

August 11, 2020

RE: Tribal Notification to Request Advice and Comments Letter 20-04: 8.291.430 NMAC,
Affordable Care, Financial Responsibility Requirements

Dear Tribal Leadership, Indian Health Service, 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 until **5:00 p.m., Mountain Time (MT) on September 11, 2020** regarding proposed amendments to 8.291.430 NMAC (Affordable Care, Financial Responsibility Requirements) effective July 1, 2020.

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: August 11, 2020

Hearing Date: September 11, 2020

Adoption Date: Proposed as December 1, 2020

Technical Citations: Section 53103 and 40203 of the Bipartisan Budget Act of 2018 (BBA of 2018), 1902(e)(14) of the Social Security Act (SSA), Section 2113 of the SSA, Section 3004 of the HEALTHY KIDS Act, Section 11051, 11031, 11049 of the Tax Cuts and Jobs Act (TCJA)

HSD is revising the New Mexico Administrative Code (NMAC) rule 8.291.430, *Medicaid Eligibility - Affordable Care, Financial Responsibility Requirements* to add in the current HSD mission statement, update new federal poverty level amounts that go into effect on April 1, 2020, and to implement the Centers for Medicare and Medicaid (CMS) guidance issued on August 22, 2019 that introduces required changes with respect to MAGI-based income methodology. The guidance introduces changes to countable income and deductions that are used in the MAGI Medicaid eligibility determination. The following are the changes:

Qualified lottery and gambling winnings-Currently qualified lottery and gambling winnings are counted as income only in the month received. The CMS guidance requires that covered lottery and gambling winnings of \$80,000 or greater, which are received as a single payout, be counted not only in the month received, but over a period of up to 120 months. Per the guidance winnings less than \$80,000 are counted as income in the month received. Winnings of \$80,000 but less than \$90,000 are counted as income over two months, with an equal amount counted in each month. For every

additional \$10,000 one month is added to the period over which total winnings are divided, in equal installments, and counted as income. The maximum period of time over which winnings may be counted is 120 months, which would apply to winnings of \$1,260,000 and above. States are required to apply this formula to qualified lottery or gambling winnings received beginning on or after January 1, 2018.

In the eligibility notice to clients, HSD will notify individuals of the date on which the lottery or gambling winnings no longer will be counted for purposes of Medicaid eligibility. HSD will require the verification of lottery and gambling winnings but will access electronic data sources, if available, before requesting documentation.

The requirement to count qualified lottery and gambling winnings in household income over multiple months applies only to the individuals receiving the winnings. The determination of household income for other members of the individual's household is not affected. Thus, for example, the total amount of qualified lottery and gambling winnings of a spouse or parent continues to count only in the month received in determining the eligibility of the other spouse and children.

HSD allows for a hardship exemption for the counting of lottery or gambling winnings if the applicant or recipient with the lottery or gambling winnings can demonstrate an undue medical hardship such that the applicant or recipient's health or life would be endangered. Hardship exemption request details will be contained in the eligibility notice issued to clients.

Exclusion of a nominal amount of parent mentor income of \$1,600 per month for income earned for participation in a grant funded program under Section 2113 of the SSA.

Alimony received is no longer counted under separation or divorce agreements finalized or modified after December 31, 2018. Alimony received still counts on or prior to December 31, 2018.

Alimony payments under separation or a divorce decree after December 31, 2018 are no longer deductible by the taxpayer. On or before December 31, 2018 alimony payments continue to be deductible.

Discharged student loan debt is treated as taxable income. The change is to not count this income for tax years 2018 through 2025 if the debt is discharged on account of the death or disability of the student.

Moving expenses are eliminated as a deduction for tax years 2018 through 2025 except for active military.

Tuition and fees are no longer deductible.

Estimated Total Financial Impact

The Department is not anticipating a fiscal impact with these rule changes which will impact a small number of Medicaid applicants and recipients with this type of income and deductions. Some of the income and deduction changes increase countable income making individuals less likely to be eligible, while others exclude income making individuals more likely to be eligible.

Tribal Impact

The counting of qualified lottery and gambling winnings of \$80,000 or more has a negative impact on tribal applicants and recipients. Rather than counting as income for Medicaid in the month received winnings will be counted as income for a period of up to 120 months.

The exclusion of a nominal amount of \$1,600 per month of parent mentor compensation has a positive impact on tribal applicant and recipients because this income will be excluded from the Medicaid eligibility determination. Parent mentor income over \$1,600 per month is included in the MAGI calculation.

Alimony received has a positive impact on tribal applicant and recipients because this income will be excluded from the Medicaid eligibility determination for separation or divorce agreements finalized or modified after December 31, 2018.

Alimony paid has a negative impact on tribal applicant and recipients because alimony payments under separation or a divorce decree after December 31, 2018 are no longer deductible by the taxpayer.

Discharged student loan debt has a positive impact on tribal applicant and recipients because this income will not count if the debt is discharged on account of the death or disability of the student for tax years 2018 through 2025.

Moving expenses has a negative impact on tribal applicant and recipients because this deduction is eliminated for tax years 2018 through 2025 except for active military.

Tuition and fees have a negative impact on tribal applicant and recipients because this deduction is eliminated.

Tribal Advice and Comments

Tribes and tribal healthcare providers may view the proposed amendments to 8.291.430 NMAC on the HSD webpage at: <http://www.hsd.state.nm.us/providers/written-tribal-consultations.aspx>. *Notification Letter 20-04.*

A written copy of these documents may be requested by contacting the HSD Medical Assistance Division (HSD/MAD) in Santa Fe at (505) 827-1337.

Important Dates

A public hearing will be held **via conference call** on September 11, 2020 at 9:00 a.m., Mountain Time (MT). **Conference phone number: 1-800-747-5150. Access Code: 2284263.**

Written advice and comments must be received no later than 5:00 p.m. MT on September 11, 2020. Please send your advice, comments or questions to the MAD Native American Liaison, Theresa Belanger, at (505) 827-3122 or by email to theresa.belanger@state.nm.us.

All comments and responses will be compiled and made available after September 25, 2020.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nicole Comeaux". The signature is fluid and cursive, with a large initial "N" and "C".

Nicole Comeaux, J.D., M.P.H, Director
Medical Assistance Division