

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
NOTICE OF PUBLIC HEARING

September 30, 2019  
10:00 a.m. Central Time  
Gold's Building, Room 534  
1033 O Street, Lincoln, Nebraska

The purpose of this hearing is to receive comments on adoption of amendments to and repeal of the following regulations:

The following regulation is proposed for AMENDMENT:

462 NAC 1 – *Funding*

The regulations govern funds made available to the Nebraska Homeless Assistance Program through the Homeless Shelter Assistance Trust Fund and the Emergency Solution Grant Fund. The proposed changes will streamline the regulations by: removing any direction to agency staff from the regulations; removing any repeated statutory language from the regulations; and consolidating three chapters of regulations into one chapter. The proposed regulations will address fund distribution and the set aside of emergency discretionary funds.

The following regulations are proposed for REPEAL in their entirety.

462 NAC 2 – *Homeless Shelter Assistance Trust Fund (HSATF)*

462 NAC 3 – *Emergency Shelter Grants Program*

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: 462	Prepared by: Kim Jasa
Chapter: 1 - 3	Date prepared: 05/15/2019
Subject: Nebraska Homeless Assistance Program	Telephone: (402) 471-9676

Type of Fiscal Impact:

	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: None

Political Subdivision: None

Regulated Public: None

If indeterminable, explain why:

TITLE 462  
NEBRASKA HOMELESS ASSISTANCE PROGRAM (NHAP)

~~CHAPTER 1-000 GENERAL PROVISIONS:~~ These regulations govern the grants made from the Homeless Shelter Assistance Trust Fund (HSATF) and the Emergency Shelter Grant Fund (ESGF).

~~1-001 Legal Authority:~~ The HSATF is authorized by Neb. Rev. Stat., sections 68-1601 through 68-1608. The HSATF is funded by 25 cents of the real estate transfer tax per \$1,000 of real estate value sold, per Neb. Rev. Stat., section 76-903.

~~The Emergency Shelter Grants Program (ESGP) is authorized by the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11371-11378). The program authorizes the Secretary of Housing and Urban Development to make grants to states, units of general local government, territories, and Indian tribes (and to private nonprofit organizations providing assistance to homeless individuals in the case of grants made with reallocated amounts).~~

~~1-002 General Requirements for Grantees~~

~~1-002.01 Services:~~ Grantees and recipients must assure that homeless individuals and families are given assistance in obtaining:

- ~~1. Appropriate, supportive services, including permanent housing, medical health treatment, mental health treatment, counseling, supervision, and other services essential for achieving independent living; and~~
- ~~2. Other federal, state, local, and private assistance available to homeless individuals and families.~~

~~1-002.01A Target Populations:~~ Nebraska Homeless Assistance Program funds are targeted to the following homeless and/or near homeless populations:

- ~~1. Jobless;~~
- ~~2. Veterans;~~
- ~~3. Persons with serious mental illness;~~
- ~~4. Persons suffering from substance abuse;~~
- ~~5. Persons living with HIV/AIDS;~~
- ~~6. Victims of domestic violence; and~~
- ~~7. Runaway youth.~~

~~1-002.02 Participation on Policy Making Entity:~~ Each grantee that receives funds must provide for the participation of homeless or formerly homeless individuals on its policymaking entity.

~~1-002.03 Nondiscrimination and Equal Opportunity:~~ A grantee must not discriminate on the basis of race, color, religion, sex, age, national origin, familial status, or disability. The grantee must make known that use of the facilities and services is available to all on a nondiscriminatory basis. The grantee must have procedures to make known their policy of nondiscrimination. Grantees and recipients must also adopt procedures which will make available to interested persons information concerning the location of services and facilities that are accessible to persons with disabilities.

