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| **Nebraska Medical Assistance Act**  **Nebraska Chapter 68** |
| **Summary**  These sections set out the parameters for the Nebraska Medical Assistance program, otherwise known as Medicaid. Medicaid is a joint-federal-state program health care program for certain individuals. The State Plan is the official document describing the nature and scope of the Nebraska Medicaid Program. While federal law mandates coverage of some populations and benefits, states may cover additional populations and offer additional benefits. These benefits include: inpatient and outpatient hospital services; laboratory and X-ray services; nursing facility services; home health services; physician services; and early and periodic screening, diagnosis and treatment services for children, which includes both physical and behavioral health screening, diagnosis, and treatment services.  Nebraska also covers these type of services, which are optional services under the federal Medicaid program: prescribed drugs; intermediate care facilities for persons with developmental disabilities (ICF-DD); home and community-based services for aged persons and persons with disabilities; dental services; rehabilitation services; personal care services; durable medical equipment; medical transportation services; vision-related services; speech therapy services; physical therapy services; chiropractic services; occupational therapy services; optometric services; podiatric services; hospice services; mental health and substance abuse services; hearing screening services for newborn and infant children; and administrative expenses related to administrative activities, including outreach services, provided by school districts and educational service units to students who are eligible or potentially eligible for medical assistance.  The federal match Federal Medical Assistance Percentage (FMAP) is based on a formula set forth in the Social Security Act which is based on a state's average personal income relative to the national average; states with lower average personal incomes have higher FMAPs. The current federal match for the Nebraska program is 56.7% for fiscal year 2021. This may be referred to as the traditional match with regard to the program. However, the federal government offers an enhanced rate for Medicaid Expansion and for certain programs designed to develop community-based options in lieu institutionalization by offering financial incentives, such as Money Follows the Person Demonstration program. In addition, rates may differ for certain services, such as targeted case management vs. administrative case management. (see handout on federal Medicaid law.)  In 2016, Nebraska’s Medicaid program was overhauled as Heritage Health, which took effect January 1, 2017, combining Nebraska Medicaid's physical health, behavioral health, and pharmacy programs into a single comprehensive and coordinated program for the state's Medicaid and Children's Health Insurance Program (CHIP) enrollees using three managed care companies (Nebraska Total Care, UnitedHealthcare Community Plan of Nebraska, and Wellcare of Nebraska).  In 2018, Nebraska voters approved Medicaid expansion to cover additional low-income Nebraskans. In December 2019, the department submitted a Section 1115 Demonstration Waiver for Medicaid expansion to the Centers for Medicare and Medicaid Services (CMS) for a 2-tier benefit system to expand Medicaid to approximately 94,000 more low-income Nebraskans, which is anticipated to begin October 1, 2020. The expansion plan is known as the Heritage Health Adult Program. |
| **Responsible State Agency**  Department of Health and Human Services, Division of Medicaid and Long-term Care, is the designated Medicaid agency. |
| **Federal Legislation/Funding**  Title XIX of the Social Security Amendments of 1965 (P.L. 89-97). The Patient Protection and Affordable Care Act pf 2010, referred to as the Affordable Care Act (ACA),expanded the Medicaid program to cover all adults with income below 138% of the federal poverty levels and other incentives for rebalancing community options in lieu of institutionalization for long-term care. |
| **How do the state statutes apply to brain injury**  Individuals with brain injury who meet financial and other eligibility requirement may receive healthcare benefits offered by the Nebraska Medicaid program. Nebraska does offer a Traumatic Brain Injury (TBI) Home and Community-based Services (HCBS) waiver program for individuals with TBI who are of the ages 18-and 64 and who meet nursing level of care. |
| **Pertinent sections** Section 68-908 outline’s the powers and duties of department to administer the Medicaid program, including entering into contracts and agreements; fee schedules; applying for and implementing waivers and managed care plans; Section 68-911 lists benefits covered under the Medicaid State Plan; Section 68-915 defines eligibility; and Section 68-913 includes provisions relating to public awareness with regard to public school district, hospitals, and other duties. |
| **Relevant Organizations/Partners:**  The Nebraska Consortium For Citizens with Disabilities (NCCD) includes healthcare and community living in its list of priorities. |
| **Web page link:**  http://dhhs.ne.gov/Pages/medicaid-and-long-term-care.aspx |

**Section 68-901. Medical Assistance Act; act, how cited.**

Sections [68-901](https://nebraskalegislature.gov/laws/statutes.php?statute=68-901) to [68-994](https://nebraskalegislature.gov/laws/statutes.php?statute=68-994) shall be known and may be cited as the Medical Assistance Act.

**Section 68-902. Purposes of act.**

The purposes of the Medical Assistance Act are to (1) reorganize and recodify statutes relating to the medical assistance program, (2) provide for implementation of the Medicaid Reform Plan, (3) clarify public policy relating to the medical assistance program, (4) provide for administration of the medical assistance program within the department, and (5) provide for legislative oversight and public comment regarding the medical assistance program.

**Source:**

* [Laws 2006, LB 1248, § 2.](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)

**Section 68-903. Medical assistance program; established.**

The medical assistance program is established, which shall also be known as medicaid.

**Source:**

* Laws 1965, c. 397, § 3, p. 1277;
* R.S.1943, (2003), § 68-1018;
* [Laws 2006, LB 1248, § 3.](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)

**Annotations**

* Nebraska has elected to participate in the federal Medicaid program through the enactment of this section. Boruch v. Nebraska Dept. of Health and Human Servs., 11 Neb. App. 713, 659 N.W.2d 848 (2003).

## **Section 68-904. Legislative findings.**

The Legislature finds that (1) many low-income Nebraska residents have health care and related needs and are unable, without assistance, to meet such needs, (2) publicly funded medical assistance provides essential coverage for necessary health care and related services for eligible low-income Nebraska children, pregnant women and families, aged persons, and persons with disabilities, (3) publicly funded medical assistance alone cannot meet all of the health care and related needs of all low-income Nebraska residents, (4) the State of Nebraska cannot sustain a rate of growth in medical assistance expenditures that exceeds the rate of growth of General Fund revenue, (5) policies must be established for the medical assistance program that will effectively address the health care and related needs of eligible recipients and effectively moderate the growth of medical assistance expenditures, and (6) publicly funded medical assistance must be integrated with other public and private health care and related initiatives providing access to health care and related services for Nebraska residents.

