

Medicaid Report of Implementation of Rules and Regulations, State Plan Amendments and Waivers January 1, 2011 through December 31, 2012

Neb. Rev. Stat. § 68-909(4) requires the Department to periodically, but no less than biennially, report to the Governor, the Legislature, and the Medicaid Reform Council on the implementation of rules and regulations, Medicaid State Plan Amendments, and waivers adopted under the Medical Assistance Act and the effect of such rules and regulations, amendments, or waivers on eligible recipients of medical assistance and medical assistance expenditures. This report summarizes the implementation of rules, regulations, and State Plan Amendments from January 1, 2011 through December 31, 2012.

ELIGIBILITY

Pregnant Woman

Centers for Medicaid and Medicare Services (CMS) notified the Nebraska Department of Health and Human Services (DHHS) that the unborn were not a Medicaid eligibility group. Effective March 1, 2010 all unborn cases were closed and eligibility was re-determined based on the pregnant woman's eligibility.

Regulations (471 Nebraska Administrative Code (NAC) 1, 10, 16, 18 and 28; 477 NAC 1-5) were effective June 28, 2011.

The State Plan Amendment was effective January 1, 2010.

Caretaker Relative

Technical correction to include caretaker relatives for Medicaid coverage.

The State Plan Amendment was effective January 1, 2011.

Unborn Prenatal Coverage

599 Children's Health Insurance Program (CHIP) was implemented effective July 19, 2012, as instructed by Legislative Bill (LB) 599, and was implemented as a separate stand-alone CHIP program for unborn children of pregnant women who are otherwise ineligible for coverage under Medicaid. The program provides health coverage for an eligible unborn child through labor and delivery when the mother is uninsured and has income at or below 185 percent Federal Poverty Level (FPL).

The CHIP State Plan Amendment was effective July 19, 2012.

Treatment of Veterans Affairs (VA) Pension

Outdated language removed from the regulations regarding the treatment of income for Medicaid-eligible veterans in nursing homes.

Regulations (469 NAC 2 and 3) were effective on May 26, 2012.

REIMBURSEMENT

Nursing Facility Rates - July 2010

Regulation established rates for July 1, 2010 through June 30, 2011 with rebasing to the June 30, 2009 cost reports and a proposed negative inflation factor of 1.54 percent. The regulation changes included a new case mix reimbursement methodology, based on the Resource Utilization Group (RUG) III 5.20 grouper. Nebraska previously used the RUG III 5.01 grouper, which was not supported by CMS after October 1, 2010. Other changes included an added definition and payment methodology for Indian Health Services (IHS) nursing facilities, and updated rate period references and administrator maximums. Additional changes corrected the swing bed payment methodology description to comply with the method described in Nebraska's approved Medicaid State Plan and the method currently and historically used, revisions to the fee charged for a copy of a cost report to comply with DHHS policy, and revisions to the inflation factor language to describe the methodology.

Regulations (471 NAC 10 and 12) were effective June 27, 2011.

The State Plan Amendment was effective July 1, 2010.

Nursing Facility Rates – July 2011

Established rates for July 1, 2011 through June 30, 2012 with rebasing to the June 30, 2010 cost reports and a proposed negative inflation factor of 3.91 percent. Other changes included elimination of dates that required updating each year by providing examples for new providers entering the Medicaid program, updating the fixed cost maximum for special contract providers, and elimination of out of date regulations.

Regulations (405 NAC 1 and 471 NAC 31) were effective October 29, 2011.

The State Plan Amendment was effective July 1, 2011.

Nursing Facility Rates - July 2012

Established rates for July 1, 2012 through June 30, 2013 with rebasing to the June 30, 2011 cost reports and a proposed positive inflation factor of 2.25 percent. Other changes included providing

quarterly interim special funding payments to IHS providers and providing special funding payments on non-IHS eligible clients.

The State Plan Amendment is pending CMS approval.

Nursing Facility Provider Tax

LB 600, passed by the Nebraska Legislature in 2011, directed Medicaid to assess a tax on nursing facility patient days. Once collected, the assessments, along with federal matching funds, are paid back to providers via a rate add-on and a higher rate of inflation.

Regulations (405 NAC 1-2, 471 NAC 12) were effective July 11, 2012.

