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NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

471 NAC 43

TITLE 471 NEBRASKA MEDICAL ASSISTANCE PROGRAM SERVICES

CHAPTER 43 NURSING FACILITY LEVEL OF CARE DETERMINATION FOR CHILDREN

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. (the Medical Assistance Act).

002. DEFINITIONS. The definitions set out in Neb. Rev. Stat. § 68-907 and the following definitions apply:

002.01 ACTIVITIES OF DAILY LIVING (ADL). Activities related to personal care. They include bathing or showering, dressing, getting in and out of bed or a chair, walking, using the toilet, and eating.

002.02 AGE APPROPRIATE. Reflective of the developmental abilities of the child taking into account any cultural traditions that are within the boundaries of state and federal law.

002.03 BATHING. A person's ability to take a full-body bath or shower. Includes how a person transfers in and out of tub or shower and the ability to bathe each part of the body.

002.04 DRESSING. A person's ability to put on and remove clothing from upper and lower body. This includes the ability to put on or remove physician ordered prosthetic or orthotic devices.

002.05 EATING. A person's ability to eat and drink. Includes intake of nourishment by other means, such as tube feeding or total parenteral nutrition.

002.06 PERSONAL HYGIENE. A person's ability to manage personal hygiene including combing hair, brushing teeth, and washing and drying self.

002.07 HOME AND COMMUNITY-BASED WAIVER SERVICES FOR AGED PERSONS OR ADULTS OR CHILDREN WITH DISABILITIES. An array of community-based services available to individuals who are eligible for nursing facility (NF) services under Medicaid but choose to receive services at home. The purpose of the waiver services is to offer options to Medicaid clients who would otherwise require nursing facility (NF) services.

002.08 HOSPICE. Hospice or hospice services shall meet the definition in 471 Nebraska Administrative Code (NAC) 36.

002.09 LEGAL REPRESENTATIVE. Any person who has been vested by law with the power to act on behalf of an individual. The term includes a guardian appointed by a court of competent jurisdiction in the case of an incompetent individual or minor, or a parent in the case of a minor, or a person acting under a valid power of attorney.

002.10 LEVEL OF CARE (LOC) DETERMINATION. Medicaid's nursing facility (NF) screening for medical necessity.

002.11 LIMITATION. A person is determined to have a limitation if they have difficulty performing age appropriate tasks associated with an activity of daily living by himself or herself, or is unable to perform the activity of daily living at all.

002.12 LEVEL II EVALUATION. See 471 NAC 12.

002.13 MEDICAID-ELIGIBLE. See 471 NAC 12.

002.14 MOBILITY. The ability to move from place to place indoors or outside, walking or other locomotion between locations on the same floor on a building.

002.15 NURSING FACILITY (NF). See 471 NAC 12.

002.16 REHABILITATION. See 471 NAC 12.

002.17 REHABILITATIVE SERVICES. See 471 NAC 12.

002.18 TERMINALLY ILL OR TERMINAL ILLNESS. The client is diagnosed with a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course.

002.19 TOILETING. How a person uses the toilet room, commode, bedpan, or urinal. How a person cleanses self after toilet use or incontinent episode(s), manages ostomy or catheter, and adjusts clothes.

002.20 TRANSFERRING. The ability to move from one place to another, including bed to chair and back, and into and out of a vehicle. Includes the ability to move on and off toilet or commode.

003. LEVEL OF CARE.

003.01 NURSING FACILITY LEVEL OF CARE (NF LOC) CRITERIA. The client or his or her authorized representative must provide information needed to determine nursing facility level of care (NF LOC). In order to make a determination, the client or representative must be assessed on the basis of activities of daily living (ADLs), risk factors, medical conditions and interventions, and cognitive function, to be determined via in-person discussion and observation of the client; reports from caregivers, family, and providers; and current medical records.

003.01(A) LEVEL OF CARE (LOC) DETERMINATION FOR CHILDREN AGE 17 OR YOUNGER. To meet nursing facility level of care (NF LOC) eligibility, a child must have assessed limitations in the child level of care (LOC) categories as follows:

- (1) Children age 0-47 Months: To be eligible, the child must have needs related to a minimum of one defined medical condition or treatment as listed in this chapter; and
- (2) Children age 48 months through 17 years: Nursing facility level of care (NFLOC) eligibility can be met in one of three ways:
 - (a) At least one medical condition or treatment need;
 - (b) Limitations in at least six activities of daily living (ADL); or
 - (c) Limitations in at least four activities of daily living (ADL) and the presence of at least two other considerations.

