



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

February 18, 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) 21-0001 Indian Health Service (IHS) and Tribal 638 Pharmacy Payment.

Effective March 1, 2021, New Mexico Medicaid is implementing a change in pharmacy payment. Reimbursement to all Indian Health Service and Tribal 638 pharmacies shall be at the All-Inclusive Rate (AIR) published annually in the Federal Register.

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 <u>2 1 — 0 0 1</u>	2. STATE New Mexico
3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
4. PROPOSED EFFECTIVE DATE March 1, 2021	

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

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 447 Subpart I	7. FEDERAL BUDGET IMPACT a. FFY <u>21</u> \$ <u>50,939,513</u> b. FFY <u>22</u> \$ <u>87,324,880</u>
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT Attachment 4.19-B page 4	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (<i>If Applicable</i>) Attachment 4.19-B page 4 (TN 17-0003)

10. SUBJECT OF AMENDMENT

Indian Health Service (IHS) and Tribal 638 Pharmacy Payment

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 23, 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

II. Payment for Prescribed Drugs.

For the New Mexico Medicaid Fee-for-Service program,

I. Payment:

Reimbursement for the drug ingredient cost shall be the lowest of:

- a. The Affordable Care Act Federal Upper Limit (FUL) plus the professional dispensing fee (PDF);
- b. The National Average Drug Acquisition Cost (NADAC) plus the PDF;
- c. The Wholesaler's Average Cost (WAC)+ 6% plus the PDF;
- d. The pharmacy's reported ingredient cost plus the PDF; or
- e. The usual and customary charge (U&C).

The PDF is \$10.30.

When the drug item is for a brand name drug that is also a multi-source drug, the Actual Acquisition Cost, (AAC) will be calculated using the generic equivalent of the brand name drug unless the prescriber has written in his or her own hand "brand medically necessary" on the prescription in which case reimbursement will be at the AAC of the NADAC for the brand name drug item plus a \$10.30 PDF, not to exceed the pharmacy's U&C.

2. Allowed Fees in Addition to the Professional Dispensing Fee (PDF)

Reimbursement for compounding fees is limited to the provider's usual additional charge for compounding not to exceed \$12.00.

3. Payment Provisions for Blood Clotting Factors

Reimbursement for clotting factors will be at the lower of the submitted ingredient cost or WAC plus 6%, plus a \$10.30 PDF, not to exceed the pharmacy's U&C.

4. Payment Provisions for 340B Drugs

Payment to 340B covered entities for drugs purchased at 340B prices authorized under Section 340B of the Public Health Services Act will be at the 340B actual acquisition cost plus a \$10.30 PDF, not to exceed the pharmacy's U&C.

5. Payment Provisions for Drugs Acquired under Federal Supply Schedule (FSS) Pricing

Payment for drugs purchased at FSS prices will be at the FSS actual acquisition cost of the drug plus a \$10.30 PDF, not to exceed the pharmacy's U&C.

6. Payment to Indian Health Service Pharmacies and Tribal 638 Healthcare Pharmacies Payment to all Indian Health Service and Tribal 638 pharmacies shall be at the All-Inclusive Rate (AIR) published annually in the Federal Register. One AIR reimbursement shall be made for each pharmacy claim and is not limited to a certain number of prescriptions per day. Submission of a pharmacy claim means that the Medicaid recipient received at least one drug item dispensed from the pharmacy, whether a new item or a refill.

The applicable AIR shall be determined by the date of service submitted on the pharmacy claim. Pharmacies reimbursed using the AIR will not be eligible for a professional dispensing fee.

The AIR for pharmacy services may be billed in addition to the AIR for other outpatient facility medical or behavioral health services that are provided on the same day.

NEWSPAPER PUBLIC NOTICE AND PROOF OF PUBLICATION

Newspaper Notice
Pharmacy Payment

The New Mexico Human Services Department (HSD), through the Medical Assistance Division (MAD), is providing this notice of opportunity to comment on proposed State Plan Amendment (SPA) 21-0001.

