

NMAC

Transmittal Form



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2020 JAN 13 PM 4: 01

Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: New Amendment Repeal Emergency Renummer (ALD Use Only) Most recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference?
Yes No

Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes No Public domain

Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

Findings required for rulemaking adoption:
continued

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The services have been covered since this time.

There are no changes between the published proposed rule and the final rule.

Two comments were received regarding adding the following providers to the list of eligible providers:

Behavior Analysts meeting one of the following requirements:

- A. Board Certified Behavior Analysts (BCBA-D, BCBA);
- B. Board Certified assistant Behavior Analyst (BCaBA) under the supervision of BCBA-D or BCBA;
- C. Registered Behavior Technician (RBT) under the supervision of BCBA-D, BCBA or BCaBA.

The Medicaid School-Based Services (MSBS) Program covers IEP-related services that are listed under 300.34 CFR and 4.19 – B of NM Medicaid State Plan. Applied Behavior Analysis (ABA) services are not currently listed in the NM Medicaid State Plan for school-based services or recognized by NM Public Education Department (NM PED) as an IEP-related service. The department is not seeking to add additional school-based service types at this time. Further, ABA services are available to eligible recipients under 8.321 NMAC Specialized Behavioral Health Services. These services may be provided in the school setting if deemed appropriate.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

David R. Scrase, M.D.

Check if authority has been delegated

Title:

Secretary

Signature: (BLACK ink only)

DR Scrase

Date signed:

10/13/20

This is an amendment to 8.320.6 NMAC, Sections 8, 11 and 13 effective 2/1/2020.

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8.320.6.8 [~~MISSION STATEMENT: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.~~] **[RESERVED]**
[8.320.6.8 NMAC - Rp, 8.320.6.8 NMAC, 7/1/2015; Repealed, 2/1/2020]

8.320.6.11 ELIGIBLE PROVIDERS:

A. Upon approval of a New Mexico MAD PPA by MAD or its designee, local education agencies (LEAs), regional educational cooperatives (RECs), and other state-funded educational agencies (SFEAs) that meet specified requirements are eligible to be reimbursed for furnishing services to an eligible recipient. The LEA, REC, or other SFEA must enter into a governmental services agreement (GSA) with HSD and abide by the terms and conditions of it.

B. The following individual service providers must be employed by, or under contract to, the LEA, REC, or other SFEA when furnishing treatment and meet other specified qualification criteria:

- (1) physical therapists (PT);
- (2) physical therapy assistants working under the supervision of a MAD enrolled PT;
- (3) occupational therapists (OT);
- (4) occupational therapy assistants working under the supervision of a MAD enrolled licensed occupational therapist;
- (5) speech and language pathologists (SLP) and clinical fellows;
- (6) apprentices in speech-language (ASL) working under the supervision of a MAD enrolled licensed speech therapist; supervision for those providers listed in Paragraphs (1) - (6) above must adhere to the requirements of the practitioner's applicable licensing board;
- (7) audiologists;
- (8) licensed nutritionists or registered dieticians;
- (9) case managers meeting one of the following requirements:
 - (a) bachelor's degree in social work, counseling, psychology, nursing or a related health or social services field from an accredited institution;
 - (b) one year experience serving medically-at-risk children or adolescents; or
 - (c) a licensed registered (RN).
- (10) psychologists meeting one of the following requirements:
 - (a) psychologists (Ph.D., Psy.D., or Ed.D.); or
 - (b) master's level practitioners licensed by the New Mexico psychologist examiners board as psychologist associates or licensed by PED as school psychologists and working under the supervision of a MAD enrolled licensed psychiatrist or a licensed psychologist (Ph.D., Psy.D., or Ed.D.) or a PED level 3 independent school psychologist, as applicable;
 - (c) supervision of psychologist associates and school psychologists must adhere to the requirements of the practitioner's applicable licensing board.
- (11) social work practitioners meeting one of the following requirements:
 - (a) licensed independent social worker (LISW); or
 - (b) licensed master social worker (LMSW) or licensed baccalaureate social worker (LBSW) and working under the supervision of a MAD enrolled licensed independent social worker (LISW) or licensed psychologist (Ph.D., Psy.D., Ed.D.) or other supervisor approved by the New Mexico board of social work examiners;
 - (i) services provided by licensed master social workers (LMSW) and licensed baccalaureate social workers (LBSW) must be within the scope of their practice respectively and supervised and periodically evaluated;
 - (ii) an eligible recipient receiving services from an LMSW or LBSW must be diagnosed by the practitioner's supervisor; the diagnosis must be documented in the MAP eligible recipient's record with the signature of the supervisor.
- (12) licensed counselors or therapists meeting one of the following requirements:
 - (a) licensed professional clinical mental health counselor (LPCC); or
 - (b) licensed marriage and family therapist (LMFT); or
 - (c) licensed mental health counselor (LMHC) or licensed professional mental health counselor (LPC) and working under the supervision of a MAD enrolled licensed psychiatrist, a licensed