## **Source:**

* [Laws 2006, LB 1248, § 4.](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)

## **Section 68-905. Program of medical assistance; statement of public policy.**

It is the public policy of the State of Nebraska to provide a program of medical assistance on behalf of eligible low-income Nebraska residents that (1) assists eligible recipients to access necessary and appropriate health care and related services, (2) emphasizes prevention, early intervention, and the provision of health care and related services in the least restrictive environment consistent with the health care and related needs of the recipients of such services, (3) emphasizes personal independence, self-sufficiency, and freedom of choice, (4) emphasizes personal responsibility and accountability for the payment of health care and related expenses and the appropriate utilization of health care and related services, (5) cooperates with public and private sector entities to promote the public health, (6) cooperates with providers, public and private employers, and private sector insurers in providing access to health care and related services and encouraging and supporting the development and utilization of alternatives to publicly funded medical assistance for such services, (7) is appropriately managed and fiscally sustainable, and (8) qualifies for federal matching funds under federal law.

## **Source:**

* [Laws 2006, LB 1248, § 5.](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)

**Section 68-906. Medical assistance; state accepts federal provisions.**

For purposes of paying medical assistance under the Medical Assistance Act and sections [68-1002](https://nebraskalegislature.gov/laws/statutes.php?statute=68-1002) and [68-1006](https://nebraskalegislature.gov/laws/statutes.php?statute=68-1006), the State of Nebraska accepts and assents to all applicable provisions of Title XIX and Title XXI of the federal Social Security Act. Any reference in the Medical Assistance Act to the federal Social Security Act or other acts or sections of federal law shall be to such federal acts or sections as they existed on January 1, 2010.

**Source:**

* Laws 1965, c. 397, § 6, p. 1278;
* Laws 1993, LB 808, § 2;
* Laws 1996, LB 1044, § 324;
* Laws 1998, LB 1063, § 7;
* [Laws 2000, LB 1115, § 10;](https://nebraskalegislature.gov/FloorDocs/96/PDF/Slip/LB1115.pdf)
* [Laws 2005, LB 301, § 4;](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB301.pdf)
* R.S.Supp.,2005, § 68-1021;
* [Laws 2006, LB 1248, § 6;](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)
* [Laws 2007, LB185, § 1;](https://nebraskalegislature.gov/FloorDocs/100/PDF/Slip/LB185.pdf)
* [Laws 2008, LB797, § 4;](https://nebraskalegislature.gov/FloorDocs/100/PDF/Slip/LB797.pdf)
* [Laws 2009, LB288, § 19;](https://nebraskalegislature.gov/FloorDocs/101/PDF/Slip/LB288.pdf)
* [Laws 2010, LB849, § 13.](https://nebraskalegislature.gov/FloorDocs/101/PDF/Slip/LB849.pdf)

**Annotations**

* This section requires the director of the Department of Health and Human Services Finance and Support to promulgate rules and policies implementing the Nebraska Medicaid program. Boruch v. Nebraska Dept. of Health and Human Servs., 11 Neb. App. 713, 659 N.W.2d 848 (2003).

## **Section 68-907. Terms, defined.**

For purposes of the Medical Assistance Act:

(1) Committee means the Health and Human Services Committee of the Legislature;

(2) Department means the Department of Health and Human Services;

(3) Medicaid Reform Plan means the Medicaid Reform Plan submitted on December 1, 2005, pursuant to the Medicaid Reform Act enacted pursuant to Laws 2005, LB 709;

(4) Medicaid state plan means the comprehensive written document, developed and amended by the department and approved by the federal Centers for Medicare and Medicaid Services, which describes the nature and scope of the medical assistance program and provides assurances that the department will administer the program in compliance with federal requirements;

(5) Provider means a person providing health care or related services under the medical assistance program;

(6) School-based health center means a health center that:

(a) Is located in or is adjacent to a school facility;

(b) Is organized through school, school district, learning community, community, and provider relationships;

(c) Is administered by a sponsoring facility;

(d) Provides school-based health services onsite during school hours to children and adolescents by health care professionals in accordance with state and local laws, rules, and regulations, established standards, and community practice;

(e) Does not perform abortion services or refer or counsel for abortion services and does not dispense, prescribe, or counsel for contraceptive drugs or devices; and

(f) Does not serve as a child's or an adolescent's medical or dental home but augments and supports services provided by the medical or dental home;

(7) School-based health services may include any combination of the following as determined in partnership with a sponsoring facility, the school district, and the community:

(a) Medical health;

(b) Behavioral and mental health;

(c) Preventive health; and

(d) Oral health;

(8) Sponsoring facility means:

(a) A hospital;

(b) A public health department as defined in section [71-1626](https://nebraskalegislature.gov/laws/statutes.php?statute=71-1626);

(c) A federally qualified health center as defined in section 1905(l)(2)(B) of the federal Social Security Act, 42 U.S.C. 1396d(l)(2)(B), as such act and section existed on January 1, 2010;

(d) A nonprofit health care entity whose mission is to provide access to comprehensive primary health care services;

(e) A school or school district; or

(f) A program administered by the Indian Health Service or the federal Bureau of Indian Affairs or operated by an Indian tribe or tribal organization under the federal Indian Self-Determination and Education Assistance Act, or an urban Indian program under Title V of the federal Indian Health Care Improvement Act, as such acts existed on January 1, 2010; and

(9) Waiver means the waiver of applicability to the state of one or more provisions of federal law relating to the medical assistance program based on an application by the department and approval of such application by the federal Centers for Medicare and Medicaid Services.

## **Source:**

* [Laws 2006, LB 1248, § 7;](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)
* [Laws 2007, LB296, § 246;](https://nebraskalegislature.gov/FloorDocs/100/PDF/Slip/LB296.pdf)
* [Laws 2010, LB1106, § 2.](https://nebraskalegislature.gov/FloorDocs/101/PDF/Slip/LB1106.pdf)

## **Section 68-908. Department; powers and duties.**

(1) The department shall administer the medical assistance program.

(2) The department may (a) enter into contracts and interagency agreements, (b) adopt and promulgate rules and regulations, (c) adopt fee schedules, (d) apply for and implement waivers and managed care plans for services for eligible recipients, including services under the Nebraska Behavioral Health Services Act, and (e) perform such other activities as necessary and appropriate to carry out its duties under the Medical Assistance Act. A covered item or service as described in section [68-911](https://nebraskalegislature.gov/laws/statutes.php?statute=68-911) that is furnished through a school-based health center, furnished by a provider, and furnished under a managed care plan pursuant to a waiver does not require prior consultation or referral by a patient's primary care physician to be covered. Any federally qualified health center providing services as a sponsoring facility of a school-based health center shall be reimbursed for such services provided at a school-based health center at the federally qualified health center reimbursement rate.

(3) The department shall maintain the confidentiality of information regarding applicants for or recipients of medical assistance and such information shall only be used for purposes related to administration of the medical assistance program and the provision of such assistance or as otherwise permitted by federal law.

(4) The department shall prepare an annual summary and analysis of the medical assistance program for legislative and public review. The department shall submit a report of such summary and analysis to the Governor and the Legislature electronically no later than December 1 of each year.

