



Michelle Lujan Grisham, Governor
Kari Armijo, Acting Secretary
Lorelei Kellogg, Acting Medicaid Director

July 03, 2023

James G. Scott, Director
Division of Program Operations
Medicaid & CHIP Operations Group
Centers for Medicare and Medicaid Services
601 E. 12th St., Room 355
Kansas City, MO 64106

Dear Mr. Scott:

Enclosed please find documents related to New Mexico State Plan Amendment (SPA) 23-0009 Nonprescription Drugs.

Effective July 1, 2023, New Mexico Medicaid is updating its state plan to comply with regulatory changes. The state plan pages are being revised as follows: 1) verbiage has been added to specify that elective nonprescription (over-the-counter) medications will be covered as listed on the state's website or in the state's provider manual; 2) the reference to agents used for cosmetic purposes or hair growth has been deleted; and 3) the provisions related to barbiturates, benzodiazepines and smoking cessation drugs has been removed.

HSD followed a process that included public notification, tribal notification and web posting. Documentation of these activities is attached.

Please refer to the attachments for the transmittal form and notices.

We appreciate your consideration of this state plan amendment. Should you have any questions on this amendment, please contact Valeria Tapia at: Valerie.Tapia@hsd.nm.gov or (505) 257-8420.

Sincerely,

A blue ink signature of Lorelei Kellogg, consisting of a stylized, cursive 'L' followed by a series of loops and a final flourish.

Lorelei Kellogg
Acting Medicaid Director

cc: Nikki Lemmon, CMS

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER

2 3 — 0 0 0 9

2. STATE

N M3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL
SECURITY ACT

XIX



XXI

TO: CENTER DIRECTOR

CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

July 1, 2023

5. FEDERAL STATUTE/REGULATION CITATION

1927(d)(4) of the Social Security Act; Section 5008 of the 21st
Century Cures Act; Section 2502 of the Affordable Care Act

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)

a. FFY 23 \$ 0b. FFY 24 \$ 0

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Attachment 3.1.A1 pgs. 1, 2, 3

8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable)

Attachment 3.1.A1 pgs. 1, 2, 3 (TN 13-01)

9. SUBJECT OF AMENDMENT

Nonprescription Drugs - New Mexico Medicaid is updating its state plan to comply with regulatory
changes.

10. GOVERNOR'S REVIEW (Check One)



GOVERNOR'S OFFICE REPORTED NO COMMENT



COMMENTS OF GOVERNOR'S OFFICE ENCLOSED



NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL



OTHER, AS SPECIFIED:

Authority delegated to the Medicaid Director

11. SIGNATURE OF STATE AGENCY OFFICIAL



12. TYPED NAME

Lorelei Kellogg

13. TITLE

Acting Director, Medical Assistance Division

14. DATE SUBMITTED

7/3/2023

15. RETURN TO

Lorelei Kellogg, Acting Director
Medical Assistance Division
P.O. Box 2348
Santa Fe, NM 87504-2348**FOR CMS USE ONLY**

16. DATE RECEIVED

17. DATE APPROVED

PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL

19. SIGNATURE OF APPROVING OFFICIAL

20. TYPED NAME OF APPROVING OFFICIAL

21. TITLE OF APPROVING OFFICIAL

22. REMARKS

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: NEW MEXICO

MEDICAID PROGRAM: REQUIREMENTS RELATING TO COVERED OUTPATIENT DRUGS FOR
THE CATEGORICALLY NEEDY

12.a. Prescribed Drugs: Description of Service Limitation

Attachment 3.1A1
Page 1

Citation(s)

Provision(s)

1935(d)(1)

Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits Under Part A or Part B.

1927(d)(2) and 1935(d)(2)

The Medicaid agency provides coverage for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses to all Medicaid recipients, including full benefit dual eligible beneficiaries under the Medicare prescription Drug Benefit-Part D.

