State of New Mexico
Human Services Department
HUMAN SERVICES REGISTER

I. DEPARTMENT
NEW MEXICO HUMAN SERVICES DEPARTMENT

II. SUBJECT
ASSERTIVE COMMUNITY TREATMENT SERVICES

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
PROPOSED RULES

V. BACKGROUND SUMMARY
The Human Services Department, Medical Assistance Division, is proposing amendments to 8.315.5 NMAC, Assertive Community Treatment (ACT) Services rules of minor revisions to clarify regulatory language and accuracy with existing regulations and provider participation agreements and opening up the type of providers that can render services. Specific policy changes are:

- Inserting specific licensing requirements, such as inserting on 8.315.5.10 (E)(1) at "least one (1) '**board certified or board eligible**' psychiatrist";
- Inserting "**at least one**" in 8.315.5.10.E (3-6) in ACT team composition to assure that ten to twelve members comprise the team; and
- The most significant change to language is allowing non-political subdivisions of the state of New Mexico to apply for reimbursement of services through Medicaid. Emphasis was made to tie policy to the ACT fidelity model as a way to ensure that SCT, as an evidence-based practice, was used instead of a hybrid ACT model.

VI. RULES
These proposed rule changes refer to 8.315.5 NMAC of the Medical Assistance Program Policy Manual. This register and the proposed changes are available on the Medical Assistance Division web site at www.hsd.state.nm.us/mad . If you do not have Internet access, a copy of the regulations may be requested by contacting the Medical Assistance Division at 505-827-3156.

VII. EFFECTIVE DATE
The Department proposes to implement these regulations effective June 1, 2008.

VIII. PUBLIC HEARING

A public hearing to receive testimony on these proposed regulations will be held at 9:00 a.m., on April 11, 2008, in the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico. Parking accessible to persons with physical impairments will be available.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Division toll free at 1-888-997-2583 and ask for extension 7-3156. In Santa Fe call 827-3156. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

IX. ADDRESS

Interested persons may address written or recorded comments to:

Pamela S. Hyde, J.D., Secretary
Human Services Department
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

These comments must be received no later than 5:00 p.n.., on April 11, 2008. Written and recorded comments will be given the same consideration as oral comments made at the public hearing. Interested persons may also address comments via electronic mail to: Magdalena.Romero@state.nm.us.

X. PUBLICATIONS

Publication of these regulations approved by:

PAMELA S. HYDE, J.D., SECRETARY
HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 315 OTHER LONG TERM CARE SERVICES
PART 5 ASSERTIVE COMMUNITY TREATMENT SERVICES

8.315.5.3 STATUTORY AUTHORITY: The New Mexico medicaid program [~~is~~] and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended and by [~~the state human services department pursuant to~~] state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991).
[8.315.5.3 NMAC - N, 10-1-05; A, 6-1-08]

8.315.5.6 OBJECTIVE: The objective of these regulations is to provide policies for the service portion of the New Mexico [~~medicaid program~~] medical assistance programs. [~~These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement~~.]
[8.315.5.6 NMAC - N, 10-1-05; A, 6-1-08]

8.315.5.8 MISSION STATEMENT: The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of [~~medicaid eligible individuals~~] eligible recipients by furnishing payment for quality health services at levels comparable to private health plans.
[8.315.5.8 NMAC - N, 10-1-05; A, 6-1-08]

8.315.5.9 ASSERTIVE COMMUNITY TREATMENT (ACT) SERVICES: [~~The New Mexico medicaid program (medicaid)~~] MAD pays for medically necessary health services furnished to eligible recipients. To help [~~New Mexico~~] eligible recipients receive necessary services, [~~the New Mexico medical assistance division (MAD)~~] MAD pays for covered professional and peer mental health services [42 CFR SS 440.40, 440.60(a) and 441.57]. [~~This part describes eligible providers, covered services, service limitations and general reimbursement methodology.~~]
[8.315.5.9 NMAC - N, 10-1-05; A, 6-1-08]

8.315.5.10 ELIGIBLE PROVIDERS: [~~Upon approval of New Mexico medical assistance program provider participation agreements by MAD, the following providers are eligible to be reimbursed for providing mental health peer and professional services.~~] Upon the approval of a New Mexico MAD provider participation agreement by MAD or its designee, a licensed practitioner or facility that meets applicable requirements is eligible to be reimbursed for furnishing covered services to an eligible program recipient. A provider must be enrolled before submitting a claim for payment to the appropriate MAD claims processing contractor. MAD makes available on the HSD/MAD website, on other program-specific, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. Once enrolled, a provider receives instructions on how to access these documents. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the manuals, billing and utilization review instructions, and other pertinent materials and to obtain answers to questions on or not covered by these materials. To be eligible for reimbursement, a provider is bound by the provisions of the MAD provider participation agreement.

A. [~~Political subdivisions of the state of New Mexico who have a contract with the medical assistance division to perform ACT. The provider must be able to contract with or employ qualified personnel to provide the service. The provider or the contractor must demonstrate compliance with administrative, financial, clinical, quality improvement and information services infrastructure standards established by the medical assistance division or be accredited by a national accrediting body for medical or behavioral health services providers~~.] The provider must demonstrate compliance with administrative, financial, clinical, quality improvement and information services infrastructure standards established by MAD or its designee, including compliance and outcomes consistent with the ACT fidelity model. *(See New Mexico Interagency Behavioral Health Service Requirement and Utilization for more specific guidance*.)

