



State of New Mexico  
Human Services Department  
**Human Services Register**



**I. DEPARTMENT**  
NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

**II. SUBJECT**  
8.314.5 NMAC, *Long Term Care Services, Developmental Disabilities Home and Community-Based Services Waiver*

**III. PROGRAM AFFECTED**  
(TITLE XIX) MEDICAID

**IV. ACTION**  
FINAL RULE

**V. BACKGROUND SUMMARY**  
New Mexico Human Services Register Vol. 37, No. 63, dated November 17, 2014, issued the proposed rule, 8.314.5 NMAC, *Long Term Care Services, Developmental Disabilities Home and Community-Based Services Waiver*.

A public hearing was held on December 29, 2014, to receive public comments and testimony on this proposed rule. The Human Services Department (the Department) received no oral testimony or recorded comments and one written set of comments.

**Summary of Comments:**

**8.314.5.13**

**Section F: A guardian or close family member are strongly encouraged and welcomed to be involved, however may not be qualified as a primary respondent.**

The commenter requests the Department provide clarification to what it means when referring to a primary respondent as qualified.

**Department Response:** The Department refers the commenter to Subsection E of Section 13 which reads:

8.314.5.13 E. At least two primary respondents who are usually primary caregivers or direct support professionals in residential and day service programs must attend the assessment. The individual being assessed can also be a primary respondent. Primary respondents are not required to have clinical expertise or professional degrees. **Qualifications for primary respondents include:**

- (1) *have known individual for at least the last three months;*
- (2) *have recently observed the individual in one or more settings at least several hours per setting; and*
- (3) *have the ability to describe the individual's support needs.*

The Department's intent is to ensure that only those individuals that have direct observation of the eligible recipient's strengths and limitations are the individuals who should be providing *primary* input concerning the eligible recipient's assessment. A family member who is concerned about the eligible recipient yet does not have first-hand observation of the eligible recipient may express his or her opinion; however, that family member does not have the knowledge of the eligible recipient's strengths and limitations. The language stands as proposed.

#### **8.314.5.14 Section D**

The commenter states the revisions to this section of the rule do not clarify what criteria must be met to merit inclusion in an H category. The commenter requests the Department to revise this section to provide information as the circumstances under which an H category will be granted.

***Department Response:***

#### **8.314.5.19 *Right to a HSD Administrative Hearing***

The commenter requests the Department to replace language detailing an agency conference back into this section.

***Department Response:*** The Department agrees that agency conferences may offer an avenue for a swift resolution to a claimant's (the eligible recipient) appeal. The Department determined an agency conference is not part of the HSD Administrative Hearing process that resides in NMAC rule. Instead, the Department's Fair Hearings Bureau has procedures it follows to facilitate early discussions, in this case between MAD and the claimant, to reach a resolution prior to the actual hearing. The language stands as proposed.

#### **8.314.5.20 *Continuation of Benefits Pursuant To A Timely Appeal and A HSD Administrative Hearing Proceeding***

The commenter requested the Department to re-instate the 13-calendar day timeframe for an individual to request a continuation of his or her MAD benefit for which MAD or its UR contraction intends to or has taken an adverse action pending his or her HSD administrative hearing final decision. The commenters cited 8.100.970 NMAC rule as in conflict with the proposed 8.314.5 NMAC rule.

***Department Response:*** The Department is allowed under CFR to set the timeframe for an individual to request a continuation of his or her MAD benefit pending a HSD administrative hearing final decision. The proposed change brings 8.314.5 NMAC into alignment with 8.352.2 NMAC. The change does not alter the eligible recipient's right to continue his or her existing benefits while he or she proceeds with the HSD Administrative Hearing. The language stands as proposed.

**The language in all other sections of the rule stands as proposed.**

## **VI. RULE**

The above referenced rule will be contained in the Medical Assistance Division Program Policy Manual. This Final Register and rule will be available on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and the corresponding rules will also be posted at on the HSD website at <http://www.hsd.state.nm.us/providers/rules-nm-administrative-code-.aspx>. If you do not have internet access, a copy of the rules may be requested by contacting the Medical Assistance Division at 505-476-6875.

## **VII. EFFECTIVE DATE**

This rule will have an effective date February 1, 2015.

## **VIII. PUBLICATION**

Publication of this rule approved by:

  

---

BRENT EARNEST, SECRETARY DESIGNATE  
HUMAN SERVICES DEPARTMENT