



Michelle Lujan Grisham, Governor  
David R. Scrase, M.D., Secretary  
Nicole Comeaux, J.D., M.P.H, Director

May 29, 2020

**RE: Tribal Notification to Request Advice and Comments Letter 20-06: Notice of Proposed Temporary Changes to Medicaid Due to COVID-19 Outbreak**

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. This letter is to inform you that the Human Services Department (HSD), through the Medical Assistance Division (MAD), is accepting written comments until **5:00 p.m. Mountain Time (MT) June 28, 2020**, regarding Temporary Changes to Medicaid due to COVID-19 Outbreak.

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the constitution and the laws of the United States. On January 31, 2020, and retroactively effective January 27, 2020, the Secretary of the United States Department of Health and Human Services (HHS) invoked his authority to waive or modify certain requirements as a result of the consequences of the COVID-19 pandemic to ensure sufficient health care coverage, items and services are available to meet the needs of individuals enrolled in the respective programs. The New Mexico Human Services Department (HSD) is seeking waiver authority to temporarily modify certain Medicaid requirements to ensure continuation of essential services to Medicaid beneficiaries without disruption or delay.

Through this notice, HSD invites members of the public and provider community to comment on the proposed changes that are described below. The proposed changes will require waivers or revisions to the New Mexico Medicaid State Plan that HSD must file with the federal Centers for Medicare and Medicaid Services (CMS).

**ELIGIBILITY AND ENROLLMENT**

**1. Self-Attestation for all Eligibility Criteria**

HSD is proposing to allow self-attestation for all eligibility criteria (excluding citizenship and immigration status) on a case-by-case basis for individuals subject to a disaster when documentation is not available.

**2. Provide Coverage at Higher Income Levels**

HSD is proposing to provide coverage at higher income levels for specific populations. This change would increase the Federal Poverty level (FPL) to 200% for “Individuals Above 133% of the FPL” (also referred to as MAGI Adult expansion group/COE 100); and increase the income standard for the “Optional Targeted Low-Income Children” category to 400%.

### **3. Delay Renewal Processing**

HSD is proposing temporarily delaying Medicaid renewals for a period of three months for all enrolled members in the state, since the impact of the disaster is applicable across the entire state.

### **4. Expand Presumptive Eligibility Determiners**

HSD is proposing to expand the type of provider qualified to conduct presumptive eligibility determinations to allow for presumptive eligibility of Medicaid enrollment to occur in settings outside of emergency rooms and hospitals.

## **FAIR HEARINGS**

### **5. Extend Timeframe to Request a Fair Hearing**

HSD is proposing to extend the time for which an enrollee or a Medicaid member may exercise their appeal rights and submit a request for a State Fair Hearing from ninety (90) days to one-hundred twenty (120) days to ensure claimants’ due process rights are met.

## **BENEFITS**

### **6. Temporarily Modify Person-Centered Service Plan Development Process**

HSD is proposing to allow the use of remote contact methods to ensure that the current assessment and services, including providers, remain acceptable for person-centered service plans that are due to expire within sixty (60) days.

### **7. Suspend Pre-Admission Screening and Annual Resident Review (PASRR)**

HSD is proposing to temporarily suspend pre-admission screening and annual resident review (PASRR) Level I and Level II assessments for thirty (30) days.

### **8. Permit Payment for 1915(c) Waiver Services**

HSD is proposing to temporarily suspend 1915(c) waiver authorization requirements and permit payment for waiver services rendered by family care givers or legally responsible individuals.

## **PRIOR AUTHORIZATION**

### **9. Suspend 1915(c) Prior Authorization Requirements**

HSD is proposing to temporarily suspend 1915(c) prior authorization requirements for waiver services which are related to, or resulting from, the COVID-19 emergency.

### **10. Suspend Managed Care and Fee-For-Service Prior Authorization Requirements**

HSD is proposing to temporarily suspend Medicaid managed care and fee-for-service prior authorization requirements for services related to COVID-19 and to cover all medically necessary emergency care without prior authorization, whether that care is provided by an in-network or an out-of-network provider. This ensures that recipients have access to covered state plan and waiver benefits and also recognizes circumstances which makes submission of medical necessity documentation difficult, impractical or impossible.

