



Michelle Lujan Grisham, Governor
David R. Scrase, M.D., Secretary
Nicole Comeaux, J.D., M.P.H., Director

August 24, 2021

RE: Tribal Notification to Request Advice and Comments Letter 21-18: Proposed amendments to several NMAC rules.

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 September 24, 2021** regarding proposed amendments to the following New Mexico Administrative Code (NMAC) rules *8.200.400 NMAC-General Recipient Rules-General Medicaid Eligibility, 8.200.410 NMAC-General Recipient Rules-General Recipient Requirements, 8.231.400 NMAC-Medicaid Eligibility-Infants of Mothers Who Are Medicaid Eligible Recipient Policies, 8.231.600 NMAC-Medicaid Eligibility-Infants of Mothers Who Are Medicaid Eligible Benefit Description, 8.234.400 NMAC-Medicaid Eligibility-SSI Ineligibility-Due to Income or Resources from an Alien Sponsor Recipient Requirements, 8.234.500 NMAC-Medicaid Eligibility-SSI Ineligibility -Due to Income or Resources from an Alien Sponsor, Income and Resource Standards, 8.243.400 NMAC-Medicaid Eligibility-Working Disabled Individuals Recipient Policies, 8.249.400 NMAC-Medical Assistance Program Eligibility-Refugee Medical Assistance Program Recipient Requirements, 8.249.500 NMAC-Medical Assistance Program Eligibility -Refugee Medical Assistance Program, Income and Resource Standards, 8.250.400 NMAC-Medical Assistance Program Eligibility-Qualified Disabled Individuals, Recipient Policies, 8.252.400 NMAC-Medicaid Eligibility Breast and Cervical Cancer Program, 8.280.400 NMAC-Medicaid Eligibility-Program of All-Inclusive Care for the Elderly (PACE), Recipient Policies, 8.285.400 NMAC-Medicaid Eligibility-Emergency Medical Assistance For Aliens Recipient Requirements, 8.285.500 NMAC-Medicaid Eligibility-Emergency Medical Services for Aliens, Income And Resource Standards, 8.285.600 NMAC-Medicaid Eligibility-Emergency Medical Services for Aliens, Benefit Description, 8.291.410 NMAC-Medicaid Eligibility- Affordable Care General Recipient Requirements, 8.292.500 NMAC-Medicaid Eligibility-Parent Caretaker Recipient Income and Resource Standards, 8.293.500 NMAC-Medicaid Eligibility-Pregnant Women Recipient Income and Resource Standards, 8.294.500 NMAC-Medicaid Eligibility-Pregnancy-Related Services Recipient Income and Resource Standards, 8.295.500 NMAC-Medicaid Eligibility-Children Under 19 Recipient Income and Resource Standards, 8.296.500 NMAC-Medicaid Eligibility-Other Adults Recipient Income and Resource Standards, 8.299.500 NMAC-Medicaid Eligibility-Family Planning Services Recipient Income And Resource Standards, and 8.325.10 NMAC-Specialty Services-Emergency Medical Services For Aliens.*

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: August 24, 2021

Hearing Date: September 24, 2021

Adoption Date: Proposed as January 1, 2022

Technical Citations: Section 208 of the Consolidated Appropriations Act, 2021; 42 Code of Federal Regulation 435.603(h)(2)

The Department is proposing to amend the rule as follows:

Background

The Centers for Medicare and Medicaid Services (CMS) has indicated that the use of the term “alien” is outdated and should be replaced with the term “non-citizen.” The Department is proposing rule changes to change “alien” to “non-citizen” throughout our rules.

Effective December 27, 2020, section 208 of the Consolidated Appropriations Act, 2021 requires states and the District of Columbia (DC) to provide Medicaid coverage for individuals who are considered Compact of Free Association (COFA) migrants (also referred to as compact citizens). COFA is an agreement between the United States and the three Pacific Island sovereign states of Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, known as Freely Associates States. States must cover COFA migrants in Medicaid as “qualified non-citizens” without a 5-year waiting period, if otherwise eligible under the Medicaid state plan or section 1115 demonstration. The Department is updating citizenship rules to include COFA migrants as “qualified non-citizens” exempt from the 5-year waiting period.

The Department is proposing additional rule changes to no longer require an interview for Program of All-Inclusive Care for the Elderly (PACE) applicants, and update the “Income Eligibility” section for Modified Adjusted Gross Income (MAGI) Medicaid categories to remove outdated language, make the language consistent, and clarify that the Department uses current monthly income in accordance with 42 Code of Federal Regulations 435.603(h)(2).

The Department is proposing to amend these rules as follows:

8.200.400, 8.200.410, 8.231.400, 8.231.600, 8.234.400, 8.234.500, 8.243.400, 8.249.400, 8.249.500, 8.250.400, 8.252.400, 8.285.400, 8.285.500, 8.285.600, 8.291.410 and 8.325.10 NMAC

These rules are being updated to change the term “alien” to ‘non-citizen’ throughout.

8.200.410 NMAC

Section 11 citizenship is being updated to incorporate the new COFA requirements.

8.280.400 NMAC:

Section 11 of the PACE rules are being updated to clarify that an interview is not required in accordance with Institutional Care rules found at 8.281.400.11.

8.292.500, 8.293.500, 8.294.500, 8.295.500, 8.296.500, 8.299.500 NMAC:

Section 12 is updated to remove outdated language, inconsistent language across Medicaid categories, and clarify that income eligibility for Parent/Caretaker, Pregnant Women, Pregnancy-Related Services, and Children under 19 Medicaid categories use modified adjusted gross income methodology using current monthly income, per State option, as opposed to projected annual household income per 42 Code of Federal Regulations 435.603(h)(2). The state defines current monthly income as a 30-day period.

Section 11 for Other Adult and Family Planning Medicaid categories is updated to reflect the same language changes cited in the prior paragraph above for consistency.

8.200.400, 8.200.410, 8.231.400, 8.231.600, 8.234.400, 8.234.500, 8.243.400, 8.249.400, 8.249.500, 8.250.400, 8.252.400, 8.285.500, 8.291.410, 8.292.500, 8.293.500, 8.294.500, 8.295.500, 8.296.500, 8.299.500 NMAC

Section 8 is being updated to include the Department's mission statement.

Throughout all the proposed rules amendments have been made to address formatting requirements.

Estimated Total Financial Impact

The financial impact of the change is minimal; an estimated 10 new Medicaid eligible recipients a year will be added due to the COFA migrant change. The other changes have no fiscal impact.

Tribal Impact

None.

Tribal Advice and Comments

Tribes and tribal healthcare providers may view the proposed NMAC 8.200.400, 8.200.410, 8.231.400, 8.231.600, 8.234.400, 8.234.500, 8.243.400, 8.249.400, 8.249.500, 8.250.400, 8.252.400, 8.280.400, 8.285.400, 8.285.500, 8.285.600, 8.291.410, 8.292.500, 8.293.500, 8.294.500, 8.295.500, 8.296.500, 8.299.500, 8.325.10 on the HSD webpage at: <https://www.hsd.state.nm.us/providers/written-tribal-consultations/>. *Notification Letter 21-18.*

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 to receive testimony on these proposed rules will be held via conference call on Friday, September 24, 2021 at 9 a.m., Mountain Time (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 September 24, 2021. 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 October 15, 2021.

Sincerely,



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