State of New Mexico
Human Services Department
Human Services Register

I. DEPARTMENT
NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

II. SUBJECT
MANAGED CARE PROGRAM RULE
8.308.15 NMAC, *Managed Care Program, Grievances and Appeals*

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
PROPOSED RULES

V. BACKGROUND SUMMARY
The Human Services Department through the Medical Assistance Division (MAD) is proposing to repeal and replace 8.308.15 NMAC, *Managed Care Program, Grievances and Appeals.*

The proposed replacement of 8.308.15 NMAC, *Managed Care Program, Grievances and Appeals*, has the following changes:

- Definitions for *administrative law judge*, *MAP*, *MAD*, *MCO*, *MCO appeal final decision*, *member* and *notice of action* have been added. Definitions for *HSD* and *Notice* have been deleted.
- Language has been added for clarity and consistency to the definitions for *adverse action*, *appeal*, *authorized representative* and *HSD administrative hearing*.
- Information on *MCO Member Grievance Process*, located in Section 12, has been further clarified and *General Information on a Member Appeal* has been separated and placed in Section 13. The *MCO Member Appeals Process*, Section 15, has been edited for clarity and now includes information on HSD Administrative Hearings.
- *General Information on a Contracted MCO Provider Appeal* has been added in Section 13.
- *Expedited Member Appeal Process* has been added in Section 16.

VI. RULES
These proposed rule will be contained in 8.308.15 NMAC. This register and the proposed rule is available on the MAD website at http://www.hsd.state.nm.us/mad/registers/2013. If you do not

have internet access, a copy of the proposed rule may be requested by contacting MAD at 505-827-3152.

VII. EFFECTIVE DATE

The Department proposes to implement this rule effective May 30, 2014.

VIII. PUBLIC HEARING

A public hearing to receive testimony on these proposed rules will be held at the South Park Conference Room, 2055 Pacheco, Santa Fe, NM on Wednesday, May 7, 2014 at 1:00 p.m.

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 MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe, call 827-3152. 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 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available on May 15, 2014 by MAD 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:

Sidonie Squier, Secretary
Human Services Department
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

These comments must be received no later than 5 p.m. on Wednesday, May 7, 2014. Written and recorded comments will be given the same consideration as testimony made at the public hearing. Interested persons may address comments via telephone to 505-827-3152 or via electronic mail to: Emily.Floyd@state.nm.us.

X. PUBLICATION

Publication of these rules approved by:

SIDONIE SQUIER, SECRETARY
HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 308 MANAGED CARE PROGRAM
PART 15 GRIEVANCES AND APPEALS

8.308.15.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.308.15.1 NMAC - Rp, 8.308.15.1 NMAC, 5-30-14]

8.308.15.2 SCOPE: This rule applies to the general public.
[8.308.15.2 NMAC - Rp, 8.308.15.2 NMAC, 5-30-14]

8.308.15.3 STATUTORY AUTHORITY: The New Mexico medicaid program 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 or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.308.15.3 NMAC - Rp, 8.308.15.3 NMAC, 5-30-14]

8.308.15.4 DURATION: Permanent.
[8.308.15.4 NMAC - Rp, 8.308.15.4 NMAC, 5-30-14]

8.308.15.5 EFFECTIVE DATE: May 30, 2014, unless a later date is cited at the end of a section.
[8.308.15.5 NMAC - Rp, 8.308.15.5 NMAC, 5-30-14]

8.308.15.6 OBJECTIVE: The objective of this rule is to provide instructions for the service portion of the New Mexico medical assistance division programs.
[8.308.15.6 NMAC - Rp, 8.308.15.6 NMAC, 5-30-14]

8.308.15.7 DEFINITIONS:

A. "Administrative law judge (ALJ)" means the hearing officer appointed by the HSD fair hearings bureau (FHB) to oversee the claimant's administrative hearing process, to produce an evidentiary record and render a recommendation to the medical assistance division director.

B. "Appeal" means:

(1) the process open to a managed care organization's member when his or her managed care organization (MCO) has taken, or intends to take, an adverse action related to the member's benefits or services; or

(2) a provider requested review by the MCO of his or her payment.

C. "Authorized representative" means the individual designated to represent and act on the claimant's behalf during the appeal process. The claimant or authorized representative must provide formal documentation authorizing the named individual or individuals to access the indentified case information for a specified purpose and time frame. An authorized representative may be an attorney representing a person or household, a person acting under the authority of a valid power of attorney, a guardian ad litem, or any other individual or individuals designated in writing by the claimant.

