

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
NOTICE OF PUBLIC HEARING

August 18, 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 the proposed amendments to Title 477 Chapter 29 of the Nebraska Administrative Code (NAC) – *Heritage Health Adult Program*. The proposed changes include: removing the benefit tier system (Basic or Prime) from the Heritage Health Adult Program, and placing all enrolled beneficiaries into one benefit package offering full Medicaid services; and removing all medically frail language, including medically frail determinations, referrals for determination, determination period, and activities of daily living; and updating the benefit plan effective date to October 1, 2021. The proposed changes will align the regulation with the withdrawal of Nebraska's 1115 demonstration waiver.

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

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 in person or 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) 471-8417. 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

<b>Agency: Department of Health and Human Services</b>	
Title: 477	Prepared by: Emi Giles
Chapter: 29	Date prepared: June 22, 2021
Subject: Heritage Health Adult Program	Telephone: 402-471-9365

**Type of Fiscal Impact:**

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	( <input type="checkbox"/> )	( <input checked="" type="checkbox"/> )	( <input checked="" type="checkbox"/> )
Increased Costs	( <input checked="" type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Decreased Costs	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Increased Revenue	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Decreased Revenue	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Indeterminable	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )

**Provide an Estimated Cost & Description of Impact:**

**State Agency:**

The estimated impact to the 9 months of SFY22 following implementation of the single benefit category for the HHA/Medicaid Expansion population would be approximately \$4,270,100 in state General Funds. Approximately 75 percent of this impact would be due to the blending of the existing Prime, Basic, and Medically Frail managed care capitation rates into a single benefit category, while retaining the geographically adjusted, age cohort, and gender specific rate cohorts.

The remaining 25 percent of the General Fund impact would be from the enrollment into the dental benefit manager for the persons who would have previously been excluded in the Basic benefit tier.

Political Subdivision: No.

Regulated Public: No.

If indeterminable, explain why:

TITLE 477 MEDICAID ELIGIBILITY

CHAPTER 29 HERITAGE HEALTH ADULT PROGRAM

The regulations contained in this chapter will become effective on October 1, ~~2021~~ 2020.

001. SCOPE AND AUTHORITY. These regulations govern the services provided under Nebraska's Medicaid program as defined by the Medical Assistance Act, Nebraska Revised Statute §§ 68-901 et seq.

002. HERITAGE HEALTH ADULT PROGRAM. In order to be eligible for Medicaid under the Heritage Health Adult program, an individual must meet the following eligibility criteria.

002.01 METHODOLOGY AND INCOME LIMIT. Eligibility for the Heritage Health Adult program is determined using the modified adjusted gross income (MAGI) methodology. In order to be eligible in the Heritage Health Adult program, an individual must have household income equal to or less than 133% of the Federal Poverty Level (FPL). 477 Nebraska Administrative Code (NAC) 14 through 18 apply to eligibility determinations in the Heritage Health Adult program.

002.02 NON-FINANCIAL CRITERIA. In order to be eligible in the Heritage Health Adult program, an individual must:

- (A) Be age 19 or older and under age 65;
- (B) Not be pregnant;
- (C) Not be entitled to or enrolled in Medicare part A or B; and
- (D) Not be eligible for or enrolled in coverage in any of the following groups: parents and caretaker relatives, pregnant women, children under age 19, former foster care, individuals receiving IV-E assistance, transitional medical assistance (TMA) with or without a premium, and Medicaid for the aged, blind, and disabled.

002.03 COVERAGE FOR DEPENDENT CHILDREN. Parents and caretaker relatives of dependent children are ineligible for coverage under the Heritage Health Adult program unless all dependent children living in the household are enrolled in Medicaid, the Children's Health Insurance Program (CHIP), or are otherwise enrolled in minimum essential coverage as defined at 26 United States Code (U.S.C.) 5000(A).

002.04 INDIVIDUALS WHO BECOME PREGNANT WHILE ENROLLED IN THE HERITAGE HEALTH ADULT PROGRAM. If an individual becomes pregnant during enrollment in the Heritage Health Adult program, the individual will remain in the Heritage Health Adult program until eligibility is redetermined during the annual eligibility renewal unless the individual becomes otherwise ineligible in this category, see 477 NAC 3.

~~003. BENEFIT TIERS. Individuals eligible in the Heritage Health Adult program will be eligible for coverage in one of two benefit tiers, the Nebraska Basic Alternative Benefit Plan, also known as the Basic benefit tier, and the Nebraska Prime Alternative Benefit Plan, also known as the Prime benefit tier. For plan benefits, see 471 NAC 39.~~

~~003.01 BASIC BENEFIT TIER. Individuals enrolled in the Heritage Health Adult program who are not targeted for enrollment in the Prime benefit tier will be enrolled in the Basic benefit tier.~~

~~003.02 PRIME BENEFIT TIER. Individuals in the following groups will be targeted for enrollment in the Prime benefit tier. When an individual no longer meets the criteria of a targeted group, he or she will be placed in the Basic benefit tier for the first month available, allowing for adequate and timely notice.~~

- ~~(A) Individuals determined to be medically frail;~~
- ~~(B) Pregnant individuals; and~~
- ~~(C) Individuals age 19 and 20.~~

~~003.03 MEDICALLY FRAIL.~~

~~003.03(A) MEDICALLY FRAIL DETERMINATION. For an individual to be determined medically frail, he or she must have a documented medical condition attested to by a healthcare provider who is able to diagnose within the scope of his or her respective practice act and is licensed and in good standing within the state in which they practice, identified through analysis and evaluation of historical claims data performed by the Medicaid managed care organization, or identified through information supplied by the Department, that falls into one or more of the following categories:~~

- ~~(i) A disabling mental disorder;~~
- ~~(ii) A chronic substance abuse disorder;~~
- ~~(iii) A physical, intellectual, or developmental disability with functional impairment that significantly impairs the individual from performing one or more activities of daily living each time the activity occurs, see 471 NAC 12 for the definition of activities of daily living for adults;~~
- ~~(iv) A disability determination based on Social Security criteria;~~
- ~~(v) A serious and complex medical condition; or~~
- ~~(vi) Chronically homeless as defined by the United States Department of Housing and Urban Development.~~

~~003.03(B) ACTIVITIES OF DAILY LIVING. For each activity of daily living an individual must require help to complete the task safely and the helper is required to be physically present throughout the task for each occurrence.~~

~~003.03(C) REFERRALS FOR DETERMINATION. Individuals may be referred to the Department in the following ways:~~

- ~~(i) The individual may self-identify as medically frail;~~
- ~~(ii) Referral by the Medicaid managed care organization after interaction with a case and care manager or through analysis of historical claims data; and~~
- ~~(iii) Identification by the Department.~~

DRAFT  
06-24-2021

NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

477 NAC 29

~~003.03(D) MEDICALLY FRAIL PERIOD. The Department will approve medically frail determinations for a period of either 12 or 36 months. The medically frail period will be based on the individual's health care condition and the Department's established clinical guideline criteria. At the end of the approved medically frail period, a review must be completed to determine whether the individual remains medically frail.~~

~~003.03(E) EFFECTIVE DATE OF MEDICALLY FRAIL DETERMINATION. Medically frail determinations approved by the Department on or before the last business day of the month will become effective on the first calendar day of the following month.~~