

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

July 22, 2019
10:00 a.m. Central Time
Nebraska State Office Building – Lower Level B
301 Centennial Mall South, Lincoln, Nebraska

The purpose of this hearing is to receive comments on the proposed REPEAL of Title 402, Chapter 1 of the Nebraska Administrative Code (NAC) – *Grants from the Nursing Facility Conversion Cash Fund*. The regulations are proposed for REPEAL in their entirety as the program governed by these regulations ended in 2005 and funding has been discontinued. These regulations are no longer necessary.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

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) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. 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.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 402	Prepared by: Catherine Gekas Steeby
Chapter: 1	Date prepared: 3/11/19
Subject: Grants from nursing facility conversion cash fund	Telephone: 420-471-9058

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact:

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

TITLE 402

NEBRASKA HEALTH CARE FUNDING ACT

CHAPTER 1

(Repealed)

TITLE 402 — NEBRASKA HEALTH CARE FUNDING ACT

CHAPTER 1 GRANTS FROM THE NURSING FACILITY CONVERSION CASH FUND

1-001 Scope Of Regulations: These regulations govern grants made from the Nursing Facility Conversion Cash Fund. The regulations implement Neb. Rev. Stat. Sections 71-7605 to 71-7622 and 71-6050 by establishing:

1. An application process for grants,
2. Criteria for nursing facilities to receive funding, including, but not limited to, minimum occupancy rates, allowable costs, and refund methods,
3. Criteria for the rates and amounts for funding, and
4. Other procedures as the Department deems necessary for the proper administration of these grants.

1-002 Definitions: As used in these regulations, unless the context otherwise requires:

Alternatives to Nursing Facility Care means those services included in the program of home and community-based waiver services (HCBS) for aged persons or adults or children with disabilities under the Medical Assistance Program established pursuant to Neb. Rev. Stat. Section 68-1018 and described in 480 NAC 5.

Assisted Living Facility means any institution, facility, place or building as defined in Neb. Rev. Stat. Section 71-2017.01(13) and 175 NAC 4.

Conversion means (a) the remodeling of existing space and, if necessary, the construction of additional space required to accommodate assisted living facility services or any other alternatives to nursing facility care or (b) new construction of an assisted living facility or other alternatives to nursing facility care if existing nursing facility beds are no longer licensed and the Department determines that new construction is more cost effective than the conversion of existing space.

Department means the Nebraska Department of Health and Human Services Finance and Support.

Director means the Director of Finance and Support.

Hospital means a hospital as defined in Neb. Rev. Stat. Section 71-2017.01 that is eligible to have swing beds.

Medical Assistance Program means the program established under Neb. Rev. Stat. Section 68-1018 and referred to as "Medicaid" in these regulations.

~~Nursing Facility means (i) a facility licensed as a nursing facility, a skilled nursing facility, or an intermediate care facility as such terms are defined in Neb. Rev. Stat. Section 71-2017.01, (ii) a long-term care hospital or a distinct part of a hospital, as such terms are defined in Neb. Rev. Stat. Section 71-2017.01 which is primarily devoted to providing the care and services enumerated in subdivision (10), (11), or (20) of Neb. Rev. Stat. Section 71-2017.01, or (iii) a hospital as defined in Neb. Rev. Stat. Section 71-2017.01 which is eligible to have swing beds, but nursing facility does not include an intermediate care facility for the mentally retarded as defined in Neb. Rev. Stat. Section 71-2017.01.~~

~~Nursing Home Advisory Council means the council established in Neb. Rev. Stat. Section 71-6044.~~

~~Policy Cabinet means the Director of Health and Human Services, the Director of Regulation and Licensure, the Director of Finance and Support, the Policy Secretary, and the Chief Medical Officer, if one is appointed under Neb. Rev. Stat. Section 81-3201, and is not intended to create or imply the creation of a separate legal entity or a public body subject to Neb. Rev. Stat. Sections 84-1408 to 84-1414.~~

