



State of New Mexico  
Human Services Department  
**Human Services Register**



**I. DEPARTMENT**

NEW MEXICO HUMAN SERVICES DEPARTMENT

**II. SUBJECT**

**8.308.6** NMAC, MANAGED CARE PROGRAM, MANAGED CARE ORGANIZATION (MCO) ENROLLMENT

**8.308.7** NMAC, MANAGED CARE PROGRAM, ENROLLMENT AND DISENROLLMENT

**8.310.2** NMAC, HEALTH CARE PROFESSIONAL SERVICES, GENERAL BENEFIT DESCRIPTION

**8.321.2** NMAC, SPECIALIZED BEHAVIORAL HEALTH SERVICES, SPECIALIZED BEHAVIORAL HEALTH PROVIDER ENROLLMENT AND REIMBURSEMENT

**III. PROGRAM AFFECTED**

(TITLE XIX) MEDICAID

**IV. ACTION**

FINAL RULES

**V. BACKGROUND SUMMARY**

The New Mexico Human Services Register Volume 44, Register 05, dated March 9, 2021, issued the proposed New Mexico Administrative Code (NMAC) rules, 8.308.6 NMAC, *Managed Care Program, Managed Care Organization (MCO) Enrollment*, 8.308.7 NMAC, *Managed Care Program, Enrollment and Disenrollment*, 8.310.2 NMAC, *Health Care Professional Services, General Benefit Description*, and 8.321.2 NMAC, *Specialized Behavioral Health Services, Specialized Behavioral Health Provider Enrollment and Reimbursement*.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: March 9, 2021

Hearing Date: April 8, 2021

Adoption Date: August 1, 2021

Technical Citations: (42 CFR §438.12, 42 CFR §438.14, 42 CFR §438.214)

A public hearing was held on April 8, 2021 to receive public comments and testimony on these proposed rules. For 8.321.2 NMAC, Specialized Behavioral Health Services, the Human Services Department (the Department) received 30 written comments, two of which were also submitted verbally. For 8.310.2 NMAC, Health Care Professional Services, General Benefit Description, the Human Services Department received 6 written comments, two of which were also submitted verbally. There were no written or verbal comments received for 8.308.6 or 8.308.7 NMAC. These rules are being implemented as proposed, except as noted below.

## **Summary of Comments and Responses**

### **8.308.6.10 NMAC**

#### **Subsection C – Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)**

The reference to 60 days was changed to “within two months” in the final rule because managed care enrollment is month to month. The revised sentence in the final rule is “when an ICF/IID resident is discharged, enrollment into managed care will begin *within two months* following discharge”. This change allows for earlier enrollment into managed care and accounts for managed care enrollment beginning at the beginning of a month.

### **8.310.2.12 NMAC**

#### **Subsection M – Telehealth Services**

A comment was received about the home of an individual for the treatment of substance use disorder or a co-occurring mental health disorder with a substance use disorder diagnosis stating that it suggests that mental health disorder can be treated at home only if it co-occurs with substance use.

**Department Response:** This is correct for (xii); however, (xiii) allows use of the home of an individual when an interactive audio and video telecommunication system that permits real-time visit is used between the eligible provider and medical assistance programs (MAP) eligible recipient. This includes behavioral health services.

A comment was received seeking clarification on how a provider knows if they are eligible to provide telephonic services and/or if their services are eligible for store and forward reimbursement.

**Department Response:** To be eligible for reimbursement under store and forward, the service must be provided through the transference of digital images, sounds, or previously recorded video from one location to another as stated in Paragraph (3) of Subsection M of 8.310.2.12 NMAC. New Mexico Medicaid pays for covered services rendered by an approved Medicaid provider whose scope of licensure allows the service to be rendered. Such covered services may be reimbursed when delivered via telehealth when the provider has met all licensure board

requirements to use telehealth for the service and follows our billing requirements for claim submission.

A comment was received that questioned whether reimbursement is made for providing the interactive system that the client uses in the home, if the home is the originating site. The commenter also questioned whether the client would be reimbursed for their computer/internet.

**Department Response:** Reimbursement is made to the originating-site for a real-time interactive audio/video technology telemedicine system fee where the MAP eligible recipient is located, if another eligible provider accompanies the patient. If the originating site is the patient's home, the originating site fee should not be billed if the eligible provider does not accompany the MAP eligible recipient. The MAP eligible recipient is not reimbursed for their computer/internet.