☒ **The following excluded drugs are covered:**

("All" drugs categories covered under the drug class) ☐

("Some" drugs categories covered under the drug class) ☒

List the covered common drug categories not individual drug products directly under the appropriate drug class)

("None" of the drugs under this drug class are covered) ☐

☒ (a) agents when used for anorexia, weight loss, weight gain

☐ (b) agents when used to promote fertility

☒ (c) agents when used for the symptomatic relief of cough and colds

TN No. 23-0009

Approval Date _____

Supersedes TN No. 13-01

Effective Date 7/1/23

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: NEW MEXICO

MEDICAID PROGRAM: REQUIREMENTS RELATING TO COVERED OUTPATIENT DRUGS FOR
THE CATEGORICALLY NEEDY

12.a. Prescribed Drugs: Description of Service Limitation

Attachment 3.1A1
Page 2

| Citation(s) | Provision(s) |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | (d) prescription vitamins and mineral products, except prenatal vitamins and fluoride |
| <input checked="" type="checkbox"/> | (e) nonprescription drugs. |
| <input checked="" type="checkbox"/> | (f) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee (see specific drug categories below) |

TN No. 23-0009

Approval Date _____

Supersedes TN No. 13-01

Effective Date 7/1/23

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: NEW MEXICO

MEDICAID PROGRAM: REQUIREMENTS RELATING TO COVERED OUTPATIENT DRUGS FOR
THE CATEGORICALLY NEEDY

12.a. Prescribed Drugs: Description of Service Limitation

**Attachment 3.1A1
Page 3**

- (a) **Agents when used for anorexia, weight loss, weight gain:** Appetite stimulants, anorexic agents, and fat absorption-decreasing agents.
- (c) **Agents when used for symptomatic relief of cough and colds:** Antihistamines, antitussives, decongestants and expectorants.
- (d) **Prescription vitamin and mineral products:** Single and multiple vitamins and minerals and combination.
- (e) **Nonprescription drugs:** Coverage for the following categories when an item is a drug of choice for a common medical condition or is an appropriate economical and therapeutic alternative to a prescription drug item: analgesics; anti-emetics; anti-inflammatory agents; anti-parasites; dermatological agents; enzyme replacements; gastrointestinal agents, including H-2 antagonists, proton pump inhibitors, laxatives and antacids; insulin; ophthalmic agents; otic agents; and respiratory agents.
- (f) **Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee:** All items

The New Mexico Human Services Department (HSD), through the Medical Assistance Division (MAD), is providing this notice of opportunity to comment on proposed State Plan Amendment (SPA) 23-0009 Nonprescription Drugs SPA.

Effective July 1, 2023, New Mexico Medicaid is updating its state plan to comply with regulatory changes. The state plan pages are being revised as follows:

1. In accordance with 1927(d)(4) of the Social Security Act, verbiage has been added to specify that elective nonprescription (over-the-counter) medications will be covered as listed on the state's website or in the state's provider manual.
2. In accordance with Section 5008 of the 21st Century Cures Act (Cures Act) which amended Section 1903(i)(21) of the Social Security Act, the reference to agents used for cosmetic purposes or hair growth has been deleted.
3. In accordance with Section 2502 of the Affordable Care Act which amends section 1927(d)(2) of the Social Security Act, the provisions related to barbiturates, benzodiazepines and smoking cessation drugs has been removed.

There is no financial impact associated with this change.

OPPORTUNITY TO VIEW DOCUMENTS AND MAKE COMMENTS

Medicaid providers, Medicaid recipients, and other interested parties are invited to make comments on this proposed SPA. The complete draft amendment may be found on the Department's website at: <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>

A written copy of these proposed documents may be requested by contacting the HSD Medical Assistance Division (HSD/MAD) in Santa Fe at (505) 827-1337.

Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to madrules@state.nm.us. All comments must be received no later than 5:00 p.m. MT on **June 25, 2023**. Written or e-mailed comments are preferred because they become part of the record associated with these changes.

Interested persons may address written comments to:

Human Services Department
Office of the Secretary
ATTN: Medical Assistance Division Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

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



Michelle Lujan Grisham, Governor
Kari Armijo, Acting Secretary
Lorelei Kellogg, Acting Medicaid Director

May 24, 2023

RE: Tribal Notification to Request Advice and Comments Letter 23-07: Nonprescription Drugs

Dear Tribal Leadership, Indian Health Service, Tribal Health Providers, and Other Interested Parties:

Seeking advice and comments from New Mexico's Indian Nations, Tribes, Pueblos and their health care providers is an important component of the government-to-government relationship with the State of New Mexico. In accordance with the New Mexico Human Services Department's (HSD's) Tribal Notification to Request Advice and Comments process, this letter is to inform you that HSD, through the Medical Assistance Division (MAD), is accepting comments until **5:00 p.m. Mountain Time (MT) June 25, 2023**, regarding state plan amendment (SPA) 23-0009 Nonprescription Drugs.