003.01(A)(i) AGE. For purposes of this section, the age of the child is his or her age on the last day of the month in which the level of care (LOC) determination is made.

003.01(A)(ii) LEVEL OF CARE (LOC) CRITERIA. The client or his or her authorized representative must provide the nursing facility level of care (NF LOC) information for use in the level of care determination which is obtained through in-person discussion, standardized assessment, and observation of the child; reports from parents or legal representative or informal caregivers; documentation from the child's individualized family service plan (IFSP) or individual education plan (IEP); and current medical records. Children with disabilities meet nursing facility level of care (NF LOC) eligibility based on the assessment categories of medical conditions and treatments, activities of daily living (ADL), and other considerations.

003.01(A)(ii)(1) DETERMINATION OF MEDICAL CONDITIONS AND MEDICAL TREATMENTS. To qualify with a limitation in this category, a child must have a defined, documented medical condition or receipt of treatment, which satisfies the requirements of this chapter.

003.01(A)(ii)(1)(a) DEFINED MEDICAL TREATMENT AND MEDICAL CONDITIONS. The following medical conditions and treatments are considered in determining nursing facility level of care (NF LOC) eligibility:

- (i) Defined medical treatments:
 - (1) Chemotherapy;
 - (2) Hemodialysis;
 - (3) Peritoneal dialysis;
 - (4) IV medication;
 - (5) Routine oxygen therapy;
 - (6) Radiation;
 - (7) Nasopharyngeal suctioning;
 - (8) Tracheotomy care;
 - (9) Transfusion;
 - (10) Ventilator or respirator;
 - (11) Wound care;
 - (12) Urinary catheter care;
 - (13) Continuous positive airway pressure (CPAP) or bi-level positive

- airway pressure (BiPAP);
- (14) Percussion vest;
- (15) Urinary collection device;
 - (a) Condom catheter;
 - (b) Indwelling catheter; or
 - (c) Cystostomy, nephrostomy, ureterostomy;
- (16) Inadequate pain control;
- (17) Mode of nutritional intake;
 - (a) Combined oral and parenteral or tube feeding;
 - (b) Nasogastric tube feeding;
 - (c) Abdominal feeding tube;
 - (d) Parenteral feeding; or
- (18) Other treatment(s) that may require management through a nursing facility or hospitalization, evaluated through clinical review by the Department;
- (ii) Defined medical conditions:
 - (1) Epilepsy;
 - (2) Conditions or diseases which make cognitive, activity of daily living, mood, or behavior patterns unstable including fluctuating, precarious, or deteriorating;
 - (3) End-stage disease, six or fewer months to live;
 - (4) Severe pressure ulcer;
 - (5) Deep craters in the skin;
 - (6) Breaks in skin exposing muscle or bone;
 - (7) Spinal cord dysfunction;
 - (8) Comatose or persistent vegetative state;
 - (9) Cerebral palsy;
 - (10) Macro or microcephaly;
 - (11) Muscular dystrophies;
 - (12) Seizure disorder;
 - (13) Traumatic brain injury;
 - (14) Congenital heart disorder;
 - (15) Cystic fibrosis;
 - (16) Cancer;
 - (17) Explicit terminal prognosis;
 - (18) Failure to thrive;
 - (19) Renal failure; or
 - (20) A fluctuating, inconsistent medical condition that has required the child to receive hospitalization related to a single medical condition:
 - (a) One or more times in the past 90 days; or
 - (b) For at least 30 days, if the child is less than 12 months old; or
- (iii) A condition which a licensed medical provider has documented as terminal or a persistent condition in which the absence of active treatment would result in hospitalization.

003.01(A)(ii)(1)(b) ADDITIONAL CRITERIA FOR MEDICAL CONDITIONS AND TREATMENTS. In addition to having a medical condition or treatment

identified above, the present medical condition or treatment must:

- (1) Impact the child's functioning or independence on a daily basis; and
- (2) Require physical assistance of another person:
 - (a) To prevent a decline in health status; or
 - (b) When the child is physically or cognitively unable to self-perform the medically necessary treatments.

003.01(A)(ii)(1)(b)(i) 48 MONTHS THROUGH 17 YEARS. For children ages 48 months through 17 years, documentation of the daily effect of a defined medical condition or treatment on the child's functioning or independence is required.