D. "Grievance" means an expression of dissatisfaction by a member or contracted provider about any matter or aspect of the MCO or its operation with the exception of the MCO's notice of action and the member's appeal of an intended or taken adverse action.

E. "HSD administrative hearing" or "fair hearing" means a HSD administrative hearing which is an informal evidentiary hearing conducted by the HSD fair hearings bureau (FHB) so that evidence may be presented as it relates to an adverse action taken, or intended to be taken, by the MCO. A member may request a HSD administrative hearing only after exhausting his or her MCO appeal process.

F. "MAD" means the medical assistance division, which administers medicaid and other medical assistance programs under HSD.

G. "MAP" means the medical assistance programs administered under MAD.

H. "MCO" means the member's HSD contracted managed care organization.

I. "MCO appeal decision" means the MCO's final decision regarding a member's appealed adverse action it intends to take or has taken against its member.

J. "Member" means a MAP eligible recipient enrolled in a HSD contracted MCO; a member becomes a claimant after exhausting the MCO's appeal process and, being dissatisfied with the MCO's appeal final decision, requests a HSD administrative hearing.

K. "Notice of action" means the notice issued by an MCO that must be sent 10 calendar days prior to the date of the intended adverse action as outlined in Section B of 8.308.15.10 NMAC.
[8.308.15.7 NMAC - Rp, 8.308.15.7 NMAC, 5-30-14]

8.308.15.8 MISSION STATEMENT: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.308.15.8 NMAC - Rp, 8.308.15.8 NMAC, 5-30-14]

8.308.15.9 GENERAL REQUIREMENTS: The HSD MCO shall have a grievance system in place for its members and providers to express dissatisfaction about any matter or aspect of the MCO operation. The MCO shall have an appeal system in place that meets the requirements of 42 CFR Section 438 Subpart F to dispute adverse actions taken or intended to be taken by the MCO against its members.
[8.308.15.9 NMAC - Rp, 8.308.15.9 NMAC, 5-30-14]

8.308.15.10 GENERAL INFORMATION ON A CONTRACTED MCO PROVIDER GRIEVANCE:

A. Upon a provider's contracting with the MCO, the MCO shall provide, at no cost, a written description of its grievance procedure and process to the provider. The MCO will update each of its providers with any changes to these procedures and processes. The description shall include:

(1) information on how the provider can file a MCO grievance and the resolution process;

(2) time frames for each step of the grievance process through its final resolution; and

(3) a description of how the MCO provider's grievance is resolved.

B. A contracted MCO provider shall have the right to file a grievance with his or her MCO to express dissatisfaction about any matter or aspect of the MCO's operation. The provider may file the grievance either orally or in writing in accordance with his or her MCO's procedures and processes.
[8.308.15.10 NMAC - Rp, 8.308.15.10 NMAC, 5-30-14]

8.308.15.11 GENERAL INFORMATION ON MEMBER GRIEVANCES:

A. Upon a member's enrollment, the MCO shall provide, at no cost, a written description of its grievance procedures and processes. The MCO will promptly provide each member with any changes to these procedures and processes. The description shall include:

(1) information on how the member can file a MCO grievance and the resolution process;

(2) timeframes for each step of the grievance process through its final resolution; and

(3) a description of how the member's grievance is resolved.

B. Member rights:

(1) A member shall have the right to file a grievance with his or her MCO to express dissatisfaction about any matter or aspect of his or her MCO's operation; the member may file the grievance either orally or in writing in accordance with his or her MCO's procedures and processes. The member must file the grievance within 30 calendar days of the occurrence of the event for which the member wishes to register his or her dissatisfaction.

(2) The member's MCO will provide him or her with its resolution to the member's grievance.

C. The following individuals may file a MCO grievance on behalf of a member:

(1) the member's authorized representative; or

(2) the member or the member's authorized representative may also choose a relative, friend or other spokesperson to represent or assist him or her through the MCO grievance process with or without designating that spokesperson with the right to make decisions on his or her behalf. A member or member's authorized representative will provide the MCO a signed release-of-information in order for a designated spokesperson to assist or represent the member or the member's authorized representative during the MCO's grievance process.

D. A member or the member's representative may have legal counsel assist him or her during the MCO grievance process.
[8.308.15.11 NMAC - Rp, 8.308.15.10 NMAC, 5-30-14]

8.308.15.12 MCO MEMBER GRIEVANCE PROCESS:

A. The MCO shall provide reasonable member assistance in completing forms and procedural steps, including but not limited to:

(1) providing interpreter services; and

(2) providing toll-free numbers that have adequate TTY/TTD and interpreter capability.

