

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

December 7, 2020
1:00 p.m. Central Time
Nebraska State Office Building – Lower Level A
301 Centennial Mall South, Lincoln, Nebraska
Phone call information: 888-820-1398; Participant code: 3213662#

The purpose of this hearing is to receive comments on proposed changes to Title 464 Chapters 1 - 3, of the Nebraska Administrative Code (NAC) – *Nebraska Lifespan Respite Services Program*. The proposed changes will consolidate and streamline the regulations from three chapters to one chapter. Additional proposed changes include: removing reference to other titles and chapters; removing the definitions section, and updating and incorporating the terms throughout the title; updating applicant requirements; removing unnecessary language from the regulations; removing directions to agency staff; and updating formatting.

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

Due to the current public health crisis, the agency will enforce any Directed Health Measure Order on the size of gatherings that is in effect at the time of the hearing. In order to encourage participation in this public hearing, a phone conference line will be set up for any member of the public to call in and provide oral comments.

Interested persons may provide verbal comments by participating via phone conference line by calling 888-820-1398; Participant code: 3213662#.

Interested persons may provide written comments by mail, fax, or email, 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) 471-8223. 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.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 464 NAC	Prepared by: Kristen Smith
Chapter: 1	Date prepared: 6/2/2020
Subject: Nebraska Lifespan Respite Services Program	Telephone: (402) 450-9837

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"/>)

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

TITLE 464 NEBRASKA LIFESPAN RESPITE SERVICES PROGRAM

CHAPTER 1 PROGRAM REQUIREMENTS

001. SCOPE AND AUTHORITY. The Lifespan Respite Services Program provides funding for eligible unpaid primary family caregivers, hereinafter "caregivers", to purchase respite services. The Program is authorized by Nebraska Revised Statutes (Neb. Rev. Stat.) §§ 68-1520 through 68-1528. The Program is administered by the Nebraska Department of Health and Human Services hereinafter, "The Department."

001.01 RESPITE SERVICES: Respite is a service designed to give caregivers a break from the demands of providing ongoing care for recipients with special needs unable to care for themselves without regard to age, type of special needs or other status. The basic intent of respite is to:

- (A) Prevent or postpone out-of-home placements or care at public expense;
- (B) Reduce family and caregiver stress;
- (C) Enhance the family and the caregiver's coping abilities;
- (D) Strengthen the family and the caregiver's ability to meet the demands of caring for family members; and
- (E) Reduce the risk of abuse or neglect of children, the elderly and other vulnerable individuals.

002. CONFIDENTIALITY. All information regarding applicants, recipients, and caregivers is kept confidential.

003. NON-DISCRIMINATION. The Department does not discriminate against any person applying for or receiving benefits through the Program on the basis of race, color, national origin, gender, age, disability, religion, or political belief.

004. FRAUD. Any person who knowingly provides false information or knowingly withholds pertinent information to obtain or attempt to obtain services under this Program may have services denied or ended, be charged an overpayment, and be criminally prosecuted for fraud.

005. ELIGIBILITY FOR OTHER RESPITE SERVICES. The assistance provided by the Program must not replace or reduce services and support by other government-administered programs for which the applicant or recipient is eligible or may be eligible.

005.01 APPLICATION REQUIREMENTS. The applicant or recipient must apply for and provide evidence of current application and eligibility denial or lack of available funds from other federal or state-funded programs offering respite services before eligibility can be determined;

- (A) The applicant or recipient must accept respite available through another government-administered program; or
- (B) A lack of cooperation with other respite support programs are grounds for denial or termination from the Program.

006. INELIGIBILITY DUE TO OTHER AVAILABLE ASSISTANCE. The applicant or recipient is ineligible if:

- (A) The applicant or recipient has available insurance, financial means or other available support programs to cover the cost of requested program services;
- (B) The applicant or recipient failed to apply for, failed to cooperate with the application process; or
- (C) The applicant or recipient failed to notify the program of services provided by other funding source and continued to bill for the same service on the same dates.

007. INDIVIDUAL RESPONSIBILITIES: Each applicant or recipient must comply with the responsibilities listed below.

007.01 COMPLETE AND ACCURATE INFORMATION. Each applicant or recipient must provide complete and accurate information. State law provides penalties of a fine, imprisonment, or both for persons found guilty of obtaining assistance or services for which the individual is not eligible by making false statements or failing to report promptly any changes in his or her circumstances.

007.02 CHANGE IN CIRCUMSTANCES. Each applicant or recipient must report a change in the following circumstances no later than ten calendar days following the change of:

- (A) Earned and unearned income;
- (B) Resources;
- (C) Living arrangement;
- (D) Address;
- (E) Family composition;
- (F) Household composition;
- (G) Need for services; or
- (H) Recipient's medical condition or health.

007.03 COOPERATION. Each applicant or recipient must cooperate with the Department or auditors during an audit.

007.04 VERIFICATION OF INFORMATION. Each applicant or recipient must provide verification of information when requested by the Department. An applicant or recipient who fails to provide information to the Department by the due date, may have the application denied. A recipient receiving services who fails to provide information requested may have payments delayed, services terminated and the Department may establish an overpayment for services previously provided. In renewal cases, if the completed application and requested

supporting documentation is not returned for the eligibility renewal before the existing eligibility period expires, the Program case will be closed at the end of the eligibility period.

