TITLE 471 NEBRASKA MEDICAL ASSISTANCE PROGRAM SERVICES

CHAPTER 15 PERSONAL ASSISTANCE SERVICES

001. SCOPE AND AUTHORITY. Medicaid personal assistance services are defined in federal regulations at 42 Code of Federal Regulations (CFR) 440.167, and are an optional Medicaid benefit. Personal assistance services are provided to persons with disabilities and chronic conditions of all ages to enable them to accomplish tasks they would normally do for themselves if they did not have a disability. Personal assistance services activities are limited to those activities that are required to maintain the client's health and safety. The regulations govern the services provided under Nebraska's Medicaid program as defined by Nebraska Revised Statue (Neb. Rev. Stat.) §§ 68-901 et seq.

002. DEFINITION OF TERMS. The following definitions apply:

002.01 CARETAKER. Defined in Neb. Rev. Stat. § 38-2219 of the Nurse Practice Act, which explains health maintenance activities, to mean a person who is:

(A) Directly and personally involved in providing care for a minor child or incompetent adult; and

(B) The parent, foster parent, family member, friend, or legal guardian of such minor child or incompetent adult.

002.02 CLIENT. The individual eligible for personal assistance services. For the purposes of these regulations, a reference to a client may include the client's guardian, legal representative, or any person authorized to act on the participant's behalf.

002.03 COMPETITIVE INTEGRATED EMPLOYMENT. Working a minimum of 40 hours per month at minimum wage.

002.04 DEPARTMENT. The Nebraska Department of Health and Human Services.

002.05 INCOMPETENT ADULT. Someone who does not have the capability and capacity to make an informed decision.

002.06 LICENSED RESIDENTIAL SERVICE PROGRAM. An assisted living facility, center for persons with developmental disabilities, group home for the developmentally disabled, mental health center, substance abuse treatment center, or respite care service program. These programs are licensed by the Nebraska Department of Public Health.

002.07 PROVIDER OR PERSONAL ASSISTANCE SERVICE PROVIDER. The individual who actually performs the personal assistance service(s) in accordance with this chapter.

003. PROVIDER REQUIREMENTS.

003.01 GENERAL PROVIDER REQUIREMENTS. To participate in the Nebraska Medicaid program, providers of personal assistance services will comply with all applicable provider participation requirements codified in 471 Nebraska Administrative Code (NAC) 1, 2, and 3.

003.02 SERVICE SPECIFIC PROVIDER REQUIREMENTS.

003.02(A) PARTICIPATION STANDARDS. All providers are Medicaid providers as defined under 471 NAC 2 and will meet the following standards:

(i) Follow all applicable Department policies and procedures including those found in NAC 465, 471, 473, 474 and 480. Bill only for services which are authorized and actually provided;

(ii) Accept payment as payment in full for the agreed upon service(s) unless the client has been assigned a portion of the cost by the Department. Provider will not charge clients any difference between the agreed upon rate and private pay rate;

(iii) Spouses or parents of minor children are not eligible to be providers;

(iv) Not engage in any activity that influences service approval or utilization if they are an employee of the Department or, the relative of a Department staff person.

(v) Retain all records related to provider enrollment and service provision, including financial records. Records will be maintained for retention periods in compliance with federal and state law, but no record will be destroyed prior to expiration of a six year retention period;

(vi) Allow federal, state, or local offices responsible for program administration or audit to review service records, in accordance with 45 CFR 74.20 - 74.24; and 42 CFR 431.107. Inspections, reviews, and audits may be conducted on site;

(vii) A provider of personal assistance services is not an employee of the Department or of the State;

(viii) Any false claims including claims submitted electronically, statements, documents, or concealment of material fact may be prosecuted under applicable state or federal laws;

(ix) Respect every client's right to confidentiality and safeguard confidential information;

(x) Understand and accept responsibility for the client's safety and property;

(xi) Not transfer this agreement to any other entity or person;