Effective March 1, 2021, payment to all Indian Health Service and Tribal 638 pharmacies shall be at the All-Inclusive Rate (AIR) published annually in the Federal Register. One AIR reimbursement shall be made for each pharmacy claim and is not limited to a certain number of prescriptions per day. Submission of a pharmacy claim means that the Medicaid recipient received at least one drug item dispensed from the pharmacy, whether a new item or a refill. The applicable AIR shall be determined by the date of service submitted on the pharmacy claim. Pharmacies reimbursed using the AIR will not be eligible for a professional dispensing fee. The AIR for pharmacy services may be billed in addition to the AIR for other outpatient facility medical or behavioral health services that are provided on the same day.

The estimated financial impact is \$50,939,513 (in federal funds) for FFY 21 and \$87,324,880 (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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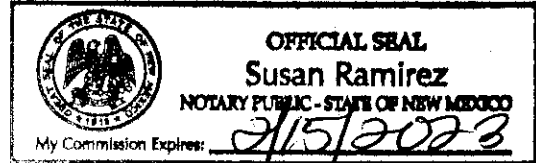
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AFFIDAVIT OF PUBLICATION STATE OF NEW MEXICO

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):

12/30/2020



[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 30 day of December of 2020

PRICE \$121.55

Statement to come at the end of month.

ACCOUNT NUMBER 1009565

Affidavit of Publication

Ad # 0004523173

This is not an invoice

HUMAN SVCS DEPT - ME D ASSIST DIV
PO BOX 2348

SANTA FE, NM 87504-2348

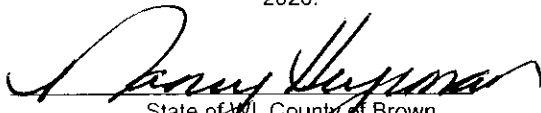
I, a legal clerk of the **Las Cruces Sun News**, a newspaper published daily at the county of Dona Ana, state of New Mexico and of general paid circulation in said county; that the same is a duly qualified newspaper under the laws of the State wherein legal notices and advertisements may be published; 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:

12/30/2020

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 30,
2020:


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

Ad # 0004523173
PO #: 62000-0000035662
of Affidavits 1

This is not an invoice

NANCY HEYRMAN
Notary Public
State of Wisconsin

Newspaper Notice
Pharmacy Payment

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#4523173, Sun-News, December 30, 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 (HSD), through the Medical Assistance Division (MAD), is providing this notice of opportunity to comment on proposed State Plan Amendment (SPA) 21-0001 Indian Health Service and Tribal 638 Pharmacy Payment.

Effective March 1, 2021, payment to all Indian Health Service and Tribal 638 pharmacies shall be at the All-Inclusive Rate (AIR) published annually in the Federal Register. One AIR reimbursement shall be made for each pharmacy claim and is not limited to a certain number of prescriptions per day. Submission of a pharmacy claim means that the Medicaid recipient received at least one drug item dispensed from the pharmacy, whether a new item or a refill.

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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 20-31: Pharmacy Reimbursement

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 a change to pharmacy reimbursement.

A Tribal Consultation was held to discuss pharmacy reimbursement on November 19, 2020. During that Consultation, payment to all Indian Health Service and Tribal 638 pharmacies was discussed; the parties agreed to the change outlined below.

Effective March 1, 2021, payment to all Indian Health Service and Tribal 638 pharmacies shall be at the All-Inclusive Rate (AIR) published annually in the Federal Register. One AIR reimbursement shall be made for each pharmacy claim and is not limited to a certain number of prescriptions per day. Submission of a pharmacy claim means that the Medicaid recipient received at least one drug item dispensed from the pharmacy, whether a new item or a refill.

The applicable AIR shall be determined by the date of service submitted on the pharmacy claim. Pharmacies reimbursed using the AIR will not be eligible for a professional dispensing fee.

The AIR for pharmacy services may be billed in addition to the AIR for other outpatient facility medical or behavioral health services that are provided on the same day.

Tribal Impact

This change is a positive one for Indian Nations, Tribes, Pueblos and their health care providers. The benefit change will increase pharmacy reimbursement rates.

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 20-31.**

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 21-0001 IHS & Tribal 638 Pharmacy Payment

Comment: One commenter asked if there is a way to create an exception for high dollar drugs. IHS sites in Arizona are sending expensive medications to outside pharmacies because all medications that cost over the AIR/OMB rate are paid at cost. This practice creates issues for continuity of care.

