NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES NOTICE OF PUBLIC HEARING

September 7, 2021
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 471, Chapter 23 of the Nebraska Administrative Code (NAC) – Speech Pathology and Audiology Services. The proposed changes specify the regulations' scope; set out definitions; remove all duplicate statutory and inconsistent language in the regulations; update provider requirements; update covered services; update billing and documentation requirements; restructure the regulatory chapter; update terminology; update formatting; and perform a compliance review to ensure uniformity 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.



NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES



Pete Ricketts, Governor

TO:

Executive Board

Room 2108 State Capitol

Legislative Council

FROM:

Marge Respeliers, Paralegal I

Legal Services

Department of Health and Human Services (DHHS)

DATE:

July 28, 2021

RE:

Notice of Rulemaking under Neb. Rev. Stat. § 84-907.06

The Department of Health and Human Services (DHHS) will be holding a public hearing on amending the following regulations:

TITLE:

471 Nebraska Medical Assistance Program

CHAPTER:

23 Speech Pathology and Audiology Services

These regulations are scheduled for public hearing on September 7, 2021.

The purpose of this hearing is to receive comments on proposed changes to Title 471, Chapter 23 of the Nebraska Administrative Code (NAC) – *Speech Pathology and Audiology Services*. The proposed changes specify the regulations' scope; set out definitions; remove all duplicate statutory and inconsistent language in the regulations; update provider requirements; update covered services; update billing and documentation requirements; restructure the regulatory chapter; update terminology; update formatting; and perform a compliance review to ensure uniformity with the State Plan, other NAC chapters, federal law, and best practices.

The following items are enclosed for your referral to the chair of the relevant standing committee of the Legislature:

- 1. A copy of the notice of public hearing;
- 2. A copy of the proposed regulations;
- 3. A copy of the Policy Pre-Review Checklist; and
- 4. The estimated fiscal impact of this rulemaking action on state agencies, political subdivisions or persons being regulated.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services		
Title:471	Prepared by: Erin Noble	
Chapter: 23	Date prepared: July 26, 2021	
Subject: Speech Pathology and Audiology	Telephone: 531-530-7154	

Type of Fiscal Impact:

Please check all that apply

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(⊠)	(⊠)	(図)
Increased Costs	(🗆)	(🗆)	(🗆)
Decreased Costs	(🗆)	(🗆)	(🗆)
Increased Revenue	(🗆)	(🗆)	(🗆)
Decreased Revenue	(🗆)	(🗆)	(🗆)
Indeterminable	(🗆)	(🗆)	(🗆)

Provide an Estimated Cost & Description of Impact: N/A.

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

DRAFT 07-12-2021

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES

471 NAC 23

TITLE 471

NEBRASKA MEDICAL ASSISTANCE PROGRAM SERVICES

CHAPTER 23

SPEECH PATHOLOGY AND AUDIOLOGY 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. The following definitions apply:

002.01 AUDIOLOGIST. An individual who practices audiology and who presents their self to the public by any title or description of services incorporating the words audiologist, hearing clinician, or hearing therapist or any similar title or description of services.

002.02 PRACTICE OF AUDIOLOGY. The application of evidence-based practice in clinical decision making for the prevention, assessment, habilitation, rehabilitation, and maintenance of persons with hearing, auditory function, and vestibular function impairments and related impairments. Practice of audiology does not include the practice of medical diagnosis, medical treatment, or surgery. Practices do include:

- (A) Cerumen removal from the cartilaginous outer one-third portion of the external auditory canal when the presence of cerumen may affect the accuracy of hearing evaluations or impressions of the ear canal for amplification devices; and
- (B) Evaluation, selection, fitting, and dispensing of hearing instruments, external processors of implantable hearing instruments, and assistive technology devices as part of a comprehensive audiological rehabilitation program.

