State of New Mexico
Human Services Department
Human Services Register

I. DEPARTMENT
NEW MEXICO HUMAN SERVICES DEPARTMENT

II. SUBJECT
8.280.500 NMAC, PACE, INCOME AND RESOURCE STANDARDS
8.281.400 NMAC, INSTITUTIONAL CARE, RECIPIENT POLICIES
8.281.500 NMAC, INSTITUTIONAL CARE, INCOME AND RESOURCE STANDARDS

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
FINAL RULES

V. BACKGROUND SUMMARY

The New Mexico Human Services Register Volume 45, Register 10, dated June 17, 2022, issued the proposed New Mexico Administrative Code (NMAC) rules *8.280.500 NMAC, PACE, Income and Resource Standards, 8.281.400 NMAC, Institutional Care, Recipient Policies, and 8.281.500 NMAC, Institutional Care, Income and Resource Standards.*

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: June 21, 2022
Hearing Date: July 22, 2022
Adoption Date: December 1, 2022
Technical Citations: 42 CFR 435.725(c)(4)

A public hearing was held on July 22, 2022, to receive public comments and testimony on these proposed rules. The Human Services Department (the Department) did not receive any public written or oral comments. These rules are being implemented as proposed for 8.280.500 and 8.281.400 with some revisions to 8.281.500 NMAC based on comments received from the Centers for Medicare and Medicaid Services (CMS) that were incorporated into the final rule.

The proposed changes to 8.281.500 NMAC implement a deduction from the Post Eligibility Treatment of Income (PETI) calculation to include reasonable limits on amounts for necessary

medical or remedial care not covered under Medicaid. The proposed rules allowed for a deduction for non-covered medical or remedial care expenses no more than three months prior to the month of an "approved Institutional Care Medicaid application." The language is being changed to "the current application" to make it clear that it is the most recent application.

The proposed rule stated that deductions allowed for "non-covered expenses must be prescribed by a medical professional (e.g., a physician, dentist, or optometrist etc.)". CMS commented that "medical professional" was not clear and needed to consider who is allowed to provide services as outlined in state law. To address this comment the final rule states that the expense must be for medically necessary medical or remedial care "rendered to the applicant or beneficiary and prescribed by a health care practitioner acting within their scope of practice who meet the qualifications of an eligible Medicaid provider as listed in the Professional Providers, Services, and Reimbursement section found at 8.310.3.9 NMAC, even if such practitioner is not a Medicaid provider."

The proposed rule stated that deductions can be made for routine and emergency dental services, hearing aids/eyeglasses and necessary related services, and institutional long-term care medical expenses. Specific services were removed and a statement was added that states "for expenses not covered under the State Plan or expenses covered under the State Plan, but not paid for by Medicaid, the amount of the deduction is the billed amount not to exceed the provider's usual and customary charges except for unpaid nursing facility expenses." The revised language is less restrictive than the proposed language allowing for most unpaid services to be deducted from the PETI calculation. Furthermore, a reasonable limit is added limiting the amount to the billed amount not to exceed the provider's usual and customary charges.

With respect to unpaid nursing facility services, a reasonable limit was added that states: "Deductions are allowed at an amount not to exceed the average monthly private rate of nursing facility services, as used to calculate asset transfer penalties and which is updated annually in the Resource Standards section found at 8.200.510.13 or a prorated amount of this figure, for unpaid nursing facility services that are for less than a full month."

The following three expenses not allowed as deductions from the PETI calculation were removed from the final rule per CMS comment:
1) Expenses resulting from the failure to obtain prior approval from applicable private insurance, Medicare, or Medicaid.
2) Expenses when a third party (including Medicaid) is liable for the expenses, even if provided by an out-of-network provider.
3) General health insurance premiums paid by someone other than the recipient (excluding the community spouse) who is not a financially responsible relative and repayment is not expected to be paid back to the third party by the recipient.

The expense not allowed as a deduction for "procedures allowed by Medicaid when prior authorization is denied due to the service being medically unnecessary" was reworded to state: "Expenses from medical or remedial procedures that were denied coverage by an insurer, including Medicaid, on the basis of a lack of medical necessity are not allowed."

VI. RULE

These amendments will be contained in 8.280.500, 8.281.400, and 8.281.500 NMAC. The final register and rule language is available on the HSD website at: https://www.hsd.state.nm.us/lookingforinformation/registers/ and https://www.hsd.state.nm.us/providers/rules-nm-administrative-code/. 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 December 1, 2022.

VIII. PUBLICATION

Publication of these rules approved by:

DocuSigned by:
David R. Scrase, M.D.
9DBE7D7D1B53422...

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