NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

August 23, 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 19 of the Nebraska Administrative Code (NAC) – *Podiatry Services.* The proposed changes specify the regulations' scope; update definitions; remove all duplicate statutory and inconsistent language in the regulations, restructure the regulatory chapter; and update formatting 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).

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 in person or by participating via phone conference line by calling 888-820-1398; Participant code: 3213662#.

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 who are deaf or hard of hearing 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: 471 NAC	Prepared by: Erin Noble
Chapter: 19	Date prepared: July 8, 2021
Subject: Podiatry Services	Telephone: 531-530-7154

Type of Fiscal Impact:

Please check all that apply

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(☒)	(☒)	(☒)
Increased Costs	(☐)	(☐)	(☐)
Decreased Costs	(☐)	(☐)	(☐)
Increased Revenue	(☐)	(☐)	(☐)
Decreased Revenue	(☐)	(☐)	(☐)
Indeterminable	(☐)	(☐)	(☐)

Provide an Estimated Cost & Description of Impact:

State Agency: N/A

Political Subdivision: N/A

Regulated Public: N/A

If indeterminable, explain why: N/A

TITLE 471 NEBRASKA MEDICAL ASSISTANCE PROGRAM SERVICES

CHAPTER 19 PODIATRY SERVICES

001. SCOPE AND AUTHORITY. The regulations govern the services provided under Nebraska's Medicaid program as defined by Nebraska Revised Statute (Neb. Rev. Stat.) §§ 68-901 et seq.

002. DEFINITIONS.

002.01 PODIATRIST. A physician of the foot, ankle, and related governing structures.

003. PROVIDER REQUIREMENTS.

003.01 GENERAL PROVIDER REQUIREMENTS. To participate in Nebraska Medicaid, providers of podiatry services must comply with all applicable participation requirements codified in 471 Nebraska Administrative Code (NAC) 1, 2 and 3. In the event that provider participation requirements in 471 NAC 1, 2 or 3 conflict with requirements outlined in 471 NAC 19, the individual provider participation requirements in 471 NAC 19 will govern.

003.02 SERVICE SPECIFIC PROVIDER REQUIREMENTS. Podiatrists must be licensed by the Nebraska Department of Health and Human Services, Division of Public Health. If podiatry services are provided outside Nebraska, the podiatrist must be licensed in that state.

003.03(A) PROVIDER AGREEMENT. The podiatrist will complete and sign a Medical Assistance Provider Agreement, and submit the completed form to the Department for approval to participate in Nebraska Medicaid.

004. SERVICE REQUIREMENTS.

004.01 GENERAL REQUIREMENTS.

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

004.01(B) SERVICES PROVIDED FOR RECIPIENTS ENROLLED IN THE NEBRASKA MEDICAID MANAGED CARE PROGRAM. See 471 NAC 1.

004.01(C) EARLY AND PERIODIC, SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT) SERVICES. See 471 NAC 33.

004.02 COVERED SERVICES. Nebraska Medicaid covers medically necessary podiatry services within the scope of the podiatrist's licensure and within program guidelines.

004.02(A) ROUTINE FOOTCARE. Routine foot care includes:
(1) Cutting or removal of corns or calluses;
(2) Trimming of nails;
(3) Other hygienic and preventive maintenance care or debridement; and
(4) Any services performed in the absence of localized illness, injury, or symptoms involving the foot.

004.02(A)(i) FREQUENCY LIMITATIONS. Coverage of routine foot care is limited to:
(a) One treatment every 90 days for non-ambulatory recipients; or
(b) One treatment every 30 days for ambulatory recipients.

004.02(A)(ii) EVALUATION AND MANAGEMENT (E&M) SERVICES. (E&M) services are not covered in addition to routine foot care on the same date of service, except:
(a) New patient visits; or
(b) When another separately identifiable service or procedure provided on the same date is documented in the medical record.

004.02(B) SURGERY. Surgical procedures performed by podiatrists must be in accordance with the provisions of Neb. Rev. Stat. § 38-3011.

004.02(B)(i) SITE OF SERVICE LIMITATIONS. Nebraska Medicaid accepts Medicare's determination of surgical procedures that are primarily performed in office settings.

004.02(B)(ii) STERILE SURGICAL TRAYS. Nebraska Medicaid covers one sterile surgical tray for each surgical procedure the podiatrist performs on an individual, in their office.