psychologist (Ph.D., Psy.D., or Ed.D.), licensed professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LMFT), or licensed independent social worker (LISW);

(i) supervision of licensed mental health counselors (LMHC) and licensed professional mental health counselors (LPC) must adhere to the requirements of the practitioner's applicable licensing board;

(ii) an eligible recipient receiving services from a LMHC or LPC must be diagnosed by the practitioner's supervisor; the diagnosis must be documented in the eligible recipient's record with the signature of the supervisor.

(d) licensed associate marriage and family therapist (LAMFT); supervision of LAMFTs must adhere to the requirements of the practitioner's applicable licensing board;

(13) licensed psychiatric clinical nurse specialist (CNS);

(14) physicians and psychiatrists licensed by the board of medical examiners.

C. For a LEA, REC, or other SFEA that employs a RN or a licensed practical nurse (LPN) not as a case worker, each is under the oversight of the department of health's (DOH) district health officer, as provided by state statute (Section 24-1-4 NMSA 1978). A LPN must work under the supervision of a RN who is a PED licensed school nurse.

D. As applicable, each provider must be licensed by the public education department (PED) when such licensure exists.

E. As applicable, each provider must be licensed by its specific regulation and licensing division (RLD)'s board of practice or by PED.

[8.320.6.11 NMAC - Rp, 8.320.6.11 NMAC, 7/1/2015; A, 2/1/2020]

8.320.6.13 COVERED SERVICES: MAD covers the following services when medically necessary and rendered as part of an eligible recipient's IEP or IFSP by specified providers in school settings.

A. For services in Subsections A - E of 8.320.6.13 NMAC, a provider must first develop and then update the eligible recipient's present level of performance for each of his or her IEP or IFSP cycles. MAD requires the following elements be included in the provider's treatment notes:

(1) the specific activity provided to the MAP eligible recipient for each date of service billed;

(2) a description of the level of engagement and the ability of the eligible recipient for each date of service billed; and

(3) the outcomes of session on the impact on the eligible recipient's exceptionality for each date of service billed.

B. To be reimbursed for a MAD school-based service, all of the requirements in this subsection must be met.

(1) Services must be medically necessary and must meet the needs specified in his or her IEP or IFSP. The services must be necessary for the treatment of the eligible recipient's specific identified condition.

(2) The ITP portion of the IEP or IFSP must be developed in conjunction with the appropriate qualified PT, OT, SLP, audiologist, RN, or behavioral health provider listed in 8.320.6.11 NMAC.

(3) The LEA, REC or other SFEA must complete a MAD specified good faith effort to notify the eligible recipient's PCP of the services to be provided.

(4) Frequency and duration of services billed may not exceed those specified in the eligible recipient's IEP or IFSP.

(5) Reimbursement is made directly to the LEA, REC, or other SFEA when therapy, licensed nutritionists or registered dietitians, transportation, case manager, or nurse providers furnish services under contract to the LEA, REC, or other SFEA.

C. **Therapy services:** MAD covers physical, occupational, audiological and speech evaluations, and therapy required for treatment of an identified medical condition that is part of an eligible recipient's ITP.

D. **Nutritional assessment and counseling:** MAD covers nutritional assessment and counseling when rendered by a licensed nutritionist or dietician for an eligible recipient who has been referred for a nutritional need when part of his or her ITP. A nutritional assessment consists of an evaluation of the nutritional needs of the eligible recipient based upon appropriate biochemical, anthropometric, physical, and dietary data, including a recommendation for appropriate nutritional intake.

