

Medicaid Draft Regulations – Nursing Facility Level of Care Determination for Children

The Department of Health and Human Services (DHHS) is committed to continuously improving the administration of its Home and Community-Based Services (HCBS) waiver programs. As part of this process, DHHS solicits feedback from stakeholders who may be impacted by proposed updates to regulations. Recently, a draft of 471 NAC 43, which updates the Nursing Facility Level of Care (NF LOC) criteria for children, was posted to the Medicaid Draft Regulations website and presented during two informal comment sessions held on October 13, 2020, at 5 p.m. Central Daylight Time and October 14, 2020, at noon Central Daylight Time. The current NF LOC for children is located at 471 NAC 12-006. The proposed regulations remove the NF LOC language from Chapter 12 and moves it to a new Chapter 43.

The following content serves as a summary of the proposed regulation changes that were reviewed during the two sessions. This summary covers updates to all pertinent NF LOC criteria for children. The components covered included Criteria Pathways, Medical Treatments, Medical Conditions, an updated definition for “Limitation,” Activities of Daily Living (ADLs), and Other Considerations. To submit comments on the proposed regulations, please send an email to dhhs.mltcregulations@nebraska.gov. DHHS will review and take into consideration any comments received. The public hearing for these regulations will be held on November 24, 2020, at 10 a.m. Central Standard Time in the Lower Level Conference Room A, 301 Centennial Mall South, Lincoln Nebraska.

The proposed regulations can be found at <http://dhhs.ne.gov/Pages/Upcoming-Public-Hearings.aspx>.

Nursing Facility Level of Care Determination for Children Components

Component	Proposed Regulations	Change
Criteria Pathways 471 NAC 12-006.01(B)	471 NAC 43-003.01(A) <ul style="list-style-type: none"> • <i>Age 0-47 Months</i> <ul style="list-style-type: none"> ○ <i>To be eligible, the child must have needs related to a minimum of one defined medical condition or treatment as listed in this chapter;</i> • <i>Age 4-17 Years</i> <ul style="list-style-type: none"> ○ <i>At least one medical condition or treatment need;</i> ○ <i>Limitations in at least six activities of daily living (ADL); or</i> ○ <i>Limitations in at least four activities of daily living (ADL) and the presence of at least two other considerations.</i> 	Adjustment to the age ranges, an “and/or” change, and a reduction in the number of Other Considerations required.
Medical Treatments 471 NAC 12-006.01(B)(ii)(1)(a)(i)	471 NAC 43-003.01(A)(ii)(1)(a)(i) <ul style="list-style-type: none"> • 18 Medical Treatments • Medical Treatments which initiate Clinical Review Process <ul style="list-style-type: none"> ○ <i>Other treatment(s) that may require management through a nursing facility or hospitalization.</i> 	Increase in the number of Medical Treatments listed, but also introduction of a Clinical Review Process as medical treatments is no longer an exhaustive list. Removed criteria for certain medical treatments.
Medical Conditions 471 NAC 12-006.01(B)(ii)(1)(a)(ii)	471 NAC 43-003.01(A)(ii)(1)(a)(ii) <ul style="list-style-type: none"> • 20 Medical Conditions • Medical Conditions which initiate Clinical Review Process <ul style="list-style-type: none"> ○ <i>Epilepsy</i> ○ <i>A fluctuating, inconsistent medical condition that has required the child to receive hospitalization related to a single medical condition.</i> 	Increase in the number of Medical Conditions, no longer an exhaustive list, and the introduction of a Clinical Review Process
Medical Conditions (Terminal/Persistent Condition) 471 NAC 12-006.01(B)(ii)(1)(a)(iii)	471 NAC 43-003.01(A)(ii)(1)(a)(iii) <i>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.</i>	No Change

Nursing Facility Level of Care Determination for Children Components

Component	Proposed Regulations	Change
Limitation Definition Not currently defined	471 NAC 43-002.13 <i>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.</i>	New Definition
ADLs 471 NAC 12-006.01(C)(1)-(7)	471 NAC 43-002.03 BATHING. 471 NAC 43-002.06 DRESSING. 471 NAC 43-002.07 EATING. 471 NAC 43-002.16 MOBILITY. 471 NAC 43-002.08 PERSONAL HYGIENE. 471 NAC 43-002.21 TOILETING. 471 NAC 43-002.22 TRANSFERRING.	Condensed to align with a standardized "limitation" definition
Vision Other Consideration 471 NAC 12-006.01(C)(i)(1)	471 NAC 43-003.01(B)(i)(1) <i>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;</i>	No Change
Hearing Other Consideration 471 NAC 12-006.01(C)(i)(2)	471 NAC 43-003.01(B)(i)(2) <i>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</i>	No Change
Communication Other Consideration 471 NAC 12-006.01(C)(i)(3)	471 NAC 43-003.01(B)(i)(3) <ul style="list-style-type: none"> • <i>Communication: The child is not able to make themselves understood. This includes expressing information content, both verbal and nonverbal.; and</i> 	Modified to use updated language
Behavior Other Consideration 471 NAC 12-006.01(C)(i)(4)	471 NAC 43-003.01(B)(i)(4) <ul style="list-style-type: none"> • <i>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.</i> 	Removal of "age 60 months or older" condition

Comprehensive proposed regulations are available at <http://dhhs.ne.gov/Pages/Upcoming-Public-Hearings.aspx>.