B. The MCO shall designate a specific employee as its member grievance coordinator with the authority to:

(1) administer the policies and procedures for resolution of a grievance; and

(2) review patterns and trends in grievances and initiate corrective action.

C. The MCO shall ensure that the individuals who make decisions related to grievances are not involved in any previous level of review or decision-making as to the matter that is grieved.

D. The MCO shall provide the member with written notice:

(1) when a grievance request has been received;

(2) of the expected date of resolution; and

(3) of the final resolution of the grievance.

E. The MCO shall ensure that punitive or retaliatory action is not taken against any member that files a grievance, or a provider that supports the member's grievance.

[8.308.15.12 NMAC - Rp, 8.308.15.12 NMAC & 8.308.15.13 NMAC, 5-30-14]

8.308.15.13 GENERAL INFORMATION ON A CONTRACTED MCO PROVIDER APPEAL:

A. Upon contracting with the MCO, the MCO shall provide, at no cost, a written description of its appeal procedure and process to the provider. The MCO will update each of its providers with any changes to these procedures and processes. The description shall include:

(1) information on how the provider can file a MCO appeal and the resolution process;

(2) time frames for each step of the appeal process through its final resolution; and

(3) a description of how the MCO provider's appeal is resolved.

B. Provider rights and limitations:

(1) A provider may file an appeal either orally or in writing in accordance with the MCO's procedures and processes.

(2) A provider shall have the right to file an appeal with the MCO related to the provider's payment.

(3) A provider may act as a spokesperson for a member during the member's MCO appeal process; however, the provider who is also the spokesperson may not file an appeal on his or her own concerning an adverse action intended or taken against a member; that remains the sole responsibility of the member or the member's authorized representative.

(4) The MCO shall ensure that punitive or retaliatory action is not taken against any provider that files a grievance.

(5) A MCO provider does not have the right to request a HSD administrative hearing following the MCO appeal decision.

[8.308.15.13 NMAC - Rp, 8.308.15.10 NMAC, 5-30-14]

8.308.15.14 GENERAL INFORMATION ON A MEMBER APPEAL:

A. Any of the following actions by an MCO constitute an adverse action for which a member may request a MCO appeal:

(1) the denial or reduction by MAD, its UR contractor, or a MCO of an authorized service or item, including level of care (with the exception of a MCO value-added service);

(2) the denial in whole or in part of a member's provider claim by the MCO which results in the member becoming liable for payment of all or part of the claim;

(3) the failure of the MCO to approve a service or item in a timely manner;

(4) the failure of the MCO to act on an appeal within the timeframes specified in 42 CFR Section 438.408 (b);

(5) a determination that a member be transferred or discharged; or

(6) the belief of a member or his or her authorized representative that the MCO's preadmission or annual resident review (PASRR) requirements determination is erroneous; when a claimant requests a HSD administrative hearing due to an adverse PASRR determination the parties to the hearing will comply with 8.354.2 NMAC in place of this rule.

B. Upon the member's enrollment, the MCO shall provide, at no cost, a written description of its appeal procedures and processes; the MCO will promptly provide each member with any changes to these procedures and processes; the description shall include:

(1) information on how the member can file a MCO appeal and the resolution process;

(2) information of the member's right to file a request for a HSD administrative hearing if the member is appealing the MCO's appeal decision;

(3) timeframes for each step of the appeal process through its final resolution; and

(4) a description of how the member's appeal is resolved.

C. Member rights:

(1) A member shall have the right to file an appeal with the MCO within 90 calendar days of receiving a notice of action of an intended or taken adverse action.

(2) The member's MCO will provide him or her with its decision of an appealed adverse action.

(3) A member shall have the right to request a HSD administrative hearing after the member has exhausted his or her MCO appeal process; see 8.352.2 NMAC for information on the HSD administrative hearing process.

(4) A member requesting a HSD administrative hearing must do so within 30 calendar days of the date of the letter that contains the MCO's appeal final decision.

D. A member or the member's authorized representative may have legal counsel assist him or her during the MCO appeal process.

[8.308.15.14 NMAC - Rp, 8.308.15.13 NMAC, 5-30-14]

8.308.15.15 MCO MEMBER APPEAL PROCESS:

A. The MCO shall provide reasonable member assistance in completing forms and procedural steps, including but not limited to:

(1) providing interpreter services; and

(2) providing toll-free numbers that have adequate TTY/TTD and interpreter capability.

