



Susana Martinez, Governor
Brent Earnest, Secretary
Nancy Smith-Leslie, Director

September 12, 2017

RE: Tribal Notification Letter 17-13

8.314.3 NMAC, Medically Fragile Home and Community-Base Services

Dear Tribal Leadership, Indian Health Services, Tribal Health Providers and Other Interested Parties,

Consultation with New Mexico's Indian Nations, Tribes, Pueblos, and their healthcare 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) Tribal Consultation requirements, this letter is to inform you that HSD, through the Medical Assistance Division (MAD), is accepting written comments through October 13, 2017, regarding proposed amendments to the Medically Fragile Home and Community-Based services rule (8.314.3) of the New Mexico Administrative Code (NMAC).

On February 1, 2017, HSD received approval from the Centers for Medicare and Medicaid Services (CMS) to renew its New Mexico Medically Fragile 1915 (c) Home and Community-Based (HCBS) Waiver with an effective date of July 1, 2016. This rule is being amended to align services and definitions with the approved Medically Fragile Waiver and the CMS HCBS Settings Final Rule.

This rule:

1. Adds language to ensure that services are provided in accordance with the CMS HCBS Settings Final Rule. Services covered under the Medically Fragile Waiver program must ensure the recipients right to privacy, dignity, and respect. Further, services must ensure the recipient's right to freedom from coercion and restraint.
2. Updates and standardizes language and acronyms with other New Mexico Medicaid programs.

Tribal Impact: *HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with these amendments throughout the rule. The changes are primarily for clarity and consistency with the waiver as approved by CMS.*

Section 7

Definitions applicable to the Medically Fragile Waiver program are added to this section.

Tribal Impact: *HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with these amendments in Section 7. The changes are primarily for clarity and consistency with the waiver as approved by CMS.*

Section 8

This section is updated to align the program mission statement with the Human Services Department mission statement.

Tribal Impact: *HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with these amendments in Section 8. The changes are primarily for clarity and consistency with other HSD program.*

Section 9

This section is updated to clarify that services are provided for individuals diagnosed with a medically fragile condition before the age of 22 and who require the same level of care as those in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

Tribal Impact: *HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with these amendments in Section 9. The changes are primarily for clarity and consistency with the waiver as approved by CMS.*

Section 10

Subsection H – the list of allowed licenses is updated for behavior support providers to align with the approved Medically Fragile 1915(c) waiver.

Subsection I – removed institutional respite as a covered service and updated the respite service to clarify that respite may be provided in the participant’s home or private place of residence, the private residence of a respite care provider, or specialized foster care home to align with the approved Medically Fragile Waiver. The final approval of where respite services are provided is made by the participant or the participant’s representative.

Tribal Impact: *HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with these amendments in Section 10. The changes are made to align with CMS Final Settings Rule and the waiver as approved by CMS. There was no use of institutional respite during the most recent federal reporting period which was for federal fiscal year 2015.*

Section 11

This section has been updated to clarify provider responsibility to comply with all federal and state laws, regulations, rules, executive orders provider agreements, and service standards.

Tribal Impact: *HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with these amendments in Section 11. The changes are made for clarity and to align with the waiver as approved by CMS.*

Section 12

This section has been updated to reflect that enrollment is contingent upon the applicant meeting eligibility requirements and the availability of funding as approved by the New Mexico legislature, and the number of federally authorized unduplicated eligible recipients.

Tribal Impact: *HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with these amendments in Section 12. The changes are made for clarity and to align with the waiver as approved by CMS.*

Section 13

This section is updated to align with the CMS HCBS Final Settings Rule. Language has been added clarifying the recipient’s right to privacy, dignity, and respect as well as freedom from coercion and restraint.

Subsection B – language is added that home health aide services are provided in the eligible recipients own home or in the community.

Subsection C – language clarifies that private duty nursing is provided in the recipients own home.

Subsection F – institutional respite is removed as a covered service to align with the approved Medically Fragile 1915(c) waiver. Language is added to clarify that respite may be provided in the eligible recipient’s home and that the participant has the option to give final approval of where respite services will be provided. Limitation of respite service to 14 days or 336 hours per budget year added to align with approved Medically Fragile 1915(c) waiver.

Subsection H – language is added requiring that specialized medical equipment meets applicable standards of manufacture, design, and installation. Clarification added that medical equipment and supplies that are furnished by the Medicaid state plan are not covered under this service.

Tribal Impact: *HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with these amendments in Section 13. The changes are made to align with CMS Final Rule and the waiver as approved by CMS. There was no use of institutional respite during the most recent federal reporting period which was for 2015.*

Section 18

A recipient’s right to a HSD administrative hearing is added to this rule to align with the approved Medically Fragile 1915(c) waiver and Code of Federal Regulations (CFR). This section outlines the circumstances under which a recipient has the right to request a fair hearing.

Tribal Impact: *HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with these amendments in Section 18. The changes are made for clarity and to align with the waiver as approved by CMS.*

Section 19

The option for a recipient to request a continuation of benefits related to an administrative hearing is added to this rule to align with the approved Medically Fragile 1915(c) waiver.

Tribal Impact: *HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with these amendments in Section 19. The changes are made for clarity and to align with the waiver as approved by CMS.*

Section 20

The recipient grievance system is added to this rule to align with the approved Medically Fragile 1915(c) waiver.

Tribal Impact: *HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with these amendments in Section 20. The changes are made for clarity and to align with the waiver as approved by CMS.*

Tribal Consultation Comments -

Tribes and their healthcare providers may view the proposed rule, 8.314.6 NMAC, on the HSD webpage at <http://www.hsd.state.nm.us/providers/written-tribal-consultation-letters.aspx>. Letter 17-09

Important Dates

- **Written comments must be submitted by 5:00 p.m. Mountain Daylight Time (MDT) on October 15, 2017.** Please send your comments and questions to the MAD Native American Liaison, **Theresa Belanger**, at **(505) 827-3122** or by email at: Theresa.Belanger@state.nm.us.
- All comments and responses will be compiled and available November 3, 2017.
- **A public hearing** to receive testimony on this proposed rule will be held in Hearing Room 1, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM on October 13, 2017 at 10:00 a.m. MDT.

Sincerely,



Nancy Smith-Leslie
Director, Medical Assistance Division

cc: Theresa Belanger, Native American Liaison, MAD
HSD/MAD/Exempt Services and Programs Bureau
HSD/MAD/PPB-Program Management/Communications Unit