~~Swing beds means beds which may be used for acute or long-term care in a facility under Title XVIII of the federal Social Security Act, as amended, located in an area which is not designated as urban by the United States Bureau of the Census and with up to fifty beds, excluding beds for newborns and intensive-care-type units.~~

~~Unit means a residential living space within an assisted living facility, or a respite care living space within an assisted living or nursing facility.~~

~~1-003 General: Grants are available to nursing facilities from the Nursing Facility Conversion Cash Fund for capital or one-time expenditure costs, including, but not limited to, startup and training expenses and operating losses for the first year, for conversion of all or a portion of a nursing facility to an assisted living facility or alternatives to nursing facility care.~~

~~A grant shall not be used to expand resident capacity of an existing nursing facility beyond the current structural parameters of the building except as provided in this section. A grant may be used for additional space when required to accommodate related supportive services, such as dining rooms, kitchen and recreation areas or other community use areas. The applicant must demonstrate to the Department that any new construction of assisted living units, which would expand the facility beyond the current structural parameters of the existing building, is more cost effective than the conversion of existing space and must agree that a specified number of existing nursing facility beds will not continue to be licensed.~~

~~There is no entitlement to any funds available for grants awarded pursuant to these regulations. The Department may award grants to the extent funds are available and, within its discretion, to the extent that applications are approved. Denial of approval of an application in one year does not preclude submission of an application in a subsequent year. A denial of an application or other adverse action is not appealable.~~

~~1-004 Eligibility: Any nursing facility that is currently enrolled and has been a nursing facility provider with the Medicaid program for the last three years is eligible to apply for a Nursing Facility Conversion grant.~~

~~Within the definition of a Nursing Facility, a hospital that is both: 1) a long-term care hospital or a distinct part of a hospital (ii in nursing facility definition), and 2) a hospital which is eligible to have swing beds (iii in nursing facility definition), must apply as a long-term care hospital or a distinct part of a hospital, and is not permitted to apply as a hospital which is eligible to have swing beds.~~

~~Within any current application period, a hospital which is eligible to have swing beds shall only be eligible if such hospital has first notified in writing all other nursing facilities within a twenty-mile radius of such hospital of the intent to submit a proposal for such a grant within the current annual calendar and no nursing facility so notified responds in writing to the hospital within thirty days after such notice that it intends to submit a proposal in the current annual calendar. Such hospital shall file a copy of the intent to submit a proposal with the department and shall file a copy of any response from another nursing facility with the department. If a nursing facility responds to a hospital notice that the nursing facility intends to submit a proposal for such a grant but does not, within the current annual calendar, submit such a proposal or if it submits and then withdraws such a proposal, the hospital shall be eligible to apply for a grant for conversion to assisted living services either within the current annual calendar or within the next annual calendar unless another nursing facility within a twenty-mile radius of the hospital has responded that the nursing facility intends to submit a proposal in the current annual calendar and submits such a proposal on timely basis and does not withdraw the proposal from consideration.~~

~~1-005 Funding Available: Grants are available for the costs of unit conversion for a maximum of \$1,100,000 per nursing facility with a maximum per unit of \$52,000.~~

~~Grants are available for the costs of conversion for alternatives to nursing facility care other than assisted living and respite care units for a maximum of \$100,000 per nursing facility.~~

~~Non-governmental grantees shall provide 20% of the total cost of any conversion.~~

~~Architectural and Financial Review allowances are available for a maximum of \$15,000, not to exceed actual costs, for the first facility, and \$5,000 for each subsequent facility when more than one facility is owned by an applicant.~~

~~1-006 Application Process: Within the application period calendar established by the Department, in response to the Department's request for applications, nursing facilities submit to the Department an application that includes:~~

1. _____ A Notice of Interest in conversion, which may include a request for an Architectural and Financial Review Allowance;
2. _____ A report of the comments received from the public regarding the conversion after a public meeting held for that purpose;
3. _____ The results of an Architectural and Financial Review, and
4. _____ A request for a conversion grant.

The various parts of the application described above are submitted in stages in accordance with the application period calendar contained in the Department's request for applications.

1-007 Grant Approval Criteria: For each application period, the Department, with the advice of the Policy Cabinet and the Nursing Home Advisory Council, shall, within its discretion, and to the extent funds are available and applications are approved, award grants and allowances based on demonstration by the applicant that:

1. _____ Conversion will offer efficient and economical care to individuals requiring long-term care services in the area.
2. _____ Assisted living services or other alternatives to nursing facility care are unlikely to be available in the area for individuals eligible for services under the Medicaid program.
3. _____ The resulting reduction in the availability of nursing facility services is not expected to cause undue hardship on those individuals requiring nursing facility services.
4. _____ The conversion will result in a lower reimbursement rate under the Medicaid program.
5. _____ In addition to the above criteria, a nongovernmental nursing facility is eligible for a grant if it is located in an under-served area and if no governmental nursing facility serving that area can or is willing to be converted. Under-served areas are deemed to be those where 9.7% of the number of individuals age 75 and over is not greater than the number of currently licensed nursing facility beds.

1-007.01 The Department may consider additional information gathered through its own research or submitted by the applicant in making a final determination that an area is under-served. Such additional information may include, but is not limited to:

1. _____ A comparison of the need for nursing facility beds by County. Need shall be based on the use of nursing facility beds within each County, based on the rate of use of nursing facility beds by persons aged 75 and over, projected to the year 2010. Population data utilizes the latest projection by the University of Nebraska Bureau of Business Research. Facilities located in Counties with the highest use of nursing facility beds have the highest priority, subject to the order of priority under 402 NAC 1-008.

2. ~~The current number of elderly and persons with disabilities and the projected number of such persons;~~
3. ~~The current number of elderly and person with disabilities requiring professional nursing care and the projected number of such persons;~~
4. ~~The current availability of alternatives to nursing facility care and known changes in the availability of alternatives to nursing facility care; and~~
5. ~~Availability of access to these services by individuals eligible for Medicaid.~~

1-008 Award Priority: ~~The Department shall award grants for approved applications for conversion in the following order of priority:~~

~~Government owned nursing facilities for conversion of all beds,
Government owned nursing facilities for partial conversion of beds,
Government owned nursing facilities for conversion to other alternatives to nursing facility care,
Non-profit nursing facilities for conversion of all beds,
Non-profit nursing facilities for partial conversion of all beds,
Non-profit nursing facilities for conversion to other alternatives to nursing facility care,
Proprietary nursing facilities for conversion of all beds,
Proprietary nursing facilities for partial conversion of beds, and
Proprietary nursing facilities for conversion to other alternatives to nursing facility care.~~

1-009 Contract Documents: ~~Grants awarded to eligible applicants by the Department are subject to Neb. Rev. Stat. Sections 71-7605 to 71-7613 and 71-6050 and these implementing regulations. The request for applications, the approved application, the notice of award, and any amendments to these documents as approved by the Department constitute the contract documents governing the grant.~~

1-010 Terms and Conditions: ~~By submitting an application for a Nursing Facility Conversion grant, including a request for an Architectural and Financial Review allowance, the applicant agrees, that should the Department award funds to it, the following Terms and Conditions apply to the award of funds.~~

1-010.01 Costs: ~~The Grantee may expend Nursing Facility Conversion funds awarded to it only in accordance with its application approved by the Department for costs that are directly attributable to the costs of conversion. Costs used by nongovernmental grantees to match grant funds must be allowable and directly attributable to the costs of conversion.~~

1-010.01A Examples of allowable costs include:

1. ~~Professional fees incurred specifically for conversion of facility, including architectural, financial, legal, human resources, research and marketing.~~

2. ~~Construction costs for the remodeling of existing space and, if necessary, the construction of additional space required to accommodate assisted living facility services or other alternatives to nursing facility care, or new construction of an assisted living facility or other alternative to nursing facility care if existing nursing facility beds are no longer licensed and the Department determines that new construction is more cost effective than the conversion of existing space.~~
3. ~~Startup and training expenses and operating losses for the first year. Examples include payroll and related employer costs, and supplies.~~

