



DISABILITY RIGHTS NEW MEXICO

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Gary Housepian, Chief Executive Officer

Promoting and Protecting the Rights of Persons with Disabilities

February 28, 2019

Human Services Department
Office of the Secretary
Attn. Medical Assistance Division Public Comments
P.O. Box 2348
Santa Fe, NM 87504-2348 via e-mail: madrules@state.nm.us

Re: Proposed amendments to Rule 8.314.3 NMAC, Medically Fragile Home and Community-Based Services.

Dear Secretary Scrase:

Disability Rights New Mexico (“DRNM”) is a private, non-profit organization whose mission is to protect, promote and expand the rights of persons with disabilities. As such, we monitor proposed regulations to advocate for the rights of our constituents who will be affected by regulatory changes. DRNM offers the following comments on the proposed amendments to the Medically Fragile Home and Community Based Services regulations.

8.314.3.10 Eligible Providers

L. Qualifications of an environmental modification provider agency. Requiring standards for environmental modification providers and Department of Health (DOH) authorization for projects will protect recipient’s and can ensure quality work is completed for the needed modifications. However, DRNM is concerned about two aspects of the requirements.

First, DRNM is concerned about access to an adequate pool of providers who satisfy the requirements for contractors, subcontractors and employees in more rural areas of the State and the additional cost of bringing in a provider meeting these requirements in some parts of the State. DRNM recommends that the Human Services Department (HSD) add a provision that will provide for additional funding for situations where a qualified provider is not available in the recipient’s geographical area to make the environmental modifications.

Second, DRNM is concerned about the process for DOH approvals of projects and ensuring that the process is not too onerous and will not delay timely access to the needed modifications. DRNM recommends that HSD ensure that there is a clear and defined process for

obtaining such approval, that the process is clearly communicated to recipients and that requests for approval are processed within specific time frames that result in expeditious approval.

8.314.3.13 Covered Waiver Services

I. Environmental Modifications. The proposed regulations limit environmental modification services to \$5,000 every five years. *See* 8.314.3.13(4). DRNM is concerned that imposition of this limitation may result in cases in which recipients may not be able to obtain the environmental modifications necessary for their health, safety and independence. The limit of \$5,000 may prevent modifications from being available to persons with extensive needs. The further limitation of restricting this service to \$5,000 over a five year period fails to consider those who may have conditions and abilities that may significantly change over that period of time and who may require new additional or different environmental modifications. DRNM recommends that HSD include a provision for discretion to allow for additional funds for environmental modifications in exceptional cases of need.

8.314.3.15 Individualized Service Plan

E. ISP Budget. DRNM commends the adding of requirements for additional funding to a recipient's ISP budget to ensure continuity of care when there are provider rate increases.

DRNM, however, remains concerned about preemptive limitations in caps for ISP budgets. System wide caps and blanket limitations on services available to program participants are incompatible with the concept of person centered planning. The person with a disability and his or her support system are in the best position to determine what services will allow the individual to live safely in the community. The person may determine that his or her needs exceed what is allowed under the current caps, and will often decide that less than the cap is needed. Either way, the person with the disability and the ones who know him or her best must be allowed to make that determination rather than being restricted by a system wide cap. Anything less is an unsatisfactory repudiation of all state sponsored efforts toward system wide person centered planning.

Respectfully submitted,



Debra Poulin
Staff Attorney