

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, 2021

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



December 1, 2021

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

Dear Mr. O'Donnell:

Pursuant to the provision 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, 2020, through November 1, 2021. 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, at Catherine.gekassteeby@nebraska.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Bagley".

Kevin Bagley, 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
Title 471 Nebraska Medicaid Program Services				
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	Public hearing scheduled for December 13, 2021
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	Public hearing scheduled for December 13, 2021
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	Promulgated effective June 26, 2021
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	Promulgated effective October 9, 2021
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 10	Addition of payment methodology language per LB1053 (2020)	Hospital Services	Addition of payment methodology language.	Public hearing held on September 29, 2021
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	Public hearing held on August 26, 2021
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 43.	Promulgated effective December 23, 2020
471 Chapter 12	Removal of Adult Level of Care from chapter 12	Nursing Facility Services	Remove the adult level of care from chapter 12 to include it in a newly created chapter 44.	Promulgated effective June 26, 2021
471 Chapter 12	Addition of payment methodology language per LB1053 (2020)	Nursing Facility Services	Addition of payment methodology language.	Public hearing held on September 29, 2021
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	Public hearing held on September 2, 2021
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	Public hearing held on August 23, 2021
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	Public hearing held on September 2, 2021
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	Public hearing held on September 7, 2021
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	Public hearing held on August 23, 2021
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	Promulgated effective July 12, 2021

Regulation	Purpose	Content	Projected Impact	Status
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	Public hearing held on September 8, 2021
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	Public hearing held on September 7, 2021
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	Alternative Benefit Plans (ABP)	Nebraska Alternative Benefit Plan	Update of ABP's required for Medicaid Expansion implementation.	Promulgated effective September 27, 2021
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.	Promulgated effective December 23, 2020
471 Chapter 44	Adult Level of Care	Nursing Facility Level of Care Determination for Adults	Creation of a new chapter for adult level of care.	Promulgated effective June 26, 2021
Title 477 Medicaid Eligibility				
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.	Promulgated effective November 4, 2020
477 Chapter 27	Updates made to incorporate changes for the MIWD program in accordance with LB323 (2020)	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	Update of program requirements in accordance with LB323 (2020) to the MIWD program.	Promulgated effective September 28, 2021
477 Chapter 29	Medicaid Expansion	Heritage Health Adult Program	Update of Medicaid expansion requirements.	Promulgated effective September 27, 2021

Regulation	Purpose	Content	Projected Impact	Status
Other Titles				
Title 482	Medicaid Expansion	Managed Care	Update of Medicaid expansion requirements.	Promulgated effective September 27, 2021
Title 480	General update	Home and Community Based Services (HCBS)	Update of all chapters to be in compliance with the current HCBS waivers.	Promulgated effective October 3, 2021

[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
20-0002	Opioid Treatment Program	Allows for SUD services and treatment	Increases federal and state expenditures	Approved October 30, 2020 with an effective date of January 1, 2020
20-0003	Medically-monitored Inpatient Withdrawal Management	Allows for SUD services and treatment	Increases federal and state expenditures	Approved October 30, 2020 with an effective date of January 1, 2020
20-0012	SFY21 Inpatient Provider Rates	Legislatively appropriated inpatient provider rate increase	Increases federal and state expenditures	Approved November 18, 2020 with an effective date of July 1, 2020
20-0013	SFY21 Outpatient and Professional Provider Rates	Legislatively appropriated inpatient provider rate increase	Increases federal and state expenditures	Approved December 18, 2020 with an effective date of July 1, 2020
20-0016-A	BH Provider Rate Increase	Legislatively appropriated BH provider rate increase	Increases federal and state expenditures	Approved March 24, 2021 with an effective date of September 1, 2020
20-0017 (CHIP)	SUPPORT Act	Federally mandate addition to the CHIP SPA to address SUD services under the SUPPORT Act	No fiscal impact	Approved March 26, 2021 with an effective date of October 24, 2019
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	Approved May 1, 2020 with an effective date of November 20, 2020
21-0003	Federal SUPPORT Act Medical Assisted Treatment (MAT)	Allows for SUD services and treatment	Increases federal and state expenditures	Approved August 17, 2021 with an effective date of October 1, 2020
21-0004	Medicaid Disaster Relief for the COVID-19 National Emergency (5)	Used to address immediate needs based on the PHE	Increases federal and state expenditures	Approved June 11, 2021 with an effective date of December 1, 2020
21-0005	MAT Prime Alternative Benefit Plan (ABP). Submitted in conjunction with 21-0003.	Allows for SUD services and treatment	Increases federal and state expenditures	Approved August 23, 2021 with an effective date of October 1, 2020
21-0006	MAT Basic Alternative Benefit Plan (ABP). Submitted in conjunction with 21-0003.	Allows for SUD services and treatment	Increases federal and state expenditures	Approved August 23, 2021 with an effective date of October 1, 2020
21-0007	Medicaid Disaster Relief for the COVID-19 National Emergency (6)	Used to address immediate needs based on the PHE	Increases federal and state expenditures	Approved June 11, 2021 with an effective date of January 1, 2021
21-0008	SFY22 Nursing Facility Rates	Legislatively appropriated nursing facility rate increase	Increases federal and state expenditures	Submitted September 29, 2021
21-0009	SFY22 ICF-DD Rates	Legislatively appropriated ICF-DD rate increase	Increases federal and state expenditures	Submitted September 29, 2021
21-0010	SFY22 Inpatient Provider Rates	Legislatively appropriated inpatient provider rate increase	Increases federal and state expenditures	Submitted September 29, 2021
21-0011	SFY22 Outpatient and Professional Provider Rates	Legislatively appropriated inpatient provider rate increase	Increases federal and state expenditures	Submitted September 29, 2021
21-0012	Medicaid Insurance for Workers with Disabilities (MIWD) eligibility changes.	Implementation of changes to MIWD eligibility in accordance with LB323 (2020)	Increases federal and state expenditures	Submitted September 28, 2021
21-0014	Nebraska Alternative Benefit Plan (ABP)	Updated to consolidate the basic and prime ABP into one ABP.	No fiscal impact	Approved September 21, 2021 with an effective date of October 1, 2021

Waiver	Purpose and Content	Impact to Recipients	Status
Home and Community Based Services Waivers			
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 effective October 1, 2018. Current amendment effective 10/01/2020.
NE HCBS for Aged & Adults & Children with Disabilities (0187.R07.01)	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 and current amendment effective August 1, 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	Current amendment effective October 1, 2021. 5 year renewal will be effective March 1, 2022.
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	Current amendment effective October 1, 2021. 5 year renewal will be effective March 1, 2022.
Other Waivers			
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.
1115 Demonstration	Heritage Health Adult Expansion Demonstration.	The waiver was terminated effective September 2, 2021	Approved by CMS September 2021
1135 Waiver 1.0	Section 1135 Waiver COVID-19 National Emergency	Used to address immediate needs based on the PHE	Approved by CMS March 15, 2020 effective March 1, 2020.