[~~B. Once enrolled, providers are advised as to where a packet of information, including medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from MAD can be obtained through internet access. Providers who do not have internet access are advised to contact MAD or its~~

~~designee to receive this information. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.~~]

[~~C~~] B. ACT services must be provided by an agency that includes a team of ten to twelve individuals. Each team must have a designated team leader. Individuals on this team shall have sufficient individual competence, professional qualifications and experience to provide service coordination; crisis assessment and intervention; symptom assessment and management; individual counseling and psychotherapy; prescription, administration, monitoring and documentation of medications; substance abuse treatment; work-related services; activities of daily living services; support services or direct assistance to ensure that individuals obtain the basic necessities of daily life; and education, support, and consultation to individuals' families and other major supports. The agency must coordinate their ACT services with local hospitals, local crises units, local law enforcement agencies, local behavioral health agencies and consider referrals from social service agencies.

[~~D~~] C. Each team staff member must successfully be certified as trained according to standards for ACT as developed [~~by the behavioral health services division of the New Mexico department of health~~] by HSD or its authorized agents. The approved training will focus on developing [~~staff's~~] staff competencies for delivering [~~assertive community treatment~~] ACT services according to the most recent ACT evidenced-based practices. Each ACT team shall have sufficient numbers of staff to provide treatment, rehabilitation, crisis and support services 24 hours a day, seven days per week.

[~~E~~] D. Each [~~assertive community treatment~~] ACT team shall have a staff-to-individual ratio in keeping with ACT evidence-based practice standards as approved by [~~the behavioral health services division of the New Mexico department of health~~] MAD or its designee.

[~~F: Each assertive community treatment team shall include at least one psychiatrist; two nurses, one of whom shall be a registered nurse; one other mental health professional; one substance abuse professional; one employment specialist; at least one peer provider; and one administrative staff person. The service recipient shall be considered a part of the team for decisions impacting his services.~~]

E. Each ACT team shall include:

(1) at least one board-certified or board-eligible psychiatrist;

(2) two licensed nurses, one of whom shall be a registered nurse;

(3) at least one other independently licensed mental health professional;

(4) at least one licensed substance abuse professional;

(5) at least one employment specialist;

(6) at least at least one certified peer provider;

(7) one administrative staff person; and

(8) the eligible recipient shall be considered apart of the team for decision impacting their services.

[8.315.5.10 NMAC - N, 10-1-05; A, 6-1-08]

8.315.5.11 PROVIDER RESPONSIBILITIES:

[~~A. Providers who furnish services to medicaid recipients must comply with all specified medicaid participation requirements. See 8.302.1 NMAC, *General Provider Policies*.~~

~~B. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance. See 8.302.1.12 NMAC for recipients whose medicaid coverage is restricted and 8.302.2.12 NMAC for dual eligible medicaid recipients.~~

~~C. Providers must maintain records that are sufficient to fully disclose the extent and medically necessary nature of the services provided to recipients. See 8.302.1 NMAC, *General Provider Policies*.~~] A provider who furnishes services to a medicaid or other health care program eligible recipient agrees to comply with all federal and state laws and regulations relevant to the provision of services as specified in the MAD provider participation agreement. A provider also agrees to conform to MAD program regulations and instructions as specified in this manual, its appendices and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or upcoding services.

[8.315.5.11 NMAC - N, 10-1-05; A, 6-1-08]

8.315.5.12 ELIGIBLE RECIPIENTS: [~~Assertive community treatment services are provided to individuals aged eighteen (18)~~]

A. ACT services are provided to individuals aged 18 and older who have a diagnosis of severe mental illness (including schizophrenia, schizoaffective disorder, bipolar disorder or psychotic depression) who have severe

problems completing activities of daily living, who have a significant history of involvement in behavioral health services, and who have experienced repeated hospitalizations [~~and/or~~] or incarcerations due to mental illness.

B. A co-occuring diagnosis of substance abuse shall not exclude an individual from eligibility for the program.

[8.315.5.12 NMAC - N, 10-1-05; A, 6-1-08]

8.315.5.13 COVERAGE CRITERIA:

A. [~~Medicaid~~] MAD covers medically necessary [~~assertive community treatment~~] ACT services required by the condition of the eligible recipient.

B. This culturally sensitive service, delivered by an appropriately constituted team, provides therapeutic interventions that address the functional problems associated with the most complex and/or pervasive conditions of the identified population. These interventions are strength-based and focused on promoting symptom stability; increasing the eligible recipient's ability to cope and relate to others; and enhancing the highest level of functioning in the community, including learning, working and recreation, and making informed choices.

C. Interventions may address adaptive skill areas such as: housing; school, work and training opportunities; daily activities; health and safety; medication support; harm reduction; money management and entitlements; promotion of individual recovery processes; relapse prevention; and service planning and coordination.

