

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

November 3, 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 amendment of Title 476 NAC 2 of the Nebraska Administrative Code (NAC) – *Application and Eligibility*. The proposed changes implement statutory changes that will increase the income limit for Low Income Home Energy Assistance from 130% of the federal poverty level to 150% of the federal poverty level; and correct minor grammar errors.

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, 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.



TO: Executive Board
Room 2108 State Capitol
Legislative Council

FROM: Marge Respeliers, Paralegal I
Legal Services
Department of Health and Human Services (DHHS)

DATE: September 27, 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 proposed amendments to the following regulations:

TITLE: 476 Low Income Home Energy Assistance Program
CHAPTER: 2 Application and Eligibility

These regulations are scheduled for public hearing on November 3, 2021.

The purpose of this hearing is to receive comments on the proposed amendment of Title 476 NAC 2 of the Nebraska Administrative Code (NAC) – *Application and Eligibility*. The proposed changes implement statutory changes that will increase the income limit for Low Income Home Energy Assistance from 130% of the federal poverty level to 150% of the federal poverty level; and correct minor grammar errors.

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: 476	Prepared by: Matt Thomsen
Chapter: 2	Date prepared: 5/10/2021
Subject: Application and Eligibility	Telephone: 402-417-9435

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: Increasing the income limit for the Low Income Home Energy Assistance Program (LIHEAP) from 130% of the federal poverty level (FPL) to 150% of the FPL will increase the number of eligible households. Increasing the number of eligible households will require additional eligibility determinations to be made by the state eligibility staff.

The Legislative fiscal office appropriated an additional five Social Service Worker full time employees (FTEs) and a half-time supervisor to assist the additional households. Below is the estimated funding to be added to CFS programs:

- \$45,900 from federal funds in state fiscal year 2021 (SFY 2021);
- \$311,396 from federal funds in SFY 2022; and,
- \$233,547 from the State General Fund and \$77,849 from federal funds (total of \$311, 396) in SFY 2023.

The American Rescue Plan Act (ARPA) provided temporary LIHEAP funds that can be utilized through September 2022. Any expense after that time period will require the use of State General Funds.

The Department of Health and Human Services (DHHS) fiscal office identified a need for 21 additional Social Service Worker FTEs and two supervisor FTEs.

This is estimated to be an additional:

- \$1,134,712 for SFY 2022; and,

- \$1,512,347 for SFY 2023.

As a result, there is potential for an annual deficit of approximately \$1,200,951.

Political Subdivision: None

Regulated Public: The same amount of funds will be available to the public, because LIHEAP is a block grant. Since more households will be eligible, less funds will be available for households below 130% of the FPL.

If indeterminable, explain why:

TITLE 476 LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

CHAPTER 2 APPLICATION AND ELIGIBILITY

001. APPLICATION. To apply for the Low Income Home Energy Assistance Program, a household must complete an agency-approved application or ask the Department to add a request for the Low Income Home Energy Assistance Program to the household's current economic assistance case.

001.01 APPLICATION PROCESSING. If the household fails to provide requested documentation within the specified timeframe, the household application may be denied or an eligibility determination may be delayed.

001.02 APPROVAL. An approved application provides household eligibility for the remainder of the program year, notwithstanding changes in household income or composition.

001.03 RE-APPLICATION. To re-apply after a denial, a household must submit a new application or request.

002. ELIGIBILITY. To qualify for the Low Income Home Energy Assistance Program, a household must:

- (A) Be considered an economically-vulnerable household;
- (B) Meet income guidelines according to household size;
- (C) Meet citizenship and residency requirements; and
- (D) Not otherwise be disqualified or ineligible.

002.01 INCOME GUIDELINES. The total annual income of a household may not exceed ~~130%~~ 150% of the federal poverty level. For purposes of calculating and treating income for Low Income Home Energy Assistance Program eligibility, the Department applies the rules and regulations from the Supplemental Nutrition Assistance Program, Title 475 Nebraska Administrative Code (NAC).

002.02 CITIZENSHIP AND RESIDENCY. For purposes of determining Low Income Home Energy Assistance Program eligibility, the Department applies the residency and citizenship or alien status requirements from the Supplemental Nutrition Assistance Program, Title 475 NAC. A person who does not meet the citizenship and residency requirements must be excluded from a household for purposes of determining eligibility for Low Income Home Energy Assistance Program.

002.03 INELIGIBILITY. A household that includes a person who is ineligible under this section may still remain eligible for the Low Income Home Energy Assistance Program. Household

size will be reduced by the number of ineligible household members for purposes of determining eligibility and payments.

002.03(A) MISREPRESENTING RESIDENCE. Any person convicted in federal or state court of having fraudulently misrepresented his or her residence in order to obtain home energy assistance in two or more states is ineligible for the Low Income Home Energy Assistance Program for ten years from the date of conviction.