007.05 CLIENT NOTIFICATIONS. The recipient must provide written notice to the Department of preference for receiving notifications through the United States Postal Service or a designated email address. Recipient is responsible to provide the Department with a current and accurate mailing or email address as well updating the Department with any changes.

008. APPLICATION PROCESS. Anyone may submit an application on a Department approved form. Anyone may submit a completed, dated, and signed program application electronically, by mail, fax, or in person.

009. ELIGIBILITY CRITERIA. In order to be eligible, applicants must:

- (A) Reside in the State of Nebraska;
- (B) Reside in a non-institutional setting;
- (C) Have a special need requiring ongoing care without regard to age, type of special needs or other status;
- (D) Meet the income and resource criteria for the Program;
- (E) The applicant or recipient must be a United States citizen or meet the qualified alien status as required by Neb. Rev. Stat. § 4-111; and
- (F) Inform the Department of everyone who lives in household regardless of relative status.

010. CAREGIVER REQUIREMENTS. To be eligible, caregivers must:

- (A) Be providing care or supervision of applicant or recipient with special needs without reimbursement or payment;
- (B) Need respite services;
- (C) Reside in the same home as the person with special needs or be providing care to recipient in the recipient's home for a minimum of 4 hours per day Sunday through Saturday; and
- (D) Caregivers may not use respite services while engaging in employment activities.

011. FINANCIAL ELIGIBILITY. To determine financial eligibility, the Program considers the applicant or recipient's family size, income and resources. Applicants or recipients who have access to financial or other resources sufficient to meet their needs may be found ineligible for services.

011.01 FAMILY SIZE. Family size is determined by the number of adults and children related by blood, marriage, or adoption who reside in the same household. An unborn child may be included.

011.02 INCOME AND RESOURCE ELIGIBILITY. In order to be eligible, applicants and recipients must have gross income, minus Department allowable income exclusions that is at or below 312% of the federal poverty level, adjusted for family size to meet income criteria for the Program. Applicants or recipients with family resources exceeding \$35,000 for a family of one or \$50,000 for a family of two or more are ineligible. Applicants or recipients actively eligible for Social Security Supplemental Security Income, Medicaid, Supplemental Nutrition

Assistance Program, Aid to Dependent Children or Assistance to the Aged, Blind and Disabled are waived from additional requirements for income and resource testing for this Program.

011.02(A) TOTAL FAMILY INCOME. For persons who have reached the age of 19, only the income of the applicant or recipient and the applicant or recipient's spouse will be considered. For persons under the age of 19, and not designated by a court as emancipated, the income and assets of the applicant or recipient and the taxable income of the custodial parent(s) is considered.

011.02(B) INCOME VERIFICATION. Applicants or recipients are to report and provide verification of all gross earned and unearned income. Verification of earned income consists of the following:

- (i) The Department considers the gross amount of all earned and unearned income to the family in determining initial and ongoing eligibility unless it is specifically excluded below;
- (ii) The date paid or received;
- (iii) The period covered by the payment or benefit; and
- (iv) The gross amount of payment or benefit.

011.02(C) INCOME EXCLUSIONS. The following income sources are not considered in determining gross monthly income:

- (i) Amount designated, per Medicaid eligibility, by a spouse living at home to a spouse in an alternate living situation, as defined by the Medical Assistance Act, Neb. Rev. Stat. §§ 68-901 to 68-992;
- (ii) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Opportunity Act, Public Law 110-315;
- (iii) Earnings of a child age 13 or younger;
- (iv) Loans, grants, or scholarships obtained and used under conditions that prohibit their use for current living costs;
- (v) Payments received through the Workforce Innovation and Opportunities Act for classroom training, tuition and books. Payments to meet living expenses while attending school are considered income;
- (vi) Payments to an individual participating in training or school attendance subsidized by Vocational Rehabilitation within the Nebraska Department of Education;
- (vii) Reimbursement of expenses or payments for services from the Senior Companion Program, AmeriCorps, Senior Corps, Foster Grandparents, Service Corps of Retired Executives, Experience Works and any other programs under Title II and II of Public Law 93-113;
- (viii) Value of United States Department of Agriculture donated foods;
- (ix) Value of Supplemental Nutrition Assistance Program and the special food service program for children under the National School Lunch Program Child Nutrition Act of 1966, as amended;
- (x) Assigned child or spousal support;
- (xi) Subsidized adoption or subsidized guardianship payments from Title IV-E or child welfare funds; and
- (xii) Work study for a graduate student or a student working for a second degree.

