



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

October 4, 2023

RE: Tribal Notification to Request Advice and Comments Letter 23-18: Amending 8.314.5 NMAC, Long Term Care Services – Waivers, Developmental Disabilities Home and Community-Based Services Waiver

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 November 10, 2023** regarding proposed amendments to the following New Mexico Administrative Code 8.314.5 NMAC, *Long Term Care Services – Waivers, Developmental Disabilities Home and Community-Based Services Waiver*.

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: September 12, 2023
Hearing Date: October 13, 2023
Adoption Date: Proposed as February 1, 2024
Technical Citations: 42 CFR Part 441

The Department is proposing to amend the rule as follows:

Throughout the rule the following changes have been made:

All references of the “Outside Reviewer” have been removed and replaced with the “Third Party Accessor (TPA)”.

Changes have been made to align with formatting requirements.

Section 7

Subsection A

HSD is proposing to add language to clarify the definition of activities for daily living (ADLs).

Subsection E

HSD is proposing to remove the subsection regarding the definition of Clinical Documentation as it is being renamed to Supporting Documentation in Subsection I. Subsequent sections are being renumbered due to addition/deletion of items.

Subsection F

HSD is proposing to remove the subsection regarding Clinical Justification in Definitions as justification documentation policy will be added in later section 15. Subsequent sections are being renumbered due to addition/deletion of items.

Subsection E

HSD is proposing to add language defining the developmental disabilities support division (DDSD), as they are the Operating agency for the daily administration of the 1915c waiver programs. Subsequent sections are being renumbered due to addition/deletion of items.

Subsection I

HSD is proposing to add the definition of Supporting Documentation, replacing Clinical Documentation to clarify and remain consistent with language throughout the rule. Subsequent sections are being renumbered due to addition/deletion of items.

Subsection J

HSD is proposing to add the definition of the Third Party Assessor as they are the contractor that will perform level of cares and medical eligibility. Subsequent sections are being renumbered due to addition/deletion of items.

Section 8

Subparagraph (j) of Paragraph (1) of Subsection B

HSD proposes adding language clarifying unacceptable intervention of public or private humiliation.

Subparagraph (k) of Paragraph (1) of Subsection B

HSD proposes removing privacy violations language and replacing with the application of water mist, noxious taste, smell, or skin agents as an unacceptable intervention.

Subparagraph (l) of Paragraph (1) of Subsection B

HSD proposes to remove the unacceptable intervention of restricting exit and replacing with privacy violations previously from Subparagraph (k) of Paragraph (1) of Subsection B and expanding on the definition.

Subparagraph (m) of Paragraph (1) of Subsection B

HSD proposes to remove the unacceptable intervention of water mist as it is being moved to Subparagraph (k) of Paragraph (1) of Subsection B and replacing with the unacceptable intervention of restricting exit of a home and expanding on the language.

Subparagraph (n) of Paragraph (1) of Subsection B

HSD proposes to remove this item as the language mentioned in the item, the unacceptable intervention of application of noxious tastes, smells, etc., has been combined with Subparagraph (k) of Paragraph (1) of Subsection B.

Paragraph (4) of Subsection B

HSD proposes to expand on direct support personnel (DSP) by adding the full spelling of direct support personnel.

Paragraph (8) of Subsection B

HSD proposes to remove the word ‘super’ to correct it being placed there in error.

Section 10

Subparagraph (d) of Paragraph (2) of Subsection D

HSD proposes to add the required qualification of having a high school diploma or GED and a minimum of 6 years of direct experience related to the delivery of social services to people with disabilities.

Subsection H

HSD proposes to expand on the language regarding living supports provider direct support personnel to include subcontractor or employee.

Subsection I

HSD proposes to expand on the language regarding customized community supports provider direct support personnel to include subcontractor or employee.

Subsection J

HSD proposes to expand on the language regarding community integrated employment provider direct support personnel to include subcontractor or employee.

Section 11

Paragraph (1) of Subsection C

HSD Proposes to add subcontractor to language regarding employees of a developmental disabilities waiver (DDW) provider.

Section 14

Paragraph (11) of Subsection B

HSD proposes to add crisis supports as a service option that are available outside of the annual resource allotment (ARA).

Section 15

HSD proposes clarifying language that DDW covered services must be based on assessed need.

Subsection A

HSD proposes removing the existing subsection regarding budget levels that the OR approved and replace with language detailing the documentation justification of services.

