



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT
NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

II. SUBJECT
8.200.410 NMAC GENERAL RECIPIENT POLICIES

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
FINAL RULE

V. BACKGROUND SUMMARY

New Mexico Human Services Register Vol. 38, No. 21, dated July 31, 2015, issued the proposed rule, 8.200.410 NMAC General Recipient Policies.

A public hearing was held August 31, 2015, to receive public comments and testimony on the proposed amendments to the rule. The Human Services Department (the Department) did not receive any oral testimony or recorded comments and did receive written comments. There were three written comments received.

Summary of Comments:

8.200.410 NMAC

Section 15

Subsection B and F

One commenter recommended that Subsections B and F of the proposed rule be combined to help clarify the definition of who is an inmate of a public institution. The commenter also recommended striking the phrase "or once he or she is adjudicated whichever occurs first" from Subsection F. The commenter provided the following proposed underlined language combining Subsection B and F:

B. MAD defines an inmate as a person incarcerated in a public institution listed in Subsection A of this rule. "A person is considered to be temporarily absent from his or her home, and not an inmate of a public institution, up to the 30th day of incarceration."

Department response: The Department agrees with combining Subsection B and F and striking the phrase “or once he or she is adjudicated whichever occurs first.” As a result of combining the two subsections, Subsection F will be deleted. The Department is further simplifying Subsection B to read, “An inmate is a person incarcerated in a public institution listed in Subsection A of 8.200.410.15 for 30 or more days.”

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One commenter recommended creating an additional subsection that addresses the federal financial exclusion for inmates as well as the exemption for inpatient stays of 24 hours or longer. The commenter proposed the following suggested language:

“MAD covered services are not available to an inmate who meets the definition provided in Subsection B of this rule, except for those services provided to an inmate while he or she is an inpatient at a medical institution for 24 hours or longer.”

Department Response: The Department agrees with creating a subsection that addresses the services exclusion with the exception of an inpatient at a medical institution for 24 hours or longer. Subsection C addresses the exclusion and inpatient stay coverage.

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Subsection E

One commenter recommended adding language to Subsection E to clarify that an inmate of a public institution who submits an application will receive an eligibility determination in accordance with all timeliness and eligibility standards provided under federal and state law and policy. The commenter proposed adding the following language to Subsection E:

“An inmate’s application will be processed in accordance with the same timeliness and eligibility standards provided to any other MAP applicant under federal and state laws, and regulations.”

Department Response: The Department in Subsection D added language that incarceration is not a basis for denying or terminating eligibility and that an inmate during the time of incarceration may apply or recertify for a MAP category of eligibility. The Department did not extrapolate regarding timeliness and eligibility standards in this subsection as the timeliness and eligibility standards are the same for all applicants.

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One commenter recommended adding a new section that clarifies an inmate’s eligibility and right to MAD services upon release. The commenter proposed adding the following language:

“A former inmate of a public institution who has an established MAP category of eligibility will be able to access MAD services, consistent with his or her eligibility category, upon release and without delay.”

Department Response: The proposed language specific to release will not be adopted as the language in Subsection D regarding incarceration in a public institution as not being a basis for denying or terminating a MAP category of eligibility is sufficient.

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Subsection A B D E and F

One commenter noted typographical errors and suggested linguistic corrections. The commenter recommended in Subsection A that the Department strike the second “2” and replace with “3” and then renumber accordingly. The commenter suggested removal of the words “this section” in Subsection B. In Subsection D strike the word “may” and replace with the word “will.” In Subsection E the commenter recommended striking the word “applicant.” In Subsection F strike the words “an incarceration facility” and replace with “a public institution.” Also in Subsection F strike the words “placed in a detention center” and replace with “in the institution.”

Department Response: The Department renumbered Subsection A accordingly. Subsections that were rewritten in the final rule took into consideration the commenter’s proposed language changes for consistency throughout the rule.

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One commenter stated that to implement Senate Bill 42 and address eligibility determination for inmates, the Department must also propose rule changes for other NMAC sections: 8.202.400.13(D)(3) JUL Medicaid, 8.230.400.13(B)(3) Full coverage for pregnant women, 8.232.400.17(D)(3) Children under 19 at 235% of the FPL or lower, 8.234.400.20(D)(3) SSI ineligibility, 8.235.400.20.23(D)(3) pregnancy or family planning services, 8.249.400.24(D)(3) Refugee Medical Assistance, 8.171.400.16 Premium Assistance for children, and 8.291.430.13(A)(5) Medicaid Eligibility Affordable Care.

