



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT
HUMAN SERVICES DEPARTMENT

II. SUBJECT
8.281.400 NMAC, MEDICAID ELIGIBILITY-INSTITUTIONAL CARE (CATEGORIES 081, 083, 084) RECIPIENT POLICIES
8.290.400 NMAC, MEDICAID ELIGIBILITY-HOME AND COMMUNITY-BASED SERVICES WAIVER (CATEGORIES 090, 091, 092, 093, 094, 095 AND 096), RECIPIENT POLICIES

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
PROPOSED RULE

V. BACKGROUND SUMMARY

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the following New Mexico Administrative Code (NMAC) rules: *8.281.400 NMAC, Medicaid Eligibility-Institutional Care (categories 081, 083, 084), Recipient Policies, 8.290.400 NMAC, Medicaid Eligibility-Home and Community-Based Services Waiver (categories 090, 091, 092, 093, 094, 095 and 096), Recipient Policies.*

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: December 15, 2020

Hearing Date: January 21, 2021

Adoption Date: Proposed as May 1, 2021

Technical Citations: 42 CFR 435 subpart B and C

Background

HSD is revising Institutional Care and Home and Community-Based Services Waiver (HCBSW) Medicaid rules to eliminate the requirement for an interview at initial application, add language regarding the requirement for a match letter for Intermediate Care Facility for Individuals with

Intellectual Disabilities (ICF/IID) applicants to confirm the applicant or recipient meets the definition of an individual with a developmental disability, and to add new language and delete outdated language to HCBSW rules on what constitutes an intellectual disability and related condition. HSD is revising the definitions to be a functional versus a categorical definition of developmental disability which is a national best practice.

The Department is proposing to amend the rules as follows:

8.281.400 NMAC

Section 1 is amended to add the acronym HSD for the Human Services Department.

Section 8 is revised to include the Department's current mission statement.

Section 10 is revised to change "applicant/recipient" to "applicant or recipient." This change was implemented throughout this rule for consistency.

Section 11 is revised to remove the requirement for an interview for Institutional Care Medicaid. An interview may be requested by an applicant or recipient.

Section 15 is amended to add language that to be eligible for ICF/IID applicants or recipients must obtain a match letter from the Department of Health (DOH) to confirm that he or she meets the definition of an individual with a developmental disability as determined by the DOH/Developmental Disabilities Supports Division.

8.290.400 NMAC

Section 7 was revised to delete the word "specific."

Section 8 is revised to include the Department's current mission statement.

Section 10 pertaining to the Developmental Disabilities Waiver was revised to add language regarding what constitutes an "intellectual disability."

Specific language was added to intellectual disability to define general intellectual functioning as the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning. Significantly sub-average is defined as an intelligence quotient (IQ) of 70 or below. Adaptive behavior is defined as the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for age and cultural group. The developmental period is defined as the period of time between birth and the 18th birthday.

Revisions were made to add language as to what constitutes a "related condition" and delete language that was no longer applicable.

Specific language was added to exclude mental illness as a related condition. Language was added to define related condition as attributable to a condition, other than mental illness, found to be closely related to an intellectual disability (ID) because this condition results in limitations in

general intellectual functioning or adaptive behavior similar to that of persons with an intellectual disability and requires similar treatment or services.

A related condition is manifested before the person reaches age twenty-two (22) years; is likely to continue indefinitely and results in substantial functional limitations (Adaptive Behavior scores less than or equal to 70) in three or more of the following areas: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

Section 11 was amended to remove the interview requirement for home and community-based services waiver categories.

VI. RULE

These proposed rule changes will be contained in 8.281.400 and 8.290.400 NMAC. This register and the proposed rule are available on the HSD website at: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and <http://www.hsd.state.nm.us/2017-comment-period-open.aspx>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at (505) 827-1337.

VII. EFFECTIVE DATE

The Department proposes to implement this rule effective May 1, 2021.

VIII. PUBLIC HEARING

A public hearing to receive testimony on these proposed rule changes will be held via conference call on Thursday, January 21, 2021 at 10:00 a.m., Mountain Time (MT). **Conference Number: 1-800-747-5150. Access Code: 2284263.**

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the MAD in Santa Fe at (505) 827-1337. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

IX. ADDRESS

Interested persons may address written comments to:

Human Services Department
Office of the Secretary
ATTN: Medical Assistance Division Public Comments

P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on January 21, 2021. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

X. PUBLICATION

Publication of this rule approved by:

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