011.02(D) RESOURCE EXCLUSIONS. The following resources are not considered in determining program eligibility:

- (i) Real property which the applicant or recipient owns and occupies as a home;
- (ii) Household goods and personal effects of a moderate value used in the home;
- (iii) Cash surrender value of life insurance policies with combined face values of \$1,500 or less per individual;
- (iv) Unspent portion of any lump sum payment or retroactive payment for Retirement, Survivors, and Disabled Insurance and Supplemental Security Income;
- (v) United States savings bonds;
- (vi) Value of unavailable resources;
- (vii) One motor vehicle;
- (viii) Essential property, land and equipment used for trade or business;
- (ix) Non-business property up to Program specified maximum;
- (x) Equity value of nonbusiness real or personal property used to produce goods or services essential to daily activities up to program specified maximum;
- (xi) Irrevocable burial trust funds or burial insurance up to Program specified maximum;
- (xii) Value of purchased burial space up to program specified maximum;
- (xiii) Cash surrender value of life insurance policies up to Program specified maximum;
- (xiv) Qualified Long-Term Care policy;
- (xv) Testamentary trusts and guardianships depending on the availability of the funds as specified in the terms of the trust;
- (xvi) Qualified annuities meeting Program requirements;
- (xvii) Special Needs or Pooled Trusts not considered available if established for a disabled client age 64 or younger or eligible to receive Supplemental Security Income, Retirement, Survivors, and Disabled insurance, or Aid to Aged, Blind and Disabled;
- (xviii) Victims compensation payments received from a state or local government to aid victims of crime;
- (xix) Payments received from a state or local government to assist in relocation;
- (xx) An unavailable job-related retirement account held by the employer not readily converted into cash without significant penalty;
- (xxi) An Individual Development Account;
- (xxii) A Nebraska Enable Savings Plan pursuant to the Achieving a Better Life Experience Act of 2014 and Section 529A of the United States Internal Revenue Code; and
- (xxiii) Medicare Set-Aside accounts used for payment of medical bills of Medicare beneficiaries.

012. MAXIMUM SUPPORT. The support provided through this Program must not exceed \$125 per recipient per month except for recipients the Department has approved for exceptional circumstances funding, including crisis respite. The Department determines the maximum monthly expenditure for each recipient based on need and available funds.

012.01 FLEXIBILITY IN USE OF FUNDS. A caregiver may request Department flexibility in use of authorized funds to meet recipient need.

012.02 ADDITIONAL SERVICES. A caregiver may contact the Department to request additional services in unusual circumstances, including a crisis need.

013. NOTICES. Applicants and recipients are sent adequate notice in writing of eligibility decisions within 30 calendar days of the Department's receipt of application. Recipients are also sent notices when services are to be reduced, added, or terminated. Applicants will be notified in writing when a review or annual renewal is necessary.

013.01 TIMELY NOTICE. A notice of case action dated and mailed at least ten calendar days before the date the action becomes effective. A timely notice must be issued if services are to be reduced or terminated before the current authorization period ends.

013.02 SITUATIONS REQUIRING ADEQUATE NOTICE. In some instances, timely notice is not needed, but adequate notice is still required. A notice is sent to the recipient no later than the action's effective date. Consult the Guidance Document for a complete listing of these situations.

013.03 NOTICE NOT REQUIRED. The recipient will not receive a notice of action when:

- (A) The Department learns of a recipient's death;
- (B) The applicant or recipient is committed to an institution or admitted to a nursing home on a long-term basis;
- (C) The applicant or recipient's whereabouts are unknown; or
- (D) The authorization period is ending and the recipient has not acted upon a request for renewal information.

014. ELIGIBILITY PERIODS. The Department establishes eligibility periods for recipients with ongoing special needs. Eligibility must be renewed at least every twelve months. A renewal will be completed more frequently if the recipient's circumstances change.

014.01 ELIGIBILITY REVIEWS. Upon receipt of a renewal request from the Department, the recipient has 45 calendar days from the date of the renewal notification to provide the same documentation that is required for initial eligibility.

014.02 ACCEPTABLE VERIFICATION FOR ANNUAL ELIGIBILITY REVIEW. Recipient must provide the same documentation required for initial eligibility.

014.03 VERIFICATION REQUESTS. Applicant or recipient has ten calendar days to respond to written requests from the Department for supportive documentation or application will be denied or case closed.

014.04 CHANGES WITHIN ELIGIBILITY PERIODS. Caregivers must immediately report any change in income, resources, living arrangement, or need to the Department. Failure to do so may result in termination of services and an overpayment which must be refunded to the Department.

015. PRIOR AUTHORIZATIONS. The Department does not pay for respite services received prior to Program eligibility determination. The Program only pays for authorized respite services.

016. PAYMENTS. The Department determines whether payments are made directly to the recipient or to the provider.

016.01 PAYMENTS TO THE RECIPIENT. Recipients receiving direct payment must complete a Department approved billing document. Incomplete or inaccurate billing documents will be rejected and not paid.

016.02 PAYMENTS TO THE PROVIDER. Providers receiving direct payment must complete a Department approved billing document. Incomplete or inaccurate billing documents will be rejected and not paid.

016.03 LIMITATIONS ON PAYMENTS. The recipient is responsible for any amount owed to the provider in excess of the authorized amount. The recipient must not bill the Department for more than the amount authorized. The Department will not pay recipient or the provider for any amount in excess of the authorized amount.

016.04 FREQUENCY OF PAYMENTS. Billing documents for respite services must be submitted no more than once a month per respite provider after all the respite services have been provided for the month. Billing documents must be submitted for any given month within 60 days of the date when the service is provided.

