

NEBRASKA



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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 1, 2020

Prepared in Accordance with Neb. Rev. Stat. § 68-909(2)



December 1, 2020

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 from November 1, 2019, through November 1, 2020. Information provided includes the projected impact on recipients of medical assistance and medical assistance expenditures.

If you have any questions, please contact Catherine Gekas Steeby, Administrator II for Policy and Communications at Catherine.gekasteeby@nebraska.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremy Brunssen".

Jeremy Brunssen, Interim Director
Division of Medicaid and Long-Term Care
Department of Health and Human Services

Attachments: 3

[Detailed information on each Regulation can be found on the MLTC website, here.](#)

Regulation	Purpose	Content	Projected Impact	Status
471 Chapter 1	General update	Administration	Clarifications regarding managed care, restricted services, and prior authorization	Promulgated effective September 21, 2020
471 Chapter 2	General update	Provider Participation	Addition of fingerprinting and background checks	Promulgated effective September 21, 2020
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	Promulgated effective September 19, 2020
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	Public hearing held September 17, 2020
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	Promulgated effective March 22, 2020
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	Promulgated effective November 9, 2020
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 12	Removal of payment methodology language	Nursing Facility Services	Remove language which was outdated and no longer in line with the states payment methodology	Promulgated effective June 28, 2020
471 Chapter 12	Removal of Children's Level of Care from chapter 12	Nursing Facility Services	Remove the children's level of care from chapter 12 to include it in a newly created chapter	Public hearing scheduled for November 24, 2020
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	Promulgated effective September 21, 2020
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	Promulgated effective June 10, 2020
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	Promulgated effective June 10, 2020. Combined with Chapter 14.
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
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	Internal DHHS process underway
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	Promulgated effective November 4, 2020
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

Regulation	Purpose	Content	Projected Impact	Status
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	Promulgated effective October 4, 2020
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	Public hearing held September 22, 2020
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	Internal DHHS process underway
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	Internal DHHS process underway
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 39	New Chapter for Alternative Benefit Plans (ABP)	Nebraska Alternative Benefit Plan	Creation of a new chapter for ABP's required for Medicaid Expansion implementation	Promulgated effective July 29, 2020
471 Chapter 40	General update	Targeted Case Management	Define case management services, state the services provided, and establish requirements for recipients and providers of case management services paid for using Medicaid funds	Internal DHHS process underway
471 Chapter 41	Complete repeal	Medical Services Covered by Child Welfare Funds	Repeal of outdated and unnecessary regulation	Repeal promulgated effective May 6, 2020
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
471 Chapter 43	Children's Level of Care	Nursing Facility Level of Care Determination for Children	Creation of a new chapter for children's level of care	Public hearing scheduled for November 24, 2020
477 Chapter 3	General update	Application Process	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Promulgated effective July 29, 2020
477 Chapter 4	General update	Effective Date of Medicaid Eligibility	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Promulgated effective July 29, 2020
477 Chapter 5	General update	Citizenship / Alien Status and Identity	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Promulgated effective July 29, 2020
477 Chapter 9	General update	Notification	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Promulgated effective July 29, 2020
477 Chapter 10	General update	Fair Hearing Process	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Promulgated effective July 29, 2020

Regulation	Purpose	Content	Projected Impact	Status
477 Chapter 11	General update	Living Arrangements	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Promulgated effective July 29, 2020
477 Chapter 19	Updates made to implement Medicaid Expansion	Modified Adjusted Gross Income (MAGI) Based Programs	Updates to incorporate required language to implement Medicaid Expansion	Promulgated effective July 29, 2020
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	Promulgated effective October 4, 2020
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, 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	Promulgated effective October 4, 2020
477 Chapter 25	General update	Budgeting for the Medically Needy	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Promulgated effective July 29, 2020
477 Chapter 26	General update	Spousal Impoverishment Medicaid Program (SIMP)	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Promulgated effective July 29, 2020
477 Chapter 27	General update	Eligibility for the Aged, Blind, and Disabled; Medically Needy; Qualified Disabled Working Individuals; Medicaid Insurance for the Workers with Disabilities; Breast and Cervical Cancer; Emergency Medical Services Assistance; and Katie Beckett	Updates to incorporate changes which have occurred over time, ensure compliance with statute, state plan and federal regulation	Promulgated effective July 29, 2020
477 Chapter 29	New chapter created to implement Medicaid Expansion	Heritage Health Adult Program	New chapter created to incorporate required language to implement Medicaid Expansion	Promulgated effective July 29, 2020
Title 482	General update	Managed Care	Updates to incorporate dental, mandatory enrollment, and subsequent Heritage Health changes	Promulgated effective January 27, 2020
Title 482	Updates made to implement Medicaid Expansion	Managed Care	Updates to incorporate required language to implement Medicaid Expansion	Promulgated effective July 29, 2020
Title 480	General update	Home and Community Based Services (HCBS)	Re-write all of 480 to be in compliance with the current HCBS waivers.	Second Public hearing scheduled for November 24, 2020
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	Promulgated effective September 21, 2020
Title 405	Repeal of duplicative language found in state statute	ICF/DD Reimbursement Protection Act	Remove outdated language and duplicative language	Promulgated effective June 20, 2020

[Detailed information on each State Plan Amendment can be found on the MLTC website, here.](#)

