DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

July 26, 2017
1:30 p.m. Central Time
Nebraska State Office Building
301 Centennial Mall South, Lincoln, Nebraska
Lower Level, Room D

The purpose of this hearing is to receive comments on proposed changes to Title 471, Chapter 3 of the Nebraska Administrative Code (NAC) – *Payment for Medicaid Services.* The purpose of the proposed changes is to change the payment methodology from the Medicare allowable amount to payment that will not exceed the lesser of the Medicare or Medicaid allowable amount. This change will potentially reduce payments made for Medicare/Medicaid dual eligible clients and provide a savings to the state budget for Medicare/Medicaid crossover claims.

Interested persons may attend the hearing and provide verbal or written comments or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively. A copy of the proposed changes is available online at http://www.sos.ne.gov, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8223. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, Room 1305, State Capitol, Lincoln, NE, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8223. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

PROPOSED REGULATION
POLICY PRE-REVIEW CHECKLIST

Agency: DHHS – Division of Medicaid
Title, Chapter of Regulation: 471 NAC 3
Subject: Payment for Services
Prepared by: Courtney Lankford
Telephone: 402.471.9368

A. Policy Changes and Impacts

1. What does the regulation do and whom does it impact? Provide a brief description of the proposed rule or regulation and its impacts on state agencies, political subdivisions, and regulated persons or entities.

   This updates Title 471 NAC 3, which regulates the payment for medical care and services through Medicaid. The regulation effects the Health Care Plans, their members, as well as providers of Medicaid services. The proposed changes will effect payments for Medicare/Medicaid crossover claims.

2. Describe changes being proposed to current policy and briefly provide rationale.

   The proposed regulations will change the payment methodology from the Medicare allowable amount to payment that will not exceed the lesser of the Medicaid allowable. This change will potentially reduce payments made for Medicaid/Medicare dual eligible clients. This will provide a savings to the state budget for Medicare/Medicaid crossover claims.

B. Why is the rule necessary? Explain and provide an identification of authorizing statute(s) or legislative bill(s).

1. Update of regulation (repeal of obsolete statutes, reflect current policy, editing or technical language changes, etc.)

   Update of regulations to conform to submitted State Biennial Budget.

2. Annual changes – cost of living, hunting season schedules, etc.

   No.

3. Law was changed – federal ___ or state _X__ [Cite authorizing statute(s) or legislative bill(s)]

   LB 327 (2017) and State Biennial Budget 2017-18/2018-19.

4. Extension of established policy or program, new initiatives or changes in policy (within statutory authority) Yes.

5. Constituent initiated No.

6. Financial needs – increases/decreases in fees Yes.

7. Litigation requires changes in rules No.

8. Addresses legal or constitutional concerns of Attorney General's office

   No.

9. Implements federal or court mandate No.

10. Other (explain)

C. <u>What happens if these rules are not adopted?</u>

Medicaid will be required to implement a 3% across the board provider rate decrease. This may lead to a loss of providers to serve the Medicaid population.

D. <u>Policy Checklist</u>

1. Is this an update or editorial change reflecting essentially no change in policy? No.

2. Does the policy in the proposed regulation reflect legislative intent? Yes.

3. Is the policy proposed in the regulation a state mandate on local government? No. Is it funded? No.

4. Is the policy proposed in the regulation a federal mandate on local government? No. Is it funded? No.

E. <u>Fiscal Impact. In addition to completing the required Fiscal Impact</u>

Statement (a copy must be attached to this document), the agency must address the following:

1. Will the proposed regulation reduce, increase, or have no change in resources – funds, personnel or FTE? Yes. Decreased cost to the state.

2. Have initial contacts been made with citizens or organizations that may be impacted by the proposed regulation? Yes, the Division of Medicaid and Long-Term Care meet with multiple associations representing providers including hospitals, nursing homes and facilities, and behavioral health.

3. Does the proposed regulation impact another agency? No. Explain the impact.

4. Will the proposed regulation reduce, increase, or have no change on reporting requirements of businesses?

   No change.

5. What is the agency's best estimate of the additional or reduced spending? If there is none, please note. If receipt of federal funds is contingent upon approval of the proposed regulation, then indicate the amount and nature of the federal funds affected, and enclose laws or correspondence from federal officials substantiating the information.

   Estimated decrease in general fund spending $11,261,571.07. Please see Fiscal Impact Statement.

6. Include a description of the impact that the proposed regulation will have on the number of state employees and how the agency intends to address proposed increases or decreases in FTE.

   No impact.

F. Unique problems or issues and recommendations.

N/A

G. Who is expected to be affected, or to oppose or support the proposed regulation? Explain what initial informal contacts have been made with

organizations or citizens who may be affected by the regulation prior to the public hearing.

The Nebraska Hospital Association has expressed some opposition. However, it is likely they would strongly oppose a 3% rate reduction which would be the alternative.

H. **Are these proposed rules a likely candidate for negotiated rulemaking? Explain. Has the process been completed? If so, explain how the issues were addressed.**

No.

Agency Director's Verification of Review

I have reviewed these proposals and verify that, at this stage of the regulation's development, these questions have been accurately addressed.

Thomas "Rocky" Thompson
Interim Director
Division of Medicaid & Long-Term Care
Department of Health and Human Services

6/19/2017
Date

FISCAL IMPACT STATEMENT

Agency: **Department of Health and Human Services**	
Title: 471	Prepared by: Denise Woolman
Chapter: 3	Date prepared: 6.5.17
Subject: Payment for Services	Telephone: 402.471.0569

Type of Fiscal Impact:

Please check all that apply

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(☐)	(☒)	(☐)
Increased Costs	(☐)	(☐)	(☐)
Decreased Costs	(☒)	(☐)	(☐)
Increased Revenue	(☐)	(☐)	(☐)
Decreased Revenue	(☐)	(☐)	(☒)
Indeterminable	(☐)	(☐)	(☐)

Provide an Estimated Cost & Description of Impact:

State Agency: Decreased cost to the state of annual Medicare/Medicaid crossover payments at an estimated savings to the state of ($11,261,571.07).

Political Subdivision:

Regulated Public: This change will potentially reduce payments made to providers for Medicaid dual eligible clients.

	Total Fund Savings	Federal Funds	General Funds
SFY18	$ (23,646,343.45)	$ (12,384,772.38)	$(11,261,571.07)

If indeterminable, explain why: