

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
NOTICE OF PUBLIC HEARING

August 22, 2019  
1:00 p.m. Central Time  
Gold's Building – Room 534  
1033 O Street, Lincoln, Nebraska

The purpose of this hearing is to receive comments on proposed changes to Title 471 Chapter 25 of the Nebraska Administrative Code (NAC) - *School-Based Services*. These regulations govern services provided in schools under the Medical Assistance Act and (Neb. Rev. Stat.) §§ 68-901 to 68-991, and Neb. Rev. Stat. § 43-2511. The proposed changes expand the services delivered in schools that are available to receive reimbursement by Nebraska Medicaid. The proposed additional services to be added for reimbursement are: nursing, mental health, personal assistance services, vision, and transportation.

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](mailto: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: <b>Department of Health and Human Services</b>	
Title: School-Based Services	Prepared by: Jennifer Irvine
Chapter: 25	Date prepared: 12.6.18
Subject: Special Education School Based Services	Telephone: 402-471-5234

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	( <input type="checkbox"/> )	( <input checked="" type="checkbox"/> )	( <input checked="" type="checkbox"/> )
Increased Costs	( <input checked="" 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: DHHS, Division of Medicaid and Long-Term Care

	Total Funds	General Funds	Federal Funds
SFY18	\$12,442,400	\$0	\$12,442,400
SFY19	\$15,677,424	\$0	\$15,677,424

It is important to note that the General Funds portion of services for school based services are met through CPE with the Nebraska Department of Education and not a direct expenditure from the Medicaid general fund. The Additional amounts of CPE for the GF portion in SFY 2018 is \$11,315,274 and in SFY2019 is \$13,764,278.

Political Subdivision:

Regulated Public:

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NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

471 NAC 25

TITLE 471            NEBRASKA MEDICAL ASSISTANCE PROGRAM SERVICES

CHAPTER 25        SCHOOL-BASED SERVICES

001. SCOPE AND AUTHORITY. These regulations govern services provided in schools under the Medical Assistance Act, Nebraska Revised Statute (Neb. Rev. Stat.) §§ 68-901 to 68-991, and Neb. Rev. Stat. § 43-2511.

002. DEFINITIONS. The following definitions apply:

002.01 ACTIVITIES OF DAILY LIVING. Self-care activities routinely performed daily for an individual's continued well-being, including mobility and transferring, dressing and grooming, bathing and personal hygiene, toileting, bladder care, and eating.

002.02 TRANSPORTATION. Transportation paid by Medicaid for a student both to and from a Medicaid reimbursable service required by the student's Individual Education Plan (IEP) or Individualized Family Service Plan (IFSP).

002.03 OUTSIDE MEDICAL SERVICE. A medical service received in a facility not located on the premises of the educational facility the student attends.

002.04 PROVIDER. An enrolled Medicaid provider that is also a public school district, Education Services Unit (ESU), or approved cooperative.

002.05 SPECIALLY ADAPTED VEHICLE. A vehicle equipped with adaptive devices to medically accommodate physical disabilities of passengers.

002.06 TRANSPORTATION AIDE. An individual who assists with passenger needs and transportation accommodations required by a student's Individual Education Plan (IEP) or Individualized Family Service Plan (IFSP).

003. PROVIDER REQUIREMENTS. To participate in school-based services, a provider must comply with all applicable provider participation requirements of 471 Nebraska Administrative Code (NAC) Chapters 2 and 3, and this chapter. If any applicable provider participation provision of 471 NAC Chapters 2 or 3 conflicts with any requirement of this chapter, the requirement of this chapter governs. Each person providing school-based services must be enrolled as an affiliated group member under the billing provider identification, provide services in compliance with any applicable requirements for licensure or certification, provide services in compliance with any applicable chapters of 471 NAC, be age 19 or older, and be employed by or under contract with the provider.

004. DIRECT SERVICE REQUIREMENTS.

004.01 GENERAL SERVICE REQUIREMENTS. School-based services must be medically necessary to meet the specific and covered needs of a student and the student's family, if applicable, and be required by:

- (A) A related service or supplementary aid or service in an Individual Education Program (IEP); or
- (B) An early intervention service in an Individualized Family Service Plan (IFSP).

004.02 SPECIFIC COVERED SERVICES AND REQUIREMENTS. When indicated in a child's Individual Education Plan (IEP) or Individualized Family Service Plan (IFSP), the following are covered services within school-based services.

004.02(A) DIRECT SERVICES. Direct services that are available in the schools include:

- (i) Physical therapy, occupational therapy, and speech pathology audiology services;
- (ii) Behavioral modification, psychotherapy services, psychological testing, and assessment needs for specific therapy services and evaluation, when not only medically necessary, but also:
  - (1) Necessary to diagnose, treat, cure, or prevent regression of significant functional impairments resulting from symptoms of a mental health disorder diagnosis;
  - (2) Supported by evidence that the treatment improves symptoms and functioning for the individual client's mental health or substance use disorder diagnosis; and
  - (3) Reasonably expected to improve the individual's condition or prevent further regression so that the services will no longer be necessary;
- (iii) Nursing services, when provided through direct intervention in a face-to-face encounter;
- (iv) Personal assistance services, which assist with activities of daily living (and other activities listed in 471 NAC Chapter 15) and supplement a child's own personal abilities and resources, when approved by a physician and provided by someone other than a legally responsible relative;
- (v) Transportation to an outside medical service, including the assistance of a Transportation Aide and the use of a specially adapted vehicle, subject to the following:
  - (1) The student must be in attendance at school on the day of the medical service to receive transportation services, and cannot be taken directly from home to the medical service;
  - (2) Medical services must be provided on the same day as the transportation;
  - (3) Only one round trip transportation per student is covered each day; and,
  - (4) The transportation cannot duplicate what would otherwise have been received in the course of attending school; and
- (vi) Visual care services to diagnose or treat a specific eye disorder, disease, symptom, complaint, or injury, and vision therapy. One assessment per calendar year is permitted, which must be performed in the school by a licensed optometrist.

005. INDIRECT SERVICES (NEBRASKA EDUCATION-BASED MEDICAID ADMINISTRATIVE CLAIMING).

005.01 INDIRECT SERVICES. Reimbursement for indirect services, such as outreach that supports Medicaid services, are allowed if reasonable and necessary for the proper and efficient administration of Medicaid and if allowable according to the Nebraska Education-Based Medicaid Administrative Claiming (NEBMAC) Guide.

006. REIMBURSEMENT METHODOLOGY FOR SCHOOL-BASED SERVICES: DIRECT AND INDIRECT SERVICES.

006.01 ADHERENCE TO NEBRASKA EDUCATION-BASED MEDICAID ADMINISTRATION (NEBMAC) GUIDE. All claims submitted by a provider must be based on random moment time studies which comply with the requirements of the Nebraska Education-Based Medicaid Administrative Claiming (NEBMAC) Guide, dated September 1, 2017, which is adopted and incorporated herein by this reference. A copy of the Nebraska Education-Based Medicaid Administrative Claiming Guide is available on the Department's website or by request at 301 Centennial Mall South, P.O. Box 95026, Lincoln, NE 68509-5026.

006.02 RETENTION OF RECORDS. Each public school district or Educational Service Unit (ESU) and approved cooperative participating in Medicaid administrative claiming must separately retain time-study methodology, instructions, financial accounting records, and other documents or records related to participation for a minimum of six years.

006.03 TIMELY FILING REQUIREMENTS. School districts, Educational Service Units (ESU's) and approved cooperatives must file their claims no later than 15 months from the end of the quarter in which direct services or indirect services were provided.

006.04 PAYMENT METHODOLOGY. Expenditures for direct school-based health services that are within the scope of Medicaid coverage and furnished to Medicaid eligible children may be claimed as medical assistance. Expenditures for administrative activities in support of these school-based services including outreach and coordination may be claimed as costs of administering Medicaid.

006.04(A) DIRECT SERVICE QUARTERLY INTERIM SETTLEMENTS. Quarterly interim settlements for services will be based on the quarterly random moment time study (RMTS) and use of the interim cost reports compiled on a quarterly basis. The cost report then calculates the amount of reimbursement that each school district is eligible to receive as an interim payment.

006.04(A)(i) ANNUAL SETTLEMENT. On an annual basis, a cost settlement process must be completed by each school district. Each school district completes an annual cost report which compares their total Medicaid-allowable costs from the year to each school district's Medicaid interim payments delivered during the quarterly reporting periods, to determine the final cost reconciliation and settlement. If a provider's interim payments exceed the actual, certified costs for Medicaid services provided in schools

DRAFT  
02-14-2019

NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

471 NAC 25

to Medicaid clients, the provider must remit the federal share of the overpayment at the time the annual settlement cost report is submitted.

~~CHAPTER 25-000 SPECIAL EDUCATION SCHOOL-BASED SERVICES:~~ This chapter provides for a statewide billing system for accessing federal Medicaid funds for special education services provided by school districts, as authorized by Neb. Rev. Stat. § 43-2511. To be eligible for Medicaid payment, services must be provided in accordance with all regulations and statutes relating to the provision of approved services and the licensure, certification, and registration of therapists, therapy/therapist assistants, and aides/paraprofessionals, including:

- ~~1. The Uniform Licensing Law (Neb. Rev. Stat. §§ 71-101 to 71-1,107.30, 71-1,133 to 71-1,338, 71-1,343 to 71-1,361, 71-1301 to 71-1354, and 71-2801 to 71-2823);~~
- ~~2. The Occupational Therapy Practice Act (Neb. Rev. Stat. §§ 71-6101 to 71-6123);~~
- ~~3. The Physical Therapy Practice Act (Neb. Rev. Stat. §§ 71-1,362 to 71-1,389);~~
- ~~4. Neb. Rev. Stat. §§ 71-1,186 to 71-1,196, known as the Audiology and Speech-Language Pathology Practice Act;~~
- ~~5. Regulations for Certificate Endorsements, Title 92 Chapter 24 of the Nebraska Administrative Code (NAC);~~
- ~~6. Regulations and Standards for Special Education Programs, 92 NAC 51; and~~
- ~~7. Regulations for the Approval of Teacher Education Programs, 92 NAC 20.~~

~~25-001 Standards for Participation:~~ To participate in the Nebraska Medical Assistance Program (NMAP/Medicaid), the “Pay-to-Provider” must be a recognized public school district of the State of Nebraska and enrolled in accordance with 471 NAC 25-002. Each therapist, therapist assistant, or aide/paraprofessional providing Special Education School-Based Services must also meet the following criteria:

~~25-001.01 Occupational Therapist:~~ An occupational therapist providing services in Nebraska must be licensed by the Nebraska Department of Health and Human Services Regulation and Licensure (HHS R&L) in accordance with all regulations and statutes relating to the licensure of occupational therapists.

~~25-001.01A Occupational Therapy Assistant:~~ If services are provided by an occupational therapy assistant under the supervision of a licensed occupational therapist, the occupational therapy assistant must be licensed by HHS R&L in accordance with all regulations and statutes relating to the licensure of occupational therapy assistants.

~~25-001.02 Physical Therapist:~~ A physical therapist providing services in Nebraska must be licensed by HHS R&L in accordance with all regulations and statutes relating to the licensure of physical therapists.

~~25-001.02A Physical Therapist Assistant:~~ If services are provided by a physical therapist assistant under the supervision of a licensed physical therapist, the physical therapist assistant must be certified by HHS R&L in accordance with all regulations and statutes relating to the certification of physical therapist assistants.

~~25-001.03 Audiologist and Speech-Language Pathologist:~~ An audiologist or speech-language pathologist providing services in Nebraska must be licensed by HHS R&L or certified by the Nebraska Department of Education in accordance with all regulations and statutes relating to the licensure or certification of audiologists and speech-language pathologists.

MANUAL LETTER # 52-2006 AND SUPPORT MANUAL 471 NAC 25-001.03A

~~25-001.03A Communication Assistant/Audiology Assistant (AA)/Speech-Language Pathology Assistant (SLPA): If services are provided by a communication assistant/AA/SLPA under the supervision of a licensed audiologist or speech-language pathologist, the communication assistant/AA/SLPA must be registered by HHS R&L in accordance with all regulations and statutes relating to the registration of communication assistants/AA's/SLPA's.~~

~~25-001.04 Personal Assistance/Care Services Aide/Paraprofessional: A motor activity paraprofessional, speech language technician, (occupational, physical, or speech-language) therapy aide, or other paraprofessional providing therapy-related personal assistance services related to the above listed therapies not licensed, certified or registered as outlined above must provide services in accordance with the provisions of the "Regulations and Standards for Special Education Programs" in 92 NAC 51 and all regulations and statutes governing the discipline for which the aide/paraprofessional is functioning.~~

~~25-001.05 Therapists Providing Services in Another State: Consideration will be given for an occupational therapist, physical therapist, or audiologist/speech-language pathologist providing services in another state to a Nebraska resident child/student. The therapist must be in good standing with and duly licensed by the licensing agency of the state where services are provided. However, information required of any therapist must be included with that of each enrolled public school district (Pay to Provider) as outlined in 471 NAC 25-002.~~

~~25-002 Provider Enrollment: To be enrolled for participation in the Nebraska Medical Assistance Program, a public school district must submit a signed and completed Form MC-19, "Medical Assistance Provider Agreement" (see 471-000-90) to be approved for provider enrollment by the Nebraska Department of Health and Human Services Finance and Support Claims Processing—Provider Enrollment Unit.~~

~~25-002.01 Service Rendering Provider: Completed Medical Assistance Provider Agreements must include the name, social security number, and license number of all licensed therapists (service rendering providers) who provide Special Education School-Based Services or who are responsible for the supervision of licensed, certified, or registered therapist assistants providing therapy services.~~

~~25-003 Definition of Covered Services: The Nebraska Medical Assistance Program (NMAP/Medicaid) covers Special Education School-Based Services under this chapter for individuals when services are provided in accordance with all regulations and statutes governing the provision of Special Education School-Based Services to resident children of the State of Nebraska and the following criteria are met:~~

~~25-003.01 Provision of Special Education School-Based Services: All Special Education School-Based Services covered under this chapter must be necessary to meet the unique needs of the child/student and family and recommended as:~~

- ~~1. A related service or supplementary aid/service (92 NAC 51-007.05B3) in an Individual Education Program (IEP); OR~~



REV. OCTOBER 4, 2006 NEBRASKA HHS FINANCE NMAP SERVICES  
MANUAL LETTER # 52-2006 AND SUPPORT MANUAL 471 NAC 25-003.01

2. ~~An early intervention service (92 NAC 51-007.10B4) in an Individualized Family Service Plan (IFSP);~~

~~25-003.01A All occupational therapy, physical therapy, and audiology/speech-language pathology must be provided in accordance with all regulations and statutes governing the provision of occupational therapy, physical therapy, and audiology/speech-language pathology in force at the time each discipline (therapy) is provided. Additionally, each therapy must be:~~

1. ~~Referred or prescribed by a physician, physician's assistant, or certified nurse practitioner. If services are referred or prescribed by a physician's assistant, corresponding claims must include the license number of the supervising physician to whom the referring/prescribing physician's assistant is assisting; and~~
2. ~~Provided by or under the supervision of a licensed therapist as applicable according to all regulations and statutes governing the provision of the Special Education School-Based Services.~~

~~25-003.02 Personal Assistance/Care Services: Personal assistance/care services provided in conjunction with occupational therapy, physical therapy, and audiology/speech-language pathology outlined above but provided by a motor activity paraprofessional, (occupational, physical, or audiology/speech-language) therapy aide, speech language technician, personal assistant, or other paraprofessional, in addition to the applicable requirements listed above, must be provided "under the direction" of a licensed therapist meeting the requirements outlined in 471 NAC 25-001.01, 25-001.02, and 25-001.03 respectively for the therapy/discipline indicated. "Under the direction of" means a licensed therapist actively participated in the development and periodic reevaluation and/or review of procedures for screening, diagnosis, or corrective services for eligible students through the development of the:~~

1. ~~Student Assistance Team (SAT);~~
2. ~~Multidisciplinary Team (MDT);~~
3. ~~Individual Education Program (IEP) or;~~
4. ~~Individualized Family Service Plan (IFSP).~~

~~25-004 Billing Requirements: The public school district (Pay to Provider) must bill for Special Education School-Based Services using the appropriate MIPS Claim Form. Separate claims must be submitted for each month for each type of service (OT, PT, or ST) provided for each client/student.~~

~~25-004.01 Service Rendering Provider: When services are provided by a licensed therapist or licensed therapy assistant, MIPS claims must include the Social Security Number (SSN) of the individual therapist (service rendering provider) assuming responsibility for the service(s) provided. When only personal assistance/care services are included in the claim, an SSN is not required.~~

~~25-005 Establishing Payment Rates: Reimbursement rates for Medicaid covered services provided to students in accordance with all regulations and statutes governing the provision of Special Education School-Based Services are established for each of the following:~~

- ~~1. Occupational Therapy Services;~~
- ~~2. Physical Therapy Services;~~
- ~~3. Speech and Language Therapy/Audiology Services; and~~
- ~~4. Personal Assistance/Care Services.~~

~~Rates for each of the above listed services are established as provided in the Nebraska State Medicaid Plan on the basis of the actual cost to public school districts in each of the following areas, respectively:~~

- ~~1. Omaha Public Schools (Douglas County School District #001); and~~
- ~~2. Lincoln Public Schools (Lancaster County School District #001); and~~
- ~~3. All other public school districts in Nebraska (average aggregate cost of each of the services listed above).~~

~~These rates are established based on the Department's review of costs that are consistent with efficiency, economy, and quality of care. The State's review and update of these rates will consider cost information related to therapists' salaries and benefits; support materials and supplies; travel; and indirect costs. The principles and standards for determining reasonable and adequate costs associated with the provision of services are outlined in the Office of Management and Budget (OMB) Circular A-87, "Cost Principles for State and Local Governments".~~