November 13, 2014

RE: Tribal Consultation Letter 14-12: Developmental Disabilities Rule Promulgation

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 December 15, 2014, regarding proposed amendments to the Developmental Disabilities Home and Community-Based Services Waiver rule - 8.314.5 of the New Mexico Administrative Code (NMAC).

Proposed amendments to 8.314.5 NMAC - Developmental Disabilities Home and Community-Based Waiver (DDW)

1) *Section 8.314.5.10 C.*

HSD is proposing to add new language to this Section in order to delete repetitive and lengthy standard language throughout the rule and replace it with one sentence in corresponding Sections and Subsections of the rule.

8.314.5.10 C. MAD through its designee, DDSD, follows a subcontractor model for certain DDW services. A provider agency, following the DDSD model, must ensure the subcontractors or employees meet all required qualifications. A provider agency must provide oversight of subcontractors and employees to ensure subcontractors or employees meet all required MAD and DOH/DDSD qualifications. *There must be oversight of subcontractors and employees by the provider agency to ensure the services are delivered in accordance with all requirements set forth by DDSD DDW service definition, all requirements outlined in the DDW services standards, applicable NMAC rules, MAD supplement, and as applicable, his or her New Mexico licensing board’s scope of practice and licensure.* Pursuant to federal regulations, an agency may not employ or subcontract with the spouse of an eligible recipient or the parent of an eligible recipient under 18 years of age receiving MAD services to provide direct care services for the eligible recipient.

Case management providers, their case managers, whether subcontractors or employees must comply with Section 10 of this rule.
**Tribal Impact:** HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with the simplification of language.

2) **8.314.5.12 K(5) Column 3**
HSD is proposing to delete Section 13 Subsection K’s third column from the table, Development Disabilities Waiver Groups A through G. HSD is proposing to no longer use the SIS sum ABE National Percentile as part of the Standard Decision Rules. DOH does not rely on the SIS sum ABE National Percentile as part of the Standard Decision Rules therefore HSD would remove this language from the rule.

**Tribal Impact:** HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with the removal of this aspect from the Standard Decision Rules.

3) **Section 8.314.5.20 Continuation of Benefits Pursuant to Timely Appeal**
HSD revised 8.352.2 NMAC claimant hearing rule earlier this year. In this, the timeframe to request a continuation of existing benefits was set at 10 calendar days. HSD is proposing to align this rule to 8.352.2 NMAC for consistency.

**Tribal Impact:** HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with aligning this rule to the overarching claimant hearing rule.

4) Overall, HSD is taking this opportunity to standardize language throughout the rule, such as replacing ‘individual’ or ‘participant’ with eligible recipient. These changes do not alter the manner or intent of the current application of the rule for providers and eligible recipients.

**Tribal Impact:** HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers by standardizing language throughout the rule.

**Tribal Consultation Comments -**
Tribes and their healthcare providers may view the proposed rule, 8.314.5 NMAC, on the Human Services Department webpage at: [http://www.hsd.state.nm.us/providers/written-tribal-consultations.aspx. Letter 14-12](http://www.hsd.state.nm.us/providers/written-tribal-consultations.aspx. Letter 14-12).

**Important Dates**
- **Written comments must be submitted by 5:00 p.m. Mountain Standard Time (MST) on December 15, 2014.** 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.
• All comments and responses will be compiled and available after December 29, 2014.

• A public hearing on this rule is scheduled be held in the Rio Grande Conference Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM on December 15, 2014 at 1:30 p.m. MST.

Sincerely,

[Signature]

Julie B. Weinberg, Director
Medical Assistance Division

cc: Theresa Belanger, Native American Liaison, MAD
    Cathy Stevenson, Director, DOH, Developmental Disabilities and Supports Division (DDSD)
    Roberta Duran, Bureau Chief, DOH/DDSD
    Angela Medrano, Bureau Chief, HSD/MAD, Exempt Services and Program (ESPB)
    Kimberly Riebsomer, Staff Manager, HSD/MAD/ESPB
    Jennifer Rodriguez, DDW Program Manager, DOH/DDSD
    HSD/MAD/PPIB-Program Management/Communications Unit