



Michelle Lujan Grisham, Governor
David R. Scrase, M.D., Secretary
Nicole Comeaux, J.D., M.P.H, Director

February 22, 2021

Mr. Bill Brooks, Medicaid Associate Regional Administrator
Division of Medicaid and Children's Health
Centers for Medicare and Medicaid Services
1301 Young Street
Dallas, Texas 75202

Dear Mr. Brooks:

Enclosed please find documents related to New Mexico State Plan Amendment (SPA) 20-0022 Federally Qualified Health Center (FQHC) Designation.

The New Mexico Human Services Department (HSD) is making a change to the Medicaid FQHC designation, effective January 31, 2021. This change in designation will allow an Indian Health Care Provider (IHCP) meeting the P.L. 93-638 requirement to designate their healthcare clinic as a FQHC, without meeting any other requirement. The change in designation may be requested; it will not be automatic.

For services provided to Native Americans by a qualified facility operated by the Indian Health Service (IHS), tribal government(s), or IHCP the applicable Office of Management and Budget (OMB) rate will be paid as published and specified in the Federal Register.

For qualified facilities operated by Indian Health Care Providers that contract with the Medicaid agency as a FQHC, an alternative payment method (APM) is allowed. The APM rate for services provided by an IHCP is set at the OMB rate.

HSD followed a process that included public notification, tribal notification and web posting. Documentation of these activities is attached.

Please refer to the attachments for the transmittal form and notices.

We appreciate your consideration of this state plan amendment. Should you have any questions on this amendment, please contact Jennifer Vigil at: JenniferR.Vigil@state.nm.us or (505) 827-6213.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nicole Comeaux".

Nicole Comeaux, J.D., M.P.H., Director
Medical Assistance Division

cc: Peter Banks, CMS
Lorelei Kellogg, HSD/MAD Deputy Director

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER

2 0 — 0 2 2

2. STATE

New Mexico

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR
CENTERS FOR MEDICARE & MEDICAID SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

January 31, 2021

5. TYPE OF PLAN MATERIAL (*Check One*)

NEW STATE PLAN

AMENDMENT TO BE CONSIDERED AS NEW PLAN

AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (*Separate transmittal for each amendment*)

6. FEDERAL STATUTE/REGULATION CITATION

42 CFR 136; PL 93-638; 1902(bb)(6) of the SSA

7. FEDERAL BUDGET IMPACT

a. FFY 21 (Feb-Sept) \$ 700,593

b. FFY 22 \$ 1,069,806

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Attachment 4.19b, page 7f (new)

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (*If Applicable*)

None (new page)

10. SUBJECT OF AMENDMENT

Federally Qualified Health Center (FQHC) Designation

11. GOVERNOR'S REVIEW (*Check One*)

GOVERNOR'S OFFICE REPORTED NO COMMENT

OTHER, AS SPECIFIED

COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL



16. RETURN TO

Nicole Comeaux, J.D., M.P.H., Director
Medical Assistance Division
P.O. Box 2348
Santa Fe, NM 87504-2348

13. TYPED NAME

Nicole Comeaux

14. TITLE

Director, Medical Assistance Division

15. DATE SUBMITTED

February 22, 2021

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED

18. DATE APPROVED

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL

20. SIGNATURE OF REGIONAL OFFICIAL

21. TYPED NAME

22. TITLE

23. REMARKS

- k. For services provided to Native Americans by a qualified facility operated by the Indian Health Service (IHS), tribal government(s), or Indian Health Care Provider (IHCP), the applicable Office of Management and Budget (OMB) rate will be paid as published and specified in the Federal Register.

For qualified facilities operated by Indian Health Care Providers that contract with the Medicaid agency as a FQHC, an alternative payment method (APM) is allowed. The APM rate for services provided by an IHCP is set at the OMB rate.

For purposes of being designated as a FQHC by Medicaid, an Indian Health Care Provider does not need to meet any requirement, other than meeting the P.L 93-638 requirement.

