

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

October 18, 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 proposed changes to Title 202, Chapter 1 of the Nebraska Administrative Code (NAC) – *Determining Ability to Pay for Supports and Services Funded by the Nebraska Department of Health and Human Services*. The regulations govern the determination of an applicant's or a beneficiary's ability to pay for services funded by the Department of Health and Human Services when the services are provided by state institutions and developmental disability providers of community-based services. The proposed changes remove any repeat of statutory language or internal agency process from the regulations; update formatting; update internal references within the regulations; and modified the hardship waiver section. Ability to pay calculations have not changed.

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: 202	Prepared by: Joe Dondlinger
Chapter: 1	Date prepared: 4/30/2019
Subject: Ability to Pay	Telephone: 402-471-7855

	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: [N/A](#)

Political Subdivision: [N/A](#)

Regulated Public: [N/A](#)

If indeterminable, explain why:

~~TITLE 202 OPERATIONS WITHIN FACILITIES AND COMMUNITY-BASED
SERVICES FOR PERSONS WITH MENTAL ILLNESS OR DEVELOPMENTAL
DISABILITIES~~

~~CHAPTER 1 DETERMINING ABILITY TO PAY FOR SUPPORTS AND SERVICES
FUNDED BY THE NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES~~

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~~TITLE 202 OPERATIONS WITHIN FACILITIES AND COMMUNITY-BASED SERVICES FOR PERSONS WITH MENTAL ILLNESS OR DEVELOPMENTAL DISABILITIES~~

~~CHAPTER 1 DETERMINING ABILITY TO PAY FOR SUPPORTS AND SERVICES FUNDED BY THE NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES~~

~~1-001 SCOPE AND AUTHORITY:~~ These regulations govern the determination of the ability to pay for all services funded by the Nebraska Department of Health and Human Services when provided by state institutions and community-based providers. These regulations implement the requirements of Neb. Rev. Stat. Sections 83-227.01, 83-227.02, 83-350, 83-363 to 83-380, and 83-1211.

These regulations are administered by the Department of Health and Human Services Finance and Support on behalf of the Department of Health and Human Services under an interagency agreement pursuant to Neb. Rev. Stat. Sections 81-3102(6), 81-3302(6), and 13-801 to 13-827.

~~1-002 DEFINITIONS:~~

~~Ability to pay~~ means the amount determined by the Department that the client or legally responsible relative can pay monthly towards the cost of services.

~~Assets~~ means unearned income and chargeable assets. For clients who have reached the age of majority, the assets of the client and/or the client's spouse will be considered.

~~Capital construction~~ means the cost to the Department for any project in which funds have been appropriated through legislation within the capital construction project.

~~Capital expenditure~~ means any funds expended by the Department for the addition of any fixtures or major improvements that will become a permanent part of a capital asset. Routine maintenance items and items related to the client's care and support are excluded from capital expenditures.

~~Chargeable assets of a client~~ means the total assets of the client and his/her spouse (or responsible relative), as applicable, and may include but is not limited to all assets reported on the financial questionnaire. Chargeable assets of the client may exclude:

- ~~1. Liabilities substantiated by the client;~~
- ~~2. The fair market value or equity in a home if it can be reasonably assumed that the client will, in the future, reside in the dwelling;~~
- ~~3. The fair market value or equity in an automobile if it can be reasonably~~

- assumed that the client will have future use of it;
4. Unearned income as defined in this chapter; and
 5. Burial trusts up to \$4000.

Client means a recipient of services funded by the Nebraska Department of Health and Human Services and provided by a state institution or by a community-based provider as defined in this chapter.

Community-based provider means the individual, organization or agency certified by the Department of Health and Human Services to provide contracted services to persons with developmental disabilities.

Earned income means the net Nebraska taxable income reportable under Nebraska law. For persons who have reached the age of majority, the income of the client and the client's spouse is considered. For persons under the age of majority, the income/assets of the client and the taxable income of the client's parents is considered.

Income means gain or recurrent benefit received in money or in-kind from employment, business, property, investments, gifts, benefits, or annuities, at regular or irregular intervals of time.

Legally Responsible Relative means the client's spouse, or if the client is not married and is under the age of majority at the time s/he receives services, the client's parents. Parents includes either or both of the client's natural parents, unless the client has been legally adopted by another parent or other parents. In the case of adoption, parents include the adoptive parent.

Liability means the legal obligations owed to creditors.