~~1-002.04 Conflicts of Interest: A grantee must not be in a position to obtain a personal or financial benefit from the grant either for himself/herself or for those individuals with whom s/he has family or business ties.~~

~~1-002.05 Relocation and Acquisition: Grantees and recipients must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this program. A displaced person must be provided relocation assistance.~~

~~Grantees and recipients must assure that they will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.~~

~~1-002.05A Appeals: A person who disagrees with the grantee's or recipient's determination concerning a payment or other assistance required by this program may file a written appeal of that determination with the grantee or recipient.~~

~~1-002.06 OMB Circulars: State and local government grantees are subject to the requirements in OMB Circulars No. A-102 and A-87. Private non-profit organizations are subject to requirements in OMB Circulars No. A-110 and A-122. Eligible organizations are subject to the audit guidelines set in federal OMB Circular A-133, "Audit Requirements for Non-Profits," which require that any nonprofit with total annual funding of more than \$300,000 must conduct a certified, annual external audit.~~

~~1-002.07 Lead-Based Paint: Grantees are subject to provisions of the Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act of 1992 and regulations that implement them.~~

~~1-002.08 Labor Standards and Provisions: Grantees are subject to:~~

- ~~1. The Davis-Bacon Act;~~
- ~~2. Section 2 of the June 13, 1934 Act popularly known as The Copeland Anti-Kickback Act;~~
- ~~3. Fair Labor Standards Act of 1938;~~
- ~~4. Contract Work Hours and Safety Standards Act; and~~
- ~~5. Section 3 of the Housing and Urban Development Act of 1968.~~

~~1-002.09 Lobbying: No grant funds may be paid by or on behalf of a grantee to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the grant.~~

~~1-002.10 Environmental Provisions: The grantee is subject to applicable environmental requirements related to:~~

- ~~1. Historic preservation;~~
- ~~2. Floodplain management and wetland protection;~~
- ~~3. Coastal Zone Management;~~
- ~~4. Sole source aquifers;~~
- ~~5. Endangered species;~~
- ~~6. Wild and scenic rivers;~~
- ~~7. Air quality;~~
- ~~8. Farmlands protection;~~

- ~~9. HUD environmental standards; and~~
- ~~10. Environmental justice.~~

~~1-002.11 Confidentiality: Grantees must maintain confidentiality of records pertaining to the provision of family violence prevention or treatment services.~~

### ~~1-003 Limitation on Homeless Prevention Activities~~

~~1-003.01 Religious Organizations: Assistance may be provided to a grantee or recipient that is a primarily religious organization if the organization agrees to provide all eligible activities under this program in a manner that is free from religious influences and in accordance with the following principles:~~

- ~~1. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;~~
- ~~2. It will provide no religious instruction or counseling, conduct no religious services or worship (not including voluntary nondenominational prayer before meetings), engage in no religious proselytizing, and exert no other religious influence in the provision of shelter and other eligible activities under these regulations.~~

~~1-003.02 Rehabilitation or Conversion of Emergency Shelters: Grants may be used to rehabilitate or convert to an emergency shelter a structure that is owned by a primarily religious organization only if:~~

- ~~1. The structure (or portion of it) that is to be renovated, rehabilitated, or converted with ESGP assistance has been leased to an existing or newly established wholly secular organization;~~
- ~~2. The ESGP assistance is provided to the secular organization (and not the religious organization) to make the improvements;~~
- ~~3. The leased structure will be used exclusively for secular purposes available to all persons;~~
- ~~4. The lease payments paid to the primarily religious organization do not exceed the fair market rent for the structure before the renovation, rehabilitation, or conversion;~~
- ~~5. The portion of the cost of any improvements that benefit any unleased portion of the structure will be allocated to, and paid for by, the religious organization; and~~
- ~~6. The primarily religious organization agrees that if the recipient does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the organization will pay to the original grantee (from which the amounts used to renovate, rehabilitate, or convert the building were derived) an amount equal to the residual value of the improvements. A private nonprofit organization must remit to the Department this amount if the organization is the lessee as well as the grantee. The original grantee is expected to use this amount to alleviate homelessness in its jurisdiction, but there is no requirement that funds received after the close of the grant period be used in accordance with these requirements.~~

~~1-003.02A Assistance to a Wholly Secular Private Nonprofit Organization: A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a recipient. The secular organization may be eligible to receive all forms of assistance available with the following requirements:~~

- ~~1. The secular organization agrees to provide shelter and services eligible under these regulations in a manner that is free from religious influences and in accordance with the principles in 462 NAC 1-003.01.~~
- ~~2. The secular organization may enter into a contract with the religious organization to provide essential services or undertake homeless prevention activities. The religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles in 462 NAC 1-003.01.~~
- ~~3. The rehabilitation, conversion, or renovation of emergency shelters are subject to the requirements in 462 NAC 1-003.02.~~

