to honor commitments to clients and families.

43. On July 3, 2025, under pressure from the referral suspension and to preserve the pending client intake, Integrated Life submitted an

email to the Department indicating intent to comply with the Bulletin, along with revised policies referencing The Mandt System and trainer certifications. The Department approved two of the seven certificates, rejecting the others for missing certain components. Integrated Life's partial compliance was undertaken solely to avoid immediate loss of referrals, which are critical to its business model, but does not reflect agreement with the Bulletin's legality.

44. That coerced compliance immediately triggered substantial financial burdens. Although Integrated Life received a one-time Department grant to partially offset initial training expenses (described in paragraph 33), transitioning to The Mandt System continues to impose substantial costs.

45. Integrated Life estimates it spends approximately \$6,000 per trainer—including \$2,995 in tuition, plus travel, lodging, and lost productivity—for each of its ten trainers. Because the mandated training must be completed by senior staff, such as Area Directors and Coordinators, every two years, and because new trainers must be certified as turnover occurs, these expenses will recur and disrupt Integrated Life's statewide operations, especially given the limited training availability outside Omaha or Lincoln.

46. Beyond the financial burden, Integrated Life's leadership estimates that the forced shift to a less tailored training system risks disrupting staff-client relationships and undermining the quality of care for vulnerable adults.

Integrated Life Seeks Statutory Review of the Bulletin

47. To address their concerns and challenge the mandate outside of litigation, Integrated Life invoked Neb. Rev. Stat. § 84-901.03, which permits regulated parties to request agency review of guidance documents that impose additional requirements or penalties without formal procedures. Integrated Life submitted a written request to the Department on June 16, 2025. In the request, Integrated Life contended that the Bulletin amends existing regulatory standards by

mandating exclusive use of The Mandt System, revoking prior approvals of alternative curricula, and imposing new compliance obligations without undergoing notice-and-comment rulemaking under the Nebraska Administrative Procedure Act.

48. Integrated Life specifically requested that the Department revise or repeal the Bulletin or promulgate its requirements as a formal regulation to ensure compliance with the APA and provide stakeholders an opportunity for input.

49. On July 28, 2025, the Department issued a response denying Integrated Life's request in part. The Department asserted that the Bulletin does not impose additional requirements or amend regulatory standards but merely informs the public of its exercise of discretionary authority under Nebraska's emergency safety intervention training rule, 404 Neb. Admin. Code § 4-003.03(C) (as in effect at the time of issuance), to approve Emergency Safety Intervention techniques. The Department emphasized that the regulation grants it discretion to select and approve one or more ESI systems, and the Bulletin provides ample time for compliance by July 1, 2025.

50. While the Department agreed to revise and reissue the Bulletin solely to update the regulatory citation to the current emergency safety intervention training rule citation, 404 Neb. Admin. Code § 4-003.03(F)(iii), following amendments effective September 17, 2024, it otherwise declined to repeal the Bulletin or initiate rulemaking. This limited response fails to address the substantive harms to Integrated Life and confirms the Department's intent to enforce the mandate without procedural safeguards, treating the Bulletin as binding despite its purported nonregulatory status.

Integrated Life Continues to Face Ongoing Harm

51. As a result, Integrated Life's coerced compliance with the Bulletin imposes immediate financial harm that cannot be recovered.

52. This harm is compounded by the prior suspension of referrals and the ongoing threat of renewed enforcement if Integrated Life fails to fully implement The Mandt System, including staff training.

53. Compliance also forces Integrated Life to abandon its proven, Department-approved Core Supports curriculum, which has reduced ESI incidents and workers' compensation claims, disrupting its mission to deliver person-centered care tailored to its adult clients.

54. Since 2021, Integrated Life has invested roughly \$100,000 in developing, maintaining, and deploying the Core Supports curriculum, excluding any labor costs, with expenses primarily incurred for digitizing the training content in response to the COVID-19 pandemic and scaling it to support business growth.

55. Without relief, Integrated Life faces an untenable choice: fully comply with an unlawful mandate at great cost and risk to its service model, or face decertification and loss of its ability to serve clients.