**Source:**

* Laws 1965, c. 397, § 8, p. 1278;
* Laws 1967, c. 413, § 2, p. 1278;
* Laws 1982, LB 522, § 43;
* Laws 1996, LB 1044, § 325;
* R.S.1943, (2003), § 68-1023;
* [Laws 2006, LB 1248, § 8;](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)
* [Laws 2007, LB296, § 247;](https://nebraskalegislature.gov/FloorDocs/100/PDF/Slip/LB296.pdf)
* [Laws 2009, LB288, § 20;](https://nebraskalegislature.gov/FloorDocs/101/PDF/Slip/LB288.pdf)
* [Laws 2010, LB1106, § 3;](https://nebraskalegislature.gov/FloorDocs/101/PDF/Slip/LB1106.pdf)
* [Laws 2012, LB782, § 91;](https://nebraskalegislature.gov/FloorDocs/102/PDF/Slip/LB782.pdf)
* [Laws 2012, LB1158, § 1;](https://nebraskalegislature.gov/FloorDocs/102/PDF/Slip/LB1158.pdf)
* [Laws 2017, LB417, § 7.](https://nebraskalegislature.gov/FloorDocs/105/PDF/Slip/LB417.pdf)

**Cross References**

* **Nebraska Behavioral Health Services Act,** see section [71-801](https://nebraskalegislature.gov/laws/statutes.php?statute=71-801).

**Section 68-909. Existing contracts, agreements, rules, regulations, plan, and waivers; how treated; report required; exception; department; powers and duties.**

(1) All contracts, agreements, rules, and regulations relating to the medical assistance program as entered into or adopted and promulgated by the department prior to July 1, 2006, and all provisions of the medicaid state plan and waivers adopted by the department prior to July 1, 2006, shall remain in effect until revised, amended, repealed, or nullified pursuant to law.

(2) Prior to the adoption and promulgation of proposed rules and regulations under section [68-912](https://nebraskalegislature.gov/laws/statutes.php?statute=68-912) or relating to the implementation of medicaid state plan amendments or waivers, the department shall provide a report to the Governor and the Legislature no later than December 1 before the next regular session of the Legislature summarizing the purpose and content of such proposed rules and regulations and the projected impact of such proposed rules and regulations on recipients of medical assistance and medical assistance expenditures. The report submitted to the Legislature shall be submitted electronically. Any changes in medicaid copayments in fiscal year 2011-12 are exempt from the reporting requirement of this subsection and the requirements of section [68-912](https://nebraskalegislature.gov/laws/statutes.php?statute=68-912).

(3) The department shall monitor 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.

**Source:**

* [Laws 2006, LB 1248, § 9;](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)
* [Laws 2008, LB928, § 15;](https://nebraskalegislature.gov/FloorDocs/100/PDF/Slip/LB928.pdf)
* [Laws 2011, LB468, § 1;](https://nebraskalegislature.gov/FloorDocs/102/PDF/Slip/LB468.pdf)
* [Laws 2012, LB782, § 92;](https://nebraskalegislature.gov/FloorDocs/102/PDF/Slip/LB782.pdf)
* [Laws 2017, LB417, § 8;](https://nebraskalegislature.gov/FloorDocs/105/PDF/Slip/LB417.pdf)
* [Laws 2017, LB644, § 16.](https://nebraskalegislature.gov/FloorDocs/105/PDF/Slip/LB644.pdf)

**Section 68-910. Medical assistance payments; source of funds.**

(1) Medical assistance shall be paid from General Funds, cash funds, federal funds, and such other funds as may qualify for federal matching funds under federal law. General Fund appropriations for the program shall be based on an assessment by the Legislature of General Fund revenue and the competing needs of other state-funded programs.

(2) Medical assistance paid on behalf of eligible recipients may include, but is not limited to, (a) direct payments to vendors under a fee-for-service, managed care, or other provider contract, (b) premium payments, deductibles, and coinsurance for private health insurance coverage, employer-sponsored coverage, catastrophic health insurance coverage, or long-term care insurance coverage, and (c) payments to providers who serve eligible recipients of medical assistance or low-income uninsured persons and meet federal and state disproportionate-share payment requirements.

(3) Medical assistance shall not be paid directly to eligible recipients.

**Source:**

* Laws 1965, c. 397, § 7, p. 1278;
* Laws 1967, c. 410, § 2, p. 1274;
* Laws 1979, LB 138, § 1;
* Laws 1981, LB 39, § 1;
* Laws 1982, LB 522, § 42;
* Laws 1983, LB 604, § 24;
* Laws 1986, LB 1253, § 1;
* R.S.1943, (2003), § 68-1022;
* [Laws 2006, LB 1248, § 10.](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)

**Section 68-911. Medical assistance; mandated and optional coverage; department; submit state plan amendment or waiver.**

(1) Medical assistance shall include coverage for health care and related services as required under Title XIX of the federal Social Security Act, including, but not limited to:

(a) Inpatient and outpatient hospital services;

(b) Laboratory and X-ray services;

(c) Nursing facility services;

(d) Home health services;

(e) Nursing services;

(f) Clinic services;

(g) Physician services;

(h) Medical and surgical services of a dentist;

(i) Nurse practitioner services;

(j) Nurse midwife services;

(k) Pregnancy-related services;

(l) Medical supplies;

(m) Mental health and substance abuse services; and

(n) Early and periodic screening and diagnosis and treatment services for children which shall include both physical and behavioral health screening, diagnosis, and treatment services.

(2) In addition to coverage otherwise required under this section, medical assistance may include coverage for health care and related services as permitted but not required under Title XIX of the federal Social Security Act, including, but not limited to:

(a) Prescribed drugs;

(b) Intermediate care facilities for persons with developmental disabilities;

(c) Home and community-based services for aged persons and persons with disabilities;

(d) Dental services;

(e) Rehabilitation services;

(f) Personal care services;

(g) Durable medical equipment;

(h) Medical transportation services;

(i) Vision-related services;

(j) Speech therapy services;

(k) Physical therapy services;

(l) Chiropractic services;

(m) Occupational therapy services;

(n) Optometric services;

(o) Podiatric services;

(p) Hospice services;

(q) Mental health and substance abuse services;

(r) Hearing screening services for newborn and infant children; and

(s) Administrative expenses related to administrative activities, including outreach services, provided by school districts and educational service units to students who are eligible or potentially eligible for medical assistance.

(3) No later than July 1, 2009, the department shall submit a state plan amendment or waiver to the federal Centers for Medicare and Medicaid Services to provide coverage under the medical assistance program for community-based secure residential and subacute behavioral health services for all eligible recipients, without regard to whether the recipient has been ordered by a mental health board under the Nebraska Mental Health Commitment Act to receive such services.

(4) On or before October 1, 2014, the department, after consultation with the State Department of Education, shall submit a state plan amendment to the federal Centers for Medicare and Medicaid Services, as necessary, to provide that the following are direct reimbursable services when provided by school districts as part of an individualized education program or an individualized family service plan: Early and periodic screening, diagnosis, and treatment services for children; medical transportation services; mental health services; nursing services; occupational therapy services; personal care services; physical therapy services; rehabilitation services; speech therapy and other services for individuals with speech, hearing, or language disorders; and vision-related services.