A comment was received about having school-based health centers and school nursing offices as allowed originating sites.

**Department Response:** The Department agrees that School-based health centers can be included. The Department has noted the suggestion to add school nursing offices and will continue to review this recommendation further. The section has been revised to include: "A School Based Health Center (SBHC) as defined by section 2110(c)(9) of the Act."

A comment was received about adding guidance for adolescent Screening, Brief Intervention and Referral to Treatment (SBIRT) and broadening the approved training and screening options.

**Department Response:** Behavioral Health Services Division (BHSD) and Medical Assistance Division (MAD) are in the process of revising the SBIRT training process and developing an SBIRT policy manual that will address these topics.

### **8.321.2 NMAC**

Five comments were received related to the Department's decision to remove lists of eligible provider types from several sections of the rule (Sections 15, 17, 18, 19, 22, 25, 26, 32, and 33).

**Department Response:** Removing the lists does not mean the provider types listed are now ineligible to provide the services. Rather, it opens each of these services to any provider with the appropriate credentials, training and staff, a standard already required by Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements. More details about requirements for each service can be found in the Behavioral Health Policy and Billing Manual.

## **Section 9 – General Provider Instruction**

### **Subsection C**

The proposed language adds licensed professional art therapists (LPATs) to the list of independently licensed providers eligible for direct reimbursement in Subsection C of 8.321.2.9 NMAC. A comment was received asking if existing LPATs will be grandfathered in without

testing or certification.

**Department Response:** LPATs will not be grandfathered in without testing or certification. To be eligible for Medicaid reimbursement, LPATs need to have a current license and Art Therapy Credentials Board (ATCB) certification, and practice within their scope.

A comment was received regarding the addition of School Based Health Centers (SBHC) to the list of provider types that are eligible for supervisory certification in Subsection D of 8.321.2.9 NMAC. The comment suggested the rule change had not extended far enough to include the variety of specific provider types a SBHC might be enrolled under.

**Department Response:** Detailed guidance about supervisory certification is found in the Behavioral Health Policy and Billing Manual. The 2021 version (pending) of the Manual responds to this concern by adding SBHC provider type 321 to those provider types that are eligible for supervisory certification. Accordingly, the new NMAC language will stand.

Two comments were received asking that Subsection E of 8.321.2.9 NMAC be further clarified as to which provider agencies must have supervisory certification from the Behavioral Health Services Division (BHSD) in order to receive reimbursement for services provided by non-independently licensed practitioners.

**Department Response:** The language in this section has been revised for clarity. It now reads: “A behavioral health service rendered by a licensed practitioner listed in Paragraph (2) of Subsection E of 8.321.2.9 NMAC whose scope of licensure does not allow him or her to practice independently or a non-licensed practitioner listed in Paragraph (3) of Subsection E of 8.321.2.9 NMAC is covered to the same extent as if rendered by a practitioner licensed for independent practice, when the supervisory requirements are met consistent with the practitioner’s licensing board within his or her scope of practice and the service is provided through and billed by one of the provider’s agencies listed in numbers one through nine of Subsection D of 8.321.2.9 NMAC, or when a provider agency listed in numbers 10 through 14 of Subsection D of 8.321.2.9 NMAC has a BHSD supervisory certificate.”

A comment was received noting the Department had been inconsistent when removing the reference to provisional or temporary licenses.

**Department Response:** The Department agrees one reference was overlooked in Subsection E of 8.321.2.9 NMAC; the language “which is not provisional or temporary” has been removed.

Two comments were received regarding the addition of language in Subsection N of 8.321.2.9 NMAC requiring specialized behavioral health services be delivered in the least restrictive settings. Comments asked for a single definition of this term and for a defined method for providers to document that a setting is least restrictive.

**Department Response:** This language adds an important protection for behavioral health clients. Each situation reflects a unique match between setting, services and client. Providers are expected to use their clinical judgment and document their reasoning and decisions through the assessment and the treatment plan.

A comment was received questioning in Subsection J of 8.321.2.9 NMAC whether it is always appropriate for a very young child to participate in all interdisciplinary teaming meetings.

**Department Response:** Providers should use clinical judgment when determining whether teaming is appropriate for a client. This section of the rule was not changed during this revision. The comment has been noted, at this time the language will stand.