Monthly means each calendar month in which the client incurred charges.

Personal needs allowance means the amount of unearned income that is not assessed for maintenance of the client. This amount is established by the Department or based on Medical Assistance guidelines.

State institution means the Lincoln Regional Center, Norfolk Regional Center, Hastings Regional Center, the Beatrice State Developmental Center, and other institutions which are established by the Legislature for the care and treatment of persons with mental illness and/or developmental disabilities.

Taxable income means Nebraska taxable income after allowance of Nebraska personal exemption credits which are converted to income.

~~Unearned income means but is not limited to Social Security benefits, Railroad Retirement benefits, military service benefits, unemployment compensation, disability benefits, worker's compensation, alimony, child support, and sick pay received on behalf of the client.~~

~~1-003 DETERMINING COST OF SUPPORTS AND SERVICES: The Department must periodically determine the individual cost, exclusive of the cost of education, for the care and support of clients in each state institution or community-based program. In making these determinations, the Department may use averaging methods for each service if, in the judgment of the Director or designee, it is not practicable to compute the cost for each client.~~

~~1-003.01 The cost of capital expenditures and capital construction are not included in making these determinations.~~

~~1-004 LIABILITY OF THE CLIENT AND LEGALLY RESPONSIBLE RELATIVES: The client and his/her legally responsible relatives are liable for the cost of the care, support, maintenance, and treatment of the client to the extent and in the manner provided in 202 NAC 1. The provisions of 202 NAC 1 also apply to persons admitted to a state institution or community-based provider as transferees from any correctional facility, but only after the expiration of the time for which the transferees were originally sentenced or committed.~~

~~1-004.01 The Department must assess against the client or his/her legally responsible relatives all or that part of the cost as they are able to pay, in the judgment of the Director or his/her designee, as determined under 202 NAC 1.~~

~~1-004.02 The liability of each legally responsible relative, except a spouse, ceases when legally responsible relatives have completed payments assessed pursuant to 202 NAC 1 for 180 months, or until the client attains the age of majority, whichever occurs first.~~

~~1-005 FAILURE TO FURNISH INFORMATION: When a client, his/her representative or attorney-in-fact, or legally responsible relative fails to furnish financial information including but not necessarily limited to a copy of their state tax return and a completed financial questionnaire to the Department within 20 days from the date requested, the Department must deem these person/s to have the ability to pay the full cost of any care, support, maintenance and treatment provided. The Department may give consideration to extenuating circumstances with regard to the 20-day limitation.~~

~~1-006 FAILURE TO PAY: When a client or legally responsible relative fails to pay the amounts determined to be due under 202 NAC 1, the State of Nebraska may proceed against such person in the manner authorized by the law for the recovery of money owed to a creditor.~~

~~1-006.01~~ The Department may assess a 1% per month finance charge on all accounts that are in excess of 90 days old, as allowed as pre-judgment interest per statute.

~~1-007 FRAUDULENT TRANSFERS:~~ In the absence of fraud, a client and his/her legally responsible relatives are liable only to the extent of assessments actually made against them respectively, in accordance with 202 NAC 1.

~~1-007.01~~ In the event that it is determined that a client or his/her legally responsible relative has transferred any assets or property to another person for the purpose of affecting the determination of ability to pay, the Department must consider the value of those assets or property in determining the ability to pay.

~~1-008 FACTORS CONSIDERED IN DETERMINING ABILITY TO PAY:~~ The client's ability to pay must be determined by the Department based on his/her taxable income, chargeable assets, and unearned income.

Liabilities, age, and the number of his/her dependents are also considered in this process.

~~1-008.01~~ A client with assets may have the ability to pay full cost depending on whether the reduction in assets would qualify the client for other types of benefits.

~~1-008.02~~ Whenever the Department determines that a client is unable to pay the entire cost, the Department must determine the ability of his/her spouse, or parents if the client is under the age of majority, to pay those costs by consideration of factors such as: taxable income reported (as defined in 202 NAC 1-002), the legally responsible relative's age, his/her assets, his/her liabilities, and the number of his/her dependents.

~~1-008.03~~ At the request of the client or legally responsible relative, the Department may consider other factors determined to be relevant in the interest of avoiding undue financial hardships. These factors may include average net monthly income, monthly liabilities, and federal poverty guidelines.