016.05 LACK OF BILLING WITHOUT JUSTIFICATION. The recipient may be determined Program ineligible if no claims have been submitted for Program authorized services for three consecutive months without providing justification to show how the recipient's needs were met during that time and why the needs will no longer be met without continued Program assistance.

017. RIGHT TO APPEAL. Any applicant or recipient has the right to appeal a Department action to deny, terminate or reduce respite services under this program based upon the following:

- (A) Denial of Program application;
- (B) Suspension of Program services;
- (C) Reduction of Program services;
- (D) Termination of Program services;
- (E) Inaction or belief the Department's action was erroneous; or
- (F) The Department determines an overpayment has occurred.

018. APPEAL TIME LIMITS. An appeal is made by requesting a fair hearing in writing within 90 days of the date of the written notice or alleged inaction. The appeal is timely if it is received by the Department within 90 days of the date of the written notice or if it is post-marked within 90 days of the date of the written notice. The appeal request must:

- (1) Include a short, timely, and accurate summary of the Department's action being appealed;
- (2) Describe the reason for the appeal; and
- (3) Be sent to the Nebraska Department of Health and Human Services Hearing Office.

018.03(A) CONTINUED SERVICE DURING APPEAL. If an appeal is requested in writing within 10 calendar days following the date the Notice of Action was mailed, the Department

will not carry out the adverse action until a fair hearing decision is made, except when the adverse action is a denial of eligibility.

019. LOCATING RESPITE PROVIDERS. Recipients and caregivers are responsible for identifying, hiring, supervising, and firing their own provider. Providers must be Nebraska Lifespan Respite Network screened. Providers are not employees of the State of Nebraska when providing respite services. Caregivers are encouraged to refer family and friends to become Network screened providers.

019.01 DEPARTMENT DISCRETION. The Department retains the authority to deny payment to a recipient's choice of provider in the following circumstances:

- (A) The provider engages in fraudulent billing;
- (B) The provider has committed fraud in other Department programs;
- (C) The provider has been convicted of abuse or neglect of a vulnerable adult or child;
- (D) The provider has been convicted of a violent crime;
- (E) The provider has been convicted of child pornography;
- (F) The provider has been convicted of domestic abuse or assault;
- (G) The provider has been convicted of shoplifting after age 19 and within the last three years;
- (H) The provider has a conviction for felony fraud in the past 10 years;
- (I) The provider has a conviction for misdemeanor fraud in the past five years;
- (J) The provider has a conviction for possession controlled substances within the last 10 years;
- (K) The provider has a conviction for manufacturing of a controlled substances within the last 10 years;
- (L) The provider has a conviction for prostitution or solicitation of prostitution within the last five years;
- (M) The provider has a conviction for robbery or burglary within the last 10 years;
- (N) The provider has a conviction for rape or sexual assault;
- (O) The provider is a registered or required to be registered on a State or National Sex Offender Registry or Repository;
- (P) The provider has a conviction for any crime against a child or vulnerable adult;
- (Q) The provider has a conviction for kidnapping;
- (R) The provider has a conviction for animal cruelty, abuse, or neglect;
- (S) The provider has a conviction for arson;
- (T) The provider has convictions for driving under the influence within the last five years;
- (U) The provider has two or more pending driving under the influence charges; or
- (V) The provider has convictions for any other crimes jeopardizing the safety of a child or vulnerable adult.

019.02 USING NEBRASKA LIFESPAN RESPITE NETWORK SCREENED PROVIDERS. Local Nebraska Lifespan Respite Networks funded through the Nebraska Lifespan Respite Services program assist families by matching caregivers with background screened providers and other types of paid and unpaid respite care. The Local Network:

- (A) Is operated by a community-based private nonprofit or for-profit agency or a public agency that provides respite services sensitive to the unique needs, strengths, and cultural values of the recipient, family, or caregiver;
- (B) Serves in one or more of the six regional services areas of the Department;

- (C) Acts as a single local source for respite services information and referral;
- (D) Assists caregivers to identify respite care needs and resources;
- (E) Facilitates access to a flexible array of local respite service options responsive to family and caregiver needs to prevent a crisis;
- (F) Recruits and screens paid and unpaid respite care providers; and
- (G) Identifies training resources and organizes training opportunities for respite care providers.

020. SUPPORTIVE SERVICES. The Department will not pay for support services with respite approved funds. Supportive services include, but are not limited to, administering medications, escort services, housekeeping services, and personal care services.

TITLE 464 RESPITE SUBSIDY PROGRAM ACROSS THE LIFESPAN

Chapter 1-000 SCOPE AND AUTHORITY

1-001 Introduction: The Respite Subsidy Program (RSP) Across the Lifespan is designed to provide funding for caregivers to purchase respite services. Remains in Section 001 as modified.

1-002 Legal Basis: The Nebraska Department of Health and Human Services, Central Office, is responsible for administering the RSP based on Neb.Rev.Stat. §§68-1520 through 1528 and 71-7611.04. Remains in Section 001 as modified.