The State Plan Amendment was effective July 1, 2011.

Payment for Nursing Facility Leave Days

Medicaid reimburses nursing facilities for up to 15 days per hospitalization for hospital leave days and up to 18-24 days per calendar year for therapeutic leave days. State Plan Amendment reduced Medicaid reimbursement for these leave days to the applicable rate in effect for assisted living services under the Home and Community Based Services (HCBS) Waiver.

Regulations (471 NAC 12) were effective May 9, 2012.

The State Plan Amendment was effective April 1, 2012.

Compliance with Federal Medicaid Requirements Regarding Children's Mental Health and Substance Abuse Services

Brought mental health and substance abuse services into compliance with federal regulations, including establishing requirements for Psychiatric Residential Treatment Facilities (PRTFs).

Regulations (471 NAC 32-008) were effective October 29, 2012.

The State Plan Amendment was effective July 1, 2011.

Estate Recovery for Medicare Cost Sharing

Exempted from Medicaid estate recovery any Medicare cost-sharing paid under the Medicare savings program for dates of service on or after January 1, 2010.

The State Plan Amendment was effective January 1, 2010.

Medicaid Prohibition on Payments to Institutions or Entities Located Outside of the United States

Section 6505 of the Patient Protection and Affordable Care Act mandated that state Medicaid agencies prohibit payments for items or services provided under the State Plan to any financial institution or entity located outside of the United States.

The State Plan Amendment was effective June 1, 2011.

Fee Schedule Rates - July 2011

Implemented 2.5 percent fee schedule rate reduction pursuant to Legislative appropriation.

The State Plan Amendment was effective July 1, 2011.

Fee Schedule Rates - July 2012

Implemented 1.5 percent fee schedule rate increase pursuant to Legislative appropriation.

The State Plan Amendment was effective July 1, 2012.

Secure Psychiatric Residential Rehabilitation Rate

Aligned the fee schedule rate for secure psychiatric residential rehabilitation services with the rate paid by the DHHS Division of Behavioral Health. Payment for mental health/substance abuse services is a per diem rate with the exception of physician services, which are paid in addition to the per diem rate.

The State Plan Amendment was effective June 1, 2011.

Rate Reduction for Psychiatric Adult Inpatient Sub-Acute Hospital Services

Implemented 2.5 percent rate reduction for psychiatric adult inpatient sub-acute hospital services pursuant to Legislative appropriation.

The State Plan Amendment was effective July 1, 2011.

Physician Fee Schedule Reduction – July 2011

Implemented 2.5 percent rate reduction to the physician fee schedule, with the exception of primary care rates, pursuant to Legislative appropriation.

The State Plan Amendment was effective July 1, 2011.

Inpatient Hospital Rate Reduction - July 2011

Implemented 2.5 percent rate reduction in inpatient hospital services payments pursuant to Legislative appropriation. Modified the medical education payment methodology to allow for annual updates so that payments more closely reflect hospital case mix changes.

Regulations (471 NAC 10) were effective May 21, 2012.

The State Plan Amendment was effective July 1, 2011.

Outpatient Hospital Rate Reduction – July 2011

Implemented 2.5 percent reduction to fee schedule rates for outpatient hospital services pursuant to Legislative appropriation.

The State Plan Amendment was effective July 1, 2011.

Laboratory Fee Schedule Reduction - July 2011

Implemented 2.5 percent reduction to the fee schedule rates for clinical laboratory services pursuant to Legislative appropriation.

Regulations (471 NAC 10, 18, 19, 24 and 33) were effective June 23, 2012.

The State Plan Amendment was effective July 1, 2011.

Children’s Mental Health and Substance Abuse Rate Increase – July 2012

Implemented 1.5 percent increase to children’s mental health and substance abuse rates pursuant to Legislative appropriation.

The State Plan Amendment was effective July 1, 2012.

Inpatient Hospital Rate Increase - July 2012

Implemented 1.5 percent provider rate increase pursuant to Legislative appropriation.

Regulations (471 NAC 10) are pending.

The State Plan Amendment is pending approval by CMS.

Outpatient Hospital Rate Increase - July 2012

Implemented 1.5 percent provider rate increase pursuant to Legislative appropriation.

Regulations (471 NAC 10) are pending.

