



May 8, 2024

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

Re: Public Comment on 8.325.12 NMAC Medication Assisted Treatment
Services in Correctional Settings

Dear Secretary Armijo:

Thank you for this opportunity to comment on the proposed regulations regarding medication assisted treatment services in correctional settings. Counties support the effort to establish effective treatment for substance use disorders in our communities and secure settings but have concerns about some aspects of the draft regulations as they apply specifically to counties.

The Proposed Regulations Violate Article X Section of the NM Constitution

The law that provides authority for these regulations (SB425, 2023) underwent significant changes during the 2023 legislative session. The provisions that would have required county detention facilities to continue and initiate medication assisted treatment were removed from the bill when the \$10 million funding for such programs was stripped from the budget. See: [Legislation - New Mexico Legislature \(nmlegis.gov\)](https://www.nmlegis.gov). No money was appropriated to the newly created Medication-Assisted Treatment for the Incarcerated Program Fund. The title of the act was also amended to remove the language providing for the "Establishment and Operation of Medication-Assisted Treatment Programs in County Correctional Facilities." Thus Section 24-1-5.11 only contains deadlines by which "state" correctional facilities must continue and induce medication assisted treatment. NMSA 1978 §24-1-5.11.D.

The workgroup that developed the initial draft for these regulations addressed this limitation on the scope of the legislation by including language which provided that the regulations would "serve as guidance for county detention facilities that elect to provide MAT or MOUD services...". That language has been omitted from the current proposed regulations. In their current form, the proposed regulations would require county detention facilities to stand up costly medication assisted treatment programs that include staff intensive induction of treatment without providing funding. Such an unfunded mandate is contrary to Article X Section 8 of the New Mexico Constitution which renders unlawful regulations mandating any new county service unless the state provides sufficient new funding to pay the cost. Id.

444 Galisteo Street
Santa Fe, NM 87501

877-983-2101
505-983-2101
Fax: 505-983-4396

NMCOUNTIES.ORG

This constitutional violation can be corrected by removing county detention facilities from the definition of “correctional facility.” New Mexico Counties asks that “or county detention facility” be stricken from the definition of correctional facility in section 8.325.12.7.D.

Requiring Counties to Stand Up MAT Programs Immediately While Delaying the Corrections Department Deadline for Continuing Prescribed Medication for Over A Year Only Serves to Exacerbate the Existing Obstacle to Continuity of Care

Notwithstanding the absence of a regulatory or state legislative mandate, county detention facilities have been continuing medication for opioid use disorder and, some, with the assistance of grant and RISE funding have stood up full-fledged MAT programs. Continuity of care is a critical challenge for these efforts. Some communities do not have programs to continue the treatment after discharge and individuals who are sentenced to the New Mexico Corrections Department are currently not allowed to continue their treatment. This problem will only be exacerbated if, as the regulations currently provide, counties are required to initiate treatment over a year before the state will be required to continue it.

The Mandates Regarding Screening and Discharge Planning do not Take into Account the Frequently Short Stays in a County Facility

The regulations were drafted to apply to the prison setting where individuals are typically stable upon arrival and where their length of stay is at least 1 year. Individuals booked into county detention facilities by contrast are often intoxicated or in crisis when they arrive and the great majority remain in custody for less than 48 hours. Some commentators have suggested adding short deadlines for things like the initial screening (e.g. within 4 hours of arrival) and comprehensive assessment (within 24 hours) but hard deadlines such as these are not always feasible in a detention setting where individuals are frequently under the influence or not medically stable on arrival and may be released before a comprehensive assessment is productive. The current language linking these tasks to the booking process without imposing firm deadlines that are better suited to facility specific policies and protocols is appropriate.

Reentry requirements while desirable are also not necessarily feasible in a county detention setting where the facility rarely knows when someone will be released. The ability of a county to provide comprehensive discharge planning will depend on length of stay. Not every detainee will be able to access this service.

Technical Suggestions

Replace “correctional” with “detention” in 8.325.12.12.C as that is the correct term for referring to county operated facilities.

Strike “OUD is a chronic condition from 8.325.12.7.N as it is not part of the definition.

Add a requirement that individuals be provided a 7 day script or medications in hand at release to serve as a bridge to community treatment.

Revise 8.325.12.9.A.1 to reflect the new SAMHSA regulations which provide that prisons and jails can dispense methadone without becoming a licensed opioid treatment program.

Expand 8.325.12.9F.(2)(c) to include recently approved OPVEE (Nalmefene) (or equivalent) opioid reversal agents and also vivitrol if regulation is intended to apply to alcohol use disorder as well.

Correct heading for 8.325.12.9.C from "MAD/MOUD Medications" to MAT/MOUD Medications."

Thank you for your consideration,



Grace Philips
General Counsel

