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Secretary Brent Earnest
Human Services Department - Office of the Secretary
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VIA EMAIL

Comments on Proposed Regulations – HSD/MAD, Vol. 41, Register 23

Secretary Earnest,

We submit these comments in response to proposed regulation revisions issued through Vol. 41, Register 23, on August 28, 2018, by the Human Services Department (HSD).

HSD should reconsider the counties it chose for the Centennial Home Visiting (CHV) pilot program to better target areas with the most need. The CHV pilot is an opportunity to implement an incredibly valuable program in areas of the state that have high rates of unmet need that would benefit from the services outlined in the proposed regulations.¹ Additionally, the CHV pilot program's requirement to provide culturally and linguistically "appropriate" materials is one that we believe requires more explanation, given New Mexico's strong ties to a number of cultures in the state. We also urge the HSD to be more transparent to the public regarding how it determined the counties that will implement the CHV.

Further, HSD should revise its proposed regulations regarding enrollment and disenrollment from MCOs, as the requirement of a signature to switch MCOs is arbitrarily restrictive. The proposed regulations will likely leave more New Mexicans without health coverage as a result of unnecessary barriers. We also urge the department to provide more explanation as to the requirements for the notice that will be sent to individuals who miss their enrollment period due to incarceration. They should be afforded the same notice that all eligible enrollees or potential enrollees are entitled under the law.

¹ 8.308.3.23(C)(1)-(3) NMAC

Centennial Home Visiting Pilot – NMAC 8.308.9.7

The CHV Pilot Program should be targeted to the areas of New Mexico with the highest needs. We have concerns not only about the lack of transparency of how the department chose the counties, but concerns that the programs were not chosen to most effectively target high need areas. A number of factors could be used to find that a certain population groups is high risk when determining home visiting services, including teen births, parental substance abuse, preterm births, lack of prenatal care, etc. However, no metric or criteria has been publically put forth, or subject to public comment, to demonstrate that HSD has chosen the most impactful targets for the CHV Pilot Program. The CHV Pilot Program mentioned by CYFD in their most recent FY17 Home Visiting Annual Outcomes Report stated the Medicaid-funded home visiting pilot would be implemented in three counties, Bernalillo, Eddy and Luna county.² However, the proposed regulations do not provide information as to Eddy and Luna's participation or how those counties and Bernalillo were chosen to be the ideal setting for a service targeted for low-income families. According to the U.S. Census Bureau, Bernalillo and Eddy county have an average income of \$ 48,994 and \$59,625, respectively.³ Compared to Luna (\$27,326) or McKinley (\$29,272) county, it would appear that a program that is targeted to Medicaid eligible families would be better suited to these areas, where poverty is more prevalent and intervention could be better implemented.⁴ These income figures, combined with the 253 pregnant women receiving Medicaid in McKinley county, demonstrate that the CHV Pilot Program would be better served in counties other than Bernalillo.⁵

HSD should reconsider its pilot counties to ensure its effectiveness at targeting the areas where Home Visiting services are at the highest need. If the department feels there is insufficient time to reconsider, other counties following Bernalillo should be subjected to an open, objective determination that the county is the best fit for the CHV Pilot Program.

Additionally, HSD needs to provide more clarity as to how the department will ensure it upholds its legal requirement to provide a culturally and linguistically appropriate Home Visiting program, pursuant to 8.308.9.7(D)(9) NMAC. Not only does this regulation require consideration of the numerous cultural and linguistic characteristics unique to New Mexico, but

² New Mexico Home Visiting Annual Outcomes Report Fiscal Year 2017, p.30, available at https://cyfd.org/docs/FY17_HV_Annual_Outcomes_Report.pdf.

³ U.S. Census Bureau Statistics Report on Bernalillo, Eddy and Luna County. Available at <https://www.census.gov/quickfacts/fact/table/eddycountynewmexico.lunacountynewmexico.bernalillocountynewmexico/PST045217>

⁴ U.S. Census Bureau Statistics Report, available at <https://www.census.gov/quickfacts/fact/table/US/PST045217>

⁵ Human Services Department Medicaid Enrollment Report, by County, August 2018. Available at http://www.hsd.state.nm.us/uploads/FileLinks/5bc82a76689a437682dbd68988331f79/MER_By_County_22.pdf

state law requires collaboration with Indian nations, tribes or pueblos.⁶ New Mexico's State-Tribal Collaboration Act requires that state agencies collaborate with the tribes and pueblos in the development and implementation of policies and programs that directly affect Native Americans.⁷ The proposed regulations provide little explanation as to how this program has or will receive input from the 22 different tribal entities that exist in New Mexico. Further, the regulations do not provide how the department will account for children who are learning dual languages at home, regardless of which language is being taught in the family home. Finally, the regulations fail to address issues of community representation in the workforce, culturally and linguistically appropriate training, materials or procedures that will be implemented to ensure continued compliance. We ask the department to provide more information about the CHV Pilot Program regarding these issues.

Managed Care Program: Enrollment and Disenrollment - 8.308.7.9 NMAC

HSD should refrain from imposing the unnecessary and harmful barrier of requiring a signature from Medicaid beneficiaries when they request to switch to a new managed care organization (MCO). While federal law provides that the state has the authority to determine whether a beneficiary must submit an oral or written request for switching MCOs⁸, there is no statutory basis for requiring a signature. Such a requirement arbitrarily impedes on the Medicaid beneficiary's free exercise of their right to choose an MCO by imposing an additional barrier that is not based in law. This will result in improper denials of a member's right to choose from which MCO they receive their Medicaid services simply because their request had no signature. Please remove the signature requirement from the proposed rule.

Additionally, HSD should clarify how notice will be provided to individuals who miss their annual enrollment period due to incarceration, as set forth in the proposed regulations at 8.308.7.9(E)(6). All enrollees and potential enrollees are entitled to required information.⁹ Notices of eligibility determinations must also comply with federal law in terms of content and timeliness.¹⁰ Please provide more information as to the notice provided to these members and ensure this complies with federal law.

Typographical Errors - 8.308.7.9(l)(4)(d); 8.308.12.18 (N)(8)

Please thoroughly review the proposed regulations and correct all misuses of "native Americans" to describe "Native Americans." For example, in 8.308.7.9(l)(4) NMAC, there is the use of the lower case "native" that appears right next to other regulations that uses the proper, capitalized version. This distinction is significant as "native American" refers to anyone

⁶ NMSA § 11-18-1 *et al.*

⁷ *Id.*

⁸ 42 CFR § 438.56

⁹ 42 CFR § 438.10(c)(1)-(7)

¹⁰ 42 CFR § 435.917 *et al.*



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born in the United States regardless of race or ethnicity while “Native American” refers to an American Indian. As a matter of consistency and accuracy, the term “Native Americans” should be used in the following regulations:

- 8.308.7.9(l)(4)(d)
- 8.308.12.18 (N)(8)

If you have any questions, please contact the New Mexico Center on Law and Poverty at 505-255-2840 or email William Townley, William@nmpovertylaw.org.

Sincerely,

William Townley, Esq.