### **11. Extending Medical Necessity or Level of Care (LOC) Authorizations for 1915(c) recipients.**

HSD is proposing to temporarily allow the use of Level of Care assessments on file to fulfill the annual LOC requirement for impacted waiver participants for the duration of the emergency.

### **12. Extend Managed Care and Fee-For-Service Prior Authorization**

HSD is proposing to require fee-for-service providers and managed care organizations to extend prior authorizations through the termination of the emergency declaration. Extending the prior authorization will help healthcare providers combat or contain the spread of COVID-19.

### **13. Allow Telephonic Visits**

HSD is proposing to allow the use of telephonic visits in lieu of face-to-face requirements. New Mexico's Medicaid MCOs are required to continue all care coordination activities using telephonic visits or, if the capacity exists for the member and MCO, virtual visits. Care coordination activities that normally require a home visit with face-to-face member interaction include initial, annual and semi-annual Comprehensive Needs Assessments (CNAs); semi-annual and annual in-person touch points; transition of care three-day in-home assessments; and Nursing Facility Level of Care (NFLOC) determinations for Community Benefits. Telephonic visits will help comply with the Centers for Disease Control (CDC) recommendations for social distancing to reduce the risk and spread of COVID-19 exposure to members and care coordinators.

### **14. Suspension of Nursing Facility Level of Care (NFLOC) Redeterminations**

HSD is proposing to suspend NFLOC redeterminations for impacted members for the duration of the emergency. New Mexico's Medicaid MCOs are required to continue to submit NFLOC determinations as they are completed and to also continue their processes to ensure that prior authorizations for Personal Care Services, nursing facilities and other long-term services and supports are in place.

## **PROVIDER ENROLLMENT AND PARTICIPATION**

## **15. Permit Providers Out of State/Territory to Provide Care**

HSD is proposing to waive the provider enrollment requirement, so it can permit providers located out of state/territory to provide care to a disaster state's Medicaid enrollee. This proposed change allows MCOs to reimburse providers for services pursuant to the following conditions being met: the services are provided outside of New Mexico; the NPIs are reflected on the claim to the MCO; the provider is enrolled in another state's Medicaid program or in Medicare; and the claim represents services furnished to a single recipient over a 180 day period (either a single instance of care or multiple instances of care). This will ensure access to care for Medicaid members who may be unable to return home to New Mexico due to isolation or quarantine requirements.

## **16. Cease Revalidation of Providers**

HSD is proposing to temporarily cease revalidation of providers who are located in-state or otherwise directly impacted by a disaster. Currently, New Mexico Medicaid providers are revalidated every three years. The Department is requesting that no providers auto-terminate for failure to revalidate timely during the public health emergency period related to COVID-19 to prevent interruptions in the provider's active enrollment status and enable providers to have continued access to client eligibility information.

## **17. Provide Payments to Facilities Providing Services in Alternative Settings**

HSD is proposing to provide payments to facilities for providing services in alternative settings, including an unlicensed facility, if the provider's licensed facility has been evacuated. The current requirement is that a provider must be enrolled with NM Medicaid before rendering services or submitting a claim for payment to the appropriate MAD claims processing contractor.

## **18. Waive Site Visits to Temporarily Enroll a Provider**

HSD is proposing to waive site visits to temporarily enroll a provider. The current requirement is that moderate-risk level providers receive a pre-enrollment site visit, and that high-risk providers receive a pre-enrollment site visit and submit fingerprints. The waiver would allow moderate- and high-risk providers to be enrolled temporarily without pre-enrollment site visits and Fingerprint-based Criminal Background Checks (FCBC).

## **19. Temporarily Modify 1915(c) Provider Requirements**

HSD is proposing to temporarily suspend fingerprint checks and modify training requirements to service providers to allow trainings to be performed telephonically or through online modalities as opposed to face-to-face. New Mexico providers must conduct employee abuse registry screenings and document that the screening has occurred.

