

THE DISABILITY COALITION

A Coalition of Persons with Disabilities, Family Members, and Advocates

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

SUBMITTED BY ELECTRONIC MAIL

September 14, 2018

Brent Earnest, Secretary
NM Human Services Department.
PO Box 2348
Santa Fe, NM 87504-2348

E-mail: madrules@state.nm.us

Re: HSR vol. 41, #22 – 8.314.5 NMAC
Developmental Disabilities Home and Community-Based Services Waiver

Secretary Earnest:

The Disability Coalition offers the following comments on the above-referenced proposal to revise Medicaid regulations relating to the Developmental Disabilities Waiver. The proposed changes appear to be primarily routine changes to strike references to the Supports Intensity Scale (SIS) that is no longer in use and to incorporate changes pursuant to the federal rule on community integration in home- and community-based services waivers. While we do not object to those revisions, we do have concerns about some provisions included in the proposal.

1) Sec. 8.314.5.7(A) – The change would narrow the scope of activities included in the definition of “activities of daily living”. While the change would conform to the more generally used definition of ADLs, it eliminates a number of activities currently included in the definition used for purposes of the DD waiver. That could limit the services available under other sections of the regulations, including respite (8.314.5.15(C)(2)), intensive medical living (8.314.5.15(C)(5)(c)), assistive technology (8.314.5.15(C)(14)), and customized in-home supports (8.314.5.15(C)(19)). We therefore oppose this change and urge the department to keep the current language of the definition.

2) Sec. 8.314.5.8 – We support the proposed deletion of the “Mission Statement”. Its patronizing and offensive language is particularly inappropriate when applied to individuals with severe intellectual and developmental disabilities.

3) Sec. 8.314.5.10(U)(7) – The regulations currently include a bachelor’s degree in special education as a qualifying credential to act as a Socialization and Sexuality Education provider. The department proposes to add psychology, social work and public health administration as related fields that would also qualify a provider for this service. We agree that psychology and social work appear to be appropriately related fields and we note that they are already included in the regulations for those holding advanced degrees. However, we question the inclusion of public health administration (PHA), which is not included in those earlier subsections. Our understanding is that PHA addresses administration and management of health systems, and is more analogous to a business degree than to training in special education or counseling. It therefore appears an odd choice to qualify to provide this service.

4) Sec. 8.314.5.15(C)(6)(d) – The department proposes to delete “classroom” from the settings where Customized Community Supports may be provided. No reasoning is given for this change so it is not clear why the change is proposed. However, we object to it. As recognized in the existing regulations, these services are of a type that is appropriate to be provided in a school setting for an individual of school age. If the department’s justification is that these services should be paid for by the school under the Individuals with Disabilities Education Act and not covered by Medicaid, that is contrary to federal law and policy, which place the responsibility to pay for these services on the Medicaid program. See 42 USC §1396b(c), 34 CFR §34.154.

5) Sec. 8.314.5.20 – The department’s notice of the proposed regulatory changes, dated August 14, 2018, describes the changes to this section as “clarifying” the agency review conference (ARC) and fair hearing process, but the proposed change goes much further and would eliminate the right of a recipient to an ARC, giving the Department of Health complete control over whether such a conference takes place. We object to this change.

Thank you for your consideration of these comments.

Sincerely,

Ellen Pinnes

Ellen Pinnes
for The Disability Coalition