

Medicaid Draft Regulations

471 Nebraska Administrative Code 43
Nursing Facility Level of Care Criteria for Children
October 13-14, 2020

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Meeting Agenda

- I. **Introductions**
- II. **Background on the Nursing Facility Level of Care (NF LOC) Criteria**
- III. **Draft/Current Regulations**
 - i. **Criteria Pathways**
 - ii. **Medical Treatments/Conditions**
 - iii. **Activities of Daily Living (ADLs)**
 - iv. **Other Considerations**
- IV. **Population Impact Analytics**
- V. **Standardized Assessment**
- VI. **Next Steps**

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Introductions

Nebraska Department of Health and Human Services (DHHS)

- ▶ Heather Leschinsky, Chief Administrator
- ▶ Karen Houseman, Program Manager II
- ▶ Jodi Harcrow, Program Specialist - RN
- ▶ Brandy Boer, Program Specialist - RN

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Introductions

Consultants

- ▶ Megan Frenzen, Senior Consultant, Optumas
- ▶ Julia Kotchevar, Senior Manager, Myers and Stauffer
- ▶ Bobby Courtney, Senior Manager, Myers and Stauffer
- ▶ Tomas Abrate, Strategy Consultant, Optumas

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Background

Goals

- To adopt the most appropriate and effective NF LOC process to ensure alignment with our mission of helping people live better lives.
 - Requires changes to State Regulations through the Nebraska Administrative Code (NAC)
- To implement a NF LOC standardized assessment tool to ensure it:
 - Comports with best practices; and
 - Achieves Nebraska's policy goals for those potentially eligible to receive NF and HCBS waiver services.

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Background

Federal Requirements for Medicaid Funded Nursing Facility Level of Care (NF LOC) Criteria for Home and Community Based Services (HCBS) Waivers & Nursing Facility Admissions

- NF LOC is required by The Centers for Medicare & Medicaid Services (CMS) to determine a person's eligibility for services and supports
- No specific formula or standard provided by CMS
- NF LOC must be assessed initially and periodically (at least annually for the HCBS waivers)

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Current Regulations - Criteria Pathways

Current Child NF LOC Criteria - 471 NAC 12-006.01(B)

- ▶ *Age 0-36 Months*
 - ▶ *The child must have needs related to a minimum of one defined Medical Condition or Treatment as listed in 471 NAC 12-003.05A1.*
- ▶ *Age 3-17 Years*
 - ▶ *At least one medical condition and treatment need (see 471 NAC 12-003.05A1), or*
 - ▶ *Limitations in at least six Activities of Daily Living (ADL) (see 471 NAC 12-003.05A2), or*
 - ▶ *Limitations in at least four Activities of Daily Living (ADL) (see 471 NAC 12-003.05A2) and at the presence of least three other considerations (see 471 NAC 12-003.05A3).*

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Draft Regulations - Criteria Pathways

Draft Child NF LOC Criteria - 471 NAC 43-003.01(A)

- ▶ *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;*
- ▶ *Age **4**-17 Years*
 - ▶ *At least one medical condition **or** treatment need;*
 - ▶ *Limitations in at least six activities of daily living (ADL); or*
 - ▶ *Limitations in at least four activities of daily living (ADL) and the presence of at least **two** other considerations.*

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Draft Regulations - Medical Treatments

Current List of Medical Treatments - 471 NAC 12-006.01(B)(ii)(1)(a)(i)

- Inclusive list
- 11 Medical Treatments
- Example: Tube Feeding - *To qualify, 50 percent or more of caloric intake must be received via tube feeding.*

Draft List of Medical Treatments - 471 NAC 43-003.01(A)(ii)(1)(a)(i)

- 18 Medical Treatments
- Medical Treatments which initiate Clinical Review Process
 - *Other treatment(s) that may require management through a nursing facility or hospitalization*

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Draft Regulations - Medical Conditions

Current List of Medical Conditions - 471 NAC 12-006.01(B)(ii)(1)(a)(ii)

- ▶ Inclusive list
- ▶ 2 Medical Conditions

Draft List of Medical Conditions - 471 NAC 43-003.01(A)(ii)(1)(a)(ii)

- ▶ 20 Medical Conditions
- ▶ Medical Conditions which initiate Clinical Review Process
 - ▶ *Epilepsy*
 - ▶ *A fluctuating, inconsistent medical condition that has required the child to receive hospitalization related to a single medical condition*

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Draft Regulations - Medical Conditions

Current Terminal or Persistent Condition Definition - 471 NAC 12-006.01(B)(ii)(1)(a)(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.*

Draft Terminal or Persistent Condition Definition - 471 NAC 43-003.01(A)(ii)(1)(a)(iii)

- No change to written regulation*

*Clinical Review Process

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Draft Regulations - Limitation

Current Limitation Definition

- There is currently no definition for “limitation” in 471 NAC 12 as it relates to the ADL components of Child NF LOC determination.