(xii) Not use any federal funds received to influence agency or congressional staff;

(xiii) Not engage in or have an ongoing history of criminal activity that may be harmful or may endanger individuals for whom they provide services. This may include a substantiated listing as a perpetrator on the child and adult central registries of abuse and neglect;

(xiv) Agency providers agree to allow Department staff to review agency policies regarding hiring and reporting to ensure that appropriate procedures regarding abuse, neglect, and law violations are in place;

(xv) Have the knowledge, experience, and skills necessary to perform the tasks of patient care and Electronic Visit Verification (EVV);

(xvi) Be capable of recognizing signs of distress in client and know how to access available emergency resources if a crisis situation occurs;

(xvii) Report changes to appropriate Department staff;
(xviii) Report all incidents in which there is reasonable cause to believe a client has been subjected to abuse, neglect, or exploitation. All such incidents will be reported to law enforcement and the Department;
(xix) Be age 19 or older if an individual provider; or assure that agency staff who assume the following roles are age 19 or older: director, administrator, agency representative for signing legal documents, or provider of in-home client services;
(xx) Not be a recipient of personal assistance services or similar services; and
(xxi) Providers entering the client's home to provide services will not be accompanied in the client's home by any individuals, including the provider's minor children, whose presence is unnecessary to the provision of services to the client, or who are not authorized to provide services to the client. This does not apply when the provider shares a home with the client.

003.02(B) SPECIALIZED PROVIDER QUALIFICATIONS. A personal assistance services provider is considered to be specialized when they provide proof of one or more of the following:
(i) Has passed the Nebraska certified nurse aide equivalency test and can provide evidence of this to the Department;
(ii) Is a licensed registered nurse or licensed practical nurse and presents a copy of the certificate or license to the Department; or
(iii) Has a total of 4,160 hours of experience as a personal assistance service provider and can provide evidence to the Department.

003.02(C) DENIAL, TERMINATION, AND SANCTION OF PERSONAL ASSISTANCE SERVICES PROVIDERS. Refer to 471 NAC 2.

003.02(D) REPORTS OF ABUSE OR NEGLECT. The following provisions apply when reports of abuse or neglect by a provider have been received.

003.02(D)(i) ADULT PROTECTIVE SERVICES AND CHILD PROTECTIVE SERVICES. Medicaid providers are subject to Adult Protective Services and Child Protective Services Central Registry checks to determine if any substantiated reports of abuse or neglect by the provider exist. For services being provided in the same location the provider lists as their home, members of the household may also be checked in the Central Registries to determine if any substantiated reports of abuse or neglect exist.

003.02(D)(ii) REPORTS OF ABUSE OR NEGLECT. If a report of abuse or neglect concerning a provider, or a household member when service is provided in the same location the provider lists as their home address, as a perpetrator is substantiated, Department staff will immediately terminate the service provider agreement. If a report of abuse or neglect is shown as investigation in progress or substantiated, the Department will not enroll the provider.

003.02(E) DENIAL OR TERMINATION OF ENROLLMENT. Refer to 471 NAC 2.

003.02(E)(i) DENIAL OR TERMINATION OF ENROLLMENT. Refer to 471 NAC 2.

003.02(E)(ii) VOLUNTARY WITHDRAWAL. Written notice to the provider applicant is not required if the provider voluntarily withdraws from the enrollment process.

003.02(F) SERVICE PROVIDER AGREEMENT. Refer to 471 NAC 2.

003.02(G) PROVIDER APPEALS. Refer to 471 NAC 2.

003.02(H) PROVIDER RESPONSIBILITIES. An approved provider must:

(i) Adhere to all general provider standards in the service provider agreement and listed in this chapter;
(ii) Perform the personal assistance services described on the service plan;
(iii) Ensure that personal assistance services are provided in a manner that is consistent with the client's choice, needs and desire to live independently;
(iv) Participate in the review of the client's service plan as described in this chapter, if and when the client requests them to participate;
(v) Recognize changes in the client's condition as it relates to the service plan, and report them to the Department;
(vi) Providers are responsible for completion of their electronic claims and any additional required documents prior to submitting them for processing. Providers are also responsible for knowing and understanding the tasks they are authorized to perform for each client they serve;
(vii) Accurately document services related to the service plan that are provided to and on behalf of the client, in the provider Electronic Visit Verification (EVV) system and submit electronic claims for payment;
(viii) Confirm that services were received in the manner authorized according to Department procedures;
(ix) Disclose necessary medical information to all clients for whom services are being provided, to allow for the safety of both client and provider;
(x) Retain the following materials for six years:
    (1) Documentation that supports provision of services to each client served;
    (2) Any other documentation determined necessary by the Department to support selection and provision of services under a service plan;
    (3) Financial information related to the personal assistance services that are necessary to allow for an independent audit under Medicaid;
    (4) Documentation that supports requests for payment; and
    (5) Provider agreements with the Department;
(xi) Give adequate notice to the client when unable to provide scheduled services and terminating service provision; and
(xii) Not harm or exploit the client or client's household members, including acts of physical or verbal abuse, theft, or misuse of household belongings, personal funds, prescriptions, or other medical supplies.

003.02(I) PROVIDER NOTICE. When a client's personal assistance services are being changed in any way or terminated, the Department will provide written notice to the provider of the change in service provision or termination of payment for personal assistance services.

004. ELIGIBILITY AND AUTHORIZATION.

004.01 GENERAL SERVICE REQUIREMENTS.

004.01(A) MEDICAL NECESSITY. Medical necessity requirements outlined in 471 NAC 1 apply to the provision of personal assistance services, and are hereby incorporated as if fully rewritten herein.

004.01(B) ELIGIBILITY AND AUTHORIZATION.

004.01(B)(i) ELIGIBILITY CRITERIA. The Department must determine that a client meets all of the following eligibility criteria:

(1) Is a current Medicaid client;
(2) Needs personal assistance services to live in the community;
  (a) But does not have needs that require more intensive services than those listed in this chapter due to an acute health care level;
(3) Is not receiving or eligible for personal assistance services or similar staff support based on their residence or place of employment;
  (a) EXCEPTION. An individual residing in a licensed residential service program may only be eligible for personal assistance services under this regulation if it is needed to maintain competitive integrated employment and if it would not duplicate any services already received; and
(4) Lives in a residence that is not a hospital, nursing facility, intermediate care facility, prison, or other institution.

004.01(B)(ii) ASSESSMENT AND SERVICE PLAN. The client must participate in the development of the assessment and service plan by stating his or her service needs and preferences, and jointly determining the units of service needed. If the client is not cooperative in the process, the client is not eligible for services. The Department makes the final determination of units authorized.

004.01(B)(ii)(1) EMPLOYER APPOINTMENT OF AGENT FORM. Before authorization of a personal assistance service provider, the Department must obtain the client's signature on Internal Revenue Service Form FA-65, Employer Appointment of Agent.

004.01(B)(iii) AUTHORIZATION.

004.01(B)(iii)(1) PRIOR AUTHORIZATION. Personal assistance services must be authorized before actual provision of the service, based on the assessment of need and development of the service plan.

004.01(B)(iii)(2) AUTHORIZATION PERIOD. Services must be authorized based on the client's service needs for a period not to exceed a maximum of one year from the service authorization begin date.

004.01(B)(iii)(2)(a) AUTHORIZATION PERIOD OF PROVIDERS. A provider of personal assistance services may only be authorized until the end date of

the client's existing authorization for services.

004.01(B)(iii)(2)(b) AUTHORIZATION OF MULTIPLE PROVIDERS. The client must work with the Department to determine the maximum number of units each provider will be authorized to provide. It is the client's responsibility to determine the day-to-day schedule of each provider.

