

THE DISABILITY COALITION
Advocating for People with Disabilities of All Types

P.O. Box 8251, Santa Fe, New Mexico 87504-8251
Telephone: (505) 983-9637

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New Mexico Human Services Department
Office of the Secretary
Attn: Medicaid Assistance Division Public Comments
Submitted by email to madrules@state.nm.us

Re: HSR vol. 45, No. 1 – 8.320.6 NMAC, Early and Periodic Screening, Diagnosis and Treatment (EPSDT), School-based Services for MAP-Eligible Recipients Under Twenty-One Years of Age

The following comments on proposed rule changes relating to Medicaid School-Based Services are offered by The Disability Coalition, which advocates for the interests of New Mexicans with disabilities of all types. Member organizations of the Coalition include The Arc of New Mexico, New Mexico Developmental Disabilities Council, Disability Rights New Mexico, and two independent living centers, the Independent Living Resource Center that serves central and part of southern New Mexico and New Vistas, which serves the north-central and northeast portions of the state. The Governor's Commission on Disability is an advisory member of the Coalition.

The primary changes proposed in HSR vol. 45, #1 are to expand Medicaid coverage of school-based services to include not just students who qualify for special education under the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.*, but also other students whose need for the services is identified in a Section 504 plan, Individual Health Care Plan (IHCP), or through other documentation, and to cover services provided by unlicensed school personnel pursuant to delegation by a registered nurse as authorized by the state Board of Nursing. We support the proposed changes.

There seems to be no logical reason why Medicaid would cover these services for special education students but not for students who need the same types of services but who don't qualify for special ed. Under federal law, only certain disabilities qualify a student for special education, but Section 504 entitles students with any type of disability to accommodations in order to participate in education. Similarly, IHCPs address the needs of students with chronic medical conditions that may not constitute a disability under federal law but that require health care services, and there may be other situations where services are medically necessary but no

particular type of plan is in place. We support the department's proposal to ensure that Medicaid covers school-based services for all these students rather than limiting coverage to only a subset of them. The proposed changes would properly make appropriateness of the service, rather than the "bucket" into which the student falls, the basis for coverage.

We also support the proposal to cover services that are delegated to unlicensed school personnel as well those provided directly by licensed nurses. Many New Mexico schools, especially in rural areas, do not have full-time school nurses, so delegation to unlicensed personnel is essential to assure availability of services. To the extent that such delegation is authorized by the state Board of Nursing, it has been determined to be an appropriate health care activity and should be covered by Medicaid.

We believe these changes will not only help to ensure that students needing services will receive them, but also will provide financial support to schools that will encourage them to provide appropriate services and free up their limited funding for other educational uses.

We offer the following comments on particular provisions of the proposed changes.

1) Individual health care plan definition – The department proposes to allow students with an IHCP to qualify for Medicaid coverage of school-based services. Unlike individualized education programs (IEPs) and individualized family services plans (IFSPs), which are clearly defined terms under federal law, there appears to be no generally-accepted definition of an IHCP, either in this proposed rule or elsewhere in the department's regulations, or in the department's Glossary of Acronyms, Abbreviations and Terms found at (<https://www.hsd.state.nm.us/lookingforinformation/glossary-of-acronyms-abbreviations-and-terms-for-recipients/>). We suggest inclusion of a definition in the rule.

2) Sections 9 and 14(D) – The proposed language in both of these sections refers to a section 504 plan "pursuant to 34 CFR 104.36". That section requires procedural safeguards in connection with actions relating to identification, evaluation, or educational placement of persons who may need special services due to a disability. It does not embody the right to a plan or lay out the contents of one and it's not clear why this one regulatory section was selected to be included here. If a citation to federal regulations is needed, we suggest changing this to read "pursuant to 34 CFR Part 104, Subpart D".¹

3) Section 11(B)(15) – The new language would add registered nurses (RNs) and licensed practical nurses (LPNs) as well as unlicensed school personnel providing delegated services to the list of eligible providers. Since nursing services are already a covered service under the rule (section 13(G)), we assume the failure to include RNs and LPNs in the list of eligible providers was an oversight and we support correction of that oversight here. As noted above, we support the proposed change to cover services by unlicensed personnel when delegated by an RN as authorized by the Board of Nursing.

¹ Part 104 is "Nondiscrimination on the Basis of Handicap [sic] in Programs or Activities Receiving Federal Financial Assistance" and Subpart D, sections 104.31-104.39, covers education.

4) Section 12(B)(3)(b) – We support the proposed change to broaden the allowable documentation on which a medical necessity determination may be based.

5) Section 13 – HSD proposes to modify the provisions of subsections A and B to include Section 504 plans, IHCPs and other care plans along with IEPs and IFSPs. However, this change is not consistently incorporated into the following portions of Section 13. Some of the subsequent subsections refer generically to an individualized treatment plan (ITP) without tying it specifically to an IEP or IFSP, but others continue to refer to only IEPs and IFSPs, without including other types of plans. See subsections E (transportation) and F (case management). This should be clarified to avoid confusion. (Also see comments on section 14, below.)

6) Section 14 – This section also continues to refer only to ITPs that are part of IEPs and IFSPs. If an ITP is to be required only in the case of those types of plans, with other documentation accepted for students who are not in special education, that should be clarified and the provisions of section 13 modified accordingly to eliminate the requirement of an ITP for students whose eligibility for services is based on other types of plans and for whom other types of documentation will be accepted. If, on the other hand, an ITP is to be required as the basis for services for all students receiving school-based EPSDT services, the provisions of section 13 that tie coverage to an ITP will have to be modified.

Also in section 14, the department proposes to add a new subsection D, which applies to “medicaid expansion”. We assume this is intended to refer to what HSD usually calls the “other adult group” or OAG. If so, it would be helpful to clarify the term since it is not the one usually used by HSD for this group of recipients.

The new subsection D would provide for coverage of services under a section 504 plan, IHCP or other determination of medical necessity but not under an IEP. Although IFSPs are for very young children and therefore would not be relevant to OAG enrollees, individuals may continue to qualify for special education services under IDEA through age 21 and OAG enrollees therefore may have an IEP. That type of plan should be included in this subsection.

Thank you for your consideration of our comments.

Ellen Pinnes

Ellen Pinnes

for The Disability Coalition
EPinnes@msn.com