



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

October 10, 2017

RE: Tribal Notification Letter 17-11

- 8.200.510 NMAC, General Recipient Rules-Resource Standards
- 8.215.500 NMAC, SSI Methodology-Income and Resource Standards
- 8.240.500-QMB-Income and Resource Standards
- 8.281.400 NMAC, Institutional Care-Recipient Policies
- 8.281.500 NMAC, Institutional Care-Income and Resource Standards
- 8.290.400 NMAC, Home and Community-Based Services Waiver-Recipient Policies

Dear Tribal Leadership, Indian Health Services, 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 through November 29, 2017, regarding proposed amendments to the several New Mexico Administrative Code (NMAC) eligibility rules. HSD is providing this notice for the purpose of receiving comment on the proposed amendments.

The Department through these rules is revising the excess home equity amount for long-term care services, is incorporating into policy the Achieving a Better Life Experience Act (ABLE Act) which establishes state-run tax advantaged accounts for eligible individuals to use for disability related expenses, adds additional resource and income exclusions for distributions made to Native Americans, and requires interviews at initial application for the Medical Assistance Program (MAP) eligibility categories of Institutional Care and Waiver. Other changes throughout the rules are to update language, incorporate standardized rule language, and to provide additional clarification in sections of the rules.

SUMMARY OF CHANGES AND TRIBAL IMPACT

8.200.510 NMAC, General Recipient Rule-Resource Standards

Section 15-The excess home equity amount for long-term care services is being changed from the federal maximum of \$840,000 down to the federal minimum of \$560,000. The home equity amount will continue to be increased each year by the urban component of the consumer price index as required by the New Mexico Medicaid State Plan. No proposed changes are new limits on services or eligibility, nor otherwise negatively impact managed care members.

Tribal Impact: *The reduction of the excess home equity amount means that HSD will exclude a much lower amount of home equity for applicants or renewing recipients. Home equity over the*

\$560,000 minimum will count as resources for MAP categories of eligibility that have a resource limit. The expectation is the reduction in the home equity down to the federal limit will have a minimal impact on Native American MAP applicants as very few applicants will have home equity in excess of \$560,000.

8.215.500 SSI Methodology-Income and Resource Standards

Section 12-Outdated references were replaced with current NMAC references.

Section 13-A new subsection "H" was added to incorporate language describing the ABLE Act which establishes state-run tax advantaged accounts for eligible individuals to use for disability related expenses. Tax advantaged accounts allow an eligible individual to save and use funds for disability-related expenses.

Section 14-A new subsection "N" was added for ABLE Act exclusions. ABLE account balances are excluded up to \$100,000. Amounts over \$100,000 count towards the \$2,000 SSI resource limit.

A new subsection "O" was added to exclude from resources per capita payments under the Indian Judgement Fund Act of \$2,000 or less.

Section 18-A new subsection "C" was added which states that contributions from any source into an ABLE account is not considered income to an SSI recipient. However, an SSI recipient's earnings contributed to an ABLE account are considered wages and counted. Gifts to an SSI recipient to be deposited into an ABLE account are considered income unless made directly into an ABLE account.

Section 20-Unearned income exclusions for subsection "D(6)" were updated to exclude certain income distributions to Native Americans as required by Public Law. A new subsection "15" was added that identifies which distributions from an ABLE account are excluded as income of the designated beneficiary.

Section 21-Outdated reference was replaced with current NMAC reference.

Tribal Impact: *The Achieving a Better Life Experience (ABLE) Act was enacted December 19, 2014. The ABLE Act establishes state-run tax advantaged accounts for eligible individuals to use for disability related expenses. Native Americans applying for a MAP category of eligibility will benefit from the resource exclusions allowed under the ABLE Act that would otherwise normally be countable resources.*

8.240.500 NMAC

Section 14-Language was added to clarify Qualified Medicare Beneficiary (QMB) policy that the standard \$20 disregard is only given if the applicant or recipient lives with an ineligible spouse.

Tribal Impact: *The amendment is a clarification of existing policy language. The standard \$20.00 disregard is given only if the applicant is married and is longstanding policy applicable to all QMB applicants.*

8.281.400 NMAC

Section 10-Language was added to this Section to clarify that Level of Care determinations are also made by Managed Care Organizations.

Section 11-Language was added that an interview is required at initial application for Institutional Care Medicaid. The telephonic or in-person interview shall be scheduled within ten working days at a time that is convenient for the applicant. Missed interviews can be rescheduled by that applicant. An

application can be denied on the 45th day if the applicant does not contact the Income Support Division or does not appear for the rescheduled interview.

Tribal Impact: *Section 10 language is a clarification to policy that Level of Care determinations are also made by Managed Care Organizations and not just by the MAD Utilization Review Contractor. Section 11 language requiring an initial interview for Institutional Care Medicaid categories is a longstanding practice which needed to be included in policy. Neither Sections 10 or 11 language changes impact Native Americans differently from what is already being done currently.*

8.281.500 NMAC

Section 7- The acronym for QLTCPI was changed to QSLTCIP (Qualified State Long-Term Care Insurance Partnership) in this section and throughout the rule.

Tribal Impact: *The language change is a correction in the acronym and has no impact on Native Americans.*

8.290.400 NMAC

Section 11-A new subsection “E” was added to state that an interview is required at initial application for Waiver programs.

Tribal Impact: *The language requiring an initial interview for Waiver Medicaid categories of eligibility is longstanding practice which needed to be included in policy. The language change does not impact Native Americans differently from what is already being done currently.*

Tribal Consultation Comments -

Tribes and their healthcare providers may view the proposed amendments on the HSD webpage at <http://www.hsd.state.nm.us/providers/written-tribal-consultation-letters.aspx> Letter 17-11.

Important Dates

- **Written comments must be submitted by 5:00 p.m. Mountain Standard Time (MST) on November 29, 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 December 11, 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 November 29, from at 10:00 a.m. to 12 p.m., MST.
- The Department proposes to implement these rules effective March 1, 2018.

Sincerely,



Nancy Smith-Leslie
Director, Medical Assistance Division

cc: Theresa Belanger, Native American Liaison, MAD
HSD/MAD/Eligibility Bureau
HSD/MAD/PPB-Program Management/Communications Unit