~~The secular organization does not need to be established before the selection of the application. The religious organization may apply on behalf of the secular organization. The application will be reviewed on the basis of the religious organization's financial responsibility and capacity, and its commitment to provide appropriate resources to the secular organization after formation. After formation, a secular organization that is not in existence at the time of the application is required to demonstrate that it meets the definition of a private non-profit organization.~~

~~1-004 Application Form: All grant applications must be made on forms provided by the Nebraska Department of Health and Human Services (the Department) unless otherwise specified. The application and instructions for completing the application will be provided by the Department.~~

~~1-004.01 Joint Applications: Joint grant applications are encouraged. One designated entity must serve as the principal point of contact for administration of the grant application. If a joint grant application is made, a signed copy of the agreement that exists between joint applicants must be provided as a part of the application.~~

~~1-004.02 Application Deadline: The Department will determine the deadline for receipt of the grant application. The Department may in its discretion establish a special deadline for accepting applications.~~

~~Any grant application that is incomplete by the grant application deadline will not be considered for funding in that funding cycle.~~

~~1-005 Grant Application Review: All applications are reviewed for eligibility to ensure that they are consistent with program policy and grant purposes.~~

~~1-005.01 Individuals with Conflict of Interest: Any Department employee or member who sits on any board of a potential grantee that will be submitting a grant application for assistance under the NHAP is prohibited from participating in discussion and voting on a particular project for funding consideration. A conflict of interest must be disclosed by the party and reported to appropriate authorities pursuant to state statutes.~~



~~1-005.02 Deadline for Reviewing Grant Applications:~~ Following the application deadline, the Department has 90 days to score grants and determine grant awards and announcements.

~~1-005.03 Review Team:~~ A Review Team is assembled each year. The members are representatives of the Nebraska Department of Health and Human Services (the Department), the Nebraska Department of Economic Development, the state continuum of care, populations who are served with these funds, and others who address issues related to people who are homeless and near homeless.

~~1-005.04 Funding Priority:~~ The priority in funding will be for services listed in 462 NAC 1-002.01 for the homeless and near-homeless target populations listed in 462 NAC 1-002.01A.

~~1-005.05 Grant Decision:~~ The Department must notify in writing an applicant whose application is not selected. The notification must include the reason for not funding the application.

~~1-005.06 Withdrawn or Cancelled Grants:~~ An applicant may unilaterally withdraw an application at any time before or after the application has been considered by the Department.

~~— If the project is cancelled by the applicant after the funds have been allocated, the applicant must refund unused grant funds allocated by the Department. Funds that have already been expended must, if necessary, be recovered according to existing state law.~~

~~— 1-005.07 Evaluation of Applications:~~ The Department must evaluate each application primarily on the basis of whether the need as stated by the applicant justifies the awarding of the grant. The Department must use the following minimum criteria:

- ~~— 1. The extent to which the applicant addresses the primary purpose of the Homeless Shelter Assistance Trust Fund Act by assisting the alleviation of homelessness, by providing temporary and permanent shelters for homeless persons, by encouraging the development of projects which link housing assistance to programs promoting the concept of self-sufficiency, and by addressing the needs of migrant farm workers;~~
- ~~— 2. The extent to which the applicant's implementation plan provides for adequate professional, non-professional, and volunteer staff to realize objectives;~~
- ~~— 3. The extent to which the applicant works closely with allied agencies and other groups serving the needs of the homeless, including participation in local and regional continuums of care;~~
- ~~— 4. The extent to which the applicant can produce measurable, objective data to support that there is a need and that there is or will be community support, including participation in any homeless management information system data collection planning and implementation through continuums of care; and~~
- ~~— 5. The extent to which the applicant has budgeted operations realistically and is attempting to obtain funds from other sources.~~

1-006 Grant Awards

1-006.01 Awarding of Grants: In making grants pursuant to the Homeless Shelter Assistance Trust Fund Act, the Department must consider but is not limited to the following factors:

- ~~1. The number of night lodging units provided by the applicant as measured by the number of persons housed per night;~~
- ~~2. The number of meals provided by the applicant;~~
- ~~3. Other verifiable units of service provided by the applicant; and~~
- ~~4. The geographic distribution of funds, in order to serve the needs of the homeless throughout the entire state.~~

1-006.01A Distribution of Funds: The Department distributes funds through a formula process according to the population and resulting homeless needs of the state planning regions. A review panel recommends funding levels to the governor up to the total amount of each regional allocation. A more detailed allocation formula is written and reviewed yearly through the State Action Plan.