**Source:**

* Laws 1965, c. 397, § 4, p. 1277;
* Laws 1967, c. 413, § 1, p. 1278;
* Laws 1969, c. 542, § 1, p. 2193;
* Laws 1993, LB 804, § 1;
* Laws 1993, LB 808, § 1;
* Laws 1996, LB 1044, § 315;
* Laws 1998, LB 1063, § 5;
* Laws 1998, LB 1073, § 60;
* [Laws 2002, Second Spec. Sess., LB 8, § 1;](https://nebraskalegislature.gov/FloorDocs/97/PDF/Slip/LB8_S2.pdf)
* R.S.1943, (2003), § 68-1019;
* [Laws 2006, LB 1248, § 11;](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)
* [Laws 2009, LB603, § 1;](https://nebraskalegislature.gov/FloorDocs/101/PDF/Slip/LB603.pdf)
* [Laws 2013, LB23, § 12;](https://nebraskalegislature.gov/FloorDocs/103/PDF/Slip/LB23.pdf)
* [Laws 2013, LB556, § 5;](https://nebraskalegislature.gov/FloorDocs/103/PDF/Slip/LB556.pdf)
* [Laws 2014, LB276, § 4.](https://nebraskalegislature.gov/FloorDocs/103/PDF/Slip/LB276.pdf)

**Cross References:**

* **Nebraska Mental Health Commitment Act,** see section [71-901](https://nebraskalegislature.gov/laws/statutes.php?statute=71-901).

**Section 68-912. Limits on goods and services; considerations; procedure.**

(1) The department may establish (a) premiums, copayments, and deductibles for goods and services provided under the medical assistance program, (b) limits on the amount, duration, and scope of goods and services that recipients may receive under the medical assistance program subject to subsection (5) of this section, and (c) requirements for recipients of medical assistance as a necessary condition for the continued receipt of such assistance, including, but not limited to, active participation in care coordination and appropriate disease management programs and activities.

(2) In establishing and limiting coverage for services under the medical assistance program, the department shall consider (a) the effect of such coverage and limitations on recipients of medical assistance and medical assistance expenditures, (b) the public policy in section [68-905](https://nebraskalegislature.gov/laws/statutes.php?statute=68-905), (c) the experience and outcomes of other states, (d) the nature and scope of benchmark or benchmark-equivalent health insurance coverage as recognized under federal law, and (e) other relevant factors as determined by the department.

(3) Coverage for mandatory and optional services and limitations on covered services as established by the department prior to July 1, 2006, shall remain in effect until revised, amended, repealed, or nullified pursuant to law. Any proposed reduction or expansion of services or limitation of covered services by the department under this section shall be subject to the reporting and review requirements of section [68-909](https://nebraskalegislature.gov/laws/statutes.php?statute=68-909).

(4) Except as otherwise provided in this subsection, proposed rules and regulations under this section relating to the establishment of premiums, copayments, or deductibles for eligible recipients or limits on the amount, duration, or scope of covered services for eligible recipients shall not become effective until the conclusion of the earliest regular session of the Legislature in which there has been a reasonable opportunity for legislative consideration of such rules and regulations. This subsection does not apply to rules and regulations that are (a) required by federal or state law, (b) related to a waiver in which recipient participation is voluntary, or (c) proposed due to a loss of federal matching funds relating to a particular covered service or eligibility category. Legislative consideration includes, but is not limited to, the introduction of a legislative bill, a legislative resolution, or an amendment to pending legislation relating to such rules and regulations.

(5) Any limitation on the amount, duration, or scope of goods and services that recipients may receive under the medical assistance program shall give full and deliberate consideration to the role of home health services from private duty nurses in meeting the needs of a disabled family member or disabled person.

**Source:**

* Laws 1993, LB 804, § 2;
* Laws 1996, LB 1044, § 316;
* R.S.1943, (2003), § 68-1019.01;
* [Laws 2006, LB 1248, § 12;](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)
* [Laws 2012, LB1122, § 1.](https://nebraskalegislature.gov/FloorDocs/102/PDF/Slip/LB1122.pdf)

**Section 68-913. Medical assistance program; public awareness; public school district; hospital; duties.**

(1) Each public school district shall annually, at the beginning of the school year, provide written information supplied by the department to every student describing the availability of children's health services provided under the medical assistance program.

(2) Each hospital shall provide the mother of every child born in such hospital, at the time of such birth, written information provided by the department describing the availability of children's health services provided under the medical assistance program.

(3) The department shall develop and implement other activities designed to increase public awareness of the availability of children's health services provided under the medical assistance program. Such activities shall include materials and efforts designed to increase participation in the program by minority populations.

**Source:**

* Laws 1998, LB 1063, § 10;
* R.S.1943, (2003), § 68-1025.01;
* [Laws 2006, LB 1248, § 13;](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)
* [Laws 2007, LB296, § 248.](https://nebraskalegislature.gov/FloorDocs/100/PDF/Slip/LB296.pdf)

**Section 68-914. Application for medical assistance; form; department; decision; appeal.**

(1) An applicant for medical assistance shall file an application with the department in a manner and form prescribed by the department. The department shall process each application to determine whether the applicant is eligible for medical assistance. The department shall provide a determination of eligibility for medical assistance in a timely manner in compliance with 42 C.F.R. 435.911, including, but not limited to, a timely determination of eligibility for coverage of an emergency medical condition, such as labor and delivery.

(2) The department shall notify an applicant for or recipient of medical assistance of any decision of the department to deny or discontinue eligibility or to deny or modify medical assistance. Decisions of the department, including the failure of the department to act with reasonable promptness, may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:**

* [Laws 2006, LB 1248, § 14;](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)
* [Laws 2011, LB494, § 1.](https://nebraskalegislature.gov/FloorDocs/102/PDF/Slip/LB494.pdf)

**Cross References**

* **Administrative Procedure Act,** see section [84-920](https://nebraskalegislature.gov/laws/statutes.php?statute=84-920).