004.01(B)(iii)(3) LIMITATION. Personal assistance services are limited to a maximum of 40 hours per seven-day period. Only the Department, not the approved service provider, may increase the maximum number of units for which the client is eligible per week, within the 40-hour per seven-day maximum. Any services provided in excess of 40 hours per seven-day period must receive prior authorization from the Department.

004.01(B)(iii)(4) RELATIONSHIP TO SERVICE PLAN. Personal assistance services authorized must relate directly to the tasks needed to be performed by someone else and that are essential to remain in the home, as listed on the service plan.

004.01(B)(iv) REVIEW OF SERVICE PLAN AND RE-AUTHORIZATION. Personal assistance services may be re-authorized at the end of an authorization period, which is at least annually, based on continued eligibility and a review of the service plan. The Department will review the service plan together with the client a minimum of once every 12 months, or whenever the client's service needs change.

004.02 SPECIFIC SERVICE REQUIREMENTS.

004.02(A) ESSENTIAL SERVICES. Personal assistance services are based on individual needs and criteria that must be determined through an assessment and development of a service plan that relates directly to the needs identified in the assessment. These services include:

(i) Basic personal hygiene including, but are not limited to, providing or assisting with bathing; shampoo, hair grooming; nail care; oral hygiene; shaving; and dressing;
(ii) Toileting and bowel and bladder care including, but are not limited to, assisting to and from bathroom, on and off toilet or commode, diapering, bedpan; external cleansing of perineal area; maintenance bowel care; and changing or emptying catheter bag;
(iii) Mobility, transfers, and comfort including, but are not limited to, assisting with ambulation with and without aids; repositioning; encouraging active range-of-motion exercises; assisting with passive range-of-motion exercise; and assisting with transfers with or without mechanical devices;
(iv) Nutrition services, including, but are not limited to, preparing meals; planning and preparing special diets; assisting with fluid intake; and feeding; or
(v) Medication services, including, but not limited to, assisting with administration of medications; reminding appropriate persons when prescriptions need to be refilled.

004.02(B) SUPPORTIVE SERVICES. When any of the services listed in 471 NAC 15-

004.02(A), items i-v are essential to enable the client to remain in the home and community, the following supportive services can also be provided:

(i) Housekeeping tasks necessary to maintain the client in a healthy and safe environment, including changing the client's bed linens, laundering the client's bed linens and personal clothing, light cleaning in essential areas of the home used by the client; purchasing of food once per week, and cleaning client's dishes; and

(ii) Accompanying and assisting the client with any mobility, transfers, or other needed services for physician office visits, or on other trips to obtain medical diagnosis or treatment when the client is unable to travel alone.

004.02(C) SPECIALIZED PROCEDURES. Specialized procedures that would enable a person to live in their home and community may be performed by a personal assistance service provider at the direction of a competent client or of a caretaker. Such procedures are considered 'health maintenance activities' under the Nebraska Nurse Practice Act, Neb. Rev. Stat. § 38-2219. The client's attending physician or registered nurse must determine that these procedures can safely be performed in the home and community by an approved personal assistance service provider under the client's direction.

004.02(D) SERVICES OUTSIDE A CLIENT'S HOME. When any of the services listed in 471 NAC 15-004.02(A), items i-v are essential to enable the client to remain in the home and community, personal assistance services may be provided outside of a client's home, including at the client's worksite when the client is engaged in competitive integrated employment. Services provided may only include those authorized tasks that might otherwise be needed in the home and community, and if at a worksite, may not be tasks which essentially perform the job the client was hired to do. Accompanying and assisting the client with needed services when the client has work-related travels is also allowable.

004.02(D)(i) LICENSED RESIDENTIAL SERVICE PROGRAMS. An individual residing in a licensed residential service program may only be eligible for personal assistance services under this regulation if it is needed to maintain competitive integrated employment.