002.03 PRACTICE OF SPEECH-LANGUAGE PATHOLOGY. The application of principles and methods associated with the development and disorders of human communication skills and with dysphagia and cognition services, in which principles and methods include screening, assessment, evaluation, treatment, prevention, consultation, and restorative modalities for speech, voice, language, language-based learning, hearing, swallowing, cognition, or other upper aero-digestive functions for the purpose of improving quality of life by reducing impairments of body functions and structures, activity limitations, participation restrictions, and environmental barriers. Practice of speech-language pathology does not include the practice of medical diagnosis, medical treatment, or surgery.

002.04 SPEECH-LANGUAGE PATHOLOGIST. An individual who presents themself to the public by any title or description of services incorporating the words speech-language

pathologist, speech therapist, speech clinician, and having completed all requirements of the American Speech-Language-Hearing Association to practice speech-language pathology.

003. PROVIDER REQUIREMENTS.

003.01 GENERAL PROVIDER REQUIREMENTS. To participate in Medicaid, providers of speech pathology and audiology services must comply will all applicable provider 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 this 471 NAC 23, the individual provider participation requirements in 471 NAC 23 will govern.

003.02 SPECIFIC PROVIDER REQUIREMENTS. If speech pathology or audiology services are provided outside Nebraska, the speech pathologist or audiologist must be licensed by the state in which the services are provided. If the applicable state does not provide licensure for speech pathologists or audiologists, the provider must:

- (A) Have been granted a certificate of competency by the American Speech, Language, and Hearing Association. A photocopy of the certificate of competency must be submitted to the Department with a signed and completed Medical Assistance Provider Agreement;
- (B) Meet the equivalent educational and work experience requirements needed for a certificate of competency; or
- (C) Have completed the academic program requirements and be acquiring the supervised work experience needed for the certificate of competency.

003.03 PROVIDER AGREEMENT. The speech pathologist or audiologist must complete a Medical Assistance Provider Agreement, and submit it to the Department to participate in Nebraska Medicaid.

003.03(A) OUT OF STATE PROVIDERS. Out of state providers who are not licensed must submit a photocopy of the certificate of clinical competency to the Department with a signed and completed Medical Assistance Provider Agreement. The Department will submit the form to the Nebraska Speech Pathology and Audiology Licensure Board for evaluation.

004. SERVICE REQUIREMENTS.

004.01 GENERAL SERVICE REQUIREMENTS.

004.01(A) MEDICAL NECESSITY. Medicaid incorporates the definition of medical necessity inform 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.

<u>004.01(B)</u> <u>SERVICE CRITERIA.</u> <u>Medicaid covers speech pathology and audiology services when the following criteria are met. <u>The service must be:</u></u>

- (i) An evaluation:
- (ii) Restorative therapy with a medically appropriate expectation that the recipient's condition will improve significantly within a reasonable period of time; or

471 NAC 23

- (iii) For physical therapy services only, recommended in a Department- approved Individual Program Plan (IPP), and the recipient is receiving services through one of the following waiver programs:
 - (1) Comprehensive Developmental Disabilities Services Waiver;
 - (2) <u>Developmental Disabilities Adult Residential Services Waiver:</u>
 - (3) Adult Comprehensive Waiver; or
 - (4) Home and Community Based Services Waiver for Aged Adults and Children with Disabilities.

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

004.01(D) EARLY PERIODIC, DIAGNOSTIC AND TREATMENT TREATMENT (EPSDT) SERVICES. See 471 NAC 33.

004.02 COVERED SERVICES. Nebraska Medicaid covers speech pathology and audiology services when the following criteria are met:

- (1) The services are ordered by a licensed physician or nurse practitioner;
- (2) The services are medically necessary;
- (3) The services are such that only a licensed speech pathologist or audiologist can safely and effectively perform the service; and
- (4) The speech pathology or audiology service meets at least one of the service criteria.

004.02(A) MAINTENANCE PROGRAM. The speech pathologist or audiologist must:

- (i) Evaluate the recipient's needs;
- (ii) Design a maintenance program; and
- (iii) Instruct the recipients, family members, or nursing facility staff in carrying out the program.

