



State of New Mexico  
Human Services Department  
**Human Services Register**



**I. DEPARTMENT**  
NEW MEXICO HUMAN SERVICES DEPARTMENT

**II. SUBJECT**  
8.314.3 MEDICALLY FRAGILE HOME AND COMMUNITY-BASED SERVICES WAIVER SERVICES

**III. PROGRAM AFFECTED**  
(TITLE XIX) MEDICAID

**IV. ACTION**  
FINAL RULE

**V. BACKGROUND SUMMARY**

New Mexico Human Services Register Volume 42, Register 1, dated 1/29/2019, issued the proposed rule 8.314.3 NMAC, *Medically Fragile Home and Community-Based Services Waiver Services*.

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: January 29, 2019  
Hearing Date: February 28, 2019  
Adoption Date: July 1, 2019  
Technical Citations: 42 CFR 438 subparts A through J

A public hearing was held on February 28, 2019 to receive public comments and testimony on this proposed rule. The Human Services Department (the Department) received five written comments and two recorded comments. No oral testimony was received.

**Summary of Comments:**

**8.314.3 NMAC**

Three commenters express support for the proposed changes to this rule citing that the changes are critically needed and address challenges that Medically Fragile Waiver (MFW) recipients have faced.

**Department Response:**

Thank you for your comments.

**8.314.3.10 NMAC**

**Subsection L**

Commenter requests a provision be added allowing additional funding for situations in which a qualified Environmental Modification provider is not available in the recipient's geographical area.

**Department Response:**

Environmental Modification is a new service in the MFW. The \$5000 limit aligns with other New Mexico home and community-based service (HCBS) waivers and creates parity within the programs. This limit is set in the Centers for Medicare and Medicaid Services (CMS) approved waiver and is outside the scope of this rule revision. The Department of Health (DOH) is in the process of completing a rate study which includes the Environmental Modification service. If there are recommendations regarding the Environmental Modification rate the recommendation will be considered for MFW. The language stands as proposed.

Commenter requests the department ensure that there is a clear and defined process for obtaining approval for Environmental Modifications, that the process is clearly communicated to participants and families, and that the process contains specific timelines for review and approval.

**Department Response:**

The process for obtaining approval for Environmental Modification services, including timelines for submission, review and approval of Environmental Modification services will be added to the MFW Service Standards. This information will be communicated to participants and families through the DOH website and MFW case managers. The language stands as proposed.

**8.314.3.13 NMAC**

**Subsection I**

Commenter requests a provision be added to allow additional funding for Environmental Modifications for exceptional cases of need.

**Department Response:**

Environmental Modification is a new service in the MFW. The \$5000 limit aligns with other New Mexico HCBS waivers and creates parity within the programs. This limit is set in the CMS approved waiver and is outside the scope of this rule revision. DOH is in the process of completing a rate study which includes the Environmental Modification service. If there are recommendations regarding the Environmental Modification rate the recommendation will be considered for MFW. The language stands as proposed.

### 8.314.3.15 NMAC

#### **Subsection E**

Commenter requests the department reconsider Individual Service Plan (ISP) budget limits. Commenter states that limitations in caps for ISP budgets are incompatible with person centered planning.

#### **Department Response:**

The capped ISP is based upon a recipient's age and determined level of care. These caps are set in the CMS approved waiver and are outside the scope of this rule revision. The language stands as proposed.

### **VI. RULES**

These amendments will be contained in 8.314.3 NMAC. The final register and rule languages are available on the HSD website at: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx>. If you do not have internet access, a copy of the final register and rules may be requested by contacting the Medical Assistance Division at (505) 827-1337.

### **VII. EFFECTIVE DATE**

This rule will have an effective date of July 1, 2019.

### **VIII. PUBLICATION**

Publication of this rule approved by:



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DAVID R. SCRASE, M.D., SECRETARY  
HUMAN SERVICES DEPARTMENT