Based on available funds, the Department has the authority to:

1. Determine the maximum monthly subsidy amount to be paid to each eligible person/family;
2. Determine the number of persons/families to be served through the RSP, based on available funding for the Lifespan (see definition);
3. Establish waiting lists;
4. Establish priorities based on needs and population; and
5. Move funds from one population to another for the purpose of ensuring all budgetary funds may be utilized.

1-003 Philosophical Basis: Respite is a service that is designed to give caregivers a break from the demands of providing ongoing care for another individual. The basic intent of respite is to:

1. Prevent and/or postpone out-of-home placements;
2. Reduce family and caregiver stress;
3. Enhance the family and caregiver's coping abilities;
4. Strengthen the family and caregiver's ability to meet the challenging demands of caring for family members; and
5. Reduce the risk of abuse/neglect of children, elderly, and other vulnerable groups.

Remains in Section 001.01 as modified.

1-004 Confidentiality: HHS staff must keep all information regarding applicants, clients, or caregivers confidential. See 465 NAC 2-005 ff. Remains in Section 002 as modified.

1-005 Non-Discrimination: HHS staff must not discriminate against any person applying for or receiving benefits through the RSP on the basis of race, color, national origin, sex, age, handicap, religion or political belief. See 465 NAC 2-001 ff. Remains in Section 003 as modified.

1-006 Department Responsibilities: Central Office staff will:

1. Make a determination regarding eligibility of each applicant;
2. Process billings; and
3. Provide notifications to the client regarding eligibility, changes of eligibility, and the need for annual reviews.

~~1-007 **Fraud:** Any person who knowingly provides false information or knowingly withholds pertinent information to obtain or attempt to obtain services under this program may be prosecuted for fraud in a court of law and, if found guilty, be punished accordingly. Neb.Rev.Stat. §68-1017. Remains in Section 004 as modified.~~

~~1-008 **Definitions:**~~

~~**Caregiver** means a friend, family member, or legal guardian residing with and providing ongoing care for an individual unable to care for himself or herself.~~

~~**Client** means an individual who has been referred to, has applied for, or has been authorized to receive Respite Services through the RSP.~~

~~**Department** means the Nebraska Department of Health and Human Services.~~

~~**Nebraska Respite Network** means a statewide network responsible for the creation of a statewide system for the coordination of respite resources through six offices located in HHS Service Area offices.~~

~~**Nebraska Respite Network Coordinator** means one of six coordinators across Nebraska responsible for the coordination of respite resources within a multiple-county area. This shall also mean the Nebraska Lifespan Respite Services Program.~~

~~**Ongoing Care** means continuous, full-time supervision/care for a person with special needs.~~

~~**Reside** means the caregiver lives with the person with special needs in the same house or apartment.~~

~~**Respite** means the provision of short-term relief to primary caregivers from the demands of ongoing care for an individual with special needs.~~

~~**Special Needs** means a person of any age with needs resulting from an emotional, behavioral, cognitive, physical, or condition that necessitates receipt of care or supervision in order to meet the person's basic needs or to prevent harm from occurring to him or her. Such conditions include, but are not limited to, (a) developmental disabilities; (b) physical disabilities; (c) chronic illness; (d) physical, mental or emotional conditions that require supervision; (e) special health care needs; (f) cognitive impairments; (g) situations in which a high risk of abuse or neglect exists.~~

~~**Vulnerable** means an individual who is susceptible to physical injury due to a substantial mental or functional impairment.~~

~~**Waiting List** means a list of applications for individuals who cannot receive benefits due to limited funding availability.~~

TITLE 464 - NEBRASKA LIFESPAN RESPITE SERVICES PROGRAM

CHAPTER 2 - (Repealed)

CHAPTER 2-000 ELIGIBILITY

~~2-001 Eligibility for Other Respite Services:~~ The assistance provided by the RSP is only for those individuals not eligible for respite funding through any other government administered respite program. The applicant must ~~Remains in Section 005 as modified.~~

- ~~1. Submit current program plans if currently receiving support from a service program, as requested;~~
- ~~2. Describe any support received in the past from any service program;~~
- ~~3. Report any instance when an application for service was denied;~~
- ~~4. Apply to all appropriate resources not previously explored; and~~
- ~~5. Accept any appropriate support offered through another program.~~ **Remains in Section 005.01(A) as modified.**

2-002 Application Process

~~2-002.01 Right to Apply:~~ Any individual or agency may submit an application for himself/herself or as a representative for another person. ~~Note:~~ Applications submitted by any person, agency or organization on behalf of any individual are considered a referral and will be processed by Department staff the same as any other application.

~~2-002.02 Application Form:~~ The applicant must either complete a current application form or use an alternate format to provide the Department with the following information:

- ~~1. Name, address and telephone number of person with special needs;~~
- ~~2. Social Security number and date of birth of person with special needs;~~
- ~~3. The total number of people who live in the household. Including parents, brothers and sisters ages 0 through 18;~~
- ~~4. A description of the person's special needs;~~
- ~~5. An explanation of the caregiver's need for respite;~~
- ~~6. Whether the client/caregiver are receiving other financial assistance for respite and a description of that assistance;~~
- ~~7. Health insurance coverage;~~
- ~~8. The source, frequency and amount of all gross earned and unearned income;~~
- ~~9. Disability related expenses, the cost and the frequency of the expenses;~~
- ~~10. Resources (only liquid resources with no significant penalty for withdrawal);~~
- ~~11. The name, Social Security number and relationship of the caregiver;~~
- ~~12. Signature and the date signed by client or his/her representative.~~ **Remains in Section 008 as modified.**

~~2-002.03 Withdrawal:~~ The applicant may voluntarily withdraw an application at any time during the process. If a written request to withdraw is received, it is not necessary to send a written notice closing/rejecting the case/application.