004.02(B)(iii) ASSISTANT SURGERY. Nebraska Medicaid covers an assistant surgeon only for surgical procedures that are identified as warranting an assistant surgeon.

004.02(C) SUPPORTIVE DEVICES OF THE FEET. Nebraska Medicaid covers orthopedic footwear, shoe corrections, orthotic devices and similar supportive devices for the feet if medically necessary for the recipient's condition. In addition to coverage as outlined herein, please see 471 NAC 7.

004.02(D) CLINICAL LABORATORY SERVICES. Nebraska Medicaid covers clinical laboratory services that are:
(i) Medically necessary;
(ii) Provided in a podiatrist's, or group of podiatrists', private office; and
(iii) Provided or supervised by the podiatrist(s).

004.02(E) INJECTIONS. Nebraska Medicaid covers intramuscular and subcutaneous injections at the cost of the medication plus an injection fee.

004.02(F) SUPPLIES. Nebraska Medicaid may cover medically necessary supplies that are used during the course of treatment and require application by the podiatrist. Routine supplies, and supplies that are considered incidental to the professional service are not covered.

005. BILLING AND PAYMENT FOR SERVICES.

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 billing requirements in 471 NAC 3 conflict with billing requirements outlined in 471 NAC 19, the billing requirements in 471 NAC 19 will govern.

005.01(B) SPECIFIC BILLING REQUIREMENTS.

005.01(B)(i) BILLING INSTRUCTIONS. Providers must bill Nebraska Medicaid using the appropriate claim form or electronic format.

005.02 PAYMENT.

005.02(A) GENERAL PAYMENT REQUIREMENTS. The department will reimburse the provider for services rendered in accordance with the applicable payment regulations codified in 471 NAC 3. In the event that payment regulations in 471 NAC 3 conflict with payment regulations outlined in 471 NAC 19, the payment regulations in 471 NAC 19 will govern.

005.02(B) SPECIFIC PAYMENT REQUIREMENTS.

005.02(B)(i) REIMBURSEMENT. Nebraska Medicaid pays for covered podiatry services in an amount equal to the lesser of:

(1) The provider's submitted charge; and
(2) The allowable amount for that procedure code in the Nebraska Medicaid Practitioner Fee Schedule in effect for that date of service.

005.02(B)(ii) MEDICARE AND NEBRASKA MEDICAID CROSSOVER CLAIMS. For information on the payment of Medicare and Nebraska Medicaid crossover claims, see 471 NAC 3.

005.02(B)(iii) COPAYMENT. For Nebraska Medicaid copayment requirements, see 471 NAC 3.

005.02(B)(iv) PAYMENT FOR SURGERY. Payment for surgeries is as follows:

(1) Surgical procedures are arranged in descending order according to the Department's allowable charges. The major procedure is paid at 100 percent of the allowable charge; and
(2) Subsequent procedures are paid at 50 percent of the allowable charge.
(3) Except for the initial office visit, payment for major surgical procedures includes office visits on the day of surgery and 14 days of post-operative care. The department follows the surgery guidelines in the American Medical Association's Current Procedural Terminology (CPT).
(4) Payment for surgical procedures that are primarily performed in office settings is reduced by 12 percent when performed in hospital outpatient settings, including emergency departments.

005.02(B)(v) STERILE SURGICAL TRAYS. Payment for a sterile surgical tray includes routine or special surgical instruments, office operating room cost, sutures, supplies, items used to prepare a sterile field for the surgical procedure, and the sterilization and maintenance of these items.

005.02(B)(vi) SUPPORTIVE DEVICES FOR THE FEET. Payment for custom orthotic devices which require impression casting by the podiatrist includes:
(1) Fitting;
(2) Cost of parts and labor;
(3) Repairs due to normal wear and tear within 90 days of the date dispensed; and
(4) Adjustments made when fitting and for 90 days from the date dispensed.
  (a) Adjustments necessitated by changes in the recipient's medical condition, or the recipient's functional abilities, are reimbursed separately.

005.02(B)(vii) CLINICAL LABORATORY SERVICES. Payment for specimens obtained in the podiatrist's office and sent to an independent clinical lab or hospital for processing must be claimed by the facility performing the tests. The Department does not reimburse the podiatrist for handling specimens or processing or interpreting tests performed outside the podiatrist's office.