B. The MCO shall designate a specific employee or subcontractor as its member or provider appeal coordinator with the authority to:

(1) administer the policies and procedures for resolution of an appeal; and

(2) review patterns and trends in appeals and initiate corrective action.

C. The MCO shall ensure that the individuals who make decisions on an appeal are not involved in any previous level of review or decision-making.

D. The MCO shall provide the member with written notices:

(1) when an appeal request has been received;

(2) of the expected date of resolution; and

(3) of the MCO appeal decision.

E. The MCO shall provide the member with a notice of action for decisions related to:

(1) previously authorized services as permitted under 42 CFR Sections 431.213 and 431.214;

(2) newly requested services; and

(3) denials of claims that may result in the member becoming financially liable.

F. A member may request from the MCO a continuation of his or her benefit during the member's MCO appeal. The MCO and member must follow the provisions of 42 CFR Section 438.420 regarding the continuation of the benefit that is the subject of the appeal during his or her MCO appeal and HSD administrative hearing processes.

(1) If the MCO reverses the appealed adverse action and the disputed benefit was not furnished during the MCO appeal process, the MCO shall authorize or provide the disputed benefit promptly and as expeditiously as the member's health condition requires.

(2) If the MCO appeal decision upholds the MCO's action, the MCO may recover from the member the cost of the continued benefit furnished during the MCO appeal process, providing the member was advised that he or she could be responsible for cost of the benefit as part of the information provided to the member; see 8.352.2 NMAC outlining the MCO recovery process. If the member requests a HSD administrative hearing, the MCO will not take action to recover the costs of the continued benefit until there is an HSD administrative hearing final decision.

(3) If the member is a party to an HSD administrative hearing and the HSD administrative hearing final decision reverses the MCO's appeal decision and the member received the disputed benefit during the MCO appeal and the HSD administrative hearing processes, the MCO may not recover any of the cost of a continued benefit.

(4) If the member is a party to a HSD administrative hearing and the HSD administrative hearing final decision upholds the MCO's appeal decision, the MCO may recover from the member the cost of the benefit furnished during the MCO appeal process and the HSD administrative hearing process, providing the member was advised that he or she could be responsible for cost of the benefit as part of the information provided to the member; see 8.352.2 NMAC outlining the MCO recovery process.

G. The MCO shall ensure that health care professionals with appropriate clinical expertise make decisions for the following:

(1) an appeal that involves clinical issues;

(2) an appeal of a MCO denial that is based on lack of medical necessity; and

(3) the MCO's denial that is upheld in an expedited resolution.

[8.308.15.15 NMAC - Rp, 8.308.15.13 NMAC, 5-30-14]

8.308.15.16 EXPEDITED MEMBER APPEAL PROCESS: The MCO shall establish and maintain an expedited review process for appeals when the MCO determines that allowing the time for a standard resolution could seriously jeopardize the member's life, health; or his or her ability to attain, maintain, or regain maximum function. A member or the MCO may request an expedited MCO appeal process in cases involving a member's health, safety, or service availability issues. The request must be made in writing to the member's MCO; the reasons why an expedited MCO appeal process is necessary must be stated in detail in the request.

A. When the MCO determines that allowing the time for a standard resolution could seriously jeopardize the member's life, health; or his or her ability to attain, maintain, or regain maximum function, the MCO shall automatically file an appeal on behalf of the member, continue the benefit, give the member oral notice of the automatic appeal, and use its best effort to involve the member in the expedited appeal process; a continuation of benefits until an appeal decision is rendered by the MCO under this type of appeal is not subject to MCO recoupment for the continuation of benefits.

B. If the MCO denies the member's request for an expedited MCO appeal process, the member may then request a HSD expedited administrative hearing regarding the issue of an expedited appeal process; the granting of an expedited HSD administrative hearing is at the discretion of the HSD FHB ALJ.

C. If the ALJ grants the member the right to a MCO expedited appeal process, the MCO will follow its procedures and processes to comply with the ALJ decision.

D. If the ALJ upholds the MCO's denial of an expedited MCO appeal process, the member must exhaust his or her MCO's appeal process before requesting an HSD administrative hearing.

E. The MCO shall ensure that punitive or retaliatory action is not taken against a member that files an appeal or a provider that supports a member's appeal.

[8.308.15.16 NMAC - N, 5-30-14]

HISTORY OF 8.308.15 NMAC:

History of Repealed Material:

8.308.15 NMAC, Grievances and Appeals, Filed 1-31-14 - Repealed effective, 5-30-14.