**68-915. Eligibility. The following persons shall be eligible for medical assistance:**

(1) Dependent children as defined in section [43-504](https://nebraskalegislature.gov/laws/statutes.php?statute=43-504);

(2) Aged, blind, and disabled persons as defined in sections [68-1002](https://nebraskalegislature.gov/laws/statutes.php?statute=68-1002) to [68-1005](https://nebraskalegislature.gov/laws/statutes.php?statute=68-1005);

(3) Children under nineteen years of age who are eligible under section 1905(a)(i) of the federal Social Security Act;

(4) Persons who are presumptively eligible as allowed under sections 1920 and 1920B of the federal Social Security Act;

(5) Children under nineteen years of age with a family income equal to or less than two hundred percent of the Office of Management and Budget income poverty guideline, as allowed under Title XIX and Title XXI of the federal Social Security Act, without regard to resources, and pregnant women with a family income equal to or less than one hundred eighty-five percent of the Office of Management and Budget income poverty guideline, as allowed under Title XIX and Title XXI of the federal Social Security Act, without regard to resources. Children described in this subdivision and subdivision (6) of this section shall remain eligible for six consecutive months from the date of initial eligibility prior to redetermination of eligibility. The department may review eligibility monthly thereafter pursuant to rules and regulations adopted and promulgated by the department. The department may determine upon such review that a child is ineligible for medical assistance if such child no longer meets eligibility standards established by the department;

(6) For purposes of Title XIX of the federal Social Security Act as provided in subdivision (5) of this section, children with a family income as follows:

(a) Equal to or less than one hundred fifty percent of the Office of Management and Budget income poverty guideline with eligible children one year of age or younger;

(b) Equal to or less than one hundred thirty-three percent of the Office of Management and Budget income poverty guideline with eligible children over one year of age and under six years of age; or

(c) Equal to or less than one hundred percent of the Office of Management and Budget income poverty guideline with eligible children six years of age or older and less than nineteen years of age;

(7) Persons who are medically needy caretaker relatives as allowed under 42 U.S.C. 1396d(a)(ii);

(8) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), disabled persons as defined in section [68-1005](https://nebraskalegislature.gov/laws/statutes.php?statute=68-1005) with a family income of less than two hundred fifty percent of the Office of Management and Budget income poverty guideline and who, but for earnings in excess of the limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving federal Supplemental Security Income. The department shall apply for a waiver to disregard any unearned income that is contingent upon a trial work period in applying the Supplemental Security Income standard. Such disabled persons shall be subject to payment of premiums as a percentage of family income beginning at not less than two hundred percent of the Office of Management and Budget income poverty guideline. Such premiums shall be graduated based on family income and shall not be less than two percent or more than ten percent of family income;

(9) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), persons who:

(a) Have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under Title XV of the federal Public Health Service Act, 42 U.S.C. 300k et seq., in accordance with the requirements of section 1504 of such act, 42 U.S.C. 300n, and who need treatment for breast or cervical cancer, including precancerous and cancerous conditions of the breast or cervix;

(b) Are not otherwise covered under creditable coverage as defined in section 2701(c) of the federal Public Health Service Act, 42 U.S.C. 300gg(c);

(c) Have not attained sixty-five years of age; and

(d) Are not eligible for medical assistance under any mandatory categorically needy eligibility group;

(10) Persons eligible for services described in subsection (3) of section [68-972](https://nebraskalegislature.gov/laws/statutes.php?statute=68-972); and

(11) Persons eligible pursuant to section [68-992](https://nebraskalegislature.gov/laws/statutes.php?statute=68-992).

Except as provided in section [68-972](https://nebraskalegislature.gov/laws/statutes.php?statute=68-972), eligibility shall be determined under this section using an income budgetary methodology that determines children's eligibility at no greater than two hundred percent of the Office of Management and Budget income poverty guideline and adult eligibility using adult income standards no greater than the applicable categorical eligibility standards established pursuant to state or federal law. The department shall determine eligibility under this section pursuant to such income budgetary methodology and subdivision (1)(q) of section [68-1713](https://nebraskalegislature.gov/laws/statutes.php?statute=68-1713).

**Source:**

* Laws 1965, c. 397, § 5, p. 1278;
* Laws 1984, LB 1127, § 4;
* Laws 1988, LB 229, § 1;
* Laws 1995, LB 455, § 6;
* Laws 1996, LB 1044, § 323;
* Laws 1998, LB 1063, § 6;
* [Laws 1999, LB 594, § 34;](https://nebraskalegislature.gov/FloorDocs/96/PDF/Slip/LB594.pdf)
* [Laws 2001, LB 677, § 1;](https://nebraskalegislature.gov/FloorDocs/97/PDF/Slip/LB677.pdf)
* [Laws 2002, Second Spec. Sess., LB 8, § 2;](https://nebraskalegislature.gov/FloorDocs/97/PDF/Slip/LB8_S2.pdf)
* [Laws 2003, LB 411, § 2;](https://nebraskalegislature.gov/FloorDocs/98/PDF/Slip/LB411.pdf)
* [Laws 2005, LB 301, § 3;](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB301.pdf)
* R.S.Supp.,2005, § 68-1020;
* [Laws 2006, LB 1248, § 15;](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)
* [Laws 2007, LB296, § 249;](https://nebraskalegislature.gov/FloorDocs/100/PDF/Slip/LB296.pdf)
* [Laws 2007, LB351, § 3;](https://nebraskalegislature.gov/FloorDocs/100/PDF/Slip/LB351.pdf)
* [Laws 2009, LB603, § 2;](https://nebraskalegislature.gov/FloorDocs/101/PDF/Slip/LB603.pdf)
* [Laws 2012, LB599, § 3;](https://nebraskalegislature.gov/FloorDocs/102/PDF/Slip/LB599.pdf)
* Initiative Law 2018, No. 427, § 3.

**Annotations**

* The adoption of an act of Congress to be passed in the future would be an unconstitutional attempt on the part of the Legislature to delegate legislative authority to Congress. By adopting the provisions of federal law, this section provides that caretaker relatives are eligible for medical assistance benefits. The Legislature may lawfully adopt by reference an existing law or regulation of another jurisdiction, including the United States. Clemens v. Harvey, 247 Neb. 77, 525 N.W.2d 185 (1994).
* In order for a minor or an incompetent adult without a legal guardian to qualify for assistance under this section, the applicant's parent must be a legal resident of Nebraska, the applicant's legal residence in Nebraska must be established by a court, or the applicant must have left her parents' home while the parents were legal residents of Nebraska. Gosney v. Department of Public Welfare, 206 Neb. 137, 291 N.W.2d 708 (1980).

**68-916. Medical assistance; application; assignment of rights; exception.**

The application for medical assistance shall constitute an automatic assignment of the rights specified in this section to the department or its assigns effective from the date of eligibility for such assistance. The assignment shall include the rights of the applicant or recipient and also the rights of any other member of the assistance group for whom the applicant or recipient can legally make an assignment.

Pursuant to this section and subject to sections [68-921](https://nebraskalegislature.gov/laws/statutes.php?statute=68-921) to [68-925](https://nebraskalegislature.gov/laws/statutes.php?statute=68-925), the applicant or recipient shall assign to the department or its assigns any rights to medical care support available to him or her or to other members of the assistance group under an order of a court or administrative agency and any rights to pursue or receive payments from any third party liable to pay for the cost of medical care and services arising out of injury, disease, or disability of the applicant or recipient or other members of the assistance group which otherwise would be covered by medical assistance. Medicare benefits shall not be assigned pursuant to this section. Rights assigned to the department or its assigns under this section may be directly reimbursable to the department or its assigns by liable third parties, as provided by rule or regulation of the department, when prior notification of the assignment has been made to the liable third party.