TN No. 20-0022

Approval Date _____

Supersedes TN No. (none – new page)

Effective Date _____

NEWSPAPER PUBLIC NOTICE AND PROOF OF PUBLICATION

Federally Qualified Health Center (FQHC) Designation

The New Mexico Human Services Department, through the Medical Assistance Division (MAD), is providing this notice of opportunity to comment on proposed State Plan Amendment (SPA) 20-0022. This SPA will change the FQHC designation effective January 31, 2021. This change in designation will allow an Indian Health Care Provider (IHCP) meeting the P.L. 93-638 requirement to designate their healthcare clinic as a FQHC, without meeting any other requirement. The change in designation may be requested; it will not be automatic.

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The estimated financial impact is \$700,593 (in federal funds) for FFY 21 and \$1,069,806 (in federal funds) for FFY 22.

OPPORTUNITY TO VIEW DOCUMENTS AND MAKE COMMENTS

Medicaid providers, Medicaid recipients, and other interested parties are invited to make comments on this proposed SPA. The complete draft amendment may be found on the Department's website at: <https://www.hsd.state.nm.us/2017-comment-period-open.aspx>

A written copy of these proposed documents may be requested by contacting the HSD Medical Assistance Division (HSD/MAD) in Santa Fe at (505) 827-1337.

Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to madrules@state.nm.us. All comments must be received no later than 5:00 p.m. MT on **January 30, 2021**. Written or e-mailed comments are preferred because they become part of the record associated with these changes.

Interested persons may address written 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

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

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AFFIDAVIT OF PUBLICATION

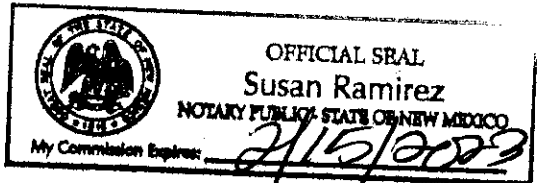
STATE OF NEW MEXICO

County of Bernalillo SS

Elise Rodriguez; the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

12/31/2020

[Handwritten Signature]



[Handwritten Signature]

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this

31 day of December of 2020

PRICE \$121.55

Statement to come at the end of month.

ACCOUNT NUMBER 1009565

Affidavit of Publication

Ad # 0004524925

This is not an invoice

HUMAN SVCS DEPT - ME D ASSIST DIV
PO BOX 2348

SANTA FE, NM 87504-2348

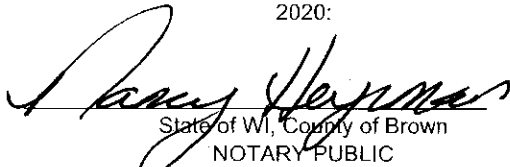
I, a legal clerk of the **Las Cruces Sun News**, a newspaper published daily at the county of Dona Ana, state of New Mexico and of general paid circulation in said county; that the same is a duly qualified newspaper under the laws of the State wherein legal notices and advertisements may be published; that the printed notice attached hereto was published in the regular and entire edition of said newspaper and not in supplement thereof on the date as follows, to wit:

12/31/2020

Despondent further states this newspaper is duly qualified to publish legal notice or advertisements within the meaning of Sec. Chapter 167, Laws of 1937.


Legal Clerk

Subscribed and sworn before me this December 31,
2020:


State of WI, County of Brown
NOTARY PUBLIC
5.15.23
My commission expires

Ad # 0004524925
PO #: 63000-0000035662
of Affidavits 1
This is not an invoice

NANCY HEYRMAN
Notary Public
State of Wisconsin

Federally Qualified Health
Center (FQHC) Designation

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#4524925, Sun-News, Dec. 31, 2020

PROVIDER, INTERESTED PARTIES, STAKEHOLDERS ASSOCIATIONS NOTICE



Michelle Lujan Grisham, Governor
David R. Scrase, M.D., Secretary
Nicole Comeaux, J.D., M.P.H., Director

December 31, 2020

Interested Parties:

The New Mexico Human Services Department, through the Medical Assistance Division (MAD), is providing this notice of opportunity to comment on proposed State Plan Amendment (SPA) 20-0022. This SPA will change the FQHC designation effective January 31, 2021. This change in designation will allow an Indian Health Care Provider (IHCP) meeting the P.L. 93-638 requirement to designate their healthcare clinic as a FQHC, without meeting any other requirement. The change in designation may be requested; it will not be automatic.

