

## DISABILITY RIGHTS NEW MEXICO

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Gary Housepian, Chief Executive Officer

*Promoting and Protecting the Rights of Persons with Disabilities*

25 October 2018

Human Services Department  
Office of the Secretary  
ATT: Medical Assistance Division Public Comments  
P.O. Box 2348  
Santa Fe, NM 87504-2348

*Submitted as a PDF attachment by e-mail to: [MADrules@state.nm.us](mailto:MADrules@state.nm.us)*

Re: *New Mexico Register*, Volume XXIX, Issue 18; September 25, 2018  
*New Mexico Human Services Register*, Vol. 41, No. 27; September 25, 2018

HSD/MAD:

Please accept these comments from Disability Rights New Mexico (DRNM), our State's Protection & Advocacy System, a federally-authorized nonprofit organization serving to protect, promote, and expand the legal rights of people with disabilities. We offer these thoughts and suggestions in hopes of helping to clarify the impact of the proposed New Mexico Administrative Code (NMAC) rule changes on people with disabilities. We thank the Human Services Department (HSD) and Medical Assistance Division (MAD) in advance for considering our input.

As you know, Medicaid is crucial to the health and well-being of New Mexico. We are grateful to Governor Martinez and HSD for expanding access to Medicaid under the Affordable Care Act. Current uncertainties surrounding the federal commitment to Medicaid make this a critical moment for HSD to treat New Mexico's Medicaid services with the utmost care.

### *A. Proposed Revisions to Retroactive Medicaid Policy*

DRNM supports the effort to clarify Medicaid retroactivity by putting it all in one location. And we are grateful that the earlier draft Centennial Care 2.0 proposal to scrap retroactivity entirely is no longer being pursued. This retroactivity proposal, however, is now more complicated than the system currently in place, as the proposal lays out a structure with different policies for different programs.

People with disabilities are among the Medicaid participants for whom retroactivity can be most important. The three-month retroactivity was rarely used, and thus resulted in a minimal financial burden to the State. DRNM opposes eliminating, or the reduction of access to,

retroactivity. We hope that HSD/MAD will reconsider this proposal in light of the potential benefits for the health and well-being of people with disabilities and other Medicaid participants.

*B. Proposed Revisions to Medicaid Family Planning Policy*

We fail to see the value or purpose in these changes, except those that are truly required by federal regulations.

*C. Proposed Ongoing Nursing Facility Level of Care (NF LOC) for Certain Community Benefit Participants in Centennial Care*

DRNM strongly supports the summary of the proposal in the “Notice” we reviewed. In fact, we had understood that these NF LOC waivers would be available to institutional Medicaid recipients as well, and we also support extending this opportunity to those participants. Furthermore, DRNM believes that this same principle for the same reasons should be offered to Community Benefit members during their annual Comprehensive Needs Assessment (CNA). Community Benefit participants with no possibility of improvement should not have to continue to face annual reductions in their services due to poorly conducted CNAs.

We also note that the “Notice” summary states that the “complete criteria for an ongoing NF LOC can be found in the New Mexico Medicaid NF LOC criteria and instructions document.” Is this document to be included in the 8.290.600 NMAC that I was unable to review? If not, when did I miss its publication for comment? And where is it currently available for public review? HSD/MAD cannot legally offer a mere reference in the NMAC, but hide from public view, the actual NF LOC standards.

Our greatest problem on this issue at this time, however, is that we were unable to review the specific language of the proposal. At the public hearing held on October 24, HSD was clearly aware of this problem. HSD told me that the proposed changes were not published where I had looked (or where other interested advocates with whom I had spoken had looked), but were in fact published in some other location. At the hearing HSD’s position seemed to be that it did not need to publish all its proposed changes where the “Notice” directed readers to find them, so long as they were published somewhere.

I had read the HSD *Human Services Register* on the HSD website, and I printed and read all of the proposed changes in all the NMAC sections available there. The apparent suggestion that it was then my responsibility to do further research to track down HSD’s errors, and locate where HSD had possible corrections for those errors, seems to turn public notice and opportunity for comment on its head. The solution here is simple: republish with a fresh appropriate public comment period.

*D. Proposed Elimination of Existing Co-Payments for CHIP and WDI*

DRNM thanks HSD/MAD for the elimination of any and all co-payments. Research nationwide shows clearly that co-payments do not work, are cost-ineffective, and reduce positive health outcomes.

*E. Proposed Revisions to Other Adults Category*

Premiums are a bad idea. Like co-payments, premiums are cost-ineffective and reduce positive health outcomes. This is not the right approach for our Medicaid system.

Given the unfortunate reality that HSD/MAD seems committed to pursuing this terrible idea, DRNM thanks you for apparently considering the overwhelming public opposition to premiums and the common knowledge of the harms they cause. We can only imagine that the inclusion of the July 1 implementation date is an effort to kick this can into the next governor's path. That's better than immediate implementation. Hopefully the next governor will direct the Department towards a wiser course of action.

*F. Other Proposed Revisions to Medicaid Eligibility Rules*

Some of the proposed changes DRNM was able to consider seem helpful, so we extend our gratitude for those. For example, we will mention here DRNM's appreciation for the continued effort to rid Medicaid rules of that offensive mission statement. We would certainly support an effort for a global change to remove it from all NMAC sections where it remains.

Our great problem on this issue at this time, however, is that we were unable to review the specific language of much of these proposals. At the public hearing held on October 24, HSD was clearly aware of this problem. HSD told me that the proposed changes were not published where I had looked (or where other interested advocates with whom I had spoken had looked), but were in fact published in some other location. At the hearing HSD's position seemed to be that it did not need to publish all its proposed changes where the "Notice" directed readers to find them, so long as they were published somewhere.

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Regarding the proposed changes to Transitional Medical Assistance, DRNM fails to see the purpose or benefit to Medicaid participants. Additional bureaucratic burdens do not improve health outcomes. And again, like just about everyone else who has considered the issue, DRNM is opposed to any implementation of cost-ineffective and harmful premiums.

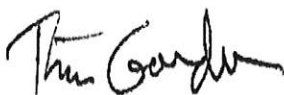
Regarding co-payments, also like nearly everyone else who has considered the issue, DRNM is opposed. At the public hearing on October 24, HSD declared that the 8.308.14 NMAC proposed changes in the "Notice" will be retracted. So it is impossible to know what to make of the proposed 8.302.2 NMAC changes. The summary in the "Notice" stated that, as with premiums, this would be kicked down the road to the next governor – with a March 1 effective date. Again,

we hope that he or she will help HSD see a wiser path for the health and well-being of New Mexicans who rely on Medicaid.

*Conclusion*

DRNM thanks HSD/MAD for consideration of our comments. We look forward to continuing to partner with you to develop more effective Medicaid services for people with disabilities. We also look forward to the opportunity to comment on the sections we were unable to review from this *Human Services Register*, and on other future publications of proposals to improve New Mexico's Medicaid system.

Sincerely,

A handwritten signature in black ink that reads "Tim Gardner". The signature is written in a cursive, flowing style.

Tim Gardner  
Legal Director