Department Response: JUL Medicaid (COE 072), full coverage for pregnant women (COE 030), children under age 19 at 235% of the FPL or lower (COE 032), pregnancy-related Medicaid (COE 035) and premium assistance for children (COE 071/2) are no longer active MAP categories having been replaced by Affordable Care categories so no proposed rule changes are needed for these categories. The Department will initiate proposed rule changes for SSI ineligibility, family planning, and Refugee Medical Assistance. There are already proposed rule changes issued for 8.291.430.13(A)(5) related to inmates and Affordable Care.

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Subsection A

One commenter noted that the term “*municipalities*” was not included among the definitions of public institutions. The commenter suggests the use of the term “*political subdivision*” which would include all forms of local governments and authorities that may own or operate correctional institutions or jails.

Department Response: The term “*public institution*” is well-defined and universally accepted as one operated by a governmental entity at the federal, state, or municipal level. This term also includes privately-operated correctional facilities under contract with federal, state and municipal governmental entities. The language stands as proposed.

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Subsection F

One commenter noted the reference to “*detention center*” in Subsection F as not being defined under Subsection A which could potentially be interpreted to include a broader array of facilities than Senate Bill 42 intends. It was suggested that the term “*detention center*” be more clearly defined.

Department Response: The Department agrees and has changed the language in the final rule.

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Subsection F

One commenter is concerned the most problematic element in the proposed rule is the truncation of the time period included in Subsection F. The previous rule had a period of 60 calendar days relative to the time for which an applicant or recipient could be considered as “temporarily absent from his or her home” for purposes of determining a MAP category or not being considered an inmate of an incarceration facility. The commenter believes that the change from 60 calendar days to 30 calendar days will be extremely disruptive to the continuity of care and access to MAP eligible and enrolled individuals residing in “detention and incarceration facilities.” The commenter is also concerned that the reduction will result in increased cost to the county and the jail facilities medical costs due to changes in procedures in the eligibility determination and termination of MAP enrollment to inmates with longer than 30 calendar day stays. This provision is not in keeping with the 90 calendar day period institutionalized individuals are able to receive SSI benefits under a similar NMAC rule pertaining to SSI beneficiaries. This time differential seems incongruent and may create potential exposure under equal protection guarantees. The reduction in days seems to be antithetical to the intent of SB 42 which was to help assure access to MAP enrollment and eligibility by incarcerated individuals thus helping to assure continuity of care and access to physical and behavioral services to a vulnerable population and to hopefully aid in reducing recidivism and better health outcomes among that population.

Department Response: Senate Bill 42 allows incarcerated individuals to retain their MAP category of eligibility. A vast majority of county jail inmates are released within 30 calendar days of being booked into a county jail. If released within 30 calendar days, MAP eligible recipients will have continuity of care and access to MAD benefits. If an inmate is incarcerated for more than 30 calendar days, the inmate will retain his or her MAP category of eligibility and will have his or her MAD benefits suspended for the duration of the incarceration period. Once an inmate is released and HSD receives notification of such release as required by SB42, the former inmate will have MAD benefits activated ensuring continuity of care and access to MAD services. An incarcerated individual’s only MAD benefits are to allow for payment of short-term inpatient hospital stays that are provided outside of the incarceration facility. The 30 calendar day rule also applies to inmates on SSI categories of eligibility. The 30 day language stands as proposed.

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One commenter is unclear why the threshold after which an inmate is considered incarcerated rather than temporarily absent from home has been reduced from 60 to 30 days. If the intent is to allow individuals who are incarcerated to submit a MAP application quickly under 8.200.410.15(E), then the reduction to 30 days should stand. If the proposed reduction serves to restrict access to Medicaid services in any way, then the 60 day time limit should be reinstated. 8.200.410.15 NMAC should facilitate the broadest possible access to Medicaid services for the community.

Department Response: Senate Bill 42 allows incarcerated individuals to retain their MAP category of eligibility. A vast majority of county jail inmates are released within 30 calendar days of being booked into a county jail. If released within 30 calendar days, MAP eligible recipients will have continuity of care and access to MAD benefits. If an inmate is incarcerated for more than 30 calendar days, the inmate will retain his or her MAP category of eligibility and will have his or her MAD benefits suspended for the duration of the incarceration period. Once an inmate is released and HSD receives notification of such release as required by SB42, the former inmate will have MAD benefits activated ensuring continuity of care and access to MAD services. The 30 day language stands as proposed.

VI. RULE

This final register is available on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and the corresponding rule is available on the HSD website at: <http://www.hsd.state.nm.us/providers/rules-nm-administrative-code-.aspx>. If you do not have internet access, a copy of the register and rule may be requested by contacting the Medical Assistance Division at 505-827-6252.

VII. EFFECTIVE DATE

This rule is effective November 01, 2015.

VIII. PUBLICATION

Publication of this rule is approved by:



BRENT EARNEST, SECRETARY
HUMAN SERVICES DEPARTMENT