

# NEBRASKA



Good Life. Great Mission.

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**DEPT. OF HEALTH AND HUMAN SERVICES**

Division of Medicaid & Long-Term Care

## Medicaid and Long-Term Care Rules and Regulations Report

December 2, 2019

Prepared in Accordance with Neb. Rev. Stat. § 68-909.02

# NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES



Pete Ricketts, Governor

December 2, 2019

Patrick O'Donnell  
Clerk of the Legislature  
Room 2018, State Capitol  
Lincoln, NE 68509

Dear Mr. O'Donnell:

Pursuant to the provisions of Neb Rev Stat §68-909(2), the Division of Medicaid and Long-Term Care (MLTC) is submitting this report to the Governor and the Legislature. This report summarizes the purpose and content of proposed rules and regulations, state plan amendments, or waivers. Information provided includes the projected impact on recipients of medical assistance and medical assistance expenditures.

If you have any questions, please contact Nate Watson, Deputy Director for Policy and Regulations at [nate.watson@nebraska.gov](mailto:nate.watson@nebraska.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "MVP".

Matthew A. Van Patton, DHS, Director  
Division of Medicaid and Long-Term Care  
Department of Health and Human Services

MVP/cgs

Attachments: 3

Regulation	Purpose	Content	Projected Impact	Status
471 Chapter 38	Updates made to comply with statute changes and updated state plan	Estate Recovery	Compliance with state statute and state plan	Promulgated effective July 1, 2019
471 Chapter 30	Updates made to comply with CMS requested changes and updated state plan	Health Insurance Premium Payment	Compliance with federal law, fiscal savings	Promulgated effective July 1, 2019
402 Chapter 1	Grants from the Nursing Facility Conversion Cash Fund	Nebraska Health Care Funding Act	Repealed as the program governing these funds ended in 2005	Promulgated effective October 27, 2019
Title 15	Updates made to comply with CMS requested changes and updated state plan	Aging Services	Compliance with federal law, state statute, and state plan	Public hearing held August 19, 2019
Title 405	Repeal of duplicative language found in state statute	ICF/DD Reimbursement Protection Act	Remove outdated language and duplicative language	Public hearing held September 23, 2019
471 Chapter 12	Addition of the children's level of care criteria	Nursing Facility Services	Possible impact to the number of individuals receiving waiver services	Promulgated effective December 19, 2018
471 Chapter 12	General update	Nursing Facility Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Public hearing held August 14, 2019
471 Chapter 1	General update	Administration	Clarifications regarding managed care, restricted services, and prior authorization	Public hearing held September 23, 2019
471 Chapter 2	General update	Provider Participation	Addition of fingerprinting and background checks	Public hearing held August 16, 2019
471 Chapter 3	General update	Payment for Medicaid Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 4	General update	Ambulance Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 5	General update	Chiropractic Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 6	General update	Dental Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 7	General update	Durable Medical Equipment and Medical Supplies	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 8	General update	Hearing Aids	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 9	General update	Home Health Agencies	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Public hearing held August 13, 2019
471 Chapter 10	General update	Hospital Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Public hearing held August 14, 2019
471 Chapter 11	General update	Indian Health Service Facilities	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 13	General update	Private Duty Nursing Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Public hearing held September 27, 2019
471 Chapter 14	General update	Occupational Therapy Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Public hearing held October 1, 2019
471 Chapter 15	General update	Personal Assistance Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 16	General update	Pharmacy Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 17	General update	Physical Therapy Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Public hearing held October 1, 2019
471 Chapter 18	General update	Physicians Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 19	General update	Podiatry Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway

Regulation	Purpose	Content	Projected Impact	Status
471 Chapter 20	General update	Psychiatric Services for Individuals Age 21 and Older	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Public hearing held August 15, 2019
471 Chapter 21	General update	Rehabilitation Care in Hospitals	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 22	General update	Respiratory Therapy Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 23	General update	Speech Pathology and Audiology Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 24	General update	Visual Care Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 25	Updates made to comply with statute changes and updated state plan	Special Ed School Based	Compliance with state statute and state plan	Public hearing held August 22, 2019
471 Chapter 26	General update	Ambulatory Surgical Center Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 27	General update	Medical Transportation Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 28	General update	Presumptive Eligibility	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 29	General update	Federally Qualified Health Centers	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 31	General update	Services in Intermediate Care Facilities for Persons with Developmental Disabilities	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 32	General update	Child Mental Health and Substance Use	Adding direct care staffing, leave, and licensure information	Public hearing held August 15, 2019
471 Chapter 33	General update	Health Checks and Treatment Services for Conditions Disclosed during Health Checks	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 34	General update	Rural Health Clinics	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 35	General update	Rehabilitative Psychiatric Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Public hearing held August 15, 2019
471 Chapter 36	General update	Hospice Services	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 37	General update	Program of All-Inclusive Care for the Elderly	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
471 Chapter 41	Complete repeal	Medical Services Covered by Child Welfare Funds	Repeal of outdated and unnecessary regulation	Public hearing held September 18, 2019
471 Chapter 42	General update	Freestanding Birth Centers	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Internal DHHS process underway
477 Chapter 20	Updates made to comply with Nebraska Supreme Court findings	Definitions Pertaining to Non-MAGI Programs	Clarifies under which circumstances a trust can be counted as an available resource. The change is in response to the recent Nebraska Supreme Court case, Donna G. v. DHHS. The regulation update is needed to maintain the status quo. For most beneficiaries, the change to regulations would have no impact.	Public hearing held September 25, 2019

Regulation	Purpose	Content	Projected Impact	Status
477 Chapter 22	Updates made to comply with district court findings	Income for Non-MAGI Programs	Aligns with federal provisions unless an exception exists. The change is in response to a Lancaster County Court decision, <i>Marshbanks v. DHHS</i> . The basis of the decision was an unclear regulation in the current chapter. The regulation has been updated and clarified to specify the necessary conditions to meet an income counting exception.	Public hearing held September 25, 2019
477 Chapter 23	Updates made to comply with Nebraska Supreme Court findings.	Resources for Non-MAGI Programs	Clarifies under which circumstances a trust can be counted as an available resource. The change is in response to the recent Nebraska Supreme Court case, <i>Donna G. v. DHHS</i> . The regulation update is needed to maintain the status quo. For most beneficiaries, the change to regulations would have no impact.	Public hearing held September 25, 2019
Title 482	General update	Managed Care	Updates to incorporate dental, mandatory enrollment, and subsequent Heritage Health changes	Public hearing held August 19, 2019
Title 480	General update	Home and Community Based Services (HCBS)	Re-write all of 480 to be in compliance with the current HCBS waivers	Public hearing held October 2, 2019

