

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
NOTICE OF PUBLIC HEARING

April 21, 2021  
10:00 a.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 471, Chapter 8 of the Nebraska Administrative Code (NAC) – *Hearing Aids*. The proposed changes will remove all duplicate statutory and inconsistent language in the regulations, restructure the regulatory chapter, and update terminology to ensure compliance with the State Plan, other NAC chapters, federal law, and best practices.

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](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) 471-8223. 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: <b>Department of Health and Human Services</b> |                           |
| Title: 471   | Prepared by: Dawn Kastens |
| Chapter: 8   | Date prepared: 3.12.21    |
| Subject: Hearing Aids                                  | Telephone: 402.471.9530   |

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:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

DRAFT  
03-12-2021

NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

471 NAC 8

TITLE 471            NEBRASKA MEDICAL ASSISTANCE PROGRAM SERVICES

CHAPTER 8        HEARING AIDS

001. SCOPE AND AUTHORITY. These regulations govern services provided under the Medical Assistance Act, Nebraska Revised Statute (Neb. Rev. Stat.) §§ 68-901 et seq.

002. DEFINITIONS. The following definitions apply:

002.01 ASSISTIVE LISTENING DEVICE. Any instrument or device that helps overcome hearing loss.

002.02 BEHIND THE EAR (BTE). All parts of the hearing aid are behind the ear (BTE) except for the ear piece that is connected by tubing to the behind the ear (BTE) parts.

002.03 COMPLETELY IN THE CANAL (CIC). The hearing aid is completely in the ear (ITE) canal.

002.04 HEARING AID. Any wearable instrument or device, including any parts, attachments, or accessories, but excluding batteries or cords, that is designed for or offered for the purpose of aiding or compensating for impaired human hearing and that is programmed to a specific individual's hearing loss. Over-the-counter amplification devices with generic settings are excluded.

002.05 IN THE CANAL (ITC). The hearing aid is mostly in the ear (ITE) canal.

002.06 IN THE EAR (ITE). The entire hearing aid fits in the area just outside of the ear canal known as the concha bowl.

002.07 OTOLARYNGOLOGY SPECIALIST. A physician who specializes with disorders and conditions of the ear, nose, and throat region and related areas of the head and neck.

002.08 RECEIVER IN THE CANAL (RIC). Hearing aid with most parts behind the ear (BTE) except the receiver that is in the ear (ITE) and connected by a wire to the behind the ear (BTE) parts.

### 003. PROVIDER REQUIREMENTS.

003.01 GENERAL PROVIDER REQUIREMENTS. Providers of hearing aids must comply with all applicable provider participation requirements codified in 471 Nebraska Administrative Code (NAC) 2 and 3. In the event that provider participation requirements in 471 NAC 2 or 3 conflict with requirements outlined in this chapter, the individual provider participation requirements in this chapter will govern.

003.02 STANDARDS OF PARTICIPATION. To participate in Medicaid, hearing aid dispensers must complete and sign Form MC-19, Service Provider Agreement, and submit the completed form to the Department for approval. Hearing aid dispensers must be licensed by the Department as a:

- (1) Hearing instrument specialist and audiologist;
- (2) Audiologist; or
- (3) Hearing instrument specialist.

003.02(A) OUT OF STATE PROVIDERS. If the services are provided outside Nebraska, the dispenser must be:

- (i) Licensed by the appropriate agency of the state in which they practice; and
- (ii) Enrolled with Medicaid as a hearing aid service provider.

003.02(B) HEARING AID BATTERIES. Pharmacies and durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) providers may dispense hearing aid batteries if enrolled as a Medicaid provider.

### 004. SERVICE REQUIREMENTS.

#### 004.01 GENERAL REQUIREMENTS.

004.01(A) MEDICAL NECESSITY. Medicaid incorporates the definition of medical necessity from 471 NAC 1 as if fully rewritten herein. Services and supplies that do not meet the 471 NAC 1 definition of medical necessity are not covered.

004.01(B) PRIOR AUTHORIZATION. Medicaid requires prior authorization for certain items and services, as outlined on the Nebraska Medicaid Hearing Aid Fee Schedule.

