

August 25, 2020

Interested Parties:

The Human Services Department (the Department), Medical Assistance Division (MAD), is promulgating new New Mexico Administrative Code (NMAC): 8.314.7, Long Term Care Services - Waivers, Supports Waiver.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: August 25, 2020

Hearing Date: September 28, 2020

Adoption Date: Proposed as January 1, 2021.

Technical Citations: 42 CFR Chapter IV Subchapter C

8.314.7 NMAC serves to implement, support, and clarify the statute for the Supports Waiver. The Supports Waiver will be the State's fourth Medicaid 1915(c) Home and Community-Based Services (HCBS) waiver program currently operated to serve individuals with special needs. The Supports Waiver will provide services to individuals with intellectual and developmental disabilities on the Department of Health (DOH) Developmental Disabilities (DD) Waiver Wait List.

**The Department is proposing to promulgate the rule as follows:**

**Section 7: Definitions**

This section provides definitions for terms found within 8.314.7 NMAC.

**Section 8: Mission Statement**

This section provides the Department's mission statement.

**Section 9: Supports Waiver Home and Community-Based Services**

This section provides a description of the Supports Waiver program and its intent to provide support services to eligible recipients to enable work toward self-determination, independence, productivity, integration, and inclusion in all facets of community life across the lifespan.

**Section 10: Eligibility Requirements for Recipient Enrollment**

This section outlines that eligibility for the Supports Waiver program is contingent upon the applicant meeting the eligibility requirements, the availability of funding as appropriated by the New Mexico legislature, and the number of federally authorized unduplicated eligible recipients.

### **Section 11: Eligible Recipient Responsibilities**

This section outlines the responsibilities that Supports Waiver eligible recipients must comply with. The section also details the eligible recipient's voluntary and involuntary program disenrollment.

### **Section 12: Supports Waiver Contracted Entities and Providers**

This section outlines the Supports Waiver program contracted entities and their responsibilities including requirements to avoid conflict of interest.

### **Section 13: Qualifications for Eligible Individual Employees, Independent Providers, Provider Agencies, and Vendors**

This section lists general and specific qualifications for agency-based and participant-directed service delivery model providers. This section also outlines the roles and responsibilities of the Employer of Record (EOR) who helps assist Supports Waiver participants accessing services in the participant-directed service delivery model with employer functions.

### **Section 14: Service Descriptions and Coverage Criteria**

This section provides description of the services offered through the Supports Waiver. This section also outlines that service delivery must be in compliance with the Centers for Medicare and Medicaid Services HCBS Settings Final Rule.

### **Section 15: Non-Covered Services**

This section lists non-covered services and specifies that the Supports Waiver program does not pay for the purchase of goods or services that a household without a person with a disability would be expected to pay for as a routine household or personal expense.

### **Section 16: Individual Service Plan and Authorized Annual Budget**

This section outlines the components, requirements, and development of a Supports Waiver participant's Individual Service Plan (ISP) and review and approval of their Authorized Annual Budget (AAB). The section also outlines the process for modification of the ISP.

### **Section 17: Prior Authorization and Utilization Review**

The section clarifies that services covered under the Supports Waiver program are subject to utilization review for medical necessity and program requirements.

### **Section 18: Recordkeeping and Documentation Responsibilities**

This section outlines the recordkeeping and documentation responsibilities of Supports Waiver program providers and participants.

### **Section 19: Reimbursement**

This section outlines reimbursement requirements for agency-based and participant-directed service delivery model providers.

### **Section 20: Right to an HSD Administrative Hearing**

This section outlines that Supports Waiver participants have an opportunity for an administrative hearing and the circumstances under which to request a fair hearing.

## **Section 21: Continuation of Benefits Pursuant to Timely Appeal**

This section outlines that Supports Waiver participants have an opportunity to request a continuation of benefits.

## **Section 22: Grievance/Complaint System**

This section outlines that Supports Waiver participants have an opportunity to register grievances or complaints concerning the provision of services under the Supports Waiver program and describes the process for filing a grievance.

The register and proposed rule will be available August 25, 2020 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx>. If you do not have Internet access, a copy of the register and proposed rule may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement these rules effective January 1, 2021. A public hearing will be held **via conference call** on September 28, 2020 at 10 a.m., Mountain Time (MT). **Conference phone number: 1-800-747-5150. Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: [madrules@state.nm.us](mailto:madrules@state.nm.us). Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on September 28, 2020. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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