Effective July 1, 2023, New Mexico Medicaid is updating its state plan to comply with regulatory changes. The state plan pages are being revised as follows:

1. In accordance with 1927(d)(4) of the Social Security Act, verbiage has been added to specify that elective nonprescription (over-the-counter) medications will be covered as listed on the state's website or in the state's provider manual.
2. In accordance with Section 5008 of the 21st Century Cures Act (Cures Act) which amended Section 1903(i)(21) of the Social Security Act, the reference to agents used for cosmetic purposes or hair growth has been deleted.
3. In accordance with Section 2502 of the Affordable Care Act which amends section 1927(d)(2) of the Social Security Act, the provisions related to barbiturates, benzodiazepines and smoking cessation drugs has been removed.

There is no financial impact associated with this change.

Tribal Impact

HSD does not anticipate an impact for Indian Nations, Tribes, and Pueblos and their health care providers.

Tribal Advice and Comments

Tribes and their healthcare providers may view the proposed changes, on the HSD webpage at: <https://www.hsd.state.nm.us/providers/written-tribal-consultations/> **Tribal Notification 23-07.**

Important Dates

Written comments must be submitted by 5:00 p.m. Mountain Time (MT) June 25, 2023. Please send your comments to the MAD Native American Liaison, **Theresa Belanger**, at (505) 670-8067 or by email at: Theresa.Belanger@hsd.nm.gov. All written comments received will be posted on the HSD website at: <https://www.hsd.state.nm.us/providers/written-tribal-consultations/> along with this notification letter. The public posting will include the name and any contact information provided by the commenter.

Tribal Leadership may request a government-to-government consultation by June 25, 2023. This request may be made to: Theresa.Belanger@hsd.nm.gov or by calling (505) 670-8067.

Sincerely,



Lorelei Kellogg
Acting Medicaid Director



Michelle Lujan Grisham, Governor
Kari Armijo, Acting Secretary
Lorelei Kellogg, Acting Medicaid Director

May 23, 2023

Interested Parties:

The New Mexico Human Services Department (HSD), through the Medical Assistance Division (MAD), is providing this notice of opportunity to comment on proposed State Plan Amendment (SPA) 23-0009 Nonprescription Drugs.

Effective July 1, 2023, New Mexico Medicaid is updating its state plan to comply with regulatory changes. The state plan pages are being revised as follows:

1. In accordance with 1927(d)(4) of the Social Security Act, verbiage has been added to specify that elective nonprescription (over-the-counter) medications will be covered as listed on the state's website or in the state's provider manual.
2. In accordance with Section 5008 of the 21st Century Cures Act (Cures Act) which amended Section 1903(i)(21) of the Social Security Act, the reference to agents used for cosmetic purposes or hair growth has been deleted.
3. In accordance with Section 2502 of the Affordable Care Act which amends section 1927(d)(2) of the Social Security Act, the provisions related to barbiturates, benzodiazepines and smoking cessation drugs has been removed.

There is no financial impact associated with this change.

OPPORTUNITY TO VIEW DOCUMENTS AND MAKE COMMENTS

Medicaid providers, Medicaid recipients, and other interested parties are invited to make comments on this proposed SPA. The complete draft SPA may be found on the Department's website at: <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notice-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>

A written copy of these proposed documents may be requested by contacting the HSD Medical Assistance Division (HSD/MAD) in Santa Fe at (505) 827-1337.

Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to HSD-madrules@state.nm.us. **All comments must be received no later than 5:00 p.m. MT on June 25, 2023.** Written or e-mailed comments are preferred because they become part of the record associated with these changes.

Interested persons may address written comments to:
Human Services Department

Office of the Secretary
ATTN: Medical Assistance Division Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

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

The New Mexico Human Services Department (HSD), through the Medical Assistance Division (MAD), is providing this notice of opportunity to comment on proposed State Plan Amendment (SPA) 23-0009 Nonprescription Drugs SPA.

Effective July 1, 2023, New Mexico Medicaid is updating its state plan to comply with regulatory changes. The state plan pages are being revised as follows:

In accordance with 1927(d)(4) of the Social Security Act, verbiage has been added to specify that elective nonprescription (over-the-counter) medications will be covered as listed on the state's website or in the state's provider manual.