004.01(B)(i) PRIOR AUTHORIZATION PROCEDURE FOR HEARING AIDS, ASSISTIVE LISTENING DEVICES, AND ACCESSORIES. Medicaid requires that the following information be submitted when requesting prior authorization for all hearing aids and assistive listening devices billed at \$500.01 or greater per unit, and accessories of \$150 or greater per line item:

- (a) A complete audiogram;
- (b) The name of the examiner or dispenser performing the audiogram;

- (c) The type of hearing aid or assistive listening device being recommended and any accessories;
- (d) The estimated cost of the hearing aid or assistive listening device;
- (e) The estimated cost of each item being provided;
- (f) The hearing aid dispenser's provider number; and
- (g) The hearing aid dispenser's name, address and phone number.

004.01(B)(i)(1) PRIOR AUTHORIZATION FORM. Form DM-5H, Physician's Report on Hearing Loss, must be used when submitting a request for prior authorization. All requests for prior authorization, and supporting documentation, must be submitted to the Department or the utilization management organization under contract with the Department.

004.01(B)(ii) PRIOR AUTHORIZATION PROCEDURE FOR REPAIRS. All requests for prior authorization, and supporting documentation, must be submitted to the Department or the utilization management organization under contract with the Department. Medicaid requires that the following information be submitted when requesting prior authorization for all repairs of \$150 or greater per line item:

- (1) The estimated cost of the repair;
- (2) The estimated cost of each item being provided;
- (3) The hearing aid dispenser's provider number; and
- (4) The hearing aid dispenser's name, address and phone number.

004.01(C) EAR, NOSE, AND THROAT (ENT) EVALUATIONS. Medicaid requires that a client be evaluated by a licensed otolaryngology specialist who is an approved Medicaid provider when the following criteria is met:

- (i) The client has a conductive hearing loss;
- (ii) The client has a unilateral hearing loss;
- (iii) The client has asymmetric hearing loss;
- (iv) The client reports dizziness; or
- (v) The client is age 16 or younger.

004.01(D) SERVICES PROVIDED FOR CLIENTS ENROLLED IN NEBRASKA MEDICAID MANAGED CARE. See 471 NAC 1.

004.01(E) HEALTH CHECK SERVICES. See 471 NAC 33

004.02 COVERED SERVICES. Medicaid provides hearing aids and supplies to Nebraska Medicaid eligible clients. These services include hearing aids, hearing aid repairs, assistive listening devices, and other hearing aid services when the services are medically necessary and are prescribed by a physician. Medicaid covers in-the-ear (ITE), behind the ear (BTE), in the canal (ITC), completely in the canal (CIC), or receiver in the canal (RIC) hearing aids. Bone conduction aids will be approved with ear, nose, and throat (ENT) physician approval.

004.02(A) NUMBER OF HEARING AIDS. Medicaid covers:

- (i) For clients age 20 and younger, the number of hearing aids is dependent on medical necessity; and

- (ii) For clients age 21 and older, hearing aids are limited to not more than one aid per ear every four years and then only when medically necessary. Medical necessity is determined using the prior authorization procedure in this chapter.

004.02(B) REPLACEMENT OF HEARING AIDS AND ASSISTIVE LISTENING DEVICES. The provider must obtain prior authorization from Medicaid for all replacements of lost or stolen hearing aids or assistive listening devices.

004.03 NON-COVERED SERVICES. Medicaid does not cover:

- (A) Hearing aid batteries for residents of a nursing facility except with the initial fitting;  
(B) Accessories which are for convenience; or  
(C) Items that are deemed to be not medically necessary.

005. BILLING AND PAYMENT FOR HEARING AIDS.

005.01 BILLING.

005.01(A) GENERAL BILLING REQUIREMENTS. Providers must comply with all applicable billing requirements codified in 471 NAC 3. In the event that individual billing requirements in 471 NAC 3 conflict with billing requirements outlined in this chapter, the individual billing requirements in this chapter will govern.

005.01(B) SPECIFIC BILLING REQUIREMENTS. Providers must submit claims to the Department on the appropriate claim form or electronic format. The provider or the provider's authorized agent must submit the provider's usual and customary charge for each procedure code listed on the claim.

005.01(B)(i) PROCEDURE CODES. Healthcare Common Procedure Coding System (HCPCS) and Current Procedural Terminology (CPT) procedure codes used by Medicaid are listed in the Nebraska Medicaid Practitioner Fee Schedule.