D. All services must be furnished within the limits of [~~medicaid~~] MAD benefits, within the scope and practice of the eligible provider's respective profession as defined by state law, and in accordance with applicable federal, state, and local laws and regulations.

E. The ACT therapy model is based on empirical data and evidence-based interventions that target specific behaviors with an individualized treatment plan. Specialized therapeutic and rehabilitative interventions falling within the fidelity mode of ACT are used to address specific areas of need, such as experiences of repeated hospitalization or incarcerations, severe problems completing activities of daily living and who have a significant history of involvement in behavioral health services.

[~~E.~~] F. **Medical necessity:** All services must be provided in compliance with the [~~medicaid~~] MAD definition of medical necessity as found in current [~~medicaid~~] MAD regulations.

[8.315.5.13 NMAC - N, 10-1-05; A, 6-1-08]

8.315.5.14 COVERED SERVICES:

A. [~~Assertive community treatment~~] ACT is a voluntary medical, comprehensive case management and psychosocial intervention program provided on the basis of the following principles:

(1) the service is available [~~twenty four~~] 24 hours a day, seven days a week;

(2) the service is provided by an interdisciplinary [~~team which may include trained personnel such as psychiatrists, nurses, nurse practitioners, case managers, master's level behavioral health professionals, qualified peer providers and clerical support staff;~~] ACT team that includes trained personnel as defined in Subsections D and E of 8.315.5.10 NMAC;

(3) an individualized treatment plan and supports are developed;

(4) at least 90% of services are delivered as community-based, non-office-based outreach services;

(5) an array of services are provided based on individual patient medical need;

(6) the service is consumer-directed;

(7) the service is recovery-oriented;

(8) the team maintains a low staff-to-patient ratio, following the ACT evidence-based model guidelines;

(9) mobilized crisis intervention is provided in various environments such as homes, schools, jails, homeless shelters, streets and other locations; and

(10) the team is not just a consortium of mental health specialists, but includes collaborative assessment and treatment planning for each service eligible recipient; cross-training of team members; daily team meetings; use of an open office format to promote team communication; and a team approach to each service eligible recipient's care and services; the team will assist the [~~individual~~] eligible recipient to access other appropriate services in the community that are not funded by[~~medicaid~~] MAD.

B. **Quality measurement:** Program success is evaluated based on outcomes which may include but are not limited to: improved engagement by [~~patients~~] eligible recipients in medical and social services; decreased rates of incarceration; decreased rates of hospitalization; decreased use of alcohol or illegal drugs; increased housing stability; increased relationships of [~~patients~~] eligible recipients with families; and increased employment; and increased attainment of goals self-identified by the service eligible recipient for his own life. Fidelity to the specific

evidence-based ACT service model will also be measured to assure that ACT, rather than some other form of intensive case management, is being provided.
[8.315.5.14 NMAC - N, 10-1-05; A, 6-1-08]

8.315.5.15 NONCOVERED SERVICES: ACT services are subject to the limitations and coverage restrictions that exist for other [~~medicaid~~] MAD services. See 8.301.3 NMAC, *General Noncovered Services*. No other psychiatric, mental health nursing, therapeutic, substance abuse or crisis services will be concurrently reimbursed for the ACT service eligible recipient except medically necessary medications and hospitalizations.
[8.315.5.15 NMAC - N, 10-1-05; A, 6-1-08]

8.315.5.16 PRIOR AUTHORIZATION AND UTILIZATION REVIEW: All [~~medicaid~~] MAD services are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. Once enrolled, providers receive instructions and documentation forms necessary for prior [~~approval~~] authorization and claims processing.

A. **Prior authorization:** Services or procedures require prior authorization from MAD or its designee. Services may be reviewed retrospectively. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process. See Subsection A of 8.311.2.16 NMAC, *Covered Emergency Services* [MAD-721.71].

B. **Eligibility determination:** Prior authorization of services does not guarantee that individuals are eligible for medicaid or other health care programs. Providers must verify that individuals are eligible for [~~medicaid~~] for a specific program at the time services are furnished and determine if [~~medicaid recipients have~~] the eligible recipient has other health insurance.

C. **Reconsideration:** Providers who disagree with prior authorization request denials or other review decisions can request a re-review and a reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953].
[8.315.5.16 NMAC - N, 10-1-05; A, 6-1-08]

8.315.5.17 REIMBURSEMENT:

A. ACT service providers must submit claims for reimbursement on the [~~HCFA-1500~~] HCFA/CMS claim form or its successor. See 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, providers receive instructions on documentation, billing, and claims processing.

B. Reimbursement to providers for covered services is made at the lesser of the following:

(1) the provider's billed charge; or

(2) the MAD fee schedule for the specific service or procedure for the provider, as established after considering cost data.

(a) The provider's billed charge must be their usual and customary charge for services.

(b) "Usual and customary charge" refers to the amount that the individual provider charges the general public in the majority of cases for a specific procedure or service.

C. ACT services must be provided directly to the eligible recipient by the treatment team members.
[8.315.5.17 NMAC - N, 10-1-05; A, 6-1-08]

HISTORY OF 8.315.5 NMAC: [RESERVED]