### **Section 10 – Adult Accredited Residential Treatment Center (AARTC)**

A comment was received asking for additional clarification on American Society of Addiction Medicine (ASAM) levels 3.2 and 3.7, referred to in Section 10 and Section 20 of 8.321.2 NMAC.

**Department Response:** These are both withdrawal management levels of care and are covered Medicaid benefits. Please see the Behavioral Health Policy and Billing Manual for more detailed information on the ASAM levels.

### **Section 11 - Accredited Residential Treatment Center for Youth**

A comment was received requesting removal of the phrase “as a last resort based on public safety” from 8.321.2.11 NMAC, which covers Accredited Residential Treatment Centers for youth.

**Department Response:** This language follows the Children's Code. The comment has been noted, at this time the language will stand.

### **Section 18 – Comprehensive Community Support Services**

A comment was received asking whether some provider agencies will still be permitted to provide the training required for Comprehensive Community Support Services (CCSS).

**Department Response:** There was no change to this portion of the rule, and there will be no change to the current process that allows experienced CCSS provider agencies to conduct annual (not initial) trainings for their own staff with BHSD approval.

A comment was received regarding community support workers (CSW) who have Masters Degrees (Paragraph (2) of Subsection A of 8.321.2.18 NMAC).

**Department Response:** No change was made to this section. The code and modifier for Masters Level CSWs are still available.

### **Section 19 – Crisis Intervention Services**

A comment was received noting inconsistent language in a listing of practitioners eligible to deliver telephone crisis services.

**Department Response:** The Department agrees the current language appears inconsistent; the section has been revised to appropriately align the language. The reference “Independently licensed BH practitioner” has been removed and (b) has been revised to read: “Non-independently licensed practitioner must be supervised by a (i) licensed independent behavioral health practitioner; or (ii) behavioral health clinical nurse specialist; or (iii) psychiatric certified nurse practitioner; or (iv) psychiatrist.”

### **Section 32 – Psychosocial Rehabilitation Services (PSR)**

A comment was received asking for clarification of the language regarding prior authorization for PSR.

**Department Response:** The Department agrees the language could be clearer; the section has been revised to read: “No prior authorization is required, but reviews for medical necessity may be conducted retrospectively. For a retrospective review, the following factors are considered: (1) recipient assessment; (2) recipient diagnostic formation; (3) recipient service and treatment plans; and (4) compliance with 8.321.2 NMAC.”

### **Section 33 – Recovery Services**

A comment was received expressing concern that because the LPAT is not included in the list of license types offered as an example of independently licensed practitioners who can deliver recovery services, LPATs are being excluded from delivering the service.

**Department Response:** The list of provider types is not exhaustive and LPATs are not excluded by not being mentioned; however, to avoid confusion, they have been added to the list.

### **Section 34 - Screening, Brief Intervention and Referral to Treatment (SBIRT)**

A comment was received about training and certification for providers delivering SBIRT.

**Department Response:** BHSD and MAD are in the process of revising the SBIRT training process and developing an SBIRT policy manual that will address training and certification for providers delivering SBIRT.

### **Comments that have been noted but not responded to:**

Additional comments were received about portions of Sections 9, 13, 16, 18, 19, 22, 28, and 34 that were not changed during this revision. As such, no changes can be made as a result of this public comment period. These comments have been noted for possible future rule revisions. At this time, the existing NMAC language will stand.

### **VI. RULES**

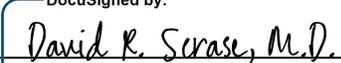
These amendments will be contained in NMAC rules 8.308.6, 8.308.7, 8.310.2 and 8.321.2. The final register and rule languages are available on the HSD website at: <https://www.hsd.state.nm.us/lookingforinformation/registers/> and <https://www.hsd.state.nm.us/lookingforinformation/medical-assistance-division-1/>. If you do not have internet access, a copy of the final register and rules may be requested by contacting the Medical Assistance Division at (505) 827-1337.

### **VII. EFFECTIVE DATE**

These rules will have an effective date of August 1, 2021.

### **VIII. PUBLICATION**

Publication of these rules approved by:

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DAVID R. SCRASE, M.D., SECRETARY  
HUMAN SERVICES DEPARTMENT