~~CHAPTER 19-000 PODIATRY SERVICES~~

~~19-001 Definitions~~

~~Podiatry: The diagnosis or medical, physical, or surgical treatment of the ailments of the human foot, ankle, and related governing structures except (1) the amputation of the forefoot, (2) the general medical treatment of any systemic disease causing manifestations in the foot, and (3) the administration of anesthetics other than local.~~

~~19-002 Provider Requirements~~

~~19-002.01 General Provider Requirements: To participate in the Nebraska Medical Assistance Program (Medicaid), providers of podiatry services shall comply with all applicable participation requirements codified in 471 NAC Chapters 2 and 3. In the event that provider participation requirements in 471 NAC Chapters 2 or 3 conflict with requirements outlined in 471 NAC Chapter 19, the individual provider participation requirements in 471 NAC Chapter 19 shall govern.~~ Remains in section 3 as modified

~~19-002.02 Service Specific Provider Requirements: Podiatrists must be licensed by the Nebraska Department of Health and Human Services, Division of Public Health. If podiatry services are provided outside Nebraska, the podiatrist must be licensed in that state.~~ Remains in section 3 as modified

~~19-002.02A Provider Agreement: The podiatrist shall complete and sign Form MC-19, "Medical Assistance Provider Agreement," (see 471-000-90) and submit the completed form to the Department for approval to participate in Medicaid.~~ Remains in section 3 as modified

~~19-003 Service Requirements~~

~~19-003.01 General Requirements~~

~~19-003.01A Medical Necessity: Podiatry services must be provided in accordance with the medical necessity guidelines outlined in 471 NAC 1-002.02A.~~ Remains in section 4 as modified

~~19-003.01B Services Provided for Clients Enrolled in the Nebraska Medicaid Managed Care Program: See 471 NAC 1-002.01.~~ Remains in section 4 as modified

~~19-003.01C HEALTH CHECK (EPSDT) Treatment Services: See 471 NAC Chapter 33.~~

19-003.02 Covered Services: Medicaid covers medically necessary podiatry services within the scope of the podiatrist's licensure and within program guidelines (471 NAC 19-003.02). Remains in section 4 as modified

19-003.02A Routine Foot Care: Routine foot care includes:
i. Cutting or removal of corns or calluses;
ii. Trimming of nails;
iii. Other hygienic and preventive maintenance care or debridement, such as cleaning and soaking the feet, and the use of skin creams to maintain the skin tone; and,
iv. Any services performed in the absence of localized illness, injury, or symptoms involving the foot.

Remains in section 4 as modified

19-003.02A1 Frequency Limitations: Coverage of routine foot care is limited to:
a. One treatment every 90 days for non-ambulatory clients; or,
b. One treatment every 30 days for ambulatory clients.

Remains in section 4 as modified

19-003.02A2 Evaluation and Management (E&M) Services: E&M services are not covered in addition to routine foot care (such as debridement or reduction of nails, corns, and calluses, etc.) on the same date of service, except:
a. New patient visits; or
b. When another separately identifiable service or procedure provided on the same date is documented in the medical record.

Remains in section 4 as modified

19-003.02B Surgery: Surgical procedures performed by podiatrists must be in accordance with the provisions of Neb. Rev. Stat. §38-3011. Remains in section 4 as modified

19-003.02B1 Site of Service Limitation: Medicaid accepts Medicare's determination of surgical procedures that are primarily performed in office settings. Remains in section 4 as modified

19-003.02B2 Sterile Surgical Trays: Medicaid covers one sterile surgical tray for each surgical procedure the podiatrist performs on a Medicaid client, in his/her office. Remains in section 4 as modified

19-003.02B3 Assistant Surgery: Medicaid covers an assistant surgeon only for surgical procedures that are identified by CMS/AMA HCPCS coding as warranting an assistant surgeon. Remains in section 4 as modified

19-003.02C Supportive Devices for the Feet: Medicaid covers orthopedic footwear, shoe corrections, orthotic devices and similar supportive devices for the feet if medically necessary for the client's condition. In addition to coverage as outlined herein, please see 471 NAC 7-013. Remains in section 4 as modified

~~19-003.02D Clinical Laboratory Services: Medicaid covers clinical laboratory services that are:~~