The State Plan Amendment is pending approval by CMS.

Laboratory Fee Schedule Increase

Implemented 1.5 percent rate increase to the clinical laboratory fee schedule pursuant to Legislative appropriation.

Regulations (471 NAC 10, 18, 19, 24 and 33) are pending.

The State Plan Amendment is pending approval by CMS.

Reimbursement for Injectable Medications at Medicare Fee Schedule Rates

Reimbursed practitioner-administered injectable medications at ninety-five percent of the Medicare Drug Fee Schedule. The revision did not apply to medications administered in an outpatient hospital setting.

Regulations (471 NAC 18) were effective August 25, 2012.

The State Plan Amendment is pending approval by CMS.

Estimate Acquisition Cost (EAC) Change in Basis of Determination

Defined the Estimated Acquisition Cost (EAC) for Nebraska Medicaid pharmacy claims as Wholesale Acquisition Cost (WAC) plus 6.8 percent. Claims with date of submission equal to or greater than March 30, 2012, used WAC plus 6.8 percent in the pricing calculation instead of AWP plus 11 percent. This change was cost neutral to the Department. This amendment also assigned a Pharmacy Dispensing Fee of \$4.45 by the Department to each individual pharmacy.

Regulations (471 NAC 16) were effective March 28, 2012.

The State Plan Amendment was effective March 30, 2012.

Payment of Medicare Part A and Part B Deductible/Coinsurance

Clarified that payment of Medicare Part A and Part B Deductible/Coinsurance is paid at the Medicare rate rather than the State Plan rate.

The State Plan Amendment was effective July 1, 2011.

Distribution of Disproportionate Share Hospital Overpayments

Modified the Disproportionate Share Hospital (DSH) payment methodology to allow for redistribution of DSH payments for those hospitals where the calculated payment would exceed the hospital specific DSH upper payment limit.

The State Plan Amendment was effective April 1, 2011.

Increase in Co-Payments

Medicaid increased some co-payments and added others for Medicaid services. The services impacted include inpatient hospital admissions, durable medical equipment with payment greater than \$50, mental health/substance abuse service visits and brand name drugs.

Regulations (471 NAC 3) were effective October 23, 2011.

The State Plan Amendment was effective October 24, 2011.

Third-Party Liability, Long Term Care Insurance Policies

When the Department receives payments from long term care insurance which exceed what Medicaid has paid toward the care of the client, the Department applies the excess to all other claims Medicaid has paid on behalf of the client, without regard to a particular Medicaid service. Any remaining excess is paid to the client.

Regulations (471 NAC 3) were effective July 2, 2011.

Change to Pediatric Vaccination Rate

Revised the State's reimbursement rate for administration of vaccines given under the Vaccine for Children (VFC) pediatric immunization program.

The State Plan Amendment was effective July 1, 2011.

Hospital Acquired Conditions

Section 2702 of the Patient Protection and Affordable Care Act mandated that state Medicaid agencies clarify in the State Plan non-payment to inpatient hospitals for preventable procedures/conditions such as surgery on the wrong appendage or other invasive procedure on a patient, and surgery on the wrong patient.

Regulations (471 NAC 10) were effective May 12, 2012.

The State Plan Amendment was effective July 1, 2012.

Freestanding Birth Center

Section 2301 of the Patient Protections and Affordable Care Act mandated that state Medicaid agencies include the provision requiring States to provide coverage and separate payments for freestanding birth center facility services and services rendered by certain professionals providing services in a freestanding birth center to the extent the State licenses or otherwise recognizes such providers under State law.

Regulations (471 NAC 42) are pending.

The State Plan Amendment was effective February 4, 2012.

Clarification of Current Practice Regarding Home Health, Personal Care & Hospice

State Plan Amendment clarified information and made adjustments that were administrative in nature relative to Home Health, Private Duty Nursing and Personal Assistance services to ensure compliance with federal requirements. Services did not change.

The State Plan Amendment was effective July 1, 2011.

Orthodontic Reimbursement

Required that the date of payment for orthodontic treatment must occur after the orthodontist receives an approved prior authorization and after the initial appliances have been placed. The regulations further required that if a Medicaid client who is receiving orthodontic treatment transfers to another dentist, the authorized dentist must refund the portion of the amount paid by Medicaid that applies to the treatment not completed to Medicaid.