004.02(B) SERVICES FOR INDIVIDUALS AGE 21 AND OLDER. For recpients age 21 and older, Nebraska Medicaid limits coverage to a combined total of 60 therapy sessions per fiscal year. The combined total of 60 therapy sessions per fiscal year includes all occupational therapy, physical therapy, speech pathology, and audiology sessions provided to the recipient.

004.03 NON-COVERED SPEECH PATHOLOGY AND AUDIOLOGY SERVICES. Nebraska Medicaid does not cover the following speech pathology or audiology services:

- (A) Maintenance therapy provided by a speech pathologist;
- (B) Therapy for vocational and prevocational assessment and training;
- (C) Therapy for functional capacity evaluations, educational testing, drivers training, or training in non-essential self-help or recreational activities, visual perception training, or treatment of psychological conditions;
- (D) Therapy for dysfunctions that are self-correcting, such as language therapy for young children with natural dysfluency or developmental articulation errors that are self-correcting;
- (E) Therapy for delays in speech development that is not due to a specific medical condition or brain injury; or
- (F) Therapy for the following conditions or diagnosis categories:

- (i) Psychosocial speech delay:
- (ii) Behavior problems;
- (iii) Attention disorders:
- (iv) Conceptual handicap; or
- (v) Learning disability.

005. BILLING AND PAYMENT FOR SPEECH PATHOLOGY AND AUDIOLOGY 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 individual billing requirements in 471 NAC 3 conflict with billing requirements outlined in this 471 NAC 23, the individual billing requirements in 471 NAC 23 will govern.

005.01(B) SPECIFIC BILLING REQUIREMENTS.

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

005.01(B)(ii) USUAL AND CUSTOMARY CHARGE. The provider, or their authorized agent, must submit the provider's usual and customary charge for services rendered.

005.01(B)(iii) MEDICAL NECESSITY DOCUMENTATION. The provider must list the following information when submitting a claim for speech pathology or audiology services:

- (1) Date of illness or injury onset;
- (2) Date speech pathology or audiology plan established;
- (3) Date speech pathology or audiology started; and
- (4) Number of speech pathology or audiology visits from onset.

005.02 PAYMENT.

005.02(A) GENERAL PAYMENT REQUIREMENTS. Nebraska 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.

005.02(B)(i) PAYMENT FOR INDIVIDUAL PROVIDERS. Nebrasaka Medicaid pays for covered speech pathology and audiology services in the amount equal to the lesser of:

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

CHAPTER 23-000 SPEECH PATHOLOGY AND AUDIOLOGY SERVICES

23-001 Standards for Participation: To participate in the Nebraska Medical Assistance Program (NMAP), a qualified professional speech pathologist or a qualified professional audiologist must be licensed by the Nebraska Department of Health and Human Services. If services are provided outside Nebraska, the speech pathologist or audiologist must:

- 1. Have been granted a certificate of competency by the American Speech, Language, and Hearing Association;
- 2. Meet the equivalent educational and work experience requirements needed for a certificate of competency;
- Have completed the academic program requirements and be acquiring the supervised work experience needed for the certificate of competency; or
- 4. Where applicable, licensed by the state.

<u>23-001.01</u> Registered Communication Assistants: NMAP does not enroll registered communication assistants as providers. Services provided by a registered communication assistant are billable to NMAP when all requirements of 172 NAC 23 and 172 NAC 24 are met.

<u>23-001.02</u> Provider Agreement: The speech pathologist of audiologist must complete and sign Form MC-19, "Medical Assistance Provider Agreement," (see 471-000-90) and submit it to the Nebraska Department of Health and Human Services, Division of Medicaid and Long Term Care, to be approved for provider enrollment.

Out of state providers who are not licensed must submit a photocopy of the certificate of clinical competency to the Department with the signed and completed Form MC-19. Out of state individuals who meet the academic requirements but are acquiring work experience for certification must submit a signed and completed Form MC-19 to the Department to be approved for provider enrollment. The Department will submit Form MC-19, completed by the applicant provider, to the Nebraska Speech Pathology and Audiology Licensure Board for evaluation. Remains in section 3 as modified

23-002 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.

23-002.01 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.

