



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT
NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

II. SUBJECT
8.314.5 NMAC DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED
SERVICES WAIVER

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
PROPOSED RULE

V. BACKGROUND SUMMARY

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend 8.314.5 NMAC, *Developmental Disabilities Home and Community-Based Service Waiver*. The Department's intent is to implement the provisions set forth by the court-approved settlement agreement in the Waldrop lawsuit against the State brought by the Disability Rights New Mexico and the ARC of New Mexico. Additional revisions are also incorporated throughout this rule to add clarity for the reader and update language throughout.

The Department proposes to amend the rule as follows:

Section 7

- Subsection B - new definition for an adult to address waiver services for individuals 18 years of age and older.
- Subsection C - new definition for an authorized representative designated by the eligible recipient.
- Subsection D – new definition for child to address waiver services for individuals under 18 years of age.
- Subsection E – new definition for clinical documentation that demonstrates the request for DDW services.
- Subsection F – new definition for clinical justification that supports the need for services based on the eligible recipient's assessed need and DDW clinical criteria.

- Subsection G – new definition for DDW clinical criteria that is approved by the Department of Health (DOH) and applied by the outside reviewer to each DDW service.
- Subsection I – new definition for the outside reviewer who is an independent third party to conduct clinical review of DDW services.
- Subsection M – new definition for young adult for individuals between the ages of 18 through 20 years of age.

Section 9 – new language to clarify the waiver population, services, and applicable federal waiver statutes.

Section 10 – revise language throughout this section to add clarity for the reader, clarify required provider agreements, and update provider qualifications and provider licensure requirements.

- Subsection H – insert language for intensive medical living supports provider agency from subsection W.
- Subsection W – delete this section and move qualifications to subsection H under community living supports.

Section 11 – new language to clarify required agreements and rules.

- Subsection C – delete this section which is not applicable to the DDW.

Section 12 – revise language to add clarity for the reader.

Section 13 – revise language throughout this section and add new language to clarify the Supports Intensity Scale and requirements; supplemental questions; and verification process.

Section 14 – new language to clarify waiver services for individuals under 18 years of age.

Section 15 – new language to clarify waiver services for individuals 18 years of age and older.

- Subsection A – revise language to clarify the NM DDW groups and availability for an eligible recipient to request services through the outside reviewer when clinical criteria are met.
- Subsection B – revise language to clarify H authorization.
- Subsection D – new language to clarify that the interdisciplinary team (IDT) should consider the DDW group's suggested service package and proposed budget with the understanding that the focus must always be on the individual's support needs that can be clinically justified.
- Subsection D(3) – revise language to add clarify for the reader.
- Subsection D(4) – new language to address the availability of three (3) therapy disciplines.
- Subsection D(5)(c) – insert language for intensive medical living supports from subsection D(20).
- Subsection D(20) – delete this section for intensive medical living supports and move to subsection D(5)(c) under living supports.

Section 17 - new language throughout section 17 to define the roles and responsibilities of the ITD and clinical justification of requested services and supports.

- Subsection A – new language to define the DDW planning packet.
- Subsection B – new language to define the role and responsibilities of the IDT.
- Subsection C and D - new language to clarify the budget evaluation process for eligible recipients.

Section 18

- Subsection D - new language to define the outside review process, application of clinical criteria, and process for Individual Service Plan (ISP) and budget denials.

Section 20 - new language to address the recipient agency review conference and attendees.

- Subsection A - new language to define an authorized representative.
- Subsection B - new language to address the process for resolutions of denials that are reached through the agency review conference.
- Subsections C, D, and E - new language to address the HSD Administrative Hearing process.

Section 21 - new language to address the automatic continuation of benefits with a recipient fair hearing request.

VI. RULE

This proposed rule will be contained in 8.314.5 NMAC. The register and proposed rule language are available on the HSD website at:

<http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and

<http://www.hsd.state.nm.us/public-notice-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD outside of Santa Fe at 505-888-997-2583 extension 7-6252 or in Santa Fe 827-6252.

VII. EFFECTIVE DATE

The Department proposes to implement this rule effective March 1, 2016.

VIII. PUBLIC HEARING

A public hearing to receive testimony on this proposed rule will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico January 4, 2016 from 10 a.m. to 12 p.m., Mountain Standard Time (MST).

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3156. In Santa Fe call 827-3156. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling

827-3184. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

IX. ADDRESS

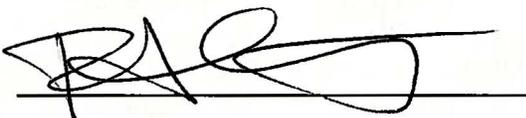
Interested persons may address written or recorded comments to:

Human Services Department
Office of the Secretary
ATTN: Medical Assistance Division Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MST on January 4, 2016. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

X. PUBLICATIONS

Publication of this rule approved by:

A handwritten signature in black ink, appearing to read 'BRENT EARNEST', written over a horizontal line.

BRENT EARNEST, SECRETARY
HUMAN SERVICES DEPARTMENT