



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

December 15, 2020

RE: Tribal Notification to Request Advice and Comments Letter 20-33

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 **5:00pm Mountain Time (MT) on January 21, 2021** regarding proposed amendments to the New Mexico Administrative Code (NMAC) 8.281.400 and 8.290.400.

HSD is revising Institutional Care and Home and Community-Based Services Waiver (HCBSW) Medicaid rules to eliminate the requirement for an interview at initial application, add language regarding the requirement for a match letter for Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) applicants to confirm the applicant or recipient meets the definition of an individual with a developmental disability, and to add new language and delete outdated language to HCBSW rules on what constitutes an intellectual disability and related condition. HSD is revising the definitions to be a functional versus a categorical definition of developmental disability which is a national best practice.

8.281.400 NMAC

Section 1 is amended to add the acronym HSD for the Human Services Department.

Section 8 is revised to include the Department's current mission statement.

Section 10 is revised to change "applicant/recipient" to "applicant or recipient." This change was implemented throughout this rule for consistency.

Section 11 is revised to remove the requirement for an interview for Institutional Care Medicaid. An interview may be requested by an applicant or recipient.

Section 15 is amended to add language that to be eligible for an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) applicants or recipients must obtain a match letter from the Department of Health (DOH) to confirm that he or she meets the definition of an individual

with a developmental disability as determined by the DOH/Developmental Disabilities Supports Division.

8.290.400 NMAC

Section 7 was revised to delete the word “specific.”

Section 8 is revised to include the Department’s current mission statement.

Section 10 pertaining to the Developmental Disabilities Waiver was revised to add language regarding what constitutes an “intellectual disability.”

Specific language was added to intellectual disability to define general intellectual functioning as the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning. Significantly sub-average is defined as an intelligence quotient (IQ) of 70 or below. Adaptive behavior is defined as the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for age and cultural group. The developmental period is defined as the period of time between birth and the 18th birthday.

Revisions were made to add language as to what constitutes a “related condition” and delete language that was no longer applicable.

Specific language was added to exclude mental illness as a related condition. Language was added to define related condition as attributable to a condition, other than mental illness, found to be closely related to an intellectual disability (ID) because this condition results in limitations in general intellectual functioning or adaptive behavior similar to that of persons with an intellectual disability and requires similar treatment or services.

A related condition is manifested before the person reaches age twenty-two (22) years, is likely to continue indefinitely, and results in substantial functional limitations (Adaptive Behavior scores less than or equal to 70) in three or more of the following areas: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

Section 11 was amended to remove the interview requirement for home and community-based services waiver categories.

Estimated Total Financial Impact

Eliminating the interview requirement for Institutional Care and HCBSW Medicaid rules is not estimated to have a financial impact. Requiring a match letter for ICF/IID applicants and recipients and updating what constitutes an intellectual disability and related condition for HCBSW applicants and recipients is not estimated to have a financial impact.

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: December 15, 2021

Hearing Date: January 21, 2021

Adoption Date: Proposed as May 1, 2021

Technical Citations: 42 CFR 435 subpart B and C

Tribal Impact

Eliminating the interview requirement for Institutional Care and HCBSW Medicaid should not have a tribal impact. An applicant or recipient can still request an interview if one is needed. Requiring a match letter for ICF/IID applicants and recipients has some tribal impact as this letter will be needed as part of the application process and is a new requirement. Updating the definition of what constitutes an intellectual disability and related condition may allow more applicants to be eligible for the Developmental Disabilities Waiver.

Tribal Advice and Comments

Tribes and tribal health care providers may view the proposed 8.281.400 and 8.290.400 NMAC on the HSD webpage at: <http://www.hsd.state.nm.us/providers/written-tribal-consultations.aspx> **Notification Letter 20-33.**

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 to receive testimony on these proposed rule changes will be held via conference call on Thursday, January 21, 2021 at 10:00 a.m., Mountain Time (MT). **Conference Number: 1-800-747-5150. Access Code: 2284263.**

Written advice and comments must be received no later than 5:00pm Mountain Time (MT) on January 21, 2021. 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 February 4, 2021.

Sincerely,



Nicole Comeaux
Director

cc: Theresa Belanger, Native American Liaison, HSD/MAD