**Source:**

* Laws 1984, LB 723, § 1;
* Laws 1988, LB 419, § 15;
* Laws 1989, LB 362, § 10;
* Laws 1996, LB 1044, § 326;
* Laws 1996, LB 1155, § 23;
* R.S.1943, (2003), § 68-1026;
* [Laws 2006, LB 1248, § 16.](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)

**Annotations**

* The statutory assignment to Department of Social Services under this section is subject to a valid hospital lien acquired under section 52-401 when the hospital lien exists before the department obligates itself to pay, or does pay, medical assistance benefits under this section. Ehlers v. Perry, 242 Neb. 208, 494 N.W.2d 325 (1993).

## **68-917. Applicant or recipient; failure to cooperate; effect.**

Refusal by the applicant or recipient specified in section [68-916](https://nebraskalegislature.gov/laws/statutes.php?statute=68-916) to cooperate in obtaining reimbursement for medical care or services provided to himself or herself or any other member of the assistance group renders the applicant or recipient ineligible for assistance. Ineligibility shall continue for so long as such person refuses to cooperate. Cooperation may be waived by the department upon a determination of the reasonable likelihood of physical or emotional harm to the applicant, recipient, or other member of the assistance group if the applicant or recipient were to cooperate. Eligibility shall continue for any individual who cannot legally assign his or her own rights and who would have been eligible for assistance but for the refusal by another person, legally able to assign such individual's rights, to cooperate as required by this section.

## **Source:**

* Laws 1984, LB 723, § 2;
* Laws 1997, LB 307, § 108;
* R.S.1943, (2003), § 68-1027;
* [Laws 2006, LB 1248, § 17.](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)

**68-918. Restoration of rights; when.**

If the applicant or recipient or any member of the assistance group becomes ineligible for medical assistance, the department shall restore to him or her the rights assigned under section 68-916.

**Source:**

* Laws 1984, LB 723, § 3;
* Laws 1997, LB 307, § 109;
* R.S.1943, (2003), § 68-1028;
* Laws 2006, LB 1248, § 18.

## **Section 68-919. Medical assistance recipient; liability; when; claim; procedure; department; powers; recovery of medical assistance reimbursement; procedure.**

## (1) The recipient of medical assistance under the medical assistance program shall be indebted to the department for the total amount paid for medical assistance on behalf of the recipient if:

## (a) The recipient was fifty-five years of age or older at the time the medical assistance was provided; or

## (b) The recipient resided in a medical institution and, at the time of institutionalization or application for medical assistance, whichever is later, the department determines that the recipient could not have reasonably been expected to be discharged and resume living at home. For purposes of this section, medical institution means a nursing facility, an intermediate care facility for persons with developmental disabilities, or an inpatient hospital.

## (2) The debt accruing under subsection (1) of this section arises during the life of the recipient but shall be held in abeyance until the death of the recipient. Any such debt to the department that exists when the recipient dies shall be recovered only after the death of the recipient's spouse, if any, and only after the recipient is not survived by a child who either is under twenty-one years of age or is blind or totally and permanently disabled as defined by the Supplemental Security Income criteria. In recovering such debt, the department shall not foreclose on a lien on the home of the recipient (a) if a sibling of the recipient with an equity interest in the home has lawfully resided in the home for at least one year before the recipient's admission and has lived there continuously since the date of the recipient's admission or (b) while the home is the residence of an adult child who has lived in the recipient's home for at least two years immediately before the recipient was institutionalized, has lived there continuously since that time, and can establish to the satisfaction of the department that he or she provided care that delayed the recipient's admission.

## (3) The debt shall include the total amount of medical assistance provided when the recipient was fifty-five years of age or older or during a period of institutionalization as described in subsection (1) of this section and shall not include interest.

## (4)(a) It is the intent of the Legislature that the debt specified in subsection (1) of this section be collected by the department before any portion of the estate of a recipient of medical assistance is enjoyed by or transferred to a person not specified in subsection (2) of this section as a result of the death of such recipient. The debt may be recovered from the estate of a recipient of medical assistance. The department shall undertake all reasonable and cost-effective measures to enforce recovery under the Medical Assistance Act. All persons specified in subsections (2) and (4) of this section shall cooperate with the department in the enforcement of recovery under the act.

## (b) For purposes of this section:

## (i) Estate of a recipient of medical assistance means any real estate, personal property, or other asset in which the recipient had any legal title or interest at or immediately preceding the time of the recipient's death, to the extent of such interests. In furtherance and not in limitation of the foregoing, the estate of a recipient of medical assistance also includes:

## (A) Assets to be transferred to a beneficiary described in section 77-2004 or 77-2005 in relation to the recipient through a revocable trust or other similar arrangement which has become irrevocable by reason of the recipient's death; and

## (B) Notwithstanding anything to the contrary in subdivision (3) or (4) of section 68-923, assets conveyed or otherwise transferred to a survivor, an heir, an assignee, a beneficiary, or a devisee of the recipient of medical assistance through joint tenancy, tenancy in common, transfer on death deed, survivorship, conveyance of a remainder interest, retention of a life estate or of an estate for a period of time, living trust, or other arrangement by which value or possession is transferred to or realized by the beneficiary of the conveyance or transfer at or as a result of the recipient’s death. Such other arrangements include insurance policies or annuities in which the recipient of medical assistance had at the time of death any incidents of ownership of the policy or annuity or the power to designate beneficiaries and any pension rights or completed retirement plans or accounts of the recipient. A completed retirement plan or account is one which because of the death of the recipient of medical assistance ceases to have elements of retirement relating to such recipient and under which one or more beneficiaries exist after such recipient’s death; and

## (ii) Estate of a recipient of medical assistance does not include:

## (A) Insurance proceeds, any trust account subject to the Burial Pre-Need Sale Act, or any limited lines funeral insurance policy to the extent used to pay for funeral, burial, or cremation expenses of the recipient of medical assistance;

## (B) Conveyances of real estate made prior to August 24, 2017, that are subject to the grantor's retention of a life estate or an estate for a period of time; and

## (C) Any pension rights or completed retirement plans to the extent that such rights or plans are exempt from claims for reimbursement of medical assistance under federal law.