In accordance with Section 5008 of the 21st Century Cures Act (Cures Act) which amended Section 1903(j)(21) of the Social Security Act, the reference to agents used for cosmetic purposes or hair growth has been deleted.

In accordance with Section 2502 of the Affordable Care Act which amends section 1927(d)(2) of the Social Security Act, the provisions related to barbiturates, benzodiazepines and smoking cessation drugs has been removed.

There is no financial impact associated with this change.

OPPORTUNITY TO VIEW DOCUMENTS AND MAKE COMMENTS

Medicaid providers, Medicaid recipients, and other interested parties are invited to make comments on this proposed SPA. The complete draft amendment may be found on the Department's website at: <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>

A written copy of these proposed documents may be requested by contacting the HSD Medical Assistance Division (HSD/MAD) in Santa Fe at (505) 827-1337.

Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to madrules@state.nm.us. All comments must be received no later than 5:00 p.m. MT on June 25, 2023. Written or e-mailed comments are preferred because they become part of the record associated with these changes.

Interested persons may address written comments to: Human Services Department Office of the Secretary ATTN: Medical Assistance Division Public Comments P.O. Box 2348 Santa Fe, New Mexico 87504-2348

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

Journal: May 26, 2023

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

Wayne Barnard, the undersigned, authorized Representative of the Albuquerque Journal, on oath states that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, that payment therefore has been made of assessed as court cost; and that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

05/26/2023



Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this

26 day of May of 2023

PRICE \$126.07

Statement to come at the end of month.

ACCOUNT NUMBER 1009565

CHRISTINA MARIE WHITE
Notary Public - State of New Mexico
Commission # 1122050
My Comm. Expires Jul 26, 2026



Las Cruces Sun News.

PART OF THE USA TODAY NETWORK

Affidavit of Publication

Ad # 0005714857

This is not an invoice

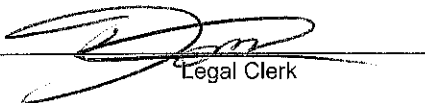
HUMAN SVCS DEPT - ME D ASSIST DIV
PO BOX 2348

SANTA FE, NM 87504-2348

I, a legal clerk of the **Las Cruces Sun News**, a newspaper published daily at the county of Dona Ana, state of New Mexico and of general paid circulation in said county; that the same is a duly qualified newspaper under the laws of the State wherein legal notices and advertisements may be published; that the printed notice attached hereto was published in the regular and entire edition of said newspaper and not in supplement thereof in editions dated as follows:

05/26/2023

Despondent further states this newspaper is duly qualified to publish legal notice or advertisements within the meaning of Sec. Chapter 167, Laws of 1937.


Legal Clerk

Subscribed and sworn before me this May 26, 2023:


State of WI, County of Brown
NOTARY PUBLIC


My commission expires

KATHLEEN ALLEN
Notary Public
State of Wisconsin

Ad # 0005714857
PO #: 63000-0000038111
of Affidavits 1

This is not an invoice

The New Mexico Human Services Department (HSD), through the Medical Assistance Division (MAD), is providing this notice of opportunity to comment on proposed State Plan Amendment (SPA) 23-0009 Nonprescription Drugs SPA. Effective July 1, 2023, New Mexico Medicaid is updating its state plan to comply with regulatory changes. The state plan pages are being revised as follows:

1. In accordance with 1927(d)(4) of the Social Security Act, verbiage has been added to specify that elective nonprescription (over-the-counter) medications will be covered as listed on the state's website or in the state's provider manual.
2. In accordance with Section 5008 of the 21st Century Cures Act (Cures Act) which amended Section 1903(i)(21) of the Social Security Act, the reference to agents used for cosmetic purposes or hair growth has been deleted.
3. In accordance with Section 2502 of the Affordable Care Act which amends section 1927(d)(2) of the Social Security Act, the provisions related to barbiturates, benzodiazepines and smoking cessation drugs has been removed.

There is no financial impact associated with this change.

OPPORTUNITY TO VIEW DOCUMENTS AND MAKE COMMENTS

Medicaid providers, Medicaid recipients, and other interested parties are invited to make comments on this proposed SPA. The complete draft amendment may be found on the Department's website at: <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>

A written copy of these proposed documents may be requested by contacting the HSD Medical Assistance Divi-

sion (HSD/MAD) in Santa Fe
at (505) 827-1337.