002.03(B) FLEEING FELON. A person is ineligible for the Low Income Home Energy Assistance Program during any period in which the person is:

- (i) Fleeing to avoid prosecution or custody or confinement after conviction for a crime or attempting to commit a crime that is a felony under the law of the place from which the person is fleeing; or
- (ii) Violating a condition of federal or state probation or parole.

002.03(C) INTENTIONAL PROGRAM VIOLATIONS. A person who commits an intentional program violation is ineligible for the Low Income Home Energy Assistance Program as follows:

- (i) A person is ineligible for the Low Income Home Energy Assistance Program during the period the person is disqualified from receiving other economic assistance benefits due to an intentional program violation in another program.
- (ii) A person who commits a Low Income Home Energy Assistance Program intentional program violation is ineligible as follows:
 - (1) For a first intentional program violation, the person becomes ineligible for any Low Income Home Energy Assistance Program benefits for the remainder of the program year and the next full program year.
 - (2) For a second intentional program violation, the person becomes ineligible for any Low Income Home Energy Assistance Program benefits for the remainder of the program year and the next three full program years.
 - (3) For a third (and any subsequent) intentional program violation, the person becomes permanently ineligible for Low Income Home Energy Assistance Program benefits.

003. COOLING ASSISTANCE. To qualify for cooling assistance, a household must qualify for the Low Income Home Energy Assistance Program and include a household member who:

- (A) Is a child under age ~~6~~ six who receives Aid to Dependent Children;
- (B) Is age 70 or older;
- (C) Has a severe illness or condition which is aggravated by extreme heat as verified by a medical statement signed by a licensed healthcare provider; or
- (D) Has received an air conditioner from the Department within four years of the application date.

004. CRISIS ASSISTANCE. To qualify for crisis assistance, a household must be eligible for the Low Income Home Energy Assistance Program, be in a crisis situation, and have an unanticipated inability to pay home energy costs within the most recent 90 days the household has experienced:

- (A) An unanticipated medical or household expense;
- (B) A significant, permanent and involuntary loss of work hours, wages, or employment;
- (C) The departure of a primary wage earner;

- (D) The inability of a primary wage earner to work because of illness or injury; or
- (E) A significant income loss because of the death of a household member.

004.01 DISCRETION. A household may also be eligible for an unspecified crisis related to a loss of income or inability to pay as determined in the Department's discretion.

004.02 INELIGIBILITY. Crisis assistance ineligibility reasons are listed below.

004.02(A) NON-COOPERATION. A household is ineligible for crisis assistance during any period a household member is under a sanction for non-cooperation with Child Support Enforcement or the Aid to Dependent Children-Employment First program.

004.02(B) OVERPAYMENT STATUS. A household is ineligible for crisis assistance to pay any bill incurred during any period a household is in overpayment status.

004.02(C) INTENTIONAL PROGRAM VIOLATION. A household is ineligible for crisis assistance to pay any bill incurred during any period a household member is under a sanction for an intentional program violation.

004.03 ALTERNATE SOURCES OF CRISIS ASSISTANCE. The Department provides a client who is denied crisis assistance with information about potential alternate sources of assistance.

004.04 DEPOSIT OR RECONNECT FEES. To qualify for assistance with a deposit or reconnect fee, the household must be eligible for crisis assistance and must have received no deposit or reconnect assistance for the same fuel type within the previous 36 months, unless extenuating circumstances exist in the Department's discretion.

005. FURNACE OR AIR CONDITIONER REPAIR OR REPLACEMENT ASSISTANCE. Qualifications for furnace or central air conditioner repair or replacement assistance and window air conditioner assistance are listed below.

005.01 FURNACE OR CENTRAL AIR CONDITIONER. To qualify for repair or replacement assistance for a furnace or central air conditioner in a home owned or being purchased by a household, the household must be eligible for Low Income Home Energy Assistance Program heating or cooling assistance, provide documentation that emergency repair or replacement is necessary, provide estimates for the cost of repair or replacement as requested by the Department, and have received no repair or replacement assistance for a furnace or air conditioner within the previous 60 months, unless extenuating circumstances exist as determined in the Department's discretion.

005.02 WINDOW AIR CONDITIONER. To qualify for assistance to purchase a window air conditioning unit, the household must be eligible for cooling assistance, provide estimates for the cost of purchase as requested by the Department, and have received no assistance to purchase a window air conditioning unit within the previous 60 months, unless extenuating circumstances exist as determined in the Department's discretion.

006. NOTICE TO HOUSEHOLD. The Department sends written notice to households informing of eligibility determinations.

006.01 APPROVAL. When a household is approved for assistance, the Department sends written notice indicating:

- (A) The Department has made a payment to a provider on behalf of the household; or
- (B) The payment schedule by which the Department will make payment to the household.

006.02 DENIAL. When the Department denies a household's application or request, the Department will send ~~to the household,~~ written notice to the household that states the reason for denial and notifies the household of its right to appeal.