



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

February 3, 2022

Interested Parties:

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.320.6, *Early and Periodic Screening, Diagnosis and Treatment (EPSDT), School-Based Services for MAP Eligible Recipients Under Twenty-One Years of Age*. The proposed amendments will allow MAD to pay for medically necessary services for a MAP eligible recipient under twenty-one years of age when the services are part of the MAP eligible recipient's (eligible recipient's) individualized education program (IEP) or an individualized family service plan (IFSP) for treatment (correction, amelioration, or prevention of deterioration) of an identified medical condition.

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: February 8, 2022

Hearing Date: March 11, 2022

Adoption Date: Proposed as July 1, 2022

Technical Citations: 34 CFR 300.142

The Department is proposing to amend the rule as follows:

Section 9 School-Based Services for Recipients Under Twenty-One Years of Age

HSD is proposing to add coverage for services provided under a Section 504 Accommodation Plan pursuant to 34 CFR 104.36 (504 Plan), an Individual Health Care Plan (IHCP), or are otherwise medically necessary as appropriate for each covered service.

This addition will allow participating schools to seek reimbursement for covered services that are provided outside of an individualized education program (IEP) or an individualized family service plan (IFSP).

Section 11 Eligible Providers

Subsection 15

HSD is proposing to add unlicensed school personnel providing delegated nursing services in accordance with the New Mexico Board of Nursing under the supervision of a RN to the list of allowable providers.

This addition will allow unlicensed personnel who have been delegated nursing services in accordance with the New Mexico Board of Nursing to provide services. This will allow school-based providers in rural and underserved areas access to an increased pool of eligible practitioners which can bill for services.

Section 12 Provider Responsibilities

Subsection B, Paragraph (3), Subparagraph (b)

HSD is proposing to add other determination of medical necessity to the requirement for evaluation and determination of need for services.

This addition will allow schools to establish medical necessity for services through evaluations or other determinations for services provided under a 504 Plan, Individual Health Care Plan (IHCP) or other care plan.

Subsection B, Paragraph (3), Subparagraph (c)

HSD is proposing to add language to clarify that an annual PCP notification or documentation of a good faith effort is only required for services provided through an IEP/IFSP.

This addition will clarify that services provided under a 504 Plan, Individual Health Care Plan (IHCP) or other care plan are not subject to the requirement for an annual PCP notification or documentation of a good faith effort.

Section 13, Covered Services

Subsection A

HSD is proposing to add that 504 Plans, IHCPs or other care plans should be reviewed annually to establish ongoing medical necessity for services.

This addition will ensure that school-based providers are regularly reviewing the eligible recipient's plan of care to establish the ongoing medical need for services.

Subsection B, Paragraph (3)

HSD is proposing to add clarifying language to reiterate that the good faith effort to notify the eligible recipient's PCP of the services to be provided will only be required for those services provided under an IEP or IFSP.

This clarification will reduce the administrative burden for schools who choose to provide additional services under a 504 Plan, Individual Health Care Plan (IHCP) or other care plan.

Subsection G

HSD is proposing to add delegated nursing services which are tasks in accordance with the New Mexico Board of Nursing that may be delegated by the RN to unlicensed school personnel. Delegated staff may include, but is not limited to, school or contracted staff, such as health assistants, teachers, teacher assistants, therapists, school administrators, administrative staff, cafeteria staff, or personal care aides.

This addition will allow schools to bill for nursing services that have been delegated in accordance with the New Mexico Board of Nursing and allow school-based providers in rural and underserved areas access to an increased pool of eligible practitioners which can bill for services.

Section 14 Individualized Treatment Plan

Subsection D

HSD is proposing to add that for purposes of Medicaid expansion, school-based services may also be listed in a Section 504 Accommodation Plan pursuant to 34 CFR 104.36, an Individual Health Care Plan, or are otherwise determined to be medically necessary as appropriate for each covered service.

This addition clarifies that covered services can be identified in an individual treatment plan that is part of a 504 Plan, Individual Health Care Plan (IHCP) or other care plan.

Throughout the Rule

HSD is proposing language to add 504 Plan, Individual Health Care Plan (IHCP) or other care plan as plans allowable for identifying covered services provided in the school-based setting.

This addition will allow schools to seek reimbursement for covered services that are provided under a 504 Plan, Individual Health Care Plan (IHCP) or other care plan.

The register for these proposed amendments to this rule will be available February 8, 2022 on the HSD website at: <https://www.hsd.state.nm.us/lookingforinformation/registers/> and <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement this rule effective July 1, 2022. A public hearing will be held **via conference call** on March 11, 2022 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. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on March 11, 2022. 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 <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/> 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.