



Susana Martinez, Governor  
Brent Earnest, Secretary Designate  
Julie B. Weinberg, Director

December 29, 2014

**RE: Tribal Consultation Letter 14-18**

- **Amending 8.321.2 NMAC Specialized Behavioral Services Section 10**
- **State Plan Amendment to add Applied Behavior Analysis (ABA) to the Medicaid State Plan Benefits**
- **State Plan Amendments to Early and Periodic Screenings, Diagnosis and Treatment (EPSDT) Services and Reimbursement Sections of the Medicaid State Plan**
- **State Plan Amendment to Rehabilitative Services and Reimbursement Sections of the Medicaid State Plan**

Dear Tribal Leadership, IHS, Tribal Facility or other interested parties,

Consultation with New Mexico's Indian Nations, Tribes, Pueblos and their healthcare providers is an important component of the government-to-government relationship with the State of New Mexico. In accordance with the New Mexico Human Services Department's (HSD) Tribal Consultation requirements, this letter is to inform you that HSD, through the Medical Assistance Division (MAD), is accepting written comments through January 29, 2015, regarding proposed amendments to 8.321.2 NMAC Specialized Behavioral Health Services. HSD finalized Section 10 (*Applied Behavior Analysis*) of 8.321.2 NMAC January 1, 2014, with minimal detail as it further developed the service. The service is specifically for eligible recipients with a diagnosis of Autism Spectrum Disorders (ASD) and a narrowly defined at-risk population. HSD has completed a lengthy study and discussion of Applied Behavior Analysis (ABA) services and is now promulgating amendments to this section of the rule. Throughout this section of the rule, HSD refers to ABA Billing Instructions. HSD is proposing to include more detailed information in the rule while continuing to have other information contained in the ABA Billing Instructions as appropriate. HSD will post for public comment the proposed amendments and the ABA Billing Instructions. HSD is also proposing to file a new State Plan Amendment to the Medicaid State Plan to add ABA services, and is revising the current Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services sections and Rehabilitative Services sections of the state plan to add standardized language to those sections.

**8.321.2 NMAC Section 10 Highlights:**

- The ABA amendments provide for new services to eligible recipients under the age of 3 who meet an at-risk category which are not offered under the current Adaptive Skills Building (ASB) service. Research demonstrates early focused interventions to very young children that may later be diagnosed with ASD greatly improve their outcomes in functional domains in later years.

### **8.321.2 NMAC Section 10 Highlights:**

- The ABA amendments provide for new services to eligible recipients under the age of 3 who meet an at-risk category which are not offered under the current Adaptive Skills Building (ASB) service. Research demonstrates early focused interventions to very young children that may later be diagnosed with ASD greatly improve their outcomes in functional domains in later years.
- The amendments extend ABA services up to 21 years of age, a change from the current limitation of up to five years of age. HSD is preparing to file a State Plan Amendment to the Centers for Medicare and Medicaid Services (CMS) to add this service to the Medicaid State benefit package.
- The amendments allow Specialty Care Providers to assist ABA agencies by rendering services to eligible recipients who present with complex care needs. Research indicates intensive services that address complex behaviors may allow the eligible recipients to remain in their home and community instead of requiring institutional care.
- ABA's effective outcomes are possible by utilizing highly trained and nationally certified ABA providers to render ABA services.
- The amendments offer an eligible recipient ABA services as long as they are medically necessary.

**Tribal Impact:** *HSD does not anticipate a negative service or financial impact to individuals, tribes or their healthcare providers with the proposed amendments to Section 10 of 8.321.2 NMAC; instead HSD anticipates improved services to eligible recipients.*

### **HSD is proposing to file three separate Medicaid State Plan Amendments:**

1. Adding Applied Behavior Analysis (ABA) to the Medicaid State Plan: HSD is proposing to include ABA services as part of its Medicaid State Plan benefits.
2. Adding standardized language to the current EPSDT Services and Reimbursement sections of the State Plan to align with other sections of the Plan: The proposed amendments do not alter the manner in which the services are delivered or reimbursed.
3. Adding standardized language to the current Rehabilitative Services and Reimbursement sections of the Medicaid State Plan to align with other sections of the Plan: The proposed amendments do not alter the manner in which the services are delivered or reimbursed.

**Tribal Impact:** *HSD does not anticipate a negative service or financial impact to individuals, tribes or their healthcare providers with the proposed amendments these sections of the Medicaid State Plan.*

### **Tribal Consultation Comments -**

Tribes and their healthcare providers may view the proposed rule, 8.321.2 NMAC and the three proposed Medicaid State Plan Amendments on the HSD webpage at:

<http://www.hsd.state.nm.us/providers/written-tribal-consultations.aspx>, *Letter 14-18.*

### **Important Dates**

- **Written comments must be submitted by 5:00 p.m. Mountain Standard Time (MST) on January 29, 2015.** Please send your comments and questions to the MAD Native American Liaison, Theresa Belanger, at (505) 827-3122 or by email at: [Theresa.Belanger@state.nm.us](mailto:Theresa.Belanger@state.nm.us).

- All comments and responses will be compiled and available *after February 13, 2015*.
- **A public hearing on 8.321.2 NMAC rule is scheduled be held in Hearing Room One, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM on January 29, 2015 at 10:30 a.m. MST.**

Sincerely,



Julie B. Weinberg, Director  
Medical Assistance Division

cc: Theresa Belanger, Native American Liaison, MAD  
HSD/MAD/PPIB-Program Management/Communications Unit