003.01(B) ACTIVITIES OF DAILY LIVING (ADL) FOR CHILDREN AGE 48 MONTHS THROUGH 17 YEARS. Information about limitations in activities of daily living (ADL) is obtained from observation of the child in the home setting, reports from parents, guardians or caregivers, current medical records, school records, and standardized assessments. Activities in daily living (ADL) are considered a limitation when the child, due to their physical disabilities, requires physical assistance from another person on a daily basis, or supervision, monitoring, or direction to complete the age appropriate tasks associated with each activity of daily living (ADL) defined in this section. For the purposes of this section, the term "ability" must be interpreted to include the physical ability, cognitive ability, age appropriateness, and endurance necessary to complete identified activities. The following activities of daily living (ADL) are considered for nursing facility level of care (NF LOC) eligibility:

- (1) Bathing;
- (2) Dressing;
- (3) Personal Hygiene;
- (4) Eating;
- (5) Mobility;
- (6) Toileting; and
- (7) Transferring.

003.01(B)(i) OTHER CONSIDERATIONS FOR CHILDREN AGE 48 MONTHS THROUGH 17 YEARS. The below are the considerations for use with 003.01(A)(2)(c) of this chapter.

- (1) Vision: The child has a documented visual impairment that is defined as a visual acuity of 20/200 or less in the better eye with the use of a correcting lens. When the child is not able to participate in testing using the Snellen or comparable methodology, documentation of an alternate method that demonstrates visual acuity is required;
- (2) Hearing: The child has a documented hearing impairment that is defined as the inability to hear at an average hearing threshold of 1000, 2000, 3000 and 4000 hertz (Hz) with the high fence set at an average of 65 decibels (dB) or higher in the better ear;
- (3) Communication: The child is not able to make themselves understood. This includes expressing information content, both verbal and nonverbal; and
- (4) Behavior: The child requires interventions based on a documented behavior management program developed and monitored by a psychiatrist,

psychologist, mental health practitioner, or school counselor.

003.02 PERSONS ELIGIBLE. To be eligible for a level of care (LOC) determination, a person must:

- (1) The person must be determined to be eligible for Medicaid, or under consideration for Medicaid eligibility;
 - (a) The person must be requesting Medicaid funding to cover nursing facility (NF) services or Home and Community-Based Waiver Services for Aged Persons or Adults or Children with Disabilities.

003.02(A) SPECIAL CIRCUMSTANCES NOT EVALUATED OR SCREENED. Level of care (LOC) will not be evaluated or reevaluated for Medicaid clients who:

- (i) Have previously been determined to meet nursing facility level of care (NF LOC) and return to the same nursing facility (NF) after discharge to a hospital, other nursing facility (NF), or swing bed. This exception does not apply for clients who have previously been discharged to an alternative level of care, or to the community;
- (ii) Are Medicaid-eligible clients who admit to the nursing facility (NF) under hospice care;
- (iii) Are nursing facility (NF) residents who elect hospice upon becoming Medicaid eligible;
- (iv) Are receiving nursing facility (NF) care which is currently being paid by Medicare. Level of care (LOC) evaluation referral must be completed after Medicare coverage has ended;
- (v) Direct transfer from one nursing facility (NF) to another nursing facility (NF);
- (vi) Are currently, or were previously eligible the month prior to nursing facility (NF) admission, for the Aged and Disabled Waiver program through the Department;
- (vii) Are admitted to a special needs nursing facility (NF) unit; or
- (viii) Are seeking out-of-state nursing facility (NF) admission.

003.02(B) EVALUATION FORMAT. Evaluations will be conducted using common evaluation tools. The evaluation tools reflect each area of nursing facility level of care (NF LOC) criteria, the amount of assistance required, and the complexity of the care.

003.02(C) REFERRAL.

003.02(C)(i) MINIMUM REFERRAL INFORMATION. The following is the minimum information required to process a referral for level of care (LOC) determination:

- (1) The name, position, and telephone number of the person making the referral;
- (2) The name of the nursing facility (NF) involved, if different than the referral source;
- (3) The name, date of birth, and social security number of the person to be evaluated; and
- (4) The date and time the referral is being made.

003.02(C)(ii) RECEIVING REFERRALS. When the Department or its agent receives a referral to evaluate an applicant for admission to a nursing facility (NF), they will begin to collect the information outlined in the evaluation tool. Information may be

collected either in person or through telephone interviews. Based on the information gathered through the evaluation, the Department determines whether the applicant meets nursing facility level of care (NF LOC).