1-010.01B ~~Examples of non-allowable costs include:~~

1. ~~Costs of travel, personal benefits, and other facility programs or investments, or for any other purpose not identified and approved by the Department.~~
2. ~~Construction costs to retrofit nursing facility space that will remain in use for nursing facility care.~~
3. ~~Any costs incurred above pre-unit grant amounts.~~

1-010.02 ~~Minimum Occupancy Rate:~~ ~~The Grantee agrees, for a minimum of ten years after the date the Grantee begins operation of its facility as an assisted living facility, to maintain a minimum occupancy rate of both 40% of the units and 40% of the residents for individuals eligible for services under Medicaid, subject to the demand for occupancy by Medicaid eligible individuals.~~

1-010.03 ~~Refund of Grant:~~ ~~The Grantee agrees that in the event the Grantee or its successor in interest ceases to operate an assisted living facility or other alternative to nursing facility care during the ten-year period after the date the Grantee begins operation of its facility as an assisted living facility or other alternative to nursing facility care, to refund to the Nursing Facility Conversion Cash Fund, on an amortized basis, the amount of the grant.~~

1-010.04 ~~Offset:~~ ~~The Department may deduct the amount of any refund due from a Grantee from any money owed by the Department to such Grantee or the Grantee's successor in interest.~~

1-010.05 ~~Non-governmental Grantees:~~ ~~Non-governmental grantees shall comply with the following:~~

1-010.05A ~~A non-governmental grantee shall submit annually cost reports to the Department, in conformance with the Department's policies and procedure, regarding the conversion project for a period of ten years after the date the Grantee begins operation of its facility as an assisted living facility or other alternative to nursing facility care.~~

~~1-010.05B A non-governmental grantee shall provide 20% of the total cost of any conversion and shall certify the same in conformance with the Department's policies and procedures.~~

~~1-010.06 Records: The Grantee must maintain the following records:~~

~~1-010.06A Resident census records that identify private pay residents separate from those residents funded through Medicaid.~~

~~1-010.06B Complete and separate records regarding the expenditure of Nursing Facility Conversion Trust funds for the grant amounts received. The Grantee shall allow access at reasonable time by duly authorized representatives of the Department and the Nebraska Auditor of Public Accounts to such records for the purpose of conducting audits and examinations and for preparing excerpts and transcripts. Such access to records shall continue for a period of three years from the date the Grantee begins operation as an assisted living facility or other alternative to nursing facility care.~~

~~1-010.07 Grantees must comply with all local, state, and national codes pertaining to construction.~~

~~1-010.08 Grantees must reduce, for the ten-year period described in 402 NAC 1-010.03, the licensed nursing facility beds by an amount equal to or greater than the number of assisted living units created through conversion.~~

~~1-010.09 Grantees must have and implement a drug-free workplace policy.~~

~~1-010.10 Grantees must accept financial responsibility for all incidental costs related to project completion.~~

~~1-010.11 Architectural and financial reviews must be completed within 90 days from date of Department's approval to proceed with the Architectural and Financial Review. The applicant may submit a written request for an extension of this time period that includes reasons for the additional time. The Department may approve the request upon good cause shown.~~

~~1-010.12 Grantees are not permitted to segregate Medicaid residents in an area, section, or portion of an assisted living facility. Grantees shall allow a resident who is converting from private pay to Medicaid to remain in the resident's living unit and shall not relocate the resident solely due to a change in payment status.~~

Effective: _____ NEBRASKA HEALTH AND HUMAN SERVICES
January 1, 2002 _____ FINANCE AND SUPPORT _____ 402 NAC 1

~~1-010.13~~ Grantees that continue to provide nursing facility level of care agree, for the ten-year period described in ~~402 NAC 1-010.03~~, not to add any additional licensed nursing facility beds.

~~1-010.14~~ Grantees that do not continue to provide nursing facility level of care agree, for the ten-year period described in ~~402 NAC 1-010.03~~, not to establish any licensed nursing facility beds.