E. **Transportation services:** MAD covers transportation services for an eligible recipient who must travel from his or her school to receive a covered service from a MAD provider when the service is unavailable in the school setting and when the service is medically necessary and are part of the eligible recipient's IEP or IFSP;

see 8.324.7 NMAC. MAD covers transportation to and from the school on the date a medically necessary MAD school-based service is rendered in the school setting for an eligible recipient who has a disability.

- (1) MAD school-based services are billed on the specific day on which transportation is rendered and are part of the ITP portion of his or her IEP or IFSP.
- (2) The eligible recipient requires transportation in a vehicle adapted to serve his or her needs that are part of the ITP portion of his or her IEP or IFSP.
- (3) Transportation occurs in a modified school bus for disabled students.

F. Case management: MAD covers school-based case management services rendered in school settings to an eligible recipient who is medically at risk when these services are part of the eligible recipient's ITP of his or her IEP or IFSP. Medically at risk refers to an eligible recipient who has a diagnosed physical condition which has high probability of impairing cognitive, emotional, neurological, social, or physical development.

- (1) The service is developed in conjunction with a qualified case manager.
- (2) MAD covers the following school-based case management services.
 - (a) The assessment of the eligible recipient's medical, social and functional abilities at least every six months, unless more frequent reassessment is indicated by the eligible recipient's condition.
 - (b) The development and implementation of a comprehensive case management plan of care that helps the eligible recipient retain or achieve the maximum degree of independence.
 - (c) The mobilization of the use of natural helping networks, such as family members, church members, community organizations, support groups, friends, and the school, if the eligible recipient is able to attend.
 - (d) Coordination and monitoring of the delivery of services, evaluation of the effectiveness and quality of the services, and revision of the case management plan of care as necessary.
 - (e) All services must be delivered to be eligible for MAD reimbursement.

(3) An eligible recipient has the freedom to choose a case management service provider. MAD will pay for only *one* case management provider to furnish services to an eligible recipient at any given time period. If an eligible recipient has a case manager or chooses to use a case manager who is not employed or under contract to the LEA, REC or other SFEA, the LEA, REC or other SFEA must coordinate with the case manager in the development of the eligible recipient's ITP.

G. Nursing: MAD covers certain nursing services required for treatment of a diagnosed medical condition that qualifies an eligible recipient for an IEP or IFSP when provided by a licensed RN or LPN. Nursing services require professional nursing expertise and are provided by a licensed RN or a LPN and must be provided in accordance with the New Mexico Nursing Practice Act and must be a covered MAD service.

H. Behavioral health services: MAD covers counseling, evaluation and therapy required for treatment of an identified behavioral health condition that is part of an eligible recipient's ITP.

~~H. I. Telemedicine services:~~ MAD covers school-based services provided via telemedicine; see 8.310.2 NMAC.

~~I. J. Administrative activities:~~ MAD covers the cost of certain administrative activities that directly support efforts to provide health-related services to a MAP eligible recipient with special education and health care needs. These administrative activities include, but are not limited to, providing information about MAD services and how to access them; facilitating the eligibility determination process; assisting in obtaining transportation and translation services when necessary to receive health care services; making referrals for MAD reimbursable services; and coordinating and monitoring MAD covered medical services.

- (1) Payment for an allowable administrative activity is contingent upon the following:
 - (a) the LEA, REC or other SFEA must complete a MAD PPA to become an approved school-based health services provider;
 - (b) the LEA, REC or other SFEA must enter into a GSA with HSD and agree to abide by the terms and conditions of the GSA;
 - (c) the LEA, REC or other SFEA must submit claims for allowable administrative activities in accordance with federal and state regulations, rules and guidelines.
- (2) A provider or contractor coordination with the school or contractor or in consultation with principals, school counselors, or teachers are not billable as a service by the provider. The provider must consult with the school to determine if the school will include such activities in its contract with the provider or contractor. The school may not bill MAD separately for these services but can include the costs as administrative costs.
- (3) Administrative claiming is subject to compliance reviews and audits conducted by HSD, the state medicaid fraud control unit and the Centers for Medicare and Medicaid Services (CMS). By signing the

MAD PPA, the LEA, REC or other SFEA agrees to cooperate fully with HSD, the state medicaid fraud control unit and CMS in the performance of all reviews and audits and further agrees to comply with all review and audit requirements.

[8.320.6.13 NMAC - Rp, 8.320.6.13 NMAC, 7/1/2015; A, 2/1/2020]