~~1-008.04~~ Any determination of the ability of a client or legally responsible relative to pay remains in effect until a redetermination is made. The Department must make a redetermination annually and at any time when, in the judgment of the Director or his/her designee, it is appropriate to do so, or when a request is made by the client or the legally responsible relative who is liable for the payments and there is a substantial, permanent change in income or assets.

~~1-008.05~~ The client and/or legally responsible relative must provide the facility with information pertaining to all types of available insurance coverage sufficient

~~to enable the facility to recover up to the full cost of services. Failure to do so or failure to assign or remit all benefits to the facility (up to and equal to an amount sufficient to cover full costs) will result in the client and/or legally responsible relative having the ability to pay full costs.~~

~~1-009 ABILITY TO PAY FROM TAXABLE INCOME OF CLIENTS WHO HAVE REACHED THE AGE OF MAJORITY: For a client who provides the requested tax return, the Department must first determine the ability to pay from his/her taxable income.~~

~~1-009.01 For a client with a spouse and/or dependents, the Department must determine the client's ability to pay at a rate of 1.5% monthly of his/her annual taxable income.~~

~~1-009.02 For a client without dependents, the Department must determine the client's ability to pay at a rate of 2% monthly of his/her annual taxable income.~~

~~1-009.03 A client who did not file a Nebraska tax return must submit to the Department a copy of his/her federal income tax return, in which case all income will be treated as though it was derived from sources within the State of Nebraska.~~

~~1-009.04 If the client did not file a tax return, the Department must make a determination of ability to pay from current earned income.~~

~~1-009.05 If a client is employed in a sheltered workshop or work-release program, the client's ability to pay is determined from the client's monthly earned income. The client's ability to pay is equal to the amount of income in excess of that allowable for continuation of any benefit.~~

~~1-010 ABILITY TO PAY FROM ASSETS OF CLIENTS WHO HAVE REACHED THE AGE OF MAJORITY: Following the determination of clients' ability to pay based on annual taxable income, for clients without sufficient taxable income to pay the full costs of services provided by the Department, the Department must next determine the ability to pay from assets as follows.~~

~~1-010.01 Chargeable Assets – Clients With Dependents: For a client with spouse and/or dependents and without sufficient taxable income to pay the cost of supports and services, the Department must consider his/her chargeable assets for the purpose of paying those costs.~~

~~1-010.01A Assets of a client and spouse are determined and assessed as one unit and not separately.~~

~~1-010.01B~~ For a client who has dependents and is receiving services at a Regional Center, the Department must assess his/her chargeable assets at a monthly rate of 1% of the assets.

~~1-010.01C~~ For a client receiving services from a community-based program or the Beatrice State Developmental Center who has available chargeable assets that exceed the eligibility levels necessary to ensure continuation of any benefit including Medicaid, the Department must assess the client's ability to pay at full cost until the client's chargeable assets no longer exceed eligibility levels.

~~1-010.02 Chargeable Assets – Clients Without Dependents:~~ For a client without dependents and without sufficient taxable income to pay the cost of supports and services, the Department must consider his/her chargeable assets for the purpose of paying those costs.

~~1-010.02A~~ For a client under age 65 who has no dependents and who is receiving services at a Regional Center, the Department must assess his/her chargeable assets at a monthly rate of 2% of the assets.

~~1-010.02B~~ For a client age 65 or older who has no dependents and is receiving services at a Regional Center, the Department must consider all his/her available chargeable assets in determining his/her monthly assessment to ensure a continuation of any benefit, including Medicaid.

~~1-010.02C~~ For a client receiving services from a community-based program or the Beatrice State Developmental Center who has available chargeable assets that exceed the eligibility levels necessary to ensure continuation of any benefit including Medicaid, the Department must assess the client's ability to pay at full cost until the client's chargeable assets no longer exceed eligibility levels.

~~1-010.03 Unearned Income:~~ After considered of annual taxable income and chargeable assets, a client with unearned income or benefits must have the ability to pay the amount by which such unearned income or benefits exceed the sum of:

- ~~1. The personal needs allowance established by the Department; and~~
- ~~2. The standard of need allowance under the Medicaid program.~~

~~1-010.03A~~ The payee of the benefits must remit the determined amounts to the Department.