~~2-003 Respite Service Populations:~~ Department staff may divide funding among populations in equal proportions. However, in order to ensure that all budgetary funds may be utilized, the Department may move funds from one population to the other. (See 464 NAC 1-002). A child who reaches age 19 will automatically transition into the adult population and an adult who reaches age 60 will automatically transition into the elderly population. Populations will be divided as follows:

1. ~~Birth through age 18;~~
2. ~~Age 19 through age 59; and~~
3. ~~Age 60 and above.~~

2-004 Eligibility Criteria:

2-004.01 Eligible Clients: Eligible clients must:

1. ~~Reside in the State of Nebraska;~~
2. ~~Reside in a non-institutional setting;~~
3. ~~Have a special need;~~
4. ~~Meet the financial criteria for the RSP; and~~
5. ~~Be a citizen of the United States of America or a qualified alien under the federal Immigration and Nationality Act and be lawfully present in the United States.~~ **Remains in Section 009 as modified.**
 - a. ~~Attestation:~~ The applicant must attest that s/he is a citizen of the United States of America or that s/he is a qualified alien under the federal Immigration and Nationality Act, 8 USC 1101 et seq., as such act existed on January 1, 2009; and is lawfully present in the United States. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her United States Citizenship and Immigration Services (USCIS) documentation upon request.
 - b. ~~Verification:~~ For any applicant who has attested that s/he is a qualified alien under 464 NAC 2-004.01, item 5.a., eligibility for benefits must be verified through the Systematic Alien Verification for Entitlements Program. Until verification of eligibility is made, the attestation may be presumed to be proof of lawful presence unless the verification is required before providing the public benefits under another provision of state or federal law.

2-004.02 Caregiver Requirements: Caregivers must:

1. ~~Be providing care or supervision of the individual with special needs without reimbursement or payment;~~
2. ~~Need a break from the ongoing care of a client; and~~
3. ~~Reside in the same home as the client.~~

Note: ~~Respite is not a substitute to allow the caregiver to work. The caregiver may maintain a separate residence but s/he must be residing with or staying with the client on an ongoing basis.~~ **Remains in Section 010 as modified.**

2-004.03 Financial Eligibility:

2-004.03A Family Size: Family size is determined by the number of adults and/or children related by blood, marriage or adoption who reside in the same household. An unborn child may be included. **Remains in Section 011.01 as modified.** The following are considered separate families:

1. Related adults other than spouses and unrelated adults who reside together;
2. Children living with non-legally responsible relatives;
3. Emancipated minors;
4. A minor parent; and
5. Children placed outside the home and who are not residing full-time with the biological parents or usual caretaker.

~~2-004.03B Other Available Resources: Clients who have access to financial or other resources sufficient to meet their needs may be found ineligible for RSP services.~~ **Remains in Section 011 as modified.**

~~2-004.03C Income Eligibility: Clients whose gross income minus allowable disregards is at or below 312 percent of the federal poverty level for the appropriate family size, meet the income criteria.~~ **Remains in Section 011.02 as modified.** for the Respite Subsidy Program.

~~2-004.03C1 Sources of Income: HHS staff must consider the gross amount of all earned and unearned income to the family in determining initial and ongoing eligibility unless it is specifically excluded below.~~ **Remains in Section 011.02(B) as modified.**

~~2-004.03C2 Income Exclusions: HHS staff will not consider the following income sources when determining beginning or ongoing eligibility:~~

- ~~1. Any monies received from Indian or Alaska Native Claims Commission or Court of Claims or per capita payments to tribes;~~
- ~~2. Bank withdrawals or loans;~~
- ~~3. Money received from the sale of property such as stocks, bonds, a house, or a car (unless the person was engaged in the business of selling such property in which case the net proceeds would be counted as income from self-employment);~~
- ~~4. Tax refunds, Capital gains, earned income credits and Advanced Earned Income Credits;~~
- ~~5. Lump sum payments from any source, including but not limited to, gifts, inheritances, insurance payments, child support or Social Security Administration payments;~~
- ~~6. The value of Food Stamps, USDA donated foods or food commodities, or food or reimbursements received under the Child Nutrition Act of 1966 or the National School Lunch Act;~~
- ~~7. Funds or reimbursement benefits from any program administered by HHS;~~
- ~~8. Medicare premiums;~~
- ~~9. In-kind income;~~
- ~~10. Any student financial assistance including work study for an undergraduate student.~~
- ~~11. Payments made to any individual from any claim or class action suits or from any funds established by Legislative acts due to harm from any act of war, disaster or health condition;~~