23-002.02 Primary Care Case Management (PCCM) Plans: All NMAP policies apply to services provided to NHC clients enrolled in a PCCM plan. The client's primary care physician (PCP) in the PCCM must refer the client for speech therapy or audiology services. All services provided to clients enrolled in NHC PCCM plans are billed to NMAP.

REV. JULY 1, 2008 NEBRASKA DEPARTMENT OF NMAP SERVICES

MANUAL LETTER # 51-2008 HEALTH AND HUMAN SERVICES 471 NAC 23-003

23-003 Covered Services: NMAP covers speech pathology and audiology services when the following criteria are met:

- 1. The services are ordered by a licensed physician;
- 2. The services are medically necessary;
- 3. The services are of such a level of complexity and sophistication or the condition of the patient is such that only a licensed speech pathologist or audiologist can safely and effectively perform the service; and
- The speech pathology or audiology service meets at least one of the conditions listed in 471 NAC 23 003.01 or 23 003 02.

Remains in section 4 as modified

23-003.01 Services for Individuals Age 21 and Older: NMAP covers a combined total of 60 therapy sessions per fiscal year (physical therapy, occupational therapy and speech therapy). The service must be: Remains in section 4 as modified

- 1. An evaluation: or
- 2. Restorative therapy with a medically appropriate expectation that the client's condition will improve significantly within a reasonable period of time; or
- Recommended in a Department approved Individual Program Plan (IPP), and the client is receiving services through one of the following waiver program:
 - a. DD Adult Comprehensive Services Waiver:
 - b. DD Adult Residential Services Waiver;
 - c. DD Adult Day Services Waiver;
 - d. Community Supports Waiver; or
 - e. Home and Community Based Services Waiver for Children with Developmental Disabilities and their Families.

<u>23 003 02 Services for Individuals Age 20 and Younger: NMAP covers speech pathology and audiology services for individuals birth to age 20 when the following criteria are met. The service must be:</u>

An evaluation; or

- Reasonable and medically necessary for the treatment of the client's illness or injury; or
- Restorative therapy with a medically appropriate expectation that the client's condition; or
- Recommended in a Department-approved Individual Program Plan (IPP), and the client is receiving services through one of the following waiver program:
 - a. DD Adult Comprehensive Services Waiver;
 - b. DD Adult Residential Services Waiver:
 - c. DD Adult Day Services Waiver;
 - d. Community Supports Waiver; or
 - e. Home and Community Based Services Waiver for Children with Developmental Disabilities and their Families.

REV. JULY 1, 2008 NEBRASKA DEPARTMENT OF NMAP SERVICES
MANUAL LETTER # 51 2008 HEALTH AND HUMAN SERVICES 471 NAC 23 003.03

<u>23-003.03 Maintenance Therapy</u>: NMAP does not cover maintenance therapy provided by a speech pathologist. The speech pathologist must:

- 1. Evaluate the client's needs;
- 2. Design a maintenance program;
- Instruct the client, family members, or nursing facility staff in carrying out the program.

Remains in section 4 as modified

23-004 Non-Covered Speech Pathology and Audiology Services: NMAP does not cover, speech pathology or audiology services in the following situations:

- 1. Clients Age 21 and Older therapy sessions in excess of 60 sessions per fiscal year for any combination of physical therapy, occupational therapy, and speech therapy;
- 2. Therapy for vocational and prevocational assessment and training:
- Therapy for functional capacity evaluations, educational testing, drivers training, or training in non-essential self-help or recreational activities (e.g. homemaking, cooking, finance), visual perception training, or treatment of psychological conditions;
- Therapy for dysfunctions that are self-correcting, such as language therapy for young children with natural dysfluency or developmental articulation errors that are selfcorrecting;
- Therapy for delays in speech development that is not due to a specific disease or brain injury; or
- 6. Therapy for the following conditions or diagnosis categories:
 - a. Psychosocial speech delay
 - b. Behavior problems
 - c. Attention disorders
 - d. Conceptual handicap

---e. Learning disability

23-005 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.