HSD is also proposing to allow currently approved providers to provide services in other service types in the event of staffing shortages, and in the instances of the use of licensed and non-licensed agency staff, to ensure agencies follow HSD guidance to continue to screen and qualify staff in the best interest of the participant.

## **REPORTING AND OVERSIGHT**

### **20. Adjust Performance Deadlines**

The HSD is proposing to adjust performance deadlines and timetables for required activities under its current 1115 Demonstration Waiver, until sixty (60) days after the declared public health emergency related to COVID-19 has ended as outlined below:

### **21. Suspend Home Health Aide Supervision Requirement**

HSD is proposing to temporarily suspend the two-week aide supervision requirement by a registered nurse for home health agencies to ensure health and safety needs of participants are being met. An agency unable to support the usual budgeted hours with substitute staff may hire a relative, friend, or parent at the home health aide rate.

### **22. Suspend Hospice Aid Supervision Requirement**

HSD is proposing to temporarily suspend supervision of hospice aides by a registered nurse every fourteen (14) days for hospice agencies.

### **23. Modify 1915(c) Incident Reporting Requirements**

HSD is proposing to modify incident reporting requirements, medication management or other participant safeguards to ensure individual health and welfare, and to account for emergency circumstances. Modifications may include: suspension of investigations of neglect due to a deviation in staffing as outlined in an individual plan, or suspension of the requirement to submit an incident report for abuse, neglect or exploitation due to a deviation in staffing as outlined in an individual plan. Providers are required to report any incidents in which staff shortages result in failure to provide care.

## **HIPAA COMPLIANCE**

### **24. Sanctions and Penalties**

HSD is proposing to temporarily suspend application of sanctions and penalties arising from non-compliance with HIPAA requirements related to:

- Obtaining a patient's agreement to speak with family members or friends;
- Honoring a request to opt out of the facility directory;
- Distributing a notice;
- The patient's right to request privacy restrictions;
- The patient's right to request confidential communications.

### **25. Temporarily Suspend Application of Emergency Medical Treatment and Labor Act (EMTALA) Sanctions**

HSD is proposing to temporarily suspend the application of sanctions under EMTALA for redirection of

an individual to receive a medical screening examination in an alternative location or transfer of an individual who has not been stabilized if the transfer is necessitated by the circumstances of the declared emergency.

### **Estimated Total Financial Impact**

HSD does not anticipate a financial impact to Indian Nations, Tribes, Pueblos or their health care providers for these proposed changes. In response to frequently changing federal regulations around the Medicaid program and the financial assistance the state is receiving from the federal government to respond to the COVID-19 pandemic, HSD continues to review the projected financial impact the public health emergency may have upon the state and will provide this information as soon as it becomes available.

### **Tribal Impact**

HSD anticipates these proposed changes will have a positive impact for Native Americans, Pueblos, Indian Health Service (IHS) and Tribal health care providers. The temporary changes will help ensure Medicaid enrollees continue to receive necessary care and access to services during the COVID-19 national emergency period, without interruption.

### **Tribal Advice and Comments**

Tribes and Tribal health care providers may view the proposed changes on Proposed Temporary Medicaid Changes Due to COVID-19 Outbreak on the HSD website at: <http://www.hsd.state.nm.us/providers/written-tribal-consultations.aspx>, Tribal Notification **20-06**.

### **Important Dates**

**Written comments must be submitted by 5:00 p.m. Mountain Time (MT) on June 28, 2020.** Please send your comments 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 written comments received will be posted on the HSD website at: <http://www.hsd.state.nm.us/providers/written-tribal-consultations.aspx> along with this notification letter. The public posting will include the name and any contact information provided by the commenter.

**Tribal Leadership may request a government-to-government consultation by June 28, 2020.** This request may be made to: [Theresa.Belanger@state.nm.us](mailto:Theresa.Belanger@state.nm.us) or by calling (505) 827-3122.

Sincerely,



Nicole Comeaux, J.D., M.P.H.  
State Medicaid Director