003.02(C)(iii) APPLICABLE TIME FRAMES. A referral will only be accepted if it is verified by the Department that an application has been received and is under consideration or if an individual is determined eligible for Medicaid. The Department must complete a level of care (LOC) evaluation within 48 hours. If the evaluation is not completed by the Department within 48 hours, the applicant for admission must be deemed by the Department to be appropriate for admission until a level of care (LOC) determination is completed and any required notice is given.

003.02(C)(iii)(1) RETROACTIVE MEDICAID LEVEL OF CARE (LOC)

DETERMINATION. If a current nursing facility (NF) resident applies for Medicaid without informing the nursing facility (NF) and a level of care (LOC) referral is not completed during the Medicaid eligibility consideration period, the nursing facility (NF) must make an immediate referral to the Department when information is received that Medicaid has been approved. If the following conditions are met, Medicaid coverage will be retroactive to the date of Medicaid eligibility:

- (a) The nursing facility (NF) has a process in place to inform private pay clients and their families that the nursing facility (NF) must be informed when a Medicaid application is made;
- (b) The nursing facility (NF) makes a referral to the Department immediately upon receipt of information about the opening of the Medicaid case. At the time of this referral, the nursing facility (NF) must provide information on the date and means by which information about Medicaid eligibility was obtained; and
- (c) The resident meets the nursing facility level of care (NF LOC) criteria.

003.02(C)(iii)(2) LEVEL OF CARE (LOC) REFERRAL 14-DAY POST-MEDICAID DETERMINATION. A level of care (LOC) approval determination will be effective as of the date of Medicaid eligibility if the referral is completed by the 14th calendar day following the Medicaid eligibility determination date.

003.02(C)(iii)(3) REFERRAL AFTER DEATH OR DISCHARGE. A level of care (LOC) referral will also be accepted and a medical records-based level of care (LOC) determination will be completed if Medicaid eligibility is not approved until after the recipient dies or is discharged from the facility. To qualify, the referral must be completed within 14 days of the Medicaid eligibility determination date, and the recipient must meet level of care (LOC) criteria. If the required conditions are met, the level of care (LOC) determination will be effective to the date of Medicaid eligibility.

003.02(C)(iii)(4) DETERMINATION OTHERWISE REQUIRED. A level of care (LOC) determination will be required in all other cases for nursing facility (NF) admission.

003.02(D) OUTCOMES OF THE EVALUATION.

003.02(D)(i) NURSING FACILITY LEVEL OF CARE (NF LOC) MET. If the Department determines that the applicant meets nursing facility level of care (NF LOC) and the client chooses to receive nursing facility (NF) services, the Department will make appropriate notifications.

003.02(D)(ii) NURSING FACILITY LEVEL OF CARE (NF LOC) NOT MET. If the Department determines that the applicant does not meet nursing facility level of care (NF LOC), notification of the determination is issued to the applicant, the facility, and the managed care organization. Persons who are found to be ineligible for Medicaid reimbursement for nursing facility (NF) service will be sent a notice of denial by the Department.

003.02(D)(iii) POSSIBLE OPTIONS. Medicaid payment for nursing facility (NF) services will only be available to those clients who are determined to require nursing facility level of care (NF LOC). They will have the option of entering a nursing facility (NF) or exploring home and community-based care services. If the evaluation determines that there is a need for post-hospitalization rehabilitative or convalescent care, the Department may indicate that short-term or time-limited nursing facility (NF) care is medically necessary. Prior to the end of the short-term or time-limited stay, the nursing facility (NF) must contact Medicaid to review the client's condition and determine future nursing facility level of care (NF LOC).

003.02(E) NOTICES AND APPEALS.

003.02(E)(i) LEVEL OF CARE (LOC) DETERMINATION NOTIFICATION. Medicaid staff send notification to each client, family, or applicable parties, to inform the client of the level of care (LOC) decision. Nursing facility (NF) residents with Medicaid funding, who no longer meet the criteria for nursing facility level of care (NF LOC), must be allowed to remain in the facility up to 30 days from the date of the notice.

003.02(E)(ii) APPEALS. The client or his or her authorized representative may appeal any action or inaction of the Department by following standard Medicaid appeal procedures as defined in 465 NAC 6.