23-006 Payment for Speech Pathology and Audiology Services

23-006.01 Payment for Individual Providers: NMAP pays for covered speech pathology and audiology 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 in effect for that date of service. The allowable amount is indicated in the fee schedule as:
 - a. The unit value multiplied by the conversion factor;
 - b. The invoice cost (indicated as "IC" in the fee schedule);
 - c. The maximum allowable dollar amount; or
 - d. The reasonable charge for the procedure as determined by the Division of Medicaid and Long Term Care (indicated as "BR"—by report or "RNE"—rate not established—in the fee schedule).

<u>23-006.01A</u> 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 nationally recognized coding systems, 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 Division of Medicaid and Long-Term Care determines that the current allowable amount is
 - a. Not appropriate for the service provided; or
 - b. Based on errors in data or calculation.

The Department may issue revisions of the Nebraska Medicaid Practitioner Fee Schedule during the year that it is effective. Providers will be notified of the revisions and their effective dates.

<u>23-006.02 Hospitals</u>: For payment as a hospital service, see 471 NAC 10-000, Hospital Services.

<u>23-006.03 Home Health Agencies</u>: For payment as a home health agency service, see 471 NAC 9-000, Home Health Agency Services.

REV. JULY 1, 2008 NEBRASKA DEPARTMENT OF NMAP SERVICES

MANUAL LETTER # 51-2008 HEALTH AND HUMAN SERVICES 471 NAC 23-007

23-007 Billing Requirements

23-007.01 Medicare or Other Insurance Coverage: If a client is eligible for Medicare or has other insurance which may cover speech pathology or audiology services, the provider must bill the Medicare carrier or the insurance company before submitting a claim to the Department.

<u>23-007.02</u> <u>Medical Necessity Documentation</u>: <u>The provider must provide the following information when submitting a claim for speech pathology services:</u>

- 1. Date of illness/injury onset;
- 2. Date speech pathology plan established;
- 3. Date speech pathology started; and
- 4. Number of speech pathology visits from onset.

Remains in section 5 as modified

<u>23-007.03 Utilization Review</u>: Claims for speech pathology and audiology services are subject to utilization review by the Department to determine medical necessity and appropriateness of service.

<u>23-007.04</u> Required Forms and Standard Electronic Transactions: Depending on the place of service, the provider must use the forms and transactions required by the Department as follows:

- 1. If the service is provided at the patient's home or the provider's office, the provider must claim payment on Form CMS-1500 (see 471-000-61) or electronically using the standard Health Care Claim: Professional transaction (ASC X12N-837). The provider must use the appropriate place of service code and CPT or HCPCS codes on Form CMS-1500 or electronically using the standard Health Care Claim: Professional transaction (ASC X12N-837);
- 2. If the service is provided in a hospital, the hospital makes payment to the physical therapist. The hospital submits claims to the Department for physical therapy services provided in the hospital facility to inpatients or outpatients on Form CMS 1450 or electronically using the standard Health Care Claim: Institutional transaction (ASC X12N 837); and

3. If the service is provided by a home health agency, the agency must claim payment on Form CMS-1450, (see 471-000-57) or electronically using the standard Health Care Claim: Institutional transaction (ASC X12N 837).

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

REV. JULY 1, 2008 NEBRASKA DEPARTMENT OF NMAP SERVICES
MANUAL LETTER # 51-2008 HEALTH AND HUMAN SERVICES 471 NAC 23-007.05

23-007.05 Procedure Codes: Individual providers billing on Form CMS-1500 or electronically using the standard Health Care Claim: Professional transaction (ASC X12N 837) must use the American Medical Association's Current Procedural Terminology (CPT) or HCPCS procedure codes when billing the Department. When billing on Form CMS-1500 with CPT procedure codes, NMAP defines 30 minutes of speech pathology services as "1" "unit of service".

Hospital providers billing on the appropriate institutional claim (see Claim Submission Table at 471-000-49) must use the appropriate revenue codes when billing the Department.

Home health providers billing on the appropriate institutional claim (see Claim Submission Table at 471 000-49) must use the procedure codes listed in 471-000-57.