

February 8, 2022

RE: Tribal Notification to Request Advice and Comments Letter 22-02: Proposed Amendments to 8.320.6 NMAC, EPSDT, School-Based Services for MAP Eligible Recipients Under Twenty-One Years of Age

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 written comments until **5:00 p.m., Mountain Time (MT) on March 11, 2022** regarding proposed amendments to the 8.320.6 NMAC School-Based Services for MAP Eligible Recipients Under Twenty-One Years of Age, which allows MAD to pay for medically necessary services for a MAP eligible recipient under twenty-one years of age when the services are part of the MAP eligible recipient's (eligible recipient's) individualized education program (IEP) or an individualized family service plan (IFSP) for treatment (correction, amelioration, or prevention of deterioration) of an identified medical condition.

The Department is proposing to amend the rule as follows:

Section 9 School-Based Services for Recipients Under Twenty-One Years of Age

HSD is proposing to add coverage for services provided under a Section 504 Accommodation Plan pursuant to 34 CFR 104.36 (504 Plan), an Individual Health Care Plan (IHCP), or are otherwise medically necessary as appropriate for each covered service.

This addition will allow participating schools to seek reimbursement for covered services that are provided outside of an individualized education program (IEP) or an individualized family service plan (IFSP).

Section 11 Eligible Providers

Subsection 15

HSD is proposing to add unlicensed school personnel providing delegated nursing services in accordance with the New Mexico Board of Nursing under the supervision of a RN to the list of allowable providers.

This addition will allow unlicensed personnel who have been delegated nursing services in accordance with the New Mexico Board of Nursing to provide services. This will allow school-based

providers in rural and underserved areas access to an increased pool of eligible practitioners which can bill for services.

Section 12 Provider Responsibilities

Subsection B, Paragraph (3), Subparagraph (b)

HSD is proposing to add other determination of medical necessity to the requirement for evaluation and determination of need for services.

This addition will allow schools to establish medical necessity for services through evaluations or other determinations for services provided under a 504 Plan, Individual Health Care Plan (IHCP) or other care plan.

Subsection B, Paragraph (3), Subparagraph (c)

HSD is proposing to add language to clarify that an annual PCP notification or documentation of a good faith effort is only required for services provided through an IEP/IFSP.

This addition will clarify that services provided under a 504 Plan, Individual Health Care Plan (IHCP) or other care plan are not subject to the requirement for an annual PCP notification or documentation of a good faith effort.

Section 13, Covered Services

Subsection A

HSD is proposing to add that 504 Plans, IHCPs or other care plans should be reviewed annually to establish ongoing medical necessity for services.

This addition will ensure that school-based providers are regularly reviewing the eligible recipient's plan of care to establish the ongoing medical need for services.

Subsection B, Paragraph (3)

HSD is proposing to add clarifying language to reiterate that the good faith effort to notify the eligible recipient's PCP of the services to be provided will only be required for those services provided under an IEP or IFSP.

This clarification will reduce the administrative burden for schools who choose to provide additional services under a 504 Plan, Individual Health Care Plan (IHCP) or other care plan.

Subsection G

HSD is proposing to add delegated nursing services which are tasks in accordance with the New Mexico Board of Nursing that may be delegated by the RN to unlicensed school personnel. Delegated staff may include, but is not limited to, school or contracted staff, such as health assistants, teachers, teacher assistants, therapists, school administrators, administrative staff, cafeteria staff, or personal care aides.

This addition will allow schools to bill for nursing services that have been delegated in accordance with the New Mexico Board of Nursing and allow school-based providers in rural and underserved areas access to an increased pool of eligible practitioners which can bill for services.

Section 14 Individualized Treatment Plan

Subsection D

HSD is proposing to add that for purposes of Medicaid expansion, school-based services may also be listed in a Section 504 Accommodation Plan pursuant to 34 CFR 104.36, an Individual Health Care Plan, or are otherwise determined to be medically necessary as appropriate for each covered service.

This addition clarifies that covered services can be identified in an individual treatment plan that is part of a 504 Plan, Individual Health Care Plan (IHCP) or other care plan.

Throughout the Rule

HSD is proposing language to add 504 Plan, Individual Health Care Plan (IHCP) or other care plan as plans allowable for identifying covered services provided in the school-based setting.

This addition will allow schools to seek reimbursement for covered services that are provided under a 504 Plan, Individual Health Care Plan (IHCP) or other care plan.

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: February 8, 2022

Hearing Date: March 11, 2022

Adoption Date: Proposed as July 1, 2022

Technical Citations: 34 CFR 300.142

Estimated Total Financial Impact

Amending the rule may lead to additional federal draw-down for school-based services providers participating in the program.

Tribal Impact

HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers based on the proposed amendments to this rule; instead, HSD anticipates improved services to eligible recipients.

Tribal Advice and Comments

Tribes and tribal healthcare providers may view the proposed amendments to 8.320.6 NMAC on the HSD webpage at: <http://www.hsd.state.nm.us/providers/written-tribal-consultations.aspx>. *Notification Letter 22-02.*

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

Important Dates

A **public hearing** on this rule is scheduled be held **via conference call** on March 11, 2022 at 10 a.m. MT. **Conference phone number: 1-800-747-5150. Access Code: 2284263.**

Written advice and comments must be received no later than 5:00 p.m. MT on March 11, 2022.

Please send your advice, comments or questions to the MAD Native American Liaison, Theresa Belanger, at (505) 670-8067 or by email to theresa.belanger@state.nm.us.

All comments and responses will be compiled and made available after March 25, 2022.

Sincerely,



Nicole Comeaux, J.D., M.P.H, Director
Medical Assistance Division

cc: Melanie Buenviaje, Bureau Chief, HSD/MAD/Exempt Services & Programs
Christie Guinn, Deputy Bureau Chief, HSD/MAD/Exempt Services & Programs
Theresa Belanger, Native American Liaison, HSD/MAD
MAD/PPSB – Program Management and Communications Unit