

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

December 6, 2023
10:00 A.M. Central Time
Nebraska State Office Building – Lower Level
Meadowlark Conference Room
301 Centennial Mall South, Lincoln, Nebraska

The purpose of this hearing is to receive comments on proposed changes to Title 477, Chapter 28 of the Nebraska Administrative Code (NAC) – *Children Eligible For IV-E Assistance, Non-IV-E Adoption Subsidy, Former Foster Care Children*. These regulations govern the services provided under Nebraska's Medicaid program as defined by the Medical Assistance Act, Nebraska Revised Statute § 68-901 et seq. The proposed changes add a chapter title and chapter name; set the regulations' scope and authority; establish coverage in the former foster care children's group for individuals who aged out of foster care in any state; clarify language; update section headings; correct punctuation; and restructure the regulatory chapter.

Authority for these regulations is found in Neb. Rev. Stat. §§ 81-3117(7) and 68-908.

Interested persons may attend the hearing and provide verbal or written comments, or mail, fax, or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 (fax) or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals who are deaf or hard of hearing may call DHHS via the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 477	Prepared by: Erin Noble
Chapter: 28	Date prepared: 6-14-2023
Subject: Children Eligible for IV-E Assistance, Non-IV-E Adoption Subsidy, Former Foster Care Children	Telephone: 531-530-7154

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact:

State Agency: N/A.

Political Subdivision: N/A.

Regulated Public: N/A.

If indeterminable, explain why:

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NEBRASKA DEPARTMENT OF
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MEDICAID ELIGIBILITY
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TITLE 477

MEDICAID ELIGIBILITY

CHAPTER 28

CHILDREN ELIGIBLE FOR IV-E ASSISTANCE, NON-IV-E ADOPTION
SUBSIDY, FORMER FOSTER CARE CHILDREN

Chapters 477 NAC 20 through 28 apply to the following: Aged, Blind, and Disabled (ABD); Medically Needy (MN); Medicaid Insurance for Workers with Disabilities (MIWD); Women's Cancer Program; Transitional Medical Assistance (TMA); Former Foster Care; Emergency Medical Services Assistance (EMSA); Children and Young Adults Eligible for IV-E Assistance

~~CHAPTER 28-000 CHILDREN ELIGIBLE FOR IV-E ASSISTANCE; NON-IV-E ADOPTION
SUBSIDY; FORMER FOSTER CARE CHILDREN~~

001. SCOPE AND AUTHORITY. These regulations govern the services provided under Nebraska's Medicaid program as defined by the Medical Assistance Act, Nebraska Revised Statute § 68-901 et seq.

~~28-001.002. CHILDREN ELIGIBLE FOR IV-E ASSISTANCE.~~ A child eligible for federally funded assistance through the Title IV-E program ~~(this includes subsidized adoption and subsidized guardianship)~~ is Medicaid eligible. This includes subsidized adoption and subsidized guardianship.

~~28-001.01 Eligible Children:~~ 002.01 ELIGIBLE CHILDREN. A child qualifying for IV-E assistance is eligible for Medicaid if:

- ~~1.(A)~~ The child ~~is~~ IV-E eligible and is in the custody of the Department or a court of competent jurisdiction;
- ~~2.(B)~~ The child is in the custody of another state that made the IV-E determination, but the child lives in Nebraska; or
- ~~3.(C)~~ The child has been determined eligible for IV-E subsidized guardianship or adoption assistance by Nebraska, or another state but the child lives in Nebraska.

~~28-001.02 Age:~~ 002.02 AGE. A child who is IV-E eligible and under ~~nineteen (19)~~ years old shall be eligible for Medicaid, with the following exceptions:

- (A) A child who is in an institution for mental disease (IMD) is eligible until he or she turns 21 years old; and

(B) A young adult who entered into an adoption or guardianship agreement after reaching 16 years old and is IV-E eligible may be eligible for Medicaid until he or she turns 21 years old.

28-001.02A Exceptions:

1. ~~A child who is in an Institution for Mental Disease (IMD) is eligible through the month of his/her twenty first (21st) birthday.~~
2. ~~A young adult who entered into an adoption or guardianship agreement after reaching sixteen (16) years old and is IV-E eligible may be eligible for Medicaid until twenty one (21) years old.~~

~~28-001.03 Income and Resources:~~ 002.03 INCOME AND RESOURCES. A child eligible for IV-E is exempt from income and resource tests.

