



State of New Mexico  
Human Services Department  
Human Services Register



**I. DEPARTMENT**

NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

**II. SUBJECT**

8.314.3 Medically Fragile Home and Community-Based Services Waiver

**III. PROGRAM AFFECTED**

(TITLE XIX) MEDICAID

**IV. ACTION**

FINAL RULE

**V. BACKGROUND SUMMARY**

New Mexico Human Services Register Volume 40, Register 20, dated September 12, 2017, issued the proposed rules, 8.314.3 Medically Fragile Home and Community-Based Services Waiver (MFW).

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: September 12, 2017

Hearing Date: October 13, 2017

Adoption Date: Proposed as March 1, 2018

Technical Citations: 42 CFR 431 Subpart G

A public hearing was held on October 13, 2017 to receive public comments and testimony on this proposed rule. The Human Services Department (the Department) received eight comments.

**Summary of Comments:**

**8.314.3.7 NMAC**

**Section I**

Commenter requests language be changed from “diagnosis of intellectually disabled” to “diagnosis of intellectual disabilities.”

**Department Response:** The Department has changed this language to “diagnosis of intellectual

disabilities.”

### **Section M**

Commenter requests that the definition of person centered planning be strengthened to emphasize the role of the participant.

**Department Response:** The Department has changed the language to, “A service planning process that is directed and led by the recipient, with assistance as needed or desired from a representative or other persons of the recipient’s choosing. Person-centered planning is designed to identify the strengths, capacities, preferences, needs, and desired outcomes of the recipient. The person-centered process is an ongoing process that enables and assists the recipient to identify and access a personalized mix of paid and non-paid services and supports that assists him or her to achieve personally defined outcomes in the community.”

### **8.314.3.10 NMAC**

#### **Section H**

Commenter requests that provider requirements for Behavior Support Consultation be aligned with that of the Developmental Disabilities Waiver (DDW) which allows for additional qualified licenses to provide this service.

**Department Response:** The provider requirements in this section align with the approved CMS Waiver NM.0223 (MFW) Appendix C. The Public Hearing for CMS Waiver NM.0223 (MFW) was held on June 13, 2016.

### **8.314.3.13 NMAC**

#### **Section H**

Two commenters request the language noting the number of days or hours of respite services that can be utilized per budget year be removed.

**Department Response:** The limitations on respite hours aligns with the approved CMS Waiver NM.0223 (MFW) Appendix C. Therefore the Department will not make this change.

### **8.314.3.15 NMAC**

Commenter requests that statement “a team of professionals in consultation with the recipient” be removed from this section and be replaced with language that supports person-centered planning in development of the Individualized Service Plan (ISP).

**Department Response:** The Department has updated the language to, “The CMS requires a person-centered, individualized services plan (ISP) for each individual receiving services through a HCBS program. The ISP is developed annually through an ongoing person-centered planning process.”

### **8.314.3.19 NMAC**

Two commenters request that language be changed to state that a recipient *may* be responsible for repayment of service provided under continuation of benefits if a hearing decision is not in his or her favor. Commenters indicate that the existing language may discourage individuals from seeking continuation of benefits and cite 42 CFR 431(b) as precedent for the requested change.

**Department Response:** This section of the Medically Fragile Waiver (MFW) rule references 8.352.2 NMAC where the requirements for administrative hearings and continuation of benefits are outlined. Revisions to 8.352.2 NMAC is not part of this rule promulgation.

## **VI. RULES**

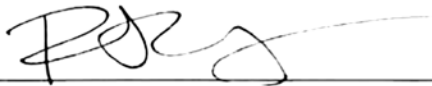
These amendments will be contained in 8.314.3. The final register and rule languages are available on the HSD website at: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx>. If you do not have internet access, a copy of the final register and rules may be requested by contacting MAD at (505) 827-6252.

## **VII. EFFECTIVE DATE**

This rule will have an effective date March 1, 2018.

## **VIII. PUBLICATION**

Publication of these rules approved by:



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BRENT EARNEST, SECRETARY  
HUMAN SERVICES DEPARTMENT