56. These injuries are ongoing and irreparable, as the financial costs, operational disruptions, reputational harm, and loss of Integrated Life's tailored care approach cannot be fully remedied through monetary damages.

CLAIMS

Count I – Violation of Separation of Powers (Neb. Const. art. II, § 1)

57. Plaintiff incorporates all prior paragraphs as if fully set forth herein.

58. The Nebraska Constitution vests legislative power in the Legislature, prohibiting executive agencies and officials, including the Department and Director Tony Green, from exercising powers properly belonging to another branch. Neb. Const. art. II, § 1; *State ex rel. Stenberg v. Murphy*, 247 Neb. 358, 364, 527 N.W.2d 185 (1995).

59. By issuing the Bulletin, which mandates exclusive use of The Mandt System for Emergency Safety Intervention training, revokes

prior approvals of alternative curricula, and imposes new obligations without statutory or regulatory authority, the Department and Director Green have exercised legislative power in violation of the separation of powers.

60. The governing regulation, 404 Neb. Admin. Code § 4-003.03(F)(iii), permits the Department to approve ESI training curricula but does not authorize mandating a single proprietary system or eliminating alternatives without formal rulemaking.

61. The Department's claim that § 4-003.03(F)(iii) permits it to mandate a single ESI program misreads the regulation. The provision requires only that providers use "Division-approved emergency safety intervention techniques," a plural, permissive phrase that naturally encompasses the possibility of multiple approved systems. In common regulatory usage, "approval" means reviewing and confirming that a curriculum meets prescribed standards, not preemptively choosing one exclusive vendor or system for all regulated parties.

62. The Department's own prior practice under Provider Bulletin 20-07 demonstrates that the Division interpreted "approval" to allow individualized review of multiple curricula. Abandoning that interpretation and mandating a single proprietary system is a substantive change in policy that, absent legislative authorization or formal rulemaking, exceeds the Division's lawful authority and intrudes on the legislative power.

63. The Legislature has neither authorized nor acquiesced in the Department's use of provider bulletins to impose sweeping, binding mandates on certified providers. In fact, the 2025 introduction of Legislative Bill 565, as amended by AM239, underscores legislative opposition to this practice. This bill would have rescinded post-July 2022 guidance documents issued by the Division of Developmental Disabilities, paused new bulletins absent federal necessity, and required fiscal impact assessments—reforms aimed squarely at curbing the kind of unilateral policymaking at issue here. The bill's introduction confirms

that the Department's authority to mandate a single proprietary ESI system is neither implied nor supported by legislative intent.

64. In *State ex rel. Spire v. Conway*, 238 Neb. 766, 472 N.W.2d 403 (1991), the Nebraska Supreme Court held that executive actions creating binding legal consequences without legislative authorization violate the separation of powers. The Bulletin creates such consequences by threatening decertification and loss of Medicaid funding, effectively barring Integrated Life from serving clients.

65. The Bulletin is also part of a broader pattern of the Department exceeding its rulemaking authority through informal bulletins. In 2024, a provider association challenged Provider Bulletin 23-05 for similarly imposing new obligations without APA compliance. While that case was dismissed for procedural reasons, it highlights the Department's recurring use of bulletins as de facto regulations, bypassing legislative checks and formal rulemaking requirements. This ongoing pattern further demonstrates that the Bulletin is a substantive policy choice masquerading as internal guidance.

66. The Department's prior practice, as outlined in Provider Bulletin 20-07, allowed providers to submit diverse ESI curricula for approval, demonstrating that the agency treated ESI approvals as flexible. The Bulletin's categorical mandate represents a substantive policy shift, not an interpretation, requiring legislative or rulemaking authority.

67. The Bulletin is arbitrary and lacks any legitimate governmental interest, as it favors a private, for-profit training system without evidence that it improves client safety or service quality compared to previously approved curricula like Integrated Life's curriculum.

68. By imposing this mandate, the Department has usurped the Legislature's role, harming Integrated Life and other providers by forcing compliance with a costly, untested system that disrupts care for vulnerable adults.