- ~~12. Payments made under any program for education or training, including but not limited to Work Investment Act, Vocational Rehabilitation, Training Workforce Investment Act or Veterans Education and Employment Assistance Act;~~
- ~~13. Earnings of a child age 18 or younger;~~
- ~~14. Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;~~
- ~~15. Housing assistance provided by Housing and Urban Development or by a local housing program;~~
- ~~16. Home produce used for household consumption;~~
- ~~17. Vendor payments of any kind, including but not limited to, payments made by an absent parent for child care, or rent;~~
- ~~18. Reimbursement benefits received to purchase items or services, such as Veterans Aide and Attendant;~~
- ~~19. Payments for services or reimbursement of expenses to volunteers serving as foster grandparents, senior health aides, or Senior Companions Services Corp., of Returned Executives (SCORE), Active Corps of Executives (ACE), Green Thumb Volunteers and any other programs under Titles II and III.~~
Remains in Section 011.02(C) and 011.02(D) as modified.

~~2-004.03C3 Income Disregards:~~ When determining financial eligibility for the RSP, Department staff may disregard income for disability-related expenses above and beyond those incurred in households where no people with disabilities reside. These costs must actually be incurred by the family/client and not paid or reimbursed by any other source. This income includes but is not limited to:

- ~~1. Additional cost of health insurance due to a disability, for example, Comprehensive Health Insurance Pool (CHIP) premiums;~~
- ~~2. Transportation for medical services (for example, an automobile modification or payment for ambulance travel if required by the disability or special needs);~~
- ~~3. Medical costs, including over-the-counter remedies related to client's special needs;~~
- ~~4. Attendant care costs;~~
- ~~5. Cost of special equipment;~~
- ~~6. Cost of home modifications; and~~
- ~~7. Other health or medical expense related to the special need of the client.~~

~~2-005 Prudent Person Principle:~~ When the statements of the client are incomplete, unclear or inconsistent, or when other circumstances in the particular case indicate to a prudent person that further inquiry must be made, the worker determining eligibility must obtain additional verifications before eligibility is determined.

~~2-006 Maximum Support:~~ The client has the right to determine how much respite care will be used each month. The support provided through this program must not exceed \$125 per client per month except as noted below. **Remains in Section 012 as modified.** The Department determines the maximum monthly expenditure for each case based on need and available funds. This maximum does not prohibit the use of other personal or private resources to meet total support costs.

~~Note:~~ If the caregiver would like to save up the respite care for an extended period, HHS staff may make special arrangements in advance. Up to three months of consecutive Respite Subsidy may be saved for use all at once to allow for extended respite services. **Remains in Section 012 as modified.**

~~Exceptions:~~ A client or caregiver may contact HHS staff to request additional services for unusual circumstances. **Remains in Section 012 as modified.**

2-007 AUTHORIZING SUPPORT

~~2-007.01 Determining Eligibility:~~ The Department's RSP worker determines eligibility and authorizes respite services. The determination process must include, but not be limited, to the following:

- ~~1. Determine if the caregiver resides with the client;~~
- ~~2. Determine if the caregiver is paid or reimbursed;~~
- ~~3. Consider the needs of the client and the caregiver/per the application;~~
- ~~4. Compare financial resources of the client to the program guidelines;~~
- ~~5. Calculate a budget and compare income to the program guidelines;~~
- ~~6. Determine if all points of eligibility have been met; and~~
- ~~7. Authorize respite services by sending a notice to the client or reject the application.~~ **Remains in Section 007 as modified.**

~~2-007.02 Notices:~~ Department staff must notify each applicant in writing when s/he has been determined—

- ~~1. Eligible to participate in the program. The notice identifies the type and amount of support for which the individual/family is eligible;~~
- ~~2. Eligible for participation, but placed on a waiting list due to insufficient funds;~~
- ~~3. Ineligible for participation; or~~
- ~~4. In need of a review/recertification application/process.~~ **Remains in Section 013 as modified.**

~~2-007.03 Adverse Action Notices:~~ The Department must provide written notice to the client at least ten calendar days in advance of the effective date if respite services are to be reduced or terminated before the current authorization period ends, unless the reduction or termination is due to the request or death of the client. **Remains in Section 013 as modified.**

~~2-008 Eligibility Periods:~~ The Department establishes eligibility periods for participants with ongoing needs. Eligibility must be reviewed at least every 12 months or more often if circumstances indicate to a prudent person that a review should be completed. **Remains in Section 014 as modified.**

~~2-008.01 Changes within Eligibility Periods: Each individual or head of a family receiving respite services under this program shall immediately report any change in income, resources, living arrangement or need to the Department. Failure to do so may result in an overpayment that must be refunded to the Department. See also 464 NAC 1-007. Remains in Section 007 as modified.~~

~~2-009 Prior Authorization: Department staff must prior authorize services before the RSP will pay for them. The notice of eligibility serves as documentation of the authorization. Remains in Section 015 as modified.~~

~~2-010 Payments: Support payments may be made directly to the client or family or as vendor payments to respite providers. Remains in Section 016 as modified.~~

~~2-010.01 Payment to the Client: Remains in Section 016 as modified. If payments are to be made directly or to the person with special needs, s/he must submit an itemized statement or receipt to the Department which:~~