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WRITTEN TRIBAL NOTIFICATION



Michelle Lujan Grisham, Governor
David R. Scrase, M.D., Secretary
Nicole Comeaux, J.D., M.P.H, Director

December 31, 2020

RE: Tribal Notification to Request Advice and Comments Letter 20-27: Federally Qualified Health Center (FQHC) Designation

Dear Tribal Leadership, Indian Health Service, Tribal Health Providers, and Other Interested Parties:

Seeking advice and comments from New Mexico’s Indian Nations, Tribes, Pueblos and their health care 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’s) Tribal Notification to Request Advice and Comments process, this letter is to inform you that HSD, through the Medical Assistance Division (MAD), is accepting comments until **5:00 p.m. Mountain Time (MT) January 30, 2021**, regarding State Plan Amendment (SPA) 20-0022, Federally Qualified Health Center (FQHC) Designation.

SPA 20-0022 will change the FQHC designation effective January 31, 2021. This change in designation will allow an Indian Health Care Provider (IHCP) meeting the P.L. 93-638 requirement to designate their healthcare clinic as a FQHC, without meeting any other requirement. The change in designation may be requested; it will not be automatic.

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Tribal Impact

This change is a positive one for Indian Nations, Tribes, Pueblos and their health care providers. The change removes previous requirements which prohibited some Indian Health Care Providers from being designated as FQHCs. This change will allow IHCPs to provide services outside the “four walls” of the FQHC and receive reimbursement at the OMB rate.

Tribal Advice and Comments

Tribes and their healthcare providers may view the proposed changes, on the HSD webpage at:

<http://www.hsd.state.nm.us/providers/written-tribal-consultations.aspx> Tribal Notification 20-27.

Important Dates

Written comments must be submitted by 5:00 p.m. Mountain Time (MT) January 30, 2021. Please send your comments to the MAD Native American Liaison, **Theresa Belanger**, at **(505) 827-3122** or by email at: Theresa.Belanger@state.nm.us. All written comments received will be posted on the HSD website at: <https://www.hsd.state.nm.us/providers/written-tribal-consultations.aspx> along with this notification letter. The public posting will include the name and any contact information provided by the commenter.

Sincerely,



Nicole Comeaux, J.D., M.P.H.
State Medicaid Director

COMMENTS RECEIVED

Comments and Responses: SPA 20-0022 Federally Qualified Health Center (FQHC) Designation

Comment: Three commenters expressed strong support for the changes and stated the changes will benefit tribal programs.

Department Response: The Department appreciates the commenter's support.

Further comment: The same three commenters recommended the Human Services Department schedule tribal information sessions to help tribal programs understand key differences between designation and billing as an Indian Health Care Provider (IHCP) clinic services provider or a Tribal FQHC.

Department Response: The Human Services Department will work with the Centers for Medicare and Medicaid (CMS) Dallas Regional Office to schedule another Tribal information session to help Tribal programs understand key differences between designation and billing as an Indian Health Care Provider (IHCP) clinic services provider or a Tribal FQHC. Tribes and Tribal programs will be notified by email and mail of the upcoming date and time.

Further Comment: Three commenters encouraged the Department to pursue a solution to the "four walls" mandate with IHS-operated facilities and extend options to tribal programs as an alternative to Tribal FQHC designation.

Department Response: The Department appreciates the commenter's suggestion; however, this is a Centers for Medicare and Medicaid Services (CMS) requirement. The state does not have the authority to override their requirements.