~~1-010.03B~~ If the amount accrued with personal needs allowance creates savings that would disqualify a client from a benefit such as Medicaid, the

~~Department must assess the excess total at full cost until the client qualifies for the benefit.~~

~~1-011 SPOUSE'S ABILITY TO PAY: When a client and his/her spouse file separate tax returns, the Department must determine the ability to pay of the client's spouse who provides the requested financial information to the Department at 1.5% of his/her annual taxable income per month.~~

~~1-011.01 If a client's spouse did not file a Nebraska income tax return, the spouse must submit a copy of the federal income tax return in order that his/her taxable income equivalent may be determined, in which case, all income will be treated as though it was derived from sources within the State of Nebraska.~~

~~1-011.02 If a client and spouse file a joint return, the Department must make a determination of ability to pay from the joint tax return using the same percentages but must consider the client's and spouse's ability to pay from taxable income.~~

~~1-012 PARENT'S ABILITY TO PAY: The Department must determine the ability to pay of parents of clients who are under the age of majority at 0.5% monthly of their annual taxable income.~~

~~1-012.01 The liability of the parents must cease when the client reaches the age of majority or when the parents have completed payments for 180 months.~~

~~1-012.02 Parents who do not file a Nebraska income tax return must submit a copy of the U.S. income tax return to the Department to determine their taxable income equivalent, in which case all income will be treated as though it was derived from sources within the State of Nebraska.~~

~~1-012.03 The Department must assess child support paid for the benefit of the client as unearned income in determining the client's ability to pay. The payee must remit the determined amounts to the Department upon notice.~~

~~1-013 HEARINGS: See Title 207 NAC 1. The party appealing the Department's decision has the burden of proof.~~

TITLE 202 OPERATIONS WITHIN FACILITIES AND COMMUNITY-BASED
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CHAPTER 1 DETERMINING ABILITY TO PAY FOR SUPPORTS AND SERVICES
FUNDED BY THE NEBRASKA DEPARTMENT OF HEALTH AND HUMAN
SERVICES

001. SCOPE AND AUTHORITY. These regulations govern the determination of the ability to pay for all services funded by the Nebraska Department of Health and Human Services and implement the requirements of Nebraska Revised Statute (Neb. Rev. Stat) §§ 83-227.01, 83-227.02, 83-350, 83-363 to 83-380.01, and 83-1211.

002. DEFINITIONS. The definitions in Neb. Rev. Stat. § 83-363 and following apply to this chapter.

002.01 ASSETS. Assets are items of objective fair market value owned by the client.

002.02 LIABILITIES. Liabilities are the amount of debt owed by the client, client's spouse, or responsible relative, as applicable.

003. INSURANCE COVERAGE. The client, or the client's legal guardian, spouse, or parent, if applicable, must provide the facility with information pertaining to all types of available insurance coverage sufficient to enable the facility to recover up to the full cost of services.

004. CLIENT'S ABILITY TO PAY. The following documents must be completed and submitted to the Department by the client, or the client's legal guardian, spouse, or parent, if applicable:

- (A) Financial questionnaire detailing income, assets, and liabilities;
- (B) Statement of insurance coverage;
- (C) Signed bank release form for all accounts;
- (D) Signed US citizenship attestation form; and
- (E) Signed authorization to request a copy of the Nebraska tax return.

004.01 NET ASSETS. The Department deducts liabilities from income and assets to determine available net assets eligible to pay for care. The available net assets eligible to pay for care is multiplied by a percentage to determine the amount the client has to pay. The percentages are:

004.01(A) CLIENT WITH NO DEPENDANTS. For a client with no dependents and who is receiving services, 1.5% of the available net assets eligible to pay for care is owed for care.

004.01(B) CLIENT WITH DEPENDANTS. For a client with dependents and who is receiving services, 1.0% of the available net assets eligible to pay for care is owed for care.

005. SPOUSE'S ABILITY TO PAY. When a client is unable to pay the entire cost of care, and the client and the client's spouse file separate tax returns, the client's spouse must submit his or her Nebraska tax return. If the client's spouse did not file a Nebraska tax return, the client's spouse must submit a copy of his or her federal tax return. The client's spouse's ability to pay will be assessed at 1.5% of the client's spouse's annual taxable income.

006. PARENT'S ABILITY TO PAY. When a client is unable to pay the entire cost of care, the client's parents must submit their Nebraska tax return. If the client's parents did not file a Nebraska tax return, the client's parents must submit a copy of their federal tax return. The client's parents' ability to pay will be assessed at 0.5% of the client's parents' annual taxable income.

007. HARDSHIP WAIVER. The spouse or parents of a client may petition the Department to waive the ability to pay requirement.

008. HEARINGS. Hearings will be held according to Title 465 of the Nebraska Administrative Code.