004.03 NON-COVERED SERVICES. Personal assistance services do not include the following:

(A) Personal assistance services not documented in the service plan;
(B) Personal assistance services provided by a parent of a minor child or spouse;
(C) Housekeeping services that are not an integral part of a covered personal assistance service;
(D) Services provided without authorization;
(E) Companion services, which provide for a person to be present without specific tasks be completed;
(F) Services provided when a client is not Medicaid eligible;
(G) Services that are defined as personal assistance services in 471 NAC 15-004.02 but are being paid by the Department under some other arrangement or funding source; and
(H) Clients receiving similar personal assistance services under another Medicaid service or program are not eligible for personal assistance services.

005. BILLING AND PAYMENT FOR PERSONAL ASSISTANCE SERVICES.

005.01 BILLING.

005.01(A) GENERAL BILLING REQUIREMENTS. Providers will comply with all applicable billing requirements located in 471 NAC 3, and with all applicable billing requirements for the Electronic Visit Verification (EVV) system.

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. Services must be delivered before they can be billed. Providers cannot provide services to more than one client at a time. Medicaid will not pay for services that were not performed during the actual hours noted by the provider in the Electronic Visit Verification (EVV) system.

005.02(B) SPECIFIC PAYMENT REQUIREMENTS.

005.02(B)(i) FREQUENCY OF BILLING. Providers may not bill more frequently than weekly but must bill at least monthly. Claims must be submitted within six months from the date of service in accordance with 471 NAC 3.

005.02(B)(ii) PROVIDER RATES. Rates are set by the Department, and are contained in the Nebraska Medicaid Personal Assistance Service Rate Listing.

005.02(B)(iii) PROVIDER SOCIAL SECURITY TAX WITHHOLDING.

005.02(B)(iii)(1) AFFECTED PROVIDERS. When required by law, the Department withholds Social Security taxes from provider payments. The employee's share of Social Security tax is withheld from provider payments only when in-home service is provided by an individual not affiliated with an agency. The Department, upon receiving a signed Internal Revenue Service Form FA-65, Employer Appointment of Agent, acts on behalf of clients who receive in-home services to withhold mandatory Federal Insurance Contribution Act taxes from individual providers and pays the client's matching tax share to the Internal Revenue Service.

005.02(B)(iii)(2) EARNINGS TAXED FOR SOCIAL SECURITY. Affected providers are subject to Social Security tax payment for each calendar year in which they are paid a federally determined amount or more for services provided to one client. The Department withholds this tax from all payments to affected providers. If a provider's earnings do not reach this annual amount for Federal Insurance Contribution Act services per client, the amount withheld for that year is refunded to the provider. The Department remits to the Internal Revenue Service an amount equal to the current Social Security tax rate for specified in-home services. Half of this amount is withheld from the provider as the employee's share; the other half is provided by the Department on behalf of the client employer.

005.02(B)(iv) PROVIDER PAYMENT PROCESS. Providers must confirm that services were received in the manner authorized according to Department procedures.

006. CLIENT RIGHTS AND RESPONSIBILITIES.

006.01 CLIENT RIGHTS. Clients, or if the clients not able to exercise these rights, a designated, responsible party who is able to perform these functions for the client, who are found to be eligible for personal assistance services have the right to:

(A) Identify their service needs;
(B) Determine their preferred approved provider, which may include selecting from a Medicaid enrolled list of providers;
(C) Identify a possible provider who meets the minimum qualifications as described in this chapter;
(D) Direct their personal assistance services;
(E) Receive services according to the service plan, free from risk of harm or exploitation, including physical and verbal abuse, theft and misuse of household belongings, personal funds, prescriptions or other medical supplies; and
(F) Dismiss a provider if not satisfied with the provision of services.