Department Response: The Human Services Department (HSD) will take this under consideration. The Department is interested in working with the commenter to understand their recommendation for what the “high dollar drug” threshold might be and how such a threshold might be implemented. Additional research is needed to determine which drugs would fit into this category and whether a change in the reimbursement methodology would remain eligible for 100% federal financing. HSD appreciates this suggestion and will consider making this change in a future State Plan Amendment (SPA) based on the outcome of further research and discussion.

Further Comment: The same commenter asked if supplies (e.g. test strips, lancets, glucose monitors) that are prescribed, but do not fall under the “drug” category, can be covered.

Department Response: The proposed SPA is specific to payment for prescribed drugs and does not address the reimbursement methodology for medical supplies. HSD will research whether the commenter’s proposal can be addressed in the future through a separate SPA. Changing the payment methodology for medical supplies would need to occur under a separate section of the Medicaid State Plan.

Further Comment: The same commenter wants confirmation that when pharmacists have clinic visits with patients, they can be reimbursed at the OMB rate for providing services. The commenter also inquired whether there is a limit to the number of visits per year or per week.

Department Response: The proposed SPA includes clarifying language stating that the All-Inclusive Rate (AIR) for pharmacy services may be billed **in addition to** the AIR for other outpatient facility medical or behavioral health services that are provided on the same day. The proposed SPA also states that there is no limitation on claims per day. There is no day/week/month or yearly limitation on visits or claims.

Comment: One commenter recommends considering each prescription as an encounter, reimbursable at the OMB rate. The commenter stated IHS and tribal sites have the potential to realize much greater benefits under reimbursement at the OMB rate.

Department Response: The proposed SPA would make payment at the AIR/OMB rate on a pharmacy claim basis. One reimbursement at the encounter rate will be made for each claim with at least one drug dispensed from the pharmacy, including new items and refills.

Further Comment: The same commenter recommends engaging in a tribal consultation session with the State of New Mexico to review the methodology for Covered Outpatient Drugs (COD) reimbursement to IHS and tribal health programs.

Department Response: HSD held a consultation with the tribes on Thursday, November 19, 2020, to discuss the details of this proposed SPA, including the methodology for reimbursement.

Comment: One commenter asked whether the changes are only meant for fee-for-service or if MCOs can be included for AIR payment. If the MCO's are included, the commenter asked for the anticipated "go-live" date because time is needed to recontract and build a network for the IHS pharmacies. The commenter also asked for the rate for AIR outpatient services, if the MCO's are included.

Department Response: The proposed SPA reimbursement methodology applies to both the fee-for-service program and Centennial Care. As detailed in the public notice for the SPA, the proposed effective date is March 1, 2021, however, additional instructions will be sent to providers and the Centennial Care managed care organizations (MCOs) regarding implementation and claims processing. Federal approval may be required before the SPA can be implemented.

Further Comment: The same individual asked if there are any changes to the submission of encounter files with this state plan amendment (SPA).

Department Response: If there are going to be changes to the submission of encounter files as a result of this SPA, HSD will send separate instructions to the MCOs.

Further Comment: The same commenter asked whether MCOs will be billed directly by pharmacies or if pharmacy services will be billed directly to the state.

Department Response: The proposed SPA does not modify claim submission pathways. For Centennial Care members, pharmacy claims will be billed to the member's MCO. For fee-for-service beneficiaries, claims will be billed to HSD via the fiscal agent (Conduent).

Further Comment: The same commenter asked whether the AIR payment will be a non-risk payment.

Department Response: HSD is not sure that it understands the comment. To the extent that these payments are a component of the Centennial Care program for managed care members, they would be included as a component of the capitation rates that are paid to the MCOs.

Comment: One commenter expressed support for the proposed change and stated the change will benefit federal facilities in the Albuquerque area.

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

STANDARD FUNDING QUESTIONS

Standard Funding Questions: SPA 21-0001 IHS & Tribal 638 Pharmacy Payment

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 from funds received by broad-based taxes levied by the state.

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 payments are made to pharmacies.

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: Reimbursement to pharmacies is not subject to UPLs.

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.