005.02 PAYMENT.

005.02(A) GENERAL PAYMENT REQUIREMENTS. Medicaid will reimburse the provider for services rendered in accordance with the applicable payment regulations codified in 471 NAC 3. In the event that individual payment regulations in 471 NAC 3 conflict with payment regulations outlined in this chapter, the individual payment regulations in this chapter will govern.

005.02(B) SPECIFIC PAYMENT REQUIREMENTS. Medicaid pays for covered hearing aid services at the lower of:

- (i) The provider's submitted charge; or  
(ii) The allowable amount for that procedure code in the Nebraska Medicaid Practitioner Fee Schedule for that date of service.

## CHAPTER 8-000 HEARING AIDS

~~8-001 Standards for Participation:~~ Hearing aid dispensers must be licensed by the Nebraska Department of Health and Human Services or if the services are provided outside Nebraska, the dispenser must be licensed by the appropriate agency of the state in which s/he practices. ~~To participate in the Nebraska Medical Assistance Program (NMAP), hearing aid dispensers must complete and sign Form MC-19, "Medical Assistance Provider Agreement," (see 471-000-90) and submit the completed form to the Department for approval.~~ **Remains in section 3 as modified**

~~8-002 Services Provided for Clients Enrolled in the Nebraska Health Connection (NHC):~~ Certain NMAP clients are required to participate in the Nebraska Medicaid Managed Care Program known as the Nebraska Health Connection (NHC). See 471-000-122 for a listing of the NHC plans.

~~8-002.01 Health Maintenance Organization (HMO) Plans:~~ The NHC HMO plans are required to provide, at a minimum, coverage of services as described in this Chapter. The prior authorization requirements, payment limitations, and billing instructions outlined in this Chapter do not apply to services provided to clients enrolled in an NHC HMO plan. Services provided to clients enrolled in an NHC HMO plan are not billed to NMAP. The provider must provide services only under arrangement with the HMO.

~~8-002.02 Primary Care Case Management (PCCM) Plans:~~ All NMAP policies apply to services provided to NHC clients enrolled in a PCCM plan. For services which require NMAP prior authorization (see 471 NAC 8-007), the provider must contact the PCCM plan and request authorization as directed by the plan. All services provided to clients enrolled in NHC PCCM plans are billed to NMAP.

~~8-003 HEALTH CHECK (EPSDT) Treatment Services:~~ Services not covered under the Nebraska Medical Assistance Program (NMAP) but defined in Section 1905(a) of the Social Security Act must meet the conditions of items 1 through 8 listed in the definition of "Treatment Services" in 471 NAC 33-001.04. These services must be prior authorized by the Division of Medicaid and Long-Term Care.

~~8-004 Covered Services:~~ NMAP considers coverage for hearing aids, hearing aid repairs, hearing aid rental, assistive listening devices, and other hearing aid services when the services are medically necessary and are prescribed by a physician.

NMAP covers standard in-the-ear, behind the ear, or body hearing aids. Bone conduction aids will be approved with Ear, Nose and Throat (E.N.T.) Specialist approval.

~~8-005 Non-Covered Services:~~ NMAP does not cover hearing aid batteries for residents of a nursing facility except with the initial fitting. NMAP does not cover accessories which are for convenience and not medically necessary, or in-the-canal (ITC) or completely in the canal (CIC) hearing aids.

~~8-006 Ear, Nose and Throat (E.N.T.) Evaluations:~~ NMAP requires that a client be evaluated by an E.N.T. when the following criteria is met:

- ~~1. The client has a conductive hearing loss;~~
- ~~2. The client has a unilateral hearing loss; or~~
- ~~3. The client is age 16 or younger.~~

Remains in section 4 as modified

#### 8-007 Limitations and Requirements for Certain Services

##### 8-007.01 Number of Hearing Aides NMAP May Consider for Payment:

- ~~1. For clients age 20 and younger: Hearing aides required by medical necessity. Medical necessity is determined using 471 NAC 8-007.03, Prior Authorization Process.~~
- ~~2. For clients age 21 and older: Hearing aides are limited to not more than one aid per ear every four years and then only when medically necessary. Medical necessity is determined using 471 NAC 8-007.03 Prior Authorization Process.~~

