



State of New Mexico  
Human Services Department  
Human Services Register



**I. DEPARTMENT**

NEW MEXICO HUMAN SERVICES DEPARTMENT

**II. SUBJECT**

DEVELOPMENTAL DISABILITIES (DD) WAIVER CHANGES TO RESPITE SERVICE

**III. PROGRAM AFFECTED**

(TITLE XIX) MEDICAID

**IV. ACTION**

PROPOSED REGULATIONS

**V. BACKGROUND SUMMARY**

The proposed change will remove respite from the family living annual resource allocation (ARA) package. Waiver participants who are currently receiving family living services will no longer be able to receive respite services.

**VI. REGULATIONS**

These proposed regulation changes refer to Subsection C of 8.314.5.13 NMAC of the Medical Assistance Program Manual. This register and the proposed changes are available on the Medical Assistance Division web site at [www.hsd.state.nm.us/mad/registers/2010](http://www.hsd.state.nm.us/mad/registers/2010). If you do not have Internet access, a copy of the regulations may be requested by contacting the Medical Assistance Division at 827-3156.

**VII. EFFECTIVE DATE**

The Department proposes to implement these regulations effective April 1, 2011.

**VIII. PUBLIC HEARING**

A public hearing to receive testimony on these proposed regulations will be held at 9:00 a.m. on February 10, 2011 in the ASD conference room, Plaza San Miguel, 729 St. Michael's Drive, Santa Fe.

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.

Copies of all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

#### **IX. ADDRESS**

Interested persons may address written or recorded comments to:

Kathryn Falls, 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.m. on February 10, 2011. 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](mailto:Magdalena.Romero@state.nm.us).

#### **X. PUBLICATIONS**

Publication of these regulations approved by:

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KATHRYN FALLS, SECRETARY  
HUMAN SERVICES DEPARTMENT

Explanatory paragraph: This is an amendment to 8.314.5 NMAC, Section 13, which will be effective April 1, 2011. The Medical Assistance Division is amending Subsection C and Subparagraph (1) of Subsection G., striking the specific language that respite care services provided to individuals in family living may not be billed for the same time period as family living.

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 314 LONG TERM CARE SERVICES-WAIVERS**  
**PART 5 DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES WAIVER**

**8.314.5.13 COVERED WAIVER SERVICES:** This medicaid waiver covers the following services for a specified and limited number of waiver recipients as a cost effective alternative to institutionalization in an ICF-MR. The program is limited to the number of federally authorized unduplicated recipient (UDR) positions and program funding.

C. **Respite care services:** Respite is a flexible family support service. The primary purpose of respite is to provide support to the individual and give the primary, unpaid caregiver time away from their duties. The respite care provider assists the individual in activities of daily living to promote the individual's health and safety, as well as maintain a clean and safe environment. Respite will be scheduled as determined by the primary caregiver. Respite services can be included in the ISP with personal support, adult day habilitation, individual, group and customized supported employments, and community access as long as the services are not provided for the same hours of the same day with the exception of therapies and case management. Respite services cannot be provided for individuals receiving supported or independent living services. ~~[Respite may be provided to individuals in family living, but the service may not be billed for the same time period as family living.]~~ Respite may be provided in the client's own home, in a provider's home or in a community setting of the family's choice. Respite services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

G. **Community living services:** Community living services are intended to provide persons with the assistance and support needed in a home environment in order to increase or maintain an individual's capacity for independent functioning, self-determination, interdependence, productivity and integration in the community. Community living services are only available for individuals for whom no other residential or support options are clinically appropriate to meet the needs of the individual. Community living services must be justified by the IDT as the only service which can meet the needs of the individual.

(1) This service includes personal support, nutritional counseling and nursing supports and, therefore, personal support, nutritional counseling and private duty nursing services may not be included in an ISP for an individual receiving community living services. Respite services cannot be provided to individuals receiving supported or independent living services. ~~[Respite services may be provided to individuals in family living, but the service may not be billed for the same time period as family living.]~~ Room and board costs are reimbursed through the individual's SSI or other personal accounts and cannot be paid through the waiver service.  
[8.314.5.13 NMAC - Rp, 8.314.5.13 NMAC, 3-1-07; A, 4-1-11]