## (c) As to any interest in property created after August 24, 2017, and for as long as any portion of the debt arising under subsection (1) of this section remains unpaid, the death of the recipient of medical assistance shall not trigger a change in the rights to possession, enjoyment, access, income, or otherwise that the recipient had at the time of death and the personal representative of the recipient's estate is empowered to and shall exercise or enjoy such rights for the purpose of paying such debt, including, but not limited to, renting such property held as a life estate, severing joint tenancies, bringing partition actions, claiming equitable rights of contribution, or taking other actions otherwise appropriate to effect the intent of this section. Such rights shall survive the death of the recipient of medical assistance and shall be administered, marshaled, and disposed of for the purposes of this section. In the event that a claim for reimbursement is made as to some, but not all, nonprobate transferees or assets, the party or owner against whom the claim is asserted may seek equitable contribution toward the claim from the other nonprobate transferees or assets in a court of applicable jurisdiction. Except as otherwise provided in this section and except for the right of the department to recover the debt from such interests in property, this subsection in and of itself does not create any rights in any other person or entity.

## (d) The department, upon application of the personal representative of an estate, any person or entity otherwise authorized under the Nebraska Probate Code to act on behalf of a decedent, any person or entity having an interest in assets of the decedent which are subject to this subsection, a successor trustee of a revocable trust or other similar arrangement which has become irrevocable by reason of the decedent's death, or any other person or entity holding assets of the decedent described in this subsection, shall timely certify to the applicant, that as of a designated date, whether medical assistance reimbursement is due or an application for medical assistance was pending that may result in medical assistance reimbursement due. An application for a certificate under this subdivision shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivery on its web site. Any application that fails to conform with such manner is void. Notwithstanding the lack of an order by a court designating the applicant as a person or entity who may receive information protected by applicable privacy laws, the applicant shall have the authority of a personal representative for the limited purpose of seeking and obtaining from the department this certification. If, in response to a certification request, the department certifies that reimbursement for medical assistance is due, the department may release some or all of the property of a decedent from the provisions of this subsection.

## (e) An action for recovery of the debt created under subsection (1) of this section may be brought by the department against the estate of a recipient of medical assistance as defined in subdivision (4)(b) of this section at any time before five years after the last of the following events:

## (i) The death of the recipient of medical assistance;

## (ii) The death of the recipient’s spouse, if applicable;

## (iii) The attainment of the age of twenty-one years by the youngest of the recipient’s minor children, if applicable; or

## (iv) A determination that any adult child of the recipient is no longer blind or totally and permanently disabled as defined by the Supplemental Security Income criteria, if applicable.

## (5) In any probate proceedings in which the department has filed a claim under this section, no additional evidence of foundation shall be required for the admission of the department's payment record supporting its claim if the payment record bears the seal of the department, is certified as a true copy, and bears the signature of an authorized representative of the department.

## (6) The department may waive or compromise its claim, in whole or in part, if the department determines that enforcement of the claim would not be in the best interests of the state or would result in undue hardship as provided in rules and regulations of the department.

## (7)(a) Whenever the department has provided medical assistance because of sickness or injury to any person resulting from a third party’s wrongful act or negligence and the person has recovered damages from such third party, the department shall have the right to recover the medical assistance it paid from any amounts that the person has received as follows:

## (i) In those cases in which the person is fully compensated by the recovery, the department shall be fully reimbursed subject to its contribution to attorney's fees and costs as provided in subdivision (b) of this subsection; or

## (ii) In those cases in which the person is not fully compensated by the recovery, the department shall be reimbursed that portion of the recovery that represents the same proportionate reduction of medical expenses paid that the recovery amount bears to full compensation of the person subject to its contributions to attorney's fees and costs as provided in subdivision (b) of this subsection.

## (b) When an action or claim is brought by the person and the person incurs or will incur a personal liability to pay attorney’s fees and costs of litigation or costs incurred in pursuit of a claim, the department’s claim for reimbursement of the medical assistance provided to the person shall be reduced by an amount that represents the department’s reasonable pro rata share of attorney’s fees and costs of litigation or the costs incurred in pursuit of a claim.

## (8) The department may adopt and promulgate rules and regulations to carry out this section.

## (9) The changes made to this section by Laws 2019, LB593, shall apply retroactively to August 30, 2015.

## **Source:**

## Laws 1994, LB 1224, § 39;

## Laws 1996, LB 1044, § 334;

## Laws 2001, LB 257, § 1;

## Laws 2004, LB 1005, § 7;

## R.S.Supp.,2004, § 68-1036.02;

## Laws 2006, LB 1248, § 19;

## Laws 2007, LB185, § 2;

## Laws 2013, LB23, § 13;

## Laws 2015, LB72, § 4;

## Laws 2017, LB268, § 14;

## Laws 2019, LB593, § 6.

## **Effective Date: May 31, 2019**

## **Cross References**

## Burial Pre-Need Sale Act, see section 12-1101.

## Nebraska Probate Code, see section 30-2201.

## **Annotations**

## The Department of Health and Human Services may recover from a Medicaid recipient's estate sums paid on the recipient's behalf for room and board and other "nonmedical" expenses at nursing facilities. In re Estate of Vollmann, 296 Neb. 659, 896 N.W.2d 576 (2017).

## Under the Medical Assistance Act, where a Medicaid recipient is not survived by a spouse or by a child who is either under the age of 21 or blind or totally and permanently disabled and where no undue hardship as provided in the Department of Health and Human Services' rules and regulations would result, the beneficiaries of a recipient's estate are not entitled to an inheritance at the public's expense. In re Estate of Vollmann, 296 Neb. 659, 896 N.W.2d 576 (2017).

## The Department of Health and Human Services was entitled to summary judgment on its Medicaid estate recovery claim made pursuant to this section, where uncontroverted evidence showed that the decedent was 55 years of age or older when medical assistance benefits were provided, and was not survived by a spouse, a child under the age of 21, or a child who was blind or totally and permanently disabled, and where the department offered properly authenticated payment records as prescribed by subsection (4) of this section. In re Estate of Cushing, 283 Neb. 571, 810 N.W.2d 741 (2012).

## Time limitations set forth in section 30-2485(a) applied to the Department of Health and Human Services' Medicaid estate recovery claim, because under this section, under which the claim was made, the indebtedness to the department arose during the lifetime of the recipient. In re Estate of Cushing, 283 Neb. 571, 810 N.W.2d 741 (2012).

## The plain and unambiguous language of this section provides that reimbursement claims for medical expenses arise at or after the death of the recipient. In re Estate of Tvrz, 260 Neb. 991, 620 N.W.2d 757 (2001).

## Subsection (4) of this section clearly dispenses with foundation for the admission of the record, if properly certified. In re Estate of Reimers, 16 Neb. App. 610, 746 N.W.2d 724 (2008).

## This section does not create any presumption that the amounts shown on the payment record of the Department of Health and Human Services are reimbursable by the recipient's estate—such must still be proved—and if the exhibit does not do so, then additional evidence is needed. In re Estate of Reimers, 16 Neb. App. 610, 746 N.W.2d 724 (2008).