Recorded comments may be
left by calling (505) 827-
1337. Electronic comments
may be submitted to madrules@state.nm.us. All com-
ments must be received no
later than 5:00 p.m. MT on
June 25, 2023. Written or e-
mailed comments are pre-
ferred because they become
part of the record associated
with these changes.

Interested persons may ad-
dress written comments to:
Human Services Department
Office of the Secretary
ATTN: Medical Assistance
Division Public Comments
P.O. Box 2348
Santa Fe, New Mexico
87504-2348

Copies of all comments will
be made available by
HSD/MAD upon request by
providing copies directly to
a requestor or by making
them available on the
HSD/MAD website or at a lo-
cation within the county of
the requestor.
#5714857, Sun News
May 26, 2023

Standard Funding Questions SPA 23-0009 Nonprescription Drugs

The following questions are being asked and should be answered in relation to all payments made to all providers reimbursed pursuant to a methodology described in Attachment 4.19-B of this SPA. For SPAs that provide for changes to payments for clinic or outpatient hospital services or for enhanced or supplemental payments to physician or other practitioners, the questions must be answered for all payments made under the state plan for such service.

1. Section 1903(a)(1) provides that Federal matching funds are only available for expenditures made by States for services under the approved State plan. Do providers receive and retain the total Medicaid expenditures claimed by the State (includes normal per diem, supplemental, enhanced payments, other) or is any portion of the payments returned to the State, local governmental entity, or any other intermediary organization? If providers are required to return any portion of payments, please provide a full description of the repayment process. Include in your response a full description of the methodology for the return of any of the payments, a complete listing of providers that return a portion of their payments, the amount or percentage of payments that are returned and the disposition and use of the funds once they are returned to the State (i.e., general fund, medical services account, etc.)

STATE RESPONSE: Providers are not required to return any portion of payments for these services.

2. Section 1902(a)(2) provides that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan. Please describe how the state share of each type of Medicaid payment (normal per diem, supplemental, enhanced, other) is funded. Please describe whether the state share is from appropriations from the legislature to the Medicaid agency, through intergovernmental transfer agreements (IGTs), certified public expenditures (CPEs), provider taxes, or any other mechanism used by the state to provide state share. Note that, if the appropriation is not to the Medicaid agency, the source of the state share would necessarily be derived through either through an IGT or CPE. In this case, please identify the agency to which the funds are appropriated. Please provide an estimate of total expenditure and State share amounts for each type of Medicaid payment. If any of the non-federal share is being provided using IGTs or CPEs, please fully describe the matching arrangement including when the state agency receives the transferred amounts from the local governmental entity transferring the funds. If CPEs are used, please describe the methodology used by the state to verify that the total expenditures being certified are eligible for Federal matching funds in accordance with 42 CFR 433.51(b). For any payment funded by CPEs or IGTs, please provide the following:
 - (i) a complete list of the names of entities transferring or certifying funds;
 - (ii) the operational nature of the entity (state, county, city, other);

- (iii) the total amounts transferred or certified by each entity;
- (iv) clarify whether the certifying or transferring entity has general taxing authority: and,
- (v) whether the certifying or transferring entity received appropriations (identify level of appropriations).

STATE RESPONSE: These services are paid using appropriations from the state legislature.

3. Section 1902(a)(30) requires that payments for services be consistent with efficiency, economy, and quality of care. Section 1903(a)(1) provides for Federal financial participation to States for expenditures for services under an approved State plan. If supplemental or enhanced payments are made, please provide the total amount for each type of supplemental or enhanced payment made to each provider type.

STATE RESPONSE: No supplemental or enhanced payments are made.

4. For clinic or outpatient hospital services please provide a detailed description of the methodology used by the state to estimate the upper payment limit (UPL) for each class of providers (State owned or operated, non-state government owned or operated, and privately owned or operated). Please provide a current (i.e., applicable to the current rate year) UPL demonstration.

STATE RESPONSE: These fee schedule changes do not apply to any provider subject to the UPL calculations.

5. Does any governmental provider receive payments that in the aggregate (normal per diem, supplemental, enhanced, other) exceed their reasonable costs of providing services? If payments exceed the cost of services, do you recoup the excess and return the Federal share of the excess to CMS on the quarterly expenditure report?

STATE RESPONSE: If governmental providers were to receive payments that exceed their reasonable cost of providing services, the excess payment would be recovered and the federal share of the excess would be reported and returned to CMS.