Remains in section 4 as modified

~~8-007.02 Prior Authorization:~~ The Department requires prior authorization for all hearing aids and assistive listening devices billed at \$500.01 or greater. Prior authorization is also required for all hearing aid repairs and accessories of \$150 or greater per line item. If the cost of the repair and batteries is less than \$150, no prior authorization is required. Remains in section 4 as modified

Note: ~~For hearing aides and assistive listening devices billed at \$500 or less, prior authorization is not required. However, the provider must secure all the information required by 471 NAC 8-007.03, including Form DM-5H. Rather than submit with a prior authorization, the provider must retain this information for four years, subject to Department review.~~

~~8-007.03 Prior Authorization Procedures:~~ NMAP requires that the following information be submitted when requesting prior authorization for a hearing aid or assistive listening device.

- ~~1. A complete audiogram (pure tone, air bone, masking, speech);~~
- ~~2. The name of the examiner or dispenser performing the audiogram;~~
- ~~3. The type of hearing aid or assistive listening device being recommended and any accessories;~~
- ~~4. The estimated cost of the hearing aid or assistive listening device;~~



5. The estimated cost of each accessory;
6. The hearing aid dispenser's provider number; and
7. The hearing aid dispenser's name, address and phone number.

Remains in section 4 as modified

~~Form DM-5H "Physician's Report on Hearing Loss," (see 471-000-3 must be used when submitting a request for prior authorization. The examining physician must complete the front portion of Form DM-5H. The back portion of Form DM-5H must be completed by either the examiner or the hearing aid dispenser.~~ Remains in section 4 as modified

REV. JULY 1, 2008 \_\_\_\_\_ NEBRASKA DEPARTMENT OF \_\_\_\_\_ NMAP SERVICES  
MANUAL LETTER # 51-2008 \_\_\_\_\_ HEALTH AND HUMAN SERVICES \_\_\_\_\_ 471 NAC 8-007.03

~~The provider must submit requests for prior authorization using the standard electronic Health Care Services Review - Request for Review and Response transaction (ASC X12N 278) (see Standard Electronic Transaction Instructions at 471-000-50) or by completing and submitting Form MC-9S, "Prior Authorization Document for Hearing Aids" (see 471-000-205 for completion instructions).~~

~~Prior authorization is obtained from the Medicaid Division.~~ Remains in section 4 as modified

~~8-007.04 Replacement of Hearing Aids and Assistive Listening Devices: The provider must obtain prior authorization from the Medicaid Division for all replacements of lost or stolen hearing aids or assistive listening devices.~~

~~8-008 Payment for Hearing Aid Services: The Nebraska Medical Assistance Program (NMAP) pays for covered hearing aid services at the lower of -~~

1. The provider's submitted charge; or
2. The allowable amount for that procedure code in the Nebraska Medicaid Practitioner Fee Schedule for that date of service. The allowable amount is indicated in the fee schedule as -
  - a. The invoice cost (indicated as "IC" in the fee schedule);
  - b. The maximum allowable dollar amount; or
  - c. The reasonable charge for the procedure as determined by the Medicaid Division (indicated as "BR" - by report or "RNE" - rate not established - in the fee schedule).

~~The Nebraska Medicaid Practitioner Fee Schedule is effective July 1 through June 30 of each year.~~

~~8-008.01 Revisions of the Fee Schedule: The Department reserves the right to adjust the fee schedule to -~~

1. Comply with changes in state or federal requirements;
2. Comply with changes in national standard code sets, such as HCPCS and CPT;
3. Establish an initial allowable amount for a new procedure based on information that was not available when the fee schedule was established for the current year; and

4. ~~Adjust the allowable amount when the Medicaid Division determines that the current allowable amount is -~~
  - a. ~~Not appropriate for the service provided; or~~
  - b. ~~Based on errors in data or calculation.~~

~~Providers will be notified of revisions and their effective dates.~~

~~8-009 Billing Requirements: Hearing aid providers must submit claims to the Department on the appropriate claim form or electronic format (see Claim Submission Table at 471-000-49).~~  
Remains in section 5 as modified

~~The provider or the provider's authorized agent must submit the provider's usual and customary charge for each procedure code listed on the claim.~~ Remains in section 5 as modified

~~8-010 Procedure Codes: HCPCS/CPT procedure codes used by NMAP are listed in the Nebraska Medicaid Practitioner Fee Schedule (see 471-000-508).~~ Remains in section 5 as modified