

August 25, 2020

RE: Tribal Notification to Request Advice and Comments Letter 20-18: New Rule Promulgation for 8.314.7 NMAC, Long Term Care Services - Waivers, Supports Waiver

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 Monday, September 28, 2020** regarding the promulgation of a new New Mexico Administrative Code (NMAC) rule, 8.314.7, Long Term Care Services - Waivers, Supports Waiver. 8.314.7 NMAC serves to implement, support, and clarify the statute for the Supports Waiver. The Supports Waiver will be the State's fourth Medicaid 1915(c) Home and Community-Based Services (HCBS) waiver program currently operated to serve individuals with special needs. The Supports Waiver will provide services to individuals with intellectual and developmental disabilities on the Department of Health (DOH) Developmental Disabilities (DD) Waiver Wait List.

**The Department proposes to promulgate the rule as follows:**

**Section 7: Definitions**

This section provides definitions for terms found within 8.314.7 NMAC.

**Section 8: Mission Statement**

This section provides the Department's mission statement.

**Section 9: Supports Waiver Home and Community-Based Services**

This section provides a description of the Supports Waiver program and its intent to provide support services to eligible recipients to enable work toward self-determination, independence, productivity, integration, and inclusion in all facets of community life across the lifespan.

## **Section 10: Eligibility Requirements for Recipient Enrollment**

This section outlines that eligibility for the Supports Waiver program is contingent upon the applicant meeting the eligibility requirements, the availability of funding as appropriated by the New Mexico legislature, and the number of federally authorized unduplicated eligible recipients.

## **Section 11: Eligible Recipient Responsibilities**

This section outlines the responsibilities that Supports Waiver eligible recipients must comply with. The section also details the eligible recipient's voluntary and involuntary program disenrollment.

## **Section 12: Supports Waiver Contracted Entities and Providers**

This section outlines the Supports Waiver program contracted entities and their responsibilities including requirements to avoid conflict of interest.

## **Section 13: Qualifications for Eligible Individual Employees, Independent Providers, Provider Agencies, and Vendors**

This section lists general and specific qualifications for agency-based and participant-directed service delivery model providers. This section also outlines the roles and responsibilities of the Employer of Record (EOR) who helps assist Supports Waiver participants accessing services in the participant-directed service delivery model with employer functions.

## **Section 14: Service Descriptions and Coverage Criteria**

This section provides description of the services offered through the Supports Waiver. This section also outlines that service delivery must be in compliance with the Centers for Medicare and Medicaid Services HCBS Settings Final Rule.

## **Section 15: Non-Covered Services**

This section lists non-covered services and specifies that the Supports Waiver program does not pay for the purchase of goods or services that a household without a person with a disability would be expected to pay for as a routine household or personal expense.

## **Section 16: Individual Service Plan and Authorized Annual Budget**

This section outlines the components, requirements, and development of a Supports Waiver participant's Individual Service Plan (ISP) and review and approval of their Authorized Annual Budget (AAB). The section also outlines the process for modification of the ISP.

## **Section 17: Prior Authorization and Utilization Review**

The section clarifies that services covered under the Supports Waiver program are subject to utilization review for medical necessity and program requirements.

## **Section 18: Recordkeeping and Documentation Responsibilities**

This section outlines the recordkeeping and documentation responsibilities of Supports Waiver program providers and participants.

## **Section 19: Reimbursement**

This section outlines reimbursement requirements for agency-based and participant-directed service delivery model providers.

## **Section 20: Right to an HSD Administrative Hearing**

This section outlines that Supports Waiver participants have an opportunity for an administrative hearing and the circumstances under which to request a fair hearing.

## **Section 21: Continuation of Benefits Pursuant to Timely Appeal**

This section outlines that Supports Waiver participants have an opportunity to request a continuation of benefits.

## **Section 22: Grievance/Complaint System**

This section outlines that Supports Waiver participants have an opportunity to register grievances or complaints concerning the provision of services under the Supports Waiver program and describes the process for filing a grievance.

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 25, 2020

Hearing Date: September 28, 2020

Adoption Date: Proposed as January 1, 2021.

Technical Citations: 42 CFR Chapter IV Subchapter C

## **Estimated Total Financial Impact**

HSD does not anticipate a financial impact to Tribes, Tribal health providers or Indian Health Services related to these changes.

## **Tribal Impact**

The average wait time for Developmental Disabilities (DD) waiver services in New Mexico is approximately 13.5 years and there are approximately 5,000 individuals on the DD Wait List. This includes 559 Native Americans enrolled in Medicaid who are waiting for DD waiver services and may benefit from the newly created Supports Waiver.

## **Tribal Advice and Comments**

Tribes and tribal health care providers may view the proposed 8.314.7 NMAC on the HSD webpage at: <http://www.hsd.state.nm.us/providers/written-tribal-consultations.aspx>. *Notification Letter 20-18.*

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 on this rule is scheduled be held via conference call on Monday, September 28, 2020 at 10 a.m. MT. Conference Number: 1-800-747-5150. Access Code: 2284263.**

**Written advice and comments must be received no later than 5:00 p.m. MT on Monday, September 28, 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](mailto:theresa.belanger@state.nm.us).

All comments and responses will be compiled and made available after **October 19, 2020**.

Sincerely,



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