Regulations (471 NAC 16) were effective June 28, 2011.

Rate Reduction for Nursing Facilities, Rate Maintained for Intermediate Care Facilities for Individuals with Mental Retardation, (ICF-MRs)

Implemented 2.5 percent reduction to nursing facility rates while holding ICF-MR rates steady, pursuant to Legislative appropriation.

Regulations 471 NAC 12 and 31) were effective May 22, 2012.

The State Plan Amendment was effective July 1, 2011.

Community Support Services

Implemented a change to the reimbursement methodology for community support services from a monthly payment amount to a fee schedule amount based on billed increments of fifteen minutes. This change complied with CMS direction to eliminate the monthly payment methodology for community support services.

Regulations (471 NAC 35-015) were effective June 6, 2011.

The State Plan Amendment was effective January 1, 2011.

BENEFITS

Managed Care Expansion Statewide

Expanded at-risk managed care for physical health benefits from 10 counties to statewide effective July 1, 2012.

Regulations (482 NAC 1, 2, 4) were effective September 23, 2012.

The State Plan Amendment was effective July 1, 2012.

CHIP State Plan Amendment Poison Control Center

LB 525 directed the Department to apply to permit unused administrative cap funds in the CHIP program to be used to match funds from the Nebraska Regional Poison Center to assist in funding the Poison Center.

The State Plan Amendment was effective January 1, 2012.

Tobacco Cessation Program

Section 4107 of the Patient Protection and Affordable Care Act mandated that state Medicaid agencies include Medicaid coverage of comprehensive tobacco cessation services for pregnant women, including both counseling and pharmacotherapy, without cost sharing.

The State Plan Amendment was effective October 1, 2011.

Children's Mental Health & Substance Abuse Services

Clarified the inpatient psychiatric care for under age 19 and all children's mental health service definitions.

Regulations (471 NAC 32-008) effective October 29, 2012. Remaining sections of Chapter 32 are pending.

The State Plan Amendment was effective July 1, 2011.

Medical Home Pilot Project

Implemented Medicaid Patient-Centered Medical Home Pilot. The pilot will be evaluated for improved health care access, improved health outcomes for patients, Medicaid cost containment, patient satisfaction and provider satisfaction.

Regulations (471 NAC 18) were effective February 20, 2011.

The State Plan Amendment was effective January 1, 2011.

Non-Emergency Transportation Broker

Implemented broker to manage non-emergency medical transportation for all Medicaid clients and non-medical transportation for individuals in the Aged & Disabled HCBS Waiver program.

Regulations (471 NAC 27) were effective June 23, 2012.

The State Plan Amendment was effective March 1, 2011.

Program of All-Inclusive Care (PACE)

Implemented Program of All-Inclusive Care for the Elderly, known as PACE, capitated benefit for elders that features a comprehensive service delivery system and integrated Medicare and Medicaid financing. Individuals age 55 and older who meet nursing facility level of care criteria and live within a defined geographic service area voluntarily enroll in the PACE program, enabling them to continue to live in a community setting. The geographic area for this first PACE initiative will be metro Omaha.

Regulations (471 NAC 37) are pending.

The State Plan Amendment will be effective February 1, 2013.

Pediatric Feeding Disorder Clinic

Provided for Medicaid payments for the comprehensive treatment of pediatric feeding disorders through interdisciplinary treatment as mandated by LB 342.

Regulations (471 NAC 18) were effective June 25, 2011.

The State Plan Amendment was effective July 1, 2010.

Effective Date for Pediatric Feeding Disorder Intensive Day Treatment and Outpatient Treatment

Implemented a new effective date (July 1, 2011) for coverage of Pediatric Feeding Disorder Clinic Intensive Day Treatment and Outpatient Treatment.

The State Plan Amendment was effective July 1, 2011.

Concurrent Curative Care for Children Receiving Hospice Service

Section 2302 of the Patient Protection and Affordable Care Act mandated that state Medicaid agencies require that children who are enrolled in either Medicaid or CHIP be allowed to receive hospice services without foregoing curative treatment related to a terminal illness.

Regulations (471 NAC 12 and 36) were effective May 1, 2012.