Draft Limitation Definition - 471 NAC 43-002.13

- *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.*

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Draft Regulations – ADLs

Draft ADL - 471 NAC 43-002.03

- *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.*
- Condensed to align with a standardized “limitation” definition.

Draft ADL - 471 NAC 43-002.06

- *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.*
- Condensed to align with a standardized “limitation” definition.

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Draft Regulations – ADLs

Draft ADL - 471 NAC 43-002.07

- *EATING. A person's ability to eat and drink. Includes intake of nourishment by other means, such as tube feeding or total parenteral nutrition.*
- Condensed to align with a standardized “limitation” definition.

Draft ADL - 471 NAC 43-002.16

- *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.*
- Condensed to align with a standardized “limitation” definition.

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Draft Regulations – ADLs

Draft ADL - 471 NAC 43-002.08

- *PERSONAL HYGIENE. A person's ability to manage personal hygiene including combing hair, brushing teeth, and washing and drying self.*
- Condensed to align with a standardized “limitation” definition.

Draft ADL - 471 NAC 43-002.21

- *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.*
- Condensed to align with a standardized “limitation” definition.

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Draft Regulations – ADLs

Draft ADL - 471 NAC 43-002.22

- ▶ *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.*
- ▶ Condensed to align with a standardized “limitation” definition.

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Draft Regulations - Other Consideration

Current Other Consideration Criteria Pathway - 471 NAC 12-006.01(B)(2)(c)

- *Limitations in at least four Activities of Daily Living (ADL) (see 471 NAC 12-003.05A2) and at the presence of least **three** other considerations (see 471 NAC 12-003.05A3).*

Draft Other Consideration Criteria Pathway - 471 NAC 43-003.01(A)(2)(c)

- *Limitations in at least four activities of daily living (ADL) and the presence of at least **two** other considerations.*

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Draft Regulations - Other Consideration: Vision/Hearing

Current Other Consideration - 471 NAC 12-006.01(C)(i)(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;*

Current Other Consideration - 471 NAC 12-006.01(C)(i)(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;*

Draft Other Considerations - 471 NAC 43-003.01(B)(i)(1) and
471 NAC 43-003.01(B)(i)(2)

- No changes to written regulation.

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Draft Regulations - Other Consideration: Communication

Current Other Consideration - 471 NAC 12-006.01(C)(i)(3)

- *Communication: The child is not able to communicate his or her needs by any means. This includes speaking, writing, sign language, or use of a communication device. This does not include speaking a language other than English; and*

Draft Other Consideration - 471 NAC 43-003.01(B)(i)(3)

- *Communication: The child is not able to make themselves understood. This includes expressing information content, both verbal and nonverbal; and*

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Draft Regulations - Other Consideration: Behavior

Current Other Consideration - 471 NAC 12-006.01(C)(i)(4)

- *Behavior, applies only to age 60 months or older: The child requires interventions based on a documented behavior management program developed and monitored by a psychiatrist, psychologist, mental health practitioner, or school counselor.*

Draft Other Consideration - 471 NAC 43-003.01(B)(i)(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.*

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Population Impact Analytics

- Results of Population Impact Analytics show little to no population impact on eligibility for NF LOC.
- Analytics will continue as more data become available.
- All individuals who may potentially gain/lose NF LOC will be identified.

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Standardized Assessment

interRAI Pediatric Home Care (PEDS-HC) Tool

- Widely used
- Validated
- Extensive resources available
- Person-centered
- Continually updated

DDD has begun to concurrently administer the existing LOC tool and proposed interRAI PEDS-HC tool.

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Next Steps

- Draft Regulations
 - <http://dhhs.ne.gov/Pages/Medicaid-Draft-Regulations-and-Comments.aspx>
- Submit Comments to:
 - dhhs.mltcregulations@nebraska.gov
- Regulations will be posted here when Public Hearing is scheduled:
 - <http://dhhs.ne.gov/Pages/Upcoming-Public-Hearings.aspx>
- NF LOC determinations made during the COVID-19 pandemic will be reviewed to ensure that individuals qualifying under the new criteria receive continuous coverage.

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Heather Leschinsky

Chief Administrator

heather.leschinsky@nebraska.gov



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