



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT

NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

II. SUBJECT

8.314.6 NMAC Mi Via Home and Community-Based Services Waiver

III. PROGRAM AFFECTED

(TITLE XIX) MEDICAID

IV. ACTION

PROPOSED RULES

V. BACKGROUND SUMMARY

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.314.6 NMAC, *Mi Via Home and Community-Based Services Waiver*.

On April 11, 2017, the Department received approval from the Centers for Medicare and Medicaid Services (CMS) of an amendment to the Mi Via 1915 (c) Home and Community-Based (HCBS) waiver with an effective date of April 15, 2017. The rule is being amended to align services and definitions with the approved amendment and the CMS HCBS Settings Final Rule.

The Department proposes the following new rules:

Throughout the rule

Language that a recipient may not be his or her own Employer of Record (EOR) if he or she has an authorized representative over financial matters in place is removed and replaced with the requirement that a recipient may be his or her own EOR unless the recipient is a minor or has a plenary or limited guardianship or conservatorship over financial matters in place. Language was added that states if the recipient is his or her own EOR and delegates any EOR responsibilities through a Power of Attorney (POA) or other legal instrument, the delegee must be designated as the EOR. Additionally, a POA may not be used to assign the responsibilities of an EOR, in part or in full, to another individual and may not be used to circumvent the requirements of the EOR as designated in this rule.

Section 8

This section is updated to align the program mission statement with the Human Services Department mission statement.

Section 11

Subsection A - Requirements for independent contractors are updated to clarify that an individual seeking to provide services as an independent contractor must submit the nature of services questionnaire and be determined by the Financial Management Agent (FMA) to be an independent contractor.

Subsection B - General Qualifications for employees are updated to include four additional required background screenings; clarification added that a Legally Responsible Individual (LRI) may not be paid to provide transportation services for a minor or individual directed goods and services; requirement of an EOR questionnaire is added; and clarifying language regarding EOR responsibilities is added.

Subsection E- Language added to clarify responsibilities and roles of in-home living supports providers.

Subsection H- Language added to identify vendors for individual directed goods and services.

Section 14

This section is updated to include EOR responsibility to submit Mi Via employee timesheets online, unless exempted by HSD.

Section 15

This section is updated to align with the CMS HCBS Settings Final Rule. The following language has been added clarifying the recipient's right to privacy, dignity, and respect: Mi Via services must be provided in integrated settings and facilitate full access to the community; ensure the individual receives services in the community to the same degree of access as those individuals not receiving HCBS services; maximize independence in making life choices; be chosen by the individual in consultation with the guardian as applicable; ensure the right to privacy, dignity, respect, and freedom from coercion and restraint; optimize individual initiative, autonomy and independence in making life choices; provide an opportunity to seek competitive employment; and facilitate choice of service and who provides them.

Subsection C – Conflict of interest is updated to align with Code of Federal Regulations (CFR) requirements.

Subsection E – Language added to clarify that living supports must be provided in the individual's own home or in the community and may not be provided in residential facilities or agency owned homes. Home health aide services covered under the waiver are clarified to differ in nature and scope from those in the State Plan. Home health aide services under the waiver may be provided on a long-term basis for the recipient's habilitative supports whereas, state plan home health aide services address acute conditions the purpose of which is curative and restorative.

Subsection H – Scope of transportation service and respite services is aligned with the approved Mi Via Waiver. The restriction disallowing transportation for minors is removed. Language added that respite services are to provide intermittent support to the recipient and give

the unpaid primary caregiver relief from his or her duties on a short-term basis. Respite services must only be provided on an intermittent or short-term basis because of the absence or need for relief of those persons normally providing care to the recipient. Related goods is renamed Individual Directed Goods and Services and the scope of this service is aligned with the scope outlined in the waiver as approved by CMS. Services and goods that are recreational or diversional in nature are excluded. Recreational and diversional in nature is defined as inherently and characteristically related to activities done for enjoyment. Grab bars are removed from environmental modifications as this is an item covered under the State Plan.

Section 16

Subsection G – Language is added to clarify goods and services considered recreational and diversional in nature. Specific non-covered recreational and diversional services are added to include, but not limited to, tickets for movies, theatrical and musical performance, sporting events, zoos, or museums.

Subsection T – Language is added to specify adaptive clothing or accessories are exempt from non-covered goods.

Section 17

Subsection B – Language is added to clarify that waiver rates are defined in the Mi Via waiver and approved by CMS. Requirements for requesting an exception to the approved range of rates is added. The need for an exception to the approved range of rates must be demonstrated thorough exceptional behavioral conditions, medical conditions, specialized supports, or location.

Subsection F – Language is added that Mi Via budgets are developed by service. A recipient may request an increase to his or her budget as applicable if services necessary for health and safety cannot be met within the budget. Requests for additional funding are built in the annual budget and are specific to the service requested.

Subsection G – Language specifying use of a debit card for the purchase of related goods is removed.

Subsection H – Timeline for a recipient to submit additional information requested by the Third Party Assessor as part of a request for information (RFI) is increased from 15 to 21 working days.

VI. REGULATIONS

These proposed rules will be contained in 8.314.6 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 at 505-827-6252.

VII. EFFECTIVE DATE

The Department proposes to implement this rule effective September 1, 2018.

VIII. PUBLIC HEARING

A public hearing to receive testimony on this proposed rule will be held in the Rio Grande Conference Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico, June 28, 2018 from 10:30 a.m. to 11:30 a.m., Mountain Daylight Time (MDT).

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 in Santa Fe at (505) 827-6252. 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. MDT on June 28, 2018. 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:



BRENT EARNEST, SECRETARY
HUMAN SERVICES DEPARTMENT