State Plan Amendment	Purpose and Content	Impact to Recipients	Impact to Expenditures	Status
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	Approved July 6, 2020 with an effective date of October 1, 2020
19-0002	Medicaid expansion eligibility	CMS required state plan for covering the expansion population	Increases federal and state expenditures	Approved March 10, 2020 with an effective date of October 1, 2020
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	Approved March 10, 2020 with an effective date of October 1, 2020
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	Approved March 26, 2020 with an effective date of October 1, 2019
19-0006	Chiropractic	Removes the limits and scope for chiropractic services and allows for medical necessity	Increases federal and state expenditures	Became SPA 20-0005
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	Approved December 11, 2019 with an effective date of July 1, 2019
19-0010	SFY 20 Inpatient Provider Rates	Legislatively mandated inpatient provider rate increase	Increases federal and state expenditures	Approved December 3, 2019 with an effective date of July 31, 2019
19-0011	SFY 20 Outpatient Provider Rates	Legislatively mandated inpatient provider rate increase	Increases federal and state expenditures	Approved February 18, 2020 with an effective date of July 31, 2019
19-0012	SUPPORT Act	CMS mandated state plan amendment to ensure compliance with the Federal SUPPORT Act	No fiscal impact	Approved March 2, 2020 with an effective date of October 1, 2019
19-0013	RAC waiver	Removes the requirement for hiring a RAC contractor	No fiscal impact	Approved December 23, 2019 with an effective date of December 1, 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	Approved July 6, 2020 with an effective date of October 1, 2020
20-0001	NF Rate Methodology and Rates	Allows for current payment methodology for NF and Hospital rate development	No fiscal impact	Approved October 22, 2020 with an effective date of July 1, 2020
20-0002	Opioid Treatment Program	Allows for SUD services and treatment	Increases federal and state expenditures	Submitted to CMS March 31, 2020
20-0003	Medically-monitored Inpatient Withdrawal Management	Allows for SUD services and treatment	Increases federal and state expenditures	Submitted to CMS March 31, 2020
20-0004	LPN Private Duty Nursing Services	Provider rate increase as a result of a rate study	Increases federal and state expenditures	Approved May 28, 2020 with an effective date of January 1, 2020
20-0005	Chiropractic	Eliminates limitations on visits and allows for medical necessity to be used.	Increases federal and state expenditures	Approved May 11, 2020 with an effective date of January 1, 2020
20-0006	NEMT Escort Services	Clarifies escort services under NEMT as a covered service	No fiscal impact	Approved July 13, 2020 with an effective date of April 1, 2020

State Plan Amendment	Purpose and Content	Impact to Recipients	Impact to Expenditures	Status
20-0008	FQHC Dental APM	Implementation of federally approved alternative payment methodology for dental services provided by an FQHC	Increases federal and state expenditures	Approved October 21, 2020 with an effective date of July 1, 2020
20-0009	ICF/DD Rates	Annual rate adjustment for ICF/DD facilities	Increases federal and state expenditures	Approved October 15, 2020 with an effective date of July 1, 2020
20-0010	Medicaid Disaster Relief for the COVID-19 National Emergency	Used to address immediate needs based on the PHE	Increases federal and state expenditures	Approved April 24, 2020 with an effective date of March 1, 2020
20-0011	Medicaid Disaster Relief for the COVID-19 National Emergency (2)	Used to address immediate needs based on the PHE	Increases federal and state expenditures	Approved June 18, 2020 with an effective date of March 1, 2020
20-0012	SFY21 Inpatient Provider Rates	Legislatively mandated inpatient provider rate increase	Increases federal and state expenditures	Submitted to CMS September 30, 2020
20-0013	SFY21 Outpatient and Professional Provider Rates	Legislatively mandated inpatient provider rate increase	Increases federal and state expenditures	Submitted to CMS September 30, 2020
20-0014	Medicaid Disaster Relief for the COVID-19 National Emergency (3)	Used to address immediate needs based on the PHE	Increases federal and state expenditures	Approved June 18, 2020 with an effective date of May 1, 2020
20-0016 (CHIP)	CHIP Disaster Relief	Used to address immediate needs based on the PHE	Increases federal and state expenditures	Approved May 1, 2020 with an effective date of March 1, 2020
20-0016-A	BH Provider Rate Increase	Legislatively mandated BH provider rate increase	Increases federal and state expenditures	Submitted to CMS September 30, 2020
20-0017 (CHIP)	SUPPORT Act	Federally mandate addition to the CHIP SPA to address SUD services under the SUPPORT Act	No fiscal impact	Submitted to CMS June 30, 2020
20-0018	Medicaid Disaster Relief for the COVID-19 National Emergency (4)	Used to address immediate needs based on the PHE	Increases federal and state expenditures	Submitted to CMS November 2, 2020

Detailed information on each waiver can be found by clicking on a waiver title. You will be directed to the MLTC website or the specific waiver application.

[An overview of the Traumatic Brain Injury Waiver, HCBS Waiver, CDD Waiver, and DDAD Waiver can be found here.](#)

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	Approved by CMS for October 2020 through June 2022
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	5 year renewal approved by CMS July 2020
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 aspects of Medicaid expansion	The waiver includes a tiered benefit package, wellness initiatives, personal responsibility activities, and community engagement requirements.	Approved by CMS October 2020