1-006.02 Grant Agreement: After the Department has approved funding for a grant, the Department and the applicant must execute a grant agreement. Execution of the agreement by the Department constitutes its approval of the grant as described in the approved application. Grants are governed by any applicable provision of state statutes in effect at the time of execution of the agreement and any statute or amendment to any statutes after the execution of the agreement. Any amendment to the agreement must be formally agreed to by both the Department and the grant recipient. The major points of the agreement are as follows:

- ~~1. The agreement must specify the grantee's obligations including the rules and regulations applicable to the conduct of a program under the Act, and any special terms and conditions to the program established by the Department.~~
- ~~2. The agreement will specify the overall funding approved and must contain an established budget for the program. The agreement must also specify the program; what is to be done; how the program will be accomplished; the applicant's responsibilities for program planning, accounting, auditing, and other similar matters.~~

1-006.03 Amendment: At the discretion of the Department, grant agreements for approved grants may be amended to increase or decrease the scope of the grant, if funds are available. A grant amendment which involves a change in purpose or scope must be approved by the Department.

TITLE 462 - HOMELESS ASSISTANCE PROGRAM

CHAPTER 2 - (Repealed)

TITLE 462

HOMELESS ASSISTANCE PROGRAM

CHAPTER 3 -

(Repealed)

~~CHAPTER 1-000 GENERAL PROVISIONS~~

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- ~~1-002 General Requirements for Grantees~~
  - ~~1-002.01 Services~~
    - ~~1-002.01A Target Populations~~
  - ~~1-002.02 Participation on Policy Making Entity~~
  - ~~1-002.03 Nondiscrimination and Equal Opportunity~~
  - ~~1-002.04 Conflicts of Interest~~
  - ~~1-002.05 Relocation and Acquisition~~
    - ~~1-002.05A Appeals~~
  - ~~1-002.06 OMB Circulars~~
  - ~~1-002.07 Lead-Based Paint~~
  - ~~1-002.08 Labor Standards and Provisions~~
  - ~~1-002.09 Lobbying~~
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- ~~1-003 Limitation on Homeless Prevention Activities~~
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- ~~1-004 Application Form~~
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  - ~~1-005.06 Withdrawn or Cancelled Grants~~
  - ~~1-005.07 Evaluation of Applications~~
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- ~~2-002 Purpose~~
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- 2-008 Grantee Performance Requirements
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TITLE 462 NEBRASKA HOMELESS ASSISTANCE PROGRAM

CHAPTER 1 FUNDING

001. GENERAL PROVISIONS. These regulations govern funds made available to the Nebraska Homeless Assistance Program through the Homeless Shelter Assistance Trust Fund and the Emergency Solution Grant Fund.

001.01 LEGAL AUTHORITY. The Homeless Shelter Assistance Trust Fund is authorized by Nebraska Revised Statute Sections 68-1601 through 68-1608. The Emergency Solutions Grant is authorized by Title IV of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§11371-11378 and the Federal Code of Regulations 24 CFR § 576. The Nebraska Homeless Assistance Program is administered by the Nebraska Department of Health and Human Services, in compliance with the Nebraska statutes governing the Homeless Shelter Assistance Trust Fund, the federal statutes and regulations governing the Emergency Solutions Grant and the Consolidated State Plan prepared by the Nebraska Department of Economic Development and the Department.

001.02 FUND DISTRIBUTION. The funds for the program are distributed across the state to eligible agencies through a competitive application process. The Nebraska Homeless Assistance Program posts the notice of funding opportunity publicly on the Nebraska Department of Health and Human Service's website.

001.03 SET ASIDE OF EMERGENCY DISCRETIONARY FUNDS. The Nebraska Department of Health and Human Services will set aside up to \$75,000 of the Homeless Assistance Trust Fund to be used for emergency or for discretionary situations that occur outside of the annual Homeless Shelter Assistance Trust Fund program cycle, related to the support of homeless and near homeless populations.