The State Plan Amendment was effective July 1, 2011.

ADMINISTRATION

Tribal Consultation Response Timeframe Changed to 30 Days

Changed the Tribal consultation response time frame whereby tribal entities have an opportunity to comment and respond to a proposed State Plan Amendment or 1915(b) or (c) waiver renewal prior to submission to CMS from 60 days to 30 days.

The State Plan Amendment was effective November 1, 2011.

Provider Screening and Enrollment

Sections 6401, 6405 and 6501 of the Patient Protection and Affordable Care Act mandated that state Medicaid agencies enforce Medicaid Program Integrity final rule on enhanced provider enrollment and screening requirements. Risk levels have been established for all provider categories and all providers are subject to additional screening requirements prior to enrollment. All prescribing, referring, and ordering providers are included in the requirements.

The State Plan Amendment was effective January 1, 2012.

Recovery Audit Contractor Program (RAC)

Section 6411 of the Patient Protection and Affordable Care Act mandated that state Medicaid agencies implement a Medicaid RAC program. Medicaid RAC objectives are to reduce erroneous payments, identify and recover overpayments, and identify underpayments in the Medicaid program. The RAC will audit post-payment claims to identify erroneous payments (includes both overpayments and underpayments). As allowed by state and federal law, the Nebraska Medicaid RAC will be paid on a contingency basis from actual amounts recovered.

The State Plan Amendment was effective April 1, 2011.

Medicaid Recovery Audit Contractor-Look Back Period

On September 16, 2011, CMS published the final rules on Medicaid Recovery Audit Contractors with an effective date of January 1, 2012. The State Plan Amendment requested implementation after the January 1, 2012 effective date.

The State Plan Amendment was effective January 1, 2012.

Amendments to Approved Waiver Applications

Aged & Disabled Children and Adult Waiver

Renewed Home and Community Based Services (HCBS) waiver for a five year period. Services provided by this waiver consist of adult day health service, assisted living service, chore, child care for children with disabilities, assistive technology supports and home modifications, home delivered meals, home again services, nutrition, independent skills building, personal emergency response system, non-medical transportation, and respite.

Waiver renewal effective August 1, 2011.

Autism Waiver

Amended the Autism Waiver to change the effective date to April 8, 2012. Subsequently amended the waiver to change the effective date to April 8, 2013. Legislation regarding the waiver (LB 27) required the receipt of matching funds from private donations to finance the program.

Waiver amendment effective April 8, 2013.

Aged & Disabled Children and Adult Waiver

Amended the Aged & Disabled Children and Adult Waiver. Reflects Nebraska's post-eligibility treatment of income for waiver participants with a spend-down to apply to waiver services.

Waiver amendment effective October 1, 2012.

Managed Care Waiver

Renewed Managed Care Waiver. Renewal of the 1915(b) waiver allows the statewide expansion of physical health managed care through two full-risk, capitated Managed Care Organizations (MCO) health plans. The renewal also allows the mandatory enrollment of special needs children and American Indians/Native Alaskans in the expansion counties.

Waiver renewal effective July 1, 2012.

Comprehensive Developmental Disability Waiver

Renewed Comprehensive Developmental Disability Waiver for adults. Added additional services, implemented individual budgeting and expanded self-direction opportunities.

Waiver renewal effective January 1, 2011.

Day Services Developmental Disability Waiver

Renewed Day Services Developmental Disability Waiver for adults. Added additional services, implemented individual budgeting and expanded self-direction opportunities.

Waiver renewal effective January 1, 2011.

Developmental Disability Waiver for Children and Their Families

Renewed Developmental Disability Waiver for Children and Their Families. Added additional services, implemented individual budgeting and expanded self-direction opportunities.

Waiver renewal effective June 1, 2012.

Residential Developmental Disability Waiver

Allowed expiration of Residential Developmental Disability Waiver for adults. Prior to expiration, waiver participants transitioned to Comprehensive Developmental Disability Waiver.

Waiver expired December 31, 2010.

Community Supports Developmental Disability Waiver

Terminated Community Supports Developmental Disability Waiver for adults. Waiver participants transitioned to Comprehensive or Day Services Waiver prior to termination of waiver.

Waiver termination effective December 31, 2011.