## A claim by the Department of Health and Human Services Finance and Support for reimbursement of medical assistance benefits pursuant to this section is one that necessarily falls within the provisions of subsection (b) of section 30-2485 as arising "at or after" the death of the decedent who is a recipient of those benefits. In re Estate of Tvrz, 9 Neb. App. 98, 608 N.W.2d 226 (2000).

## **Section 68-920. Department; garnish employment income; when; limitation.**

**Department; garnish employment income; when; limitation.**

The department may garnish the wages, salary, or other employment income of a person for the costs of health services provided to a child who is eligible for medical assistance pursuant to the medical assistance program if:

(1) The person is required by court or administrative order to provide health care coverage for the costs of such services; and

(2) The person has received payment from a third party for the costs of such services but has not used the payment to reimburse either the other parent or guardian or the provider of such services.

The amount garnished shall be limited to the amount necessary to reimburse the department for its expenditures for the costs of such services under the medical assistance program. Any claim for current or past-due child support shall take priority over a claim for the costs of health services.

**Source:**

Laws 1994, LB 1224, § 71;

Laws 1996, LB 1044, § 335;

R.S.1943, (2003), § 68-1036.03;

Laws 2006, LB 1248, § 20.

**Section 68-921. Entitlement of spouse; terms, defined.**

For purposes of sections 68-921 to 68-925:

(1) Assets means property which is not exempt from consideration in determining eligibility for medical assistance under rules and regulations adopted and promulgated under section 68-922;

(2) Community spouse monthly income allowance means the amount of income determined by the department in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5;

(3) Community spouse resource allowance means the amount of assets determined in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5. For purposes of 42 U.S.C. 1396r-5(f)(2)(A)(i), the amount specified by the state shall be twelve thousand dollars;

(4) Home and community-based services means services furnished under home and community-based waivers as defined in Title XIX of the federal Social Security Act, as amended, 42 U.S.C. 1396;

(5) Qualified applicant means a person (a) who applies for medical assistance on or after July 9, 1988, (b) who is under care in a state-licensed hospital, a nursing facility, an intermediate care facility for persons with developmental disabilities, an assisted-living facility, or a center for the developmentally disabled, as such terms are defined in the Health Care Facility Licensure Act, or an adult family home certified by the department or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance;

(6) Qualified recipient means a person (a) who has applied for medical assistance before July 9, 1988, and is eligible for such assistance, (b) who is under care in a facility certified to receive medical assistance funds or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance; and

(7) Spouse means the spouse of a qualified applicant or qualified recipient.

**Source**:

* Laws 1988, LB 419, § 1;
* Laws 1989, LB 362, § 11;
* Laws 1991, LB 244, § 1;
* Laws 1996, LB 1044, § 336;
* Laws 1997, LB 608, § 4;
* Laws 2000, LB 819, § 81;
* R.S.1943, (2003), § 68-1038;
* Laws 2006, LB 1248, § 21;
* Laws 2007, LB185, § 3;
* Laws 2007, LB296, § 250;
* Laws 2013, LB23, § 14.

**Cross References**

* Health Care Facility Licensure Act, see section 71-401.

**Section 68-922. Amount of entitlement; department; rules and regulations.**

For purposes of determining medical assistance eligibility and the right to and obligation of medical support pursuant to sections [68-716](https://nebraskalegislature.gov/laws/statutes.php?statute=68-716), [68-915](https://nebraskalegislature.gov/laws/statutes.php?statute=68-915), and [68-916](https://nebraskalegislature.gov/laws/statutes.php?statute=68-916), a spouse may retain (1) assets equivalent to the community spouse resource allowance and (2) an amount of income equivalent to the community spouse monthly income allowance.

The department shall administer this section in accordance with section 1924 of the Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5, and shall adopt and promulgate rules and regulations as necessary to implement and enforce sections [68-921](https://nebraskalegislature.gov/laws/statutes.php?statute=68-921) to [68-925](https://nebraskalegislature.gov/laws/statutes.php?statute=68-925).

**Source:**

* Laws 1988, LB 419, § 2;
* Laws 1989, LB 362, § 12;
* R.S.1943, (2003), § 68-1039;
* [Laws 2006, LB 1248, § 22;](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)
* [Laws 2007, LB296, § 251.](https://nebraskalegislature.gov/FloorDocs/100/PDF/Slip/LB296.pdf)

**Section 68-923. Assets; eligibility for assistance; future medical support; considerations; subrogation.**

If a portion of the aggregate assets is designated in accordance with section 68-924:

(1) Only the assets not designated for the spouse shall be considered in determining the eligibility of an applicant for medical assistance;

(2) In determining the eligibility of an applicant, the assets designated for the spouse shall not be taken into account and proof of adequate consideration for any assignment or transfer made as a result of the designation of assets shall not be required;

(3) The assets designated for the spouse shall not be considered to be available to an applicant or recipient for future medical support and the spouse shall have no duty of future medical support of the applicant or recipient from such assets;

(4) Recovery may not be made from the assets designated for the spouse for any amount paid for future medical assistance provided to the applicant or recipient; and

(5) Neither the department nor the state shall be subrogated to or assigned any future right of the applicant or recipient to medical support from the assets designated for the spouse.

*Source:*

* Laws 1988, LB 419, § 3;
* Laws 1989, LB 362, § 13;
* R.S.1943, (2003), § 68-1040;
* Laws 2006, LB 1248, § 23;
* Laws 2007, LB296, § 252.

**Section 68-924. Designation of assets; procedure.**

A designation of assets pursuant to section [68-922](https://nebraskalegislature.gov/laws/statutes.php?statute=68-922) shall be evidenced by a written statement listing such assets and signed by the spouse. A copy of such statement shall be provided to the department at the time of application and shall designate assets owned as of the date of application. Failure to complete any assignments or transfers necessary to place the designated assets in sole ownership of the spouse within a reasonable time after the statement is signed as provided in rules and regulations adopted and promulgated under section [68-922](https://nebraskalegislature.gov/laws/statutes.php?statute=68-922) may render the applicant or recipient ineligible for assistance in accordance with such rules and regulations.

**Source:**

* Laws 1988, LB 419, § 5;
* Laws 1989, LB 362, § 14;
* R.S.1943, (2003), § 68-1042;
* [Laws 2006, LB 1248, § 24;](https://nebraskalegislature.gov/FloorDocs/99/PDF/Slip/LB1248.pdf)
* [Laws 2007, LB296, § 253](https://nebraskalegislature.gov/FloorDocs/100/PDF/Slip/LB296.pdf)

**Section 68-925. Department; furnish statement.**

The department shall furnish to each qualified applicant for and each qualified recipient of medical assistance a clear and simple written statement explaining the provisions of section 68-922.

**Source**:

* Laws 1988, LB 419, § 6;
* Laws 1989, LB 362, § 15;
* Laws 1996, LB 1044, § 337;
* R.S.1943, (2003), § 68-1043;
* Laws 2006, LB 1248, § 25;
* Laws 2007, LB296, § 254.