

REG-1-050, Medicines and Medical Equipment

050.01 The following definitions apply to this regulation and Reg-1-051, Physicians and Dentists. The Nebraska Department of Revenue will rely upon determinations of the Nebraska Medical Assistance Program operated by the Nebraska Department of Health and Human Services (Medicaid) to determine if specific equipment, supplies, or devices are eligible for coverage under Medicaid.

050.01A Appropriate for use in the home means the equipment can be used or operated by a person without specialized training.

050.01B Drug means any compounds, substances, or preparations, other than grooming and hygiene products such as soap, toiletries, and cosmetics, food and food ingredients, dietary supplements, or alcoholic beverages which are:

050.01B(1) Recognized in the official U.S. Pharmacopoeia, official U.S. Homeopathic Pharmacopoeia, or official National Formulary;

050.01B(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

050.01B(3) Intended to affect the structure or function of the body.

050.01C Durable medical equipment means equipment, including repair and replacement parts, that:

050.01C(1) Can withstand repeated use;

050.01C(2) Is primarily and customarily used to serve a medical purpose;

050.01C(3) Is not generally useful to a person in the absence of illness or injury; and

050.01C(4) Is appropriate for use in the home.

050.01C(5) Durable medical equipment does not include exercise equipment, recliners, vibrators, hot tubs, or monitoring devices unless the monitoring devices are necessary to use other durable medical equipment.

050.01D Home medical supplies means supplies primarily and customarily used to serve a medical purpose that are appropriate for use in the home and are not generally useful to a person in the absence of illness or injury. Home medical supplies do not include items for personal comfort, hygiene, or cosmetic purposes, or any drugs.

050.01E Mobility enhancing equipment means equipment, including repair and replacement parts, which:

050.01E(1) Is primarily and customarily used to provide or increase the ability to move from one place to another;

050.01E(2) Is not generally used by persons with normal mobility; and

050.01E(3) Is appropriate for use either in a home or a motor vehicle.

050.01E(4) Mobility enhancing equipment does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer, for example, power steering, power brakes, automatic door locks, or running boards.

050.01F Oxygen equipment means oxygen cylinders, cylinder transport devices, including sheaths and carts, cylinder studs and support devices, regulators, flowmeters, tank wrenches, oxygen concentrators, liquid oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and accessories.

050.01G Over-the-counter drug means a drug containing a label as required by 21 C.F.R. 201.66. The over-the-counter drug label includes a drug facts panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

050.01H Prescription means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a practitioner licensed under the Uniform Credentialing Act.

050.01I Prosthetic device means replacement, corrective, or supportive devices worn on or in the body to replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body. Prosthetic devices include any supplies used with prosthetic devices and any repair or replacement parts.

050.02 Sales of mobility enhancing equipment for human use are exempt from sales and use tax when supported by a prescription issued by a practitioner licensed under the Uniform Credentialing Act. Taxation of mobility enhancing equipment that is annexed to real estate will be governed by the selected option of the contractor annexing the mobility enhancing equipment. (Reg-1-017, Contractors).

050.02A Option 1 contractors may accept a Nebraska Resale or Exempt Sale Certificate, Form 13, and a copy of the prescription to exempt the equipment or materials from sales tax.

050.02B Option 2 and Option 3 contractors are the consumers of all mobility enhancing equipment that is purchased and annexed to real estate. Option 2 and Option 3 contractors must pay tax on this equipment and materials, and do not collect sales tax from their customers. Option 2 and Option 3 contractors cannot accept a Form 13 or a prescription from their customer to exempt the equipment or materials from tax.

050.03 Sales of home medical supplies, oxygen, oxygen equipment, prosthetic devices, and durable medical equipment are exempt from sales and use tax if the home medical supplies, oxygen, oxygen equipment, prosthetic devices, or durable medical equipment are:

050.03A Sold for a human patient's use;

050.03B Sold pursuant to a prescription issued by a practitioner licensed under the Uniform Credentialing Act for the treatment of a medical condition; and

050.03C Either;

050.03C(1) Paid for or eligible for coverage under Medicaid, or

050.03C(2) Transferred to the patient during a procedure which is paid for or eligible for coverage under Medicaid, regardless of whether or not the patient is eligible for assistance.

050.04 Sales of drugs for human use, except over-the-counter drugs, are exempt from sales and use tax when supported by a prescription issued by a practitioner licensed under the Uniform Credentialing Act.

050.04A Over-the-counter drugs that can be purchased without a prescription are taxable even if they are prescribed by a practitioner licensed under the Uniform Credentialing Act.

050.04B All illegal drugs are taxable.

050.05 Sales of insulin for human use with or without a prescription are exempt from sales tax.

050.06 Purchases by physicians and dentists are discussed in Reg-1-051, Physicians and Dentists.

050.07 Purchases by hospitals, clinics, or health care practitioner facilities that are not sales tax-exempt are taxed in the same manner as purchases by physicians and dentists. Hospitals, clinics, or health care practitioner facilities must maintain records showing that prescriptions were issued for items transferred without any tax paid or collected.

050.08 Retailers making sales of drugs, other than over-the-counter drugs, durable medical equipment, home medical supplies, prosthetic devices, or mobility enhancing equipment, must keep the prescription sales records segregated from other sales records.

050.09 Charges which are billed under the Nebraska Medical Assistance Program operated by the Nebraska Department of Health and Human Services and are paid by the State of Nebraska, are deemed to be purchases by the state and are exempt from sales tax.

(Neb. Rev. Stat. §§ 77-2704.02, 77-2704.09, 77-2704.12 and 77-2704.15. June 24, 2017.)