006.02 CLIENT RESPONSIBILITIES. Clients receiving personal assistance services must:

(A) Disclose necessary medical information to the personal assistance service provider to ensure the safety of both the client and provider;
(B) Notify the Department of any changes in their medical condition or service needs;
(C) Schedule provider(s) within the parameters of the Service Authorization Notice;
(D) Notify the Department if the provider is not performing the tasks for which they are authorized;
(E) Notify the Department of any harm or exploitation by the provider, including physical and verbal abuse, theft and misuse of household belongings, personal funds, prescriptions or other medical supplies;
(F) Validate service delivery in a manner that includes, but is not limited to, the date and location of service delivery, arrival and departure times of provider, and verification of service delivery by both the provider and client, or their authorized representative;
(G) Sign the Internal Revenue Service Form FA-65, “Employer Appointment of Agent”;
(H) Be at home or other designated location when the provider arrives to carry out scheduled authorized tasks;
(I) Ensure that the provider is free from risk of harm while performing the authorized tasks;
(J) Follow the terms of the service plan;
(K) Formulate a back-up plan for provision of services, including the selection of an approved back-up personal assistance services provider, in case of provider emergency; and if a provider emergency arises, initiate the back-up plan for provision of services; and
(L) Direct their personal assistance services.

006.03 CLIENT NOTIFICATION. The Department will send written notice of denial, reduction, or termination of services to the client. Notice to clients must contain: a clear statement of the action to be taken; a clear statement of the reason for the action; a specific regulation

citation which supports the action; and a complete statement of the client's right to appeal.

006.03(A) NOTICE OF REDUCTION OR TERMINATION OF SERVICES. Notice of reduction or termination of services must be mailed at least ten calendar days before the effective date of action. Refer to NAC Title 465 for additional computation excluding the day of the event, last day of the period, and holidays and weekend mailings.

006.03(A)(i) EXCEPTION. If the termination of personal assistance services is because of loss of Medicaid eligibility, the effective date of the termination must match the effective date of the termination of Medicaid eligibility.

006.03(B) CHANGES TO AUTHORIZATION. The Department will notify the client in writing of any change in the authorized service, including:

(i) Change in service tasks to be provided;
(ii) Change in authorized units;
(iii) Change in approved provider; or
(iv) Change in authorization period.

006.03(C) DENIAL AND TERMINATION REASONS. The Department will provide notice of denying or terminating eligibility for the following reasons:

(i) The client has no personal assistance service need;
(ii) The client's needs are being met by another source;
(iii) The client has not supplied needed information to complete the eligibility process;
(iv) The client fails to meet the specified eligibility criteria in this chapter;
(v) The Department and the client cannot agree on the specific component(s) of the service plan, including services to be provided, and number of units to be authorized;
(vi) The client voluntarily closes their personal assistance services case;
(vii) The client moves out of Nebraska;
(viii) The client dies;
(ix) The Department loses contact with the client and their whereabouts are unknown;
(x) The client has not made themselves available to the provider(s) at scheduled times by being home or at other designated locations, three or more times in a 30-day period;
(xi) The client or household member has demonstrated violence toward the provider(s);
(xii) The client has provided an unsafe and dangerous environment in which the provider(s) has been expected to work;
(xiii) An authorization period is ending and the client has not acted upon the Department's written notice of the need for re-authorization; or
(xiv) The client fails to comply with any of the client responsibilities in this chapter.

006.03(D) ADVANCE NOTICE NOT REQUIRED. Ten-day notice, in accordance with 15-006.03 and 477 NAC 9, is not required in the following situations:

(i) The Department has factual information confirming the death of a client;
(ii) The Department receives a clear written statement signed by a client that they no longer wish to receive services;
(iii) The client has been admitted to a nursing facility, intermediate care facility for

persons with developmental disabilities, or institution for mental disease;

(iv) The client's whereabouts are unknown; or

(v) The client has been accepted for Medicaid services by another state.

006.04 CLIENT APPEALS OF ADVERSE ACTIONS. Persons who request, apply for, or receive services may appeal any adverse action or inaction of the Department in accordance with NAC Title 465.