~~1. Medically Necessary;~~
~~2. Provided in a podiatrist's, or group of podiatrists', private office; and,~~
~~3. Provided or supervised by the podiatrist(s).~~

Remains in section 4 as modified

~~19-003.02E Injections: Medicaid covers intramuscular and subcutaneous injections at the cost of the medication plus an injection fee.~~

Remains in section 4 as modified

19-003.02F Supplies: Medicaid may cover medically necessary supplies that are used during the course of treatment and require application by the podiatrist (e.g., splints, casts and other devices used in the treatment of fractures, etc.). Routine supplies, and supplies that are considered incidental to the professional service (e.g., application of surgical dressings) are not covered.

19-004 Billing and Payment for Podiatry Services

19-004.01 Billing

19-004.01A General Billing Requirements: Providers shall comply with all applicable billing requirements codified in 471 NAC Chapter 3. In the event that billing requirements in 471 NAC Chapter 3 conflict with billing requirements outlined in 471 NAC Chapter 19, the billing requirements in 471 NAC Chapter 19 shall govern. Remains in section 4 as modified

19-004.01B Specific Billing Requirements

19-004.01B1 Billing Instructions: Providers shall bill Medicaid, using the appropriate claim form or electronic format (see Claim Submission Table at Appendix 471-000-49), and in accordance with the billing instructions included in Appendix 471-000-63.

19-004.02 Payment

19-004.02A General Payment Requirements: Medicaid will reimburse provider for services rendered in accordance with the applicable payment regulations codified in 471 NAC Chapter 3. In the event that payment regulations in 471 NAC Chapter 3 conflict with payment regulations outlined in this 471 NAC Chapter 19, the payment regulations in 471 NAC Chapter 19 shall govern.

19-004.02B Specific Payment Requirements

19-004.02B1 Reimbursement: Medicaid pays for covered podiatry services in an amount equal to the lesser of:

a. The provider's submitted charge; and
b. The allowable amount for that procedure code in the Medicaid Practitioner Fee Schedule (471-000-519) in effect for that date of service.

Remains in section 5 as modified

19-004.02B2 Medicare/Medicaid Crossover Claims: For payment of Medicare/Medicaid crossover claims, see 471-000-70. Remains in section 5 as modified

19-004.02B3 Copayment: For Medicaid copayment requirements, see 471 NAC 3-008. Remains in section 5 as modified

19-004.02B4 Payment for Surgery: Payment for surgeries is as follows:

a. Surgical procedures are arranged in descending order according to Medicaid's

allowable charges. The major procedure is paid at 100 percent of the allowable charge; and

b. Subsequent procedures are paid at 50 percent of the allowable charge.

~~Except for the initial office visit, payment for major surgical procedures includes office visits on the day of surgery and 14 days of post-operative care. Medicaid follows the surgery guidelines in the American Medical Association's Current Procedural Terminology (CPT).~~

~~Payment for surgical procedures that are primarily performed in office settings is reduced by 12% when performed in hospital outpatient settings (including emergency departments).~~

Remains in section 5 as modified

~~19-004.02B5 Sterile Surgical Trays: Payment for a sterile surgical tray includes surgical instruments (routine or special), office operating room cost, sutures, supplies, items used to prepare a sterile field for the surgical procedure, and the sterilization and maintenance of these items.~~ Remains in section 5 as modified

~~19-004.02B6 Supportive Devices for the Feet: Payment for custom orthotic devices which require impression casting by the podiatrist includes:~~
- ~~a. Fitting;~~
- ~~b. Cost of parts and labor;~~
- ~~c. Repairs due to normal wear and tear within 90 days of the date dispensed; and,~~
- ~~d. Adjustments made when fitting and for 90 days from the date dispensed.~~
  - ~~i. Adjustments necessitated by changes in the client's medical condition, or the client's functional abilities, are reimbursed separately.~~

  Remains in section 5 as modified

~~19-002.04B7 Clinical Laboratory Services: Payment for specimens obtained in the podiatrist's office and sent to an independent clinical lab or hospital for processing must be claimed by the facility performing the tests. The Department does not reimburse the~~
~~podiatrist for handling specimens or processing or interpreting tests performed outside the podiatrist's office.~~ Remains in section 4 as modified