- ~~1. Describes the services provided;~~
- ~~2. Includes the dates and hours of service;~~
- ~~3. Is signed by the provider or on customized forms; and~~
- ~~4. Includes the provider's Social Security number or Federal Tax I.D. number.~~

~~The client must not bill for more than the amount authorized according to his/her notice of eligibility. Regardless of the total respite expenses, the Department payment must not exceed the maximum dollar amount allowed the client.~~

~~Note: Respite Subsidy payments made directly to the client may be considered as income by other assistance programs.~~

~~2-010.02 Payment to the Provider: Remains in Section 016 as modified. If payments are made directly to providers, the provider must submit an itemized statement to the Department which—~~

- ~~1. Describes the service provided;~~
- ~~2. Includes the dates and hours of service;~~
- ~~3. Is signed by the client or caregiver; and~~
- ~~4. Includes the provider's Social Security number or Federal I.D. tax number.~~

~~The provider must not bill for more than the amount authorized for the client according to the client's notice of eligibility. Regardless of the total respite expenses, the Department payment must not exceed the maximum dollar amount allowed the client.~~

~~2-010.03 Frequency of Payments: Clients or providers must submit billings no more than once a month after all the respite services have been provided for the month. Department staff must review the bill/receipt and issue a check in a timely manner. Remains in Section 016 as modified.~~

~~Clients or providers must submit billings for any given month within 90 days of when the service is provided. Remains in Section 016 as modified.~~

~~2-011 Right to Appeal:~~ Any individual or family who is denied respite services or whose respite services are to be reduced or terminated under this program may appeal by requesting a fair hearing in writing within 90 days of the date of the written notice or alleged inaction. This request must—

1. Include a short summary of the Department's action being appealed;
2. Describe the reason for the appeal; and
3. Be addressed to the Director of the Nebraska Department of Health and Human Services. **Remains in Section 018 as modified.**

The Department must conduct the appeal and fair hearing according to the policies in 465 NAC 6-000 ff.

~~2-012 Record Retention:~~ HHS staff must retain case files for four years after the RSP case has been closed/rejected.

TITLE 464 - NEBRASKA LIFESPAN RESPITE SERVICES PROGRAM

CHAPTER 3 - (Repealed)

CHAPTER 3-000 LIFESPAN RESPIRE SUBSIDY PROVIDERS

~~3-001 Locating Providers:~~ Clients must locate their own providers. The Department may refer eligible clients to community resources with expertise in the appropriate area or to Network Coordinators. **Remains in Section 019 as modified.**

~~3-002 Contracts/Provider Agreements:~~ The Department does not provide or require contracts or provider agreements.

~~3-002.01 Provider Employment Status:~~ Providers are not employees of the State of Nebraska. **Remains in Section 019 as modified.** They may be considered to be employees of the clients they serve by the Internal Revenue Service and the Social Security Administration.

~~3-003 Provider Approval:~~ The providers must meet any applicable local, state, and federal laws and regulations. It is the responsibility of the caregiver to make this determination. **Remains in Section 019 as modified.**

~~3-003.01 Services Provided Outside Nebraska:~~ RSP uses services in Nebraska. RSP may cover respite care outside Nebraska or services by a provider residing outside Nebraska only when the service is not available within reasonable driving distance from the client's home.

~~3-003.02 When the Service is Not Available in the State:~~ When respite services are not available in the state, the following criteria must be met for approval:

- ~~1. The client must contact the Respite Network Coordinator for assistance in locating a provider within a reasonable driving distance.~~
- ~~2. If none is available, the Respite Network Coordinator must notify Central Office that the service is not available within a reasonable driving distance.
 - ~~a. The Respite Network Coordinator may notify Central Office by any means: a letter, a phone call, by e-mail or any other method within reason.~~~~
- ~~3. Central Office must document in the case file that the Respite Network Coordinator has verified the service is not available within a reasonable driving distance.~~
- ~~4. The out-of-state provider must meet that state's licensure laws and regulations, if they exist.~~
- ~~5. The Central Office staff responsible for determining eligibility must give specific prior approval for the service.~~

~~3-003.03 Supportive Services:~~ Any services provided in connection with the respite services must be considered in the rate negotiated with the client. The RSP will not pay for supportive services billed separately. Supportive Services includes, but is not limited to, transportation, administering medications, escort services, housekeeping services and personal care services. **Remains in Section 020 as modified.**

~~MAY 18, 2002~~ ~~NEBRASKA HEALTH AND RESPITE SUBSIDY PROGRAM~~
~~MANUAL LETTER # 31-2002~~ ~~HUMAN SERVICES MANUAL~~ ~~464 NAC 3-004~~

~~3-004 Fraud: Any person, including vendors and providers of respite services, who willfully provides false information or attempts to obtain payment for which s/he is not entitled, may be prosecuted for fraud. See also 464 NAC 1-007.~~ **Remains in Section 004 as modified.**

~~CHAPTER 1-000 SCOPE AND AUTHORITY~~

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~~CHAPTER 3-000 LIFESPAN RESPITE SUBSIDY PROVIDERS~~

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~~3-002.01 Provider Employment Status~~

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