



DISABILITY RIGHTS NEW MEXICO

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Gary Housepian, Chief Executive Officer

Promoting and Protecting the Rights of Persons with Disabilities

By Email

Secretary Brent Earnest
New Mexico Human Services Department
P.O. Box 2348
Santa Fe, New Mexico 87504-2348
Email: madrules@state.nm.us

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

Dear Secretary Earnest:

Please accept this correspondence as Disability Rights New Mexico's comments on the above-referenced proposed revisions to Medicaid regulations. Disability Rights New Mexico ("DNM") is a federally-authorized nonprofit organization serving to protect, promote, and expand the legal rights of people with disabilities. We offer these comments and suggestions to clarify the impact of the above-referenced proposed regulations.

8.308.7.9(E)

The current regulations allow members to receive an award of retroactive MAD eligibility for up to two years. The proposed regulations would drastically reduce that period of retroactivity by 75%, to just six months. DRNM strongly opposes this proposed change. This draconian reduction in the potential period of retroactive eligibility is a significant threat to the financial livelihood of many potential applicants. Individuals experiencing significant medical issues may be unable to complete or endure the already onerous process of applying for Medicaid benefits. Any slight delay in beginning that process could leave the applicant with catastrophic medical bills and costs that could go uncovered. Many potential applicants will be discouraged from even seeking Medicaid coverage. Understandably, the stress and anxiety of dealing with significant medical bills, which undoubtedly would include collection efforts and legal actions, would have a severe negative effect on people already dealing with significant medical issues.

If there is to be a reduction in the period of retroactivity, certain groups should be exempted from any such reduction. Those groups should include (but not be limited to) pregnant women; children; those individuals leaving a correctional facility or institutional care and not enrolled in

Medicaid upon release; anyone who should have been enrolled in Real-Time eligibility but was missed by HSD; and anyone whose disability interfered with their earlier enrollment in Medicaid.

8.308.10.9(A)(1)

The proposed regulation would permit Managed Care Organizations (“MCO”) to delegate care coordination activities, either through a “full delegation model” or “share functions model.” This proposal will likely reduce the responsibility of the MCO to provide care coordination for their members, and place more of that responsibility on the member. If care coordination is delegated to several individuals, decisions on a member’s care are more likely to be subject to discussions and disputes by those individuals over who is responsible for each part of the member’s care. The proposed regulation would place additional layers of bureaucracy between a member and their care. Members with mental, behavioral, developmental, or intellectual disabilities are likely to be particularly affected by this proposal. In addition to bearing a greater share of the responsibility for ensuring that decisions are made and care is provided, the member also will be the only person suffering as a result of delays in treatment. This situation will be compounded if MCOs are permitted to delegate care coordination activities to outside organizations. When the MCO provides a single care coordinator who is the member’s point of contact for decisions and questions about care, it streamlines and simplifies the member’s ability to get information and establish continuous care.

8.308.12.18(G)

HSD proposes renaming the “homemaker services” provided under the Self-Directed Community Benefit services, to “Self-directed Personal Care Services.” Under the Agency-Based Community Benefit, one category of services available to participants is “personal care services.” See 8.308.12.13(J) NMAC. Under the Agency-Based Community Benefit, those “personal care services” are specifically and exhaustively described. They include seven categories of services for a member’s Activities of Daily Living (“ADLs”), and consist of many subcategories of specific activities to be performed as part of those personal care services.

Conversely, the Self-Directed Community Benefit program contains no such categories and no explicit, specific description of the activities to be performed. Already, MCOs and care coordinators erroneously conflate the two categories of services available under the Self-Directed Community Benefit and the Agency-Directed Community Benefit. As currently written, the regulations are clear: the “personal care services” provided under the Agency-Directed Community Benefit are distinct from the “homemaker services” provided under the Self-Directed Community Benefit. The proposal to rename “homemaker services” will only serve to further confuse the issue, and muddy the waters with respect to what care services are provided under the Self-Directed

Community Benefit. Instead of adding further confusion, the Department should leave the two programs with different services and abandon this proposed change.

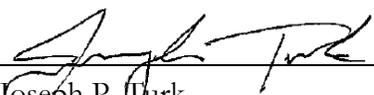
8.308.12.18(K) and (O)

DRNM vigorously opposes any imposition of a “cap” on the cost of any services, including but not limited to “related goods” and “startup goods” under the Community Benefit program. As an initial matter, any such cap likely violates the Americans with Disabilities Act (“ADA”) because it would discriminate against those with disabilities on their level of need. This proposed limit on the amount available for these services also violates Olmstead v. Zimring and its progeny. Olmstead, 527 U.S. 581 (1991). The Department provides neither a justification for limiting the cost of these services, nor a basis for capping them at the arbitrary amount of \$2,000.

Further, fixing a cap on these services would wholly fail to provide an individualized program of services as required under New Mexico and federal regulations. A cap would prevent a member’s comprehensive care plan from “meet[ing] that member’s long-term, physical, and behavioral health care needs.” 8.308.12.7(G) NMAC. There is no way a plan can meet each member’s individual needs if HSD prematurely places a cap on the value of those benefits. Similarly, federal regulations require that each member’s services “be sufficient in amount, duration, and scope to reasonably achieve its purpose.” 42 C.F.R. § 440.230(b). If services are subject to this cap, then the amount, duration, and scope of services will not be designed to meet the member’s need, but instead to meet an arbitrary and artificial amount in this proposed regulation.

Thank you for your consideration of these comments in advance of any action on the proposed regulations. If you have any questions or wish to discuss this matter further, please do not hesitate to contact our office.

Respectfully submitted,



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Disability Rights New Mexico