Count II – Violation of Due Process
(Neb. Const. art. I, § 3)

69. Plaintiff incorporates all prior paragraphs as if fully set forth herein.

70. Integrated Life has a protected property interest in its Department certification and its reasonable reliance on the continued validity of its curriculum, approved in 2021 and integral to its Medicaid-funded operations. *See Melanie M. v. Winterer*, 290 Neb. 764, 774 (2015) (recognizing substantial private interest in government entitlements like benefits).

71. The Department's Bulletin and enforcement actions, including the July 2, 2025, suspension of client referrals, revoke Integrated Life's prior curriculum approval and condition continued certification on compliance with a costly, less suitable training system, without adequate notice or opportunity to contest the bulletin's validity. *See Marshall v. Wimes*, 261 Neb. 846, 626 N.W.2d 229 (2001) (holding that due process requires notice, factual basis for the action, and opportunity for rebuttal).

72. The coercive effect of the Bulletin was immediate and concrete. The Department's July 2, 2025, suspension of all new client referrals cut off Integrated Life's primary source of new Medicaid-funded clients and jeopardized specific placements, including one intake completed after sixty days of preparation and coordination with the client's family.

73. While the Department offered an administrative appeal process after suspending referrals, this post-deprivation procedure is inadequate, as it does not allow Integrated Life to challenge the bulletin's legality and was offered only after immediate harm occurred.

74. Additionally, the review process under Neb. Rev. Stat. § 84-901.03 did not provide an adequate safeguard. That provision allows regulated parties to request agency review of guidance documents at any time, separate from any enforcement action. Integrated Life invoked this process on June 16, 2025, arguing that the Bulletin

amended regulatory standards without APA rulemaking. In its July 28, 2025, response, the Department acknowledged the request, addressed the merits, and expressly rejected Integrated Life’s position, concluding that the governing regulation conferred unfettered discretion to approve a single ESI system. The Department agreed only to update a regulatory citation and declined to repeal or subject the Bulletin to rulemaking. Because the agency’s interpretation foreclosed relief and left no avenue to contest the mandate’s legality outside litigation, the process could not meaningfully protect Integrated Life’s rights before enforcement.

75. Integrated Life’s partial compliance—revising its policies and providing certificates of trainers certified in The Mandt System on July 3, 2025, to avoid immediate loss of referrals—does not cure the lack of procedural safeguards and imposes ongoing financial and operational harms.

76. In *McAllister v. Nebraska Department of Correctional Services*, 253 Neb. 910, 913–16 (1998), the Nebraska Supreme Court held that agency actions altering legal obligations without APA procedures or individualized process violate due process.

77. The absence of any adjudicatory process to challenge the Bulletin’s mandate, combined with its coercive enforcement, denies Integrated Life fundamental procedural fairness under Neb. Const. art. I, § 3.

78. This arbitrary action, forcing Integrated Life to choose between costly compliance and loss of certification, violates due process.

**Count III – Violations of Nebraska Administrative
Procedure Act
(Neb. Rev. Stat. §§ 84-901 et seq.)**

79. Plaintiff incorporates all prior paragraphs as if fully set forth herein.

80. The Bulletin violates the Nebraska Administrative Procedure Act for two independent reasons. First, the Bulletin is invalid as ultra vires because it exceeds the Department’s statutory and regulatory authority. By mandating exclusive use of The Mandt System and revoking prior approvals of alternative curricula, such as Integrated Life’s Core Supports curriculum, the Bulletin overrides the flexibility of 404 Neb. Admin. Code § 4-003.03(F)(iii), which requires only “Division approved emergency safety intervention techniques.”

81. The Department’s interpretation of 404 Neb. Admin. Code § 4-003.03(F)(iii) as allowing it to designate a single, mandatory ESI program is inconsistent with the regulation’s text, structure, and history. The regulation refers to “Division-approved emergency safety intervention techniques”—a plural, permissive formulation that contemplates the Division may approve multiple compliant techniques, not require exclusive adoption of one. “Approval” in ordinary regulatory usage means determining that a proposed curriculum meets established standards, not preemptively selecting one system to the exclusion of all others.

82. The Department’s own prior implementation, including Provider Bulletin 20-07, confirms this understanding: the Division simultaneously approved multiple curricula tailored to different provider populations. The shift to a single mandated program is therefore a substantive policy change, not an exercise of existing approval authority.