State Plan Amendment	Purpose and Content	Impact to Recipients	Impact to Expenditures	Status
18-0006	Annual nursing facility rate rebasing for SFY19	No impact	Increases federal and state expenditures	Approved November 26, 2018 with an effective date of July 1, 2019
18-0008	Additions to the disregards for blind individuals and life estates	Ensures continued access to services for Medicaid members	No fiscal impact	Not submitted due to CMS updating the system used for submitting state plans; Re-worked as SPA 19-0005
NE - 18-0015 CHIP	Federally mandated update to the managed care section of the CHIP state plan. Ensures compliance with the managed care final rule	No impact	No fiscal impact	Approved February 7, 2019 with an effective date of January 1, 2019
19-0001	Alternative Benefit Plan (Prime) for expansion	CMS required state plan for documenting the services offered to individuals covered under Medicaid expansion	Increases federal and state expenditures	Submitted to CMS April 1, 2019; Re-issued tribal notice October 25, 2019
19-0002	Medicaid expansion eligibility	CMS required state plan for covering the expansion population	Increases federal and state expenditures	Submitted to CMS April 1, 2019
19-0003	Methodology for identification of applicable FMAP rates	CMS required state plan for covering the expansion population and determining the FMAP rates	Increases federal and state expenditures	Submitted to CMS April 1, 2019
19-0004	Bed limits for therapeutic group homes	Increased the number of beds allowed in a therapeutic group home from 8 to 16	No fiscal impact	Approved May 7, 2019 with an effective date of January 1, 2019
19-0005	1902 ( R ) (2) Disregards (Blind Disregard and Life Estate)	Provides for federal approval of disregards for the blind and disregards of certain life estates which are already operationalized	No fiscal impact	Tribal notice submitted October 4, 2019
19-0006	Chiropractic	Removes the limits and scope for chiropractic services and allows for medical necessity	Increases federal and state expenditures	Drafting
19-0008	Annual nursing facility and ICF/DD rate rebasing for SFY20	No impact	Increases federal and state expenditures	Approved November 7, 2019 with an effective date of July 1, 2019
19-0009	Non-Emergency Medical Transportation	Removal of the broker from the state plan as the service was added to managed care	No fiscal impact	Submitted to CMS September 13, 2019
19-0010	SFY 20 Inpatient Provider Rates	Legislatively mandated inpatient provider rate increase	Increases federal and state expenditures	Submitted to CMS September 23, 2019
19-0011	SFY 20 Outpatient Provider Rates	Legislatively mandated outpatient provider rate increase	Increases federal and state expenditures	Submitted to CMS September 23, 2019
19-0012	SUPPORT Act	CMS mandated state plan amendment to ensure compliance with the Federal SUPPORT Act	No fiscal impact	Tribal notice submitted October 9, 2019
19-0013	RAC waiver	Removes the requirement for hiring a RAC contractor	No fiscal impact	Tribal notice submitted October 4, 2019
19-0014	Alternative Benefit Plan (Basic) for expansion	CMS required state plan for documenting the services offered to individuals covered under Medicaid expansion	Increases federal and state expenditures	Tribal notice submitted October 25, 2019

Waiver	Purpose and Content	Impact to Recipients	Status
1115 Demonstration	Substance use disorder (SUD)	Ensures continued access to services for Medicaid members requiring SUD services who are residing in an institute for mental disease (IMD)	Approved by CMS for July 2019 through June 2024
NE Traumatic Brain Injury Waiver (40199.R03.00)	This waiver provides assisted living service for individuals with brain injury ages 18 to 64	Ensures continued access to services for Medicaid members with traumatic brain injury	5 year renewal approved by CMS March 2019
Managed Care Waiver (03.R09.M02)	This 1915(b) waiver provides the authority to operate a managed care delivery system in Nebraska	Allows the state to implement the integrated managed care program, Heritage Health	Next renewal due June 30, 2019
NE HCBS for Aged & Adults & Children with Disabilities (0187.R06)	The Waiver serves individuals of all ages who have a disability or are aged and require a nursing facility (NF) level of care	Ensures continued access to services for Medicaid members requiring nursing facility level of care	Next renewal due July 31, 2021
Comprehensive developmental disabilities (CDD) waiver (4154)	Allows persons of all ages with developmental disabilities to maximize their independence as they live, work, socialize, and participate to the fullest extent possible in their communities. A participant must have a developmental disability and needs that require services like those provided by an intermediate care facility for persons with developmental disabilities (ICF-DD).	Elimination of some services and encompasses previous DD waivers into one comprehensive waiver for all ages	Effective October 1, 2019
Developmental disabilities adult day (DDAD) waiver (0394)	Allows persons ages 21 and over with developmental disabilities to maximize their independence as they live, work, socialize, and participate to the fullest extent possible in their communities. A participant must have a developmental disability and needs that require services like those provided by an intermediate care facility for persons with developmental disabilities (ICF-DD).	Unbundling of services, modifications to service definitions, provider qualification revisions, as well as other changes	Effective October 1, 2019
1115 Demonstration	Heritage Health Adult Expansion Demonstration. This waiver will be used to implement Medicaid expansion. The waiver includes the elimination of retroactive eligibility for some populations.	Provides eligibility to an additional category of eligibility not offered previously. The waiver includes a tiered benefit package, wellness initiatives, personal responsibility activates, and community engagement requirements. The waiver also will eliminate retroactive eligibility for some populations.	Posted for public comment October 25, 2019