Comment: One commenter asked whether a facility would have both Medicaid provider types 221 (IHS/638) and 313 (FQHC).

Department Response: No, the provider would have to choose one or the other provider type, based on their needs.

STANDARD FUNDING QUESTIONS

Standard Funding Questions – SPA 20-0022 FQHC Designation

The following questions are being asked and should be answered in relation to all payments made to all providers reimbursed pursuant to a methodology described in Attachment 4.19-B of this SPA. For SPAs that provide for changes to payments for clinic or outpatient hospital services or for enhanced or supplemental payments to physician or other practitioners, the questions must be answered for all payments made under the state plan for such service.

1. Section 1903(a)(1) provides that Federal matching funds are only available for expenditures made by States for services under the approved State plan. Do providers receive and retain the total Medicaid expenditures claimed by the State (includes normal per diem, supplemental, enhanced payments, other) or is any portion of the payments returned to the State, local governmental entity, or any other intermediary organization? If providers are required to return any portion of payments, please provide a full description of the repayment process. Include in your response a full description of the methodology for the return of any of the payments, a complete listing of providers that return a portion of their payments, the amount or percentage of payments that are returned and the disposition and use of the funds once they are returned to the State (i.e., general fund, medical services account, etc.)

STATE RESPONSE: Providers are not required to return any portion of payments for these services.

2. Section 1902(a)(2) provides that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan. Please describe how the state share of each type of Medicaid payment (normal per diem, supplemental, enhanced, other) is funded. Please describe whether the state share is from appropriations from the legislature to the Medicaid agency, through intergovernmental transfer agreements (IGTs), certified public expenditures (CPEs), provider taxes, or any other mechanism used by the state to provide state share. Note that, if the appropriation is not to the Medicaid agency, the source of the state share would necessarily be derived through either through an IGT or CPE. In this case, please identify the agency to which the funds are appropriated. Please provide an estimate of total expenditure and State share amounts for each type of Medicaid payment. If any of the non-federal share is being provided using IGTs or CPEs, please fully describe the matching arrangement including when the state agency receives the transferred amounts from the local governmental entity transferring the funds. If CPEs are used, please describe the methodology used by the state to verify that the total expenditures being certified are eligible for Federal matching funds in accordance with 42 CFR 433.51(b). For any payment funded by CPEs or IGTs, please provide the following:
 - (i) a complete list of the names of entities transferring or certifying funds;
 - (ii) the operational nature of the entity (state, county, city, other);

- (iii) the total amounts transferred or certified by each entity;
- (iv) clarify whether the certifying or transferring entity has general taxing authority: and,
- (v) whether the certifying or transferring entity received appropriations (identify level of appropriations).

STATE RESPONSE: These services are paid using appropriations from the state legislature.

3. Section 1902(a)(30) requires that payments for services be consistent with efficiency, economy, and quality of care. Section 1903(a)(1) provides for Federal financial participation to States for expenditures for services under an approved State plan. If supplemental or enhanced payments are made, please provide the total amount for each type of supplemental or enhanced payment made to each provider type.

STATE RESPONSE: No supplemental or enhanced payment are made to this provider type.

4. For clinic or outpatient hospital services please provide a detailed description of the methodology used by the state to estimate the upper payment limit (UPL) for each class of providers (State owned or operated, non-state government owned or operated, and privately owned or operated). Please provide a current (i.e., applicable to the current rate year) UPL demonstration.

STATE RESPONSE: These fee schedule changes do not apply to any provider subject to the UPL calculations.

5. Does any governmental provider receive payments that in the aggregate (normal per diem, supplemental, enhanced, other) exceed their reasonable costs of providing services? If payments exceed the cost of services, do you recoup the excess and return the Federal share of the excess to CMS on the quarterly expenditure report?

STATE RESPONSE: If governmental providers were to receive payments that exceed their reasonable cost of providing services, the excess payment would be recovered and the federal share of the excess would be reported and returned to CMS.