83. In contrast to Provider Bulletin 24-01, Defendants’ earlier Provider Bulletin 20-07 allowed each provider to submit its own ESI curriculum for individualized review and approval. This approach reflected the Department’s prior practice of permitting multiple compliant systems rather than mandating a single one. By eliminating that flexibility and requiring exclusive adoption of The Mandt System, the Bulletin marks a substantive policy shift that exceeds the Department’s statutory and regulatory authority.

84. Second, the Bulletin is invalid as a violation of the APA’s rulemaking requirements. The Bulletin constitutes a “rule” under Neb. Rev. Stat. § 84-901(2) because it imposes binding requirements of general applicability, creates new substantive obligations, and has significant economic and operational impact on certified providers, including Integrated Life.

85. In its July 28, 2025, response to Integrated Life’s request for review under Neb. Rev. Stat. § 84-901.03, the Department asserted that the Bulletin is merely informational and does not amend regulatory standards or impose additional requirements, but rather informs the public of its exercise of discretionary authority under existing regulations.

86. However, the Department’s own enforcement actions contradict that position. On July 2, 2025, the Department suspended referrals to Integrated Life and threatened loss of certification unless Integrated Life complied with the Bulletin’s terms, leaving Integrated Life no practical choice but to begin compliance. These coercive consequences confirm that the Bulletin functions as a binding rule under the APA. *See McAllister*, 253 Neb. at 913–16.

87. In *McAllister*, 253 Neb. at 911–17, the Nebraska Supreme Court held that an agency policy imposing enforceable consequences affecting private rights is a rule requiring formal rulemaking, regardless of its label as “guidance.”

88. The Department issued the Bulletin without complying with the APA’s notice-and-comment rulemaking procedures under Neb. Rev. Stat. § 84-907, including filing with the Secretary of State, public hearings, or opportunity for stakeholder input.

89. The legislative response to the Department’s bulletin practice further confirms that these documents operate as binding rules. LB 565’s proposed moratorium on new bulletins and rescission of existing ones reflects a legislative determination that bulletins like Provider Bulletin 24-01 have substantive effect and require formal APA procedures. This contemporaneous legislative concern reinforces the

conclusion that the Bulletin is invalid absent compliance with rulemaking requirements.

90. Because the Bulletin (1) exceeds the Department's statutory and regulatory authority and (2) was not promulgated in accordance with the APA, it is invalid and unenforceable.

REQUEST FOR RELIEF

Plaintiff respectfully requests the following relief:

- A. Declare that Provider Bulletin 24-01 exceeds the Department's lawful authority, constitutes an ultra vires act, and violates the Nebraska Constitution's separation of powers provision;
- B. Declare that Provider Bulletin 24-01 violates the Nebraska Constitution's due process provision by imposing new mandates without adequate procedural safeguards;
- C. Declare that Provider Bulletin 24-01 is a "rule" under the Nebraska Administrative Procedure Act and was unlawfully adopted without required notice-and-comment procedures;
- D. Permanently enjoin Defendants from enforcing Provider Bulletin 24-01 against Integrated Life or other providers;
- E. Award Plaintiffs their reasonable costs;
- F. Award Plaintiffs their reasonable attorneys' fees; and
- G. Award Plaintiffs any other relief as is appropriate under the circumstances.

Dated: August 22, 2025.

Respectfully submitted,

/s/ Perry A. Pirsch

Perry A. Pirsch, #21525
Pirsch Legal Services, PC, LLO
24804 Country Club Road
Ashland, NE 68003
(402) 521-0930
perry@nebraskabusiness.legal

/s/ Matthew B. Stafford, Esq.

Matthew B. Stafford, #28218
Pirsch Legal Services, PC, LLO
24804 Country Club Road
Ashland, NE 68003
(402) 521-0930
matts@nebraskabusines.legal

ALLISON D. DANIEL
OH Bar No. 96186 *
Pacific Legal Foundation
3100 Clarendon Blvd., Ste. 1000
Arlington, VA 22201
Tel: (202) 888-6881
ADaniel@pacificlegal.org

Counsel for Plaintiff

** Pro Hac Vice application
forthcoming*