Subsection C

HSD proposes removing language regarding budget levels.

Paragraph (2) of Subsection C

HSD proposes to add amounts and units of respite available per individual service plan (ISP) year to eligible recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (3) of Subsection C

HSD proposes to add amounts and units of adult nursing services available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (4) of Subsection C

HSD proposes to add amounts and units of therapy services available per ISP year to eligible recipients must comply with limits outlined in the DDS issued.

Subparagraph (a) of Paragraph (5) of Subsection C

HSD proposes to add clarifying language stating the recipient lives in the same residence as the direct support personnel for family living services.

Subparagraph (b) of Paragraph (5) of Subsection C

HSD proposes to add language clarifying amounts and units of supported living services available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards. As well as clarifying documentation requirements.

Subparagraph (c) of Paragraph (5) of Subsection C

HSD proposes adding the language of approval for supported living intensive medical supports requires a IMLS parameter tool with a score of 20 or above. As well as subsequent item is being renumbered due to the addition.

Paragraph (6) of Subsection C

HSD proposes adding the language of amounts and units of customized community supports (CCS) available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (7) of Subsection C

HSD proposes adding language stating requests from eligible recipients for community integrated employment (CIE) intensive services must include a letter of justification and the eligibility recipient's work hours or proposed schedule.

Subparagraph (a) of Paragraph (7) of Subsection C

HSD proposes adding language stating requests to utilize the DDW for job development must have prior written approval by DDS.

Subparagraph (b) of Paragraph (7) of Subsection C

HSD proposes adding language stating requests to utilize the DDW for short term job coaching must have prior written approval by DDS.

Subparagraph (e) of Paragraph (7) of Subsection C

HSD proposes to remove reference to job aid. As well as subsequent items are being renumbered due to the removal.

Paragraph (8) of Subsection C

HSD proposes to add language clarifying the amounts and units for support consultation available to the recipient as it is subject to DDS services standards as well as guidance on requesting units over limits.

Subparagraph (c) of Paragraph (8) of Subsection C

HSD proposes to adjust language referring to direct support personnel to be DSP.

Subparagraph (a) of Paragraph (10) of Subsection C

HSD proposes to add language allowing the purchase and installation of grab bars for environmental modification services.

Subparagraph (d) of Paragraph (10) of Subsection C

HSD proposes to add language clarifying the amounts and units for environmental modification services available to the recipient as it is subject to DDS services standards as well as documentation requirements. Subsequent item is being renumbered due to the addition.

Paragraph (11) of Subsection C

HSD proposes to add language of Crisis Supports must be prior authorized by the DDS Bureau of Behavioral Supports (BBS).

Paragraph (12) of Subsection C

HSD proposes to add language of reimbursement is allowable for eligible ride share programs identified through ISP. Amounts and units of non-medical transportation available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (14) of Subsection C

HSD proposes to add the language of amounts and units of assistive technology available to eligible recipients per ISP year must comply with limits outlined in the DDS issued service standards.

Paragraph (15) of Subsection C

HSD proposes to add the language of requests from eligible recipients for independent living transition services must include DDS verification of eligibility form. Amounts and units of independent living transition services available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (16) of Subsection C

HSD proposes to add the language of amounts and units of remote support technology available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (17) of Subsection C

HSD proposes to add the language of amounts and units of preliminary risk screening and consultation (PRSC) available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (18) of Subsection C

HSD proposes to add the language of amounts and units of socialization and sexuality education (SSE) available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

Paragraph (19) of Subsection C

HSD proposes to add the language of requests for customized in-home living supports for over 11 hours a day must be approved the DDS.

Section 17

Subsection F

HSD proposes to remove this section as the Jackson lawsuit has been dismissed. Subsequent subsections are being renumbered due to the deletion.

Estimated Total Financial Impact

HSD does not anticipate any financial impact in state general fund related to these proposed changes.

Tribal Impact

There are 350 Native American participants out of 4,579 unduplicated participants receiving services under the Developmental Disabilities Waiver (DDW). 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 NMAC rules on the HSD webpage at: <https://www.hsd.state.nm.us/providers/written-tribal-consultations/>. *Notification Letter 23-18.*

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 this proposed rule will be held **via conference call** on October 13, 2023, at 10 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 November 10, 2023. 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 December 1, 2023.

Sincerely,



Lorelei Kellogg, Acting Medicaid Director
Medical Assistance Division