~~28-001.04 Effective Date of Medicaid Eligibility:~~ 002.04 EFFECTIVE DATE OF MEDICAID ELIGIBILITY. Medicaid eligibility is effective the first day of the month in which custody was first granted if the child was IV-E eligible in that same month.

~~28-001.05 Continuous Eligibility:~~ 002.05 CONTINUOUS ELIGIBILITY. Children who are eligible for Medicaid due to ~~their~~ IV-E ~~status~~ eligibility shall receive six months of continuous eligibility from the date of initial Medicaid eligibility. See 477 NAC 3-~~008~~.

~~28-001.06 Child Placed in Jail or Detention Facility:~~ 002.06 CHILD PLACED IN A JAIL OR A DETENTION FACILITY. Medicaid cannot be used as a funding source for medical care during incarceration.

~~28-001.06A Exception:~~ 002.06(A) EXCEPTION. When a child placed in jail or detention leaves that setting and goes to an acute medical treatment setting for at least ~~twenty-four~~ (24) hours, medical treatment in the acute setting may be billed to Medicaid if eligibility requirements are otherwise met.

~~28-002003.~~ CHILDREN ELIGIBLE FOR NON-IV-E ADOPTION.: A special needs child eligible for non-IV-E subsidized adoption assistance may be Medicaid eligible if ~~s/he~~ he or she meets special needs criteria.

~~28-002.01 Eligible Children:~~ 003.01 ELIGIBLE CHILDREN. A child qualifying for non-IV-E subsidized adoption assistance is eligible for Medicaid if the following conditions are met:

1. ~~(A)~~ An adoption agreement, (other than an agreement under Title IV-E,) between the State of Nebraska and the adoptive parent(s) is in effect;
2. ~~(B)~~ The Department has determined that the child cannot be placed for adoption without Medicaid coverage because of special needs for medical or rehabilitative care;
3. ~~(C)~~ The child meets either of the following requirements:
 - a. ~~(i)~~ S/he He or she would have been eligible for Medicaid before the adoption agreement was entered into; or

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- ~~b.(ii)~~ He or she would have been eligible for Medicaid before the adoption agreement was entered into, if the eligibility standards and methodologies of the Title IV-E program were used without employing the threshold ADC Aid to Dependent Children (ADC) eligibility determination; and
- ~~4.(D)~~ The child is under ~~nineteen (19)~~ years old.

~~28-002.02 Income and Resources:~~ 003.02 INCOME AND RESOURCES. A child who meets these criteria is exempt from income and resource tests.

~~28-003004.~~ FORMER FOSTER CARE CHILDREN.

~~28-003.01 Former Foster Care Children:~~ 004.01 FORMER FOSTER CARE CHILDREN. Individuals under ~~twenty-six (26)~~ years old who were in foster care in any state under Nebraska's or a Nebraska tribe's responsibility and receiving Medicaid when the individual became ~~eighteen (18)~~ or ~~nineteen (19)~~ years old, or such higher age at which Nebraska's the state's federal foster care assistance ends.

004.02 INCOME AND RESOURCES. ~~These individuals former foster care children~~ are exempt from income and resource tests.

~~28-003.01A Eligibility Requirements:~~ 004.03 ELIGIBILITY REQUIREMENTS. In order to receive Medicaid, the applicant ~~or~~ client must:

- ~~1.(A)~~ Be under ~~twenty-six (26)~~ years old;
- ~~2.(B)~~ Have been a client at ~~eighteen (18)~~ years old or such higher age at which the State's foster care assistance ends under title IV-E of the Social Security Act;
- ~~3.(C)~~ Have been in foster care in any state under Nebraska's or a Nebraska tribe's responsibility at ~~eighteen (18)~~ or such higher age at which the State's state's foster care assistance ends under title IV-E of the Social Security Act; and
- ~~4.(D)~~ Not be ~~eligible for and~~ enrolled in mandatory Medicaid coverage through the Parent and / Caretaker Rrelatives, Pregnant Women, Children, or Aged, Blind, and Disabled (ABD) eligibility groups.

~~For Former Ward, see 477 NAC 19-005.~~