



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

December 1, 2016

RE: Tribal Notification Letter 16-17
Developmental Disabilities 1915 (c) Home and Community-Based Services Waiver

Dear Tribal Leader, Indian Health Service, Tribal Facility or other interested parties:

Consultation with New Mexico's Indian Nations, Tribes, Pueblos and their healthcare 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) Tribal Consultation requirements, this letter is to inform you that HSD intends to submit its Developmental Disabilities 1915 (c) Home and Community-Based (HCBS) waiver renewal application to the Centers for Medicare and Medicaid Services (CMS). The State is seeking comments from Native American communities regarding this waiver renewal. Currently there are 469 Native American recipients out of 3,378 recipients receiving services under the Developmental Disabilities waiver (DDW) program.

The primary purpose of this waiver renewal is to allow the State to continue administering the DDW program for another five years, through June 30, 2021. The current waiver expired on June 30, 2016 and is currently operating under a temporary waiver extension approved by the CMS. The State intends to submit its renewal application to the CMS by February 15, 2017 with a retroactive effective date of July 1, 2016.

The DDW provides Medicaid-funded HCBS services to individuals who have an intellectual and/or developmental disability (I/DD). The goal of the program is to serve individuals in the community as an alternative to institutionalization in an intermediate care facility for individuals with intellectual disabilities (ICF/IID). The Department of Health (DOH)/Developmental Disabilities Supports Division (DDSD) operates the day-to-day aspects of the DDW program with oversight by the HSD/Medical Assistance Division (MAD).

The key components of proposed changes under the DDW renewal are as follows:

1. The SIS is currently required for adult recipients receiving DD Waiver services, and information obtained from the SIS, along with other information, is used to assist in developing the Individual Service Plan and budget. Language has been added to the waiver renewal to discontinue initial and routine SIS reassessments for adult recipients on the DDW by the end of waiver year one.

New adult recipients will receive budget approvals solely through the Outside Review process and clinical criteria developed by the State. *Appendices C-3: Waiver Services Specifications* and *C-4: Additional Limits on Amount of Waiver Services* have been updated to remove language describing NM DDW Groups and ranges.

2. Quality measures and reporting through performance indicators have been updated to comply with the modifications required by the CMS effective June 1, 2014. These CMS modifications include:
 - Health and welfare monitoring where outcomes are emphasized;
 - Remediation is reported to CMS in substantiated instances of abuse, neglect or exploitation;
 - Quality improvement projects/remediation is required when the threshold of compliance is at or below 85%.
3. The term “mental retardation” (MR) has been replaced with “intellectual and developmental disability” (IDD) to reflect the nationwide adoption of this updated terminology.
4. *Attachment #2* and *Appendix C-5* of the waiver application have been updated to reflect the State’s activities to comply with the CMS Final Rule 2249-F/2296-F regarding HCBS settings.
5. Language has been added to align the waiver with the provisions set forth by the court-approved 2015 settlement agreement in the Waldrop lawsuit against the State, specifically in the areas concerning the Outside Review process, application of clinical criteria and process for Individual Service Plan and budgets, and HSD administrative hearing processes.
6. Language has been updated regarding the DOH Incident Management Bureau’s processes for DDW recipient safeguards for the reporting of abuse, neglect, exploitation, suspicious injury, or death.
7. Language has been added to align the waiver with the DDSD Director’s Release (issued August 3, 2010) on the criteria for use of and prohibitions of use, of restraints and restrictive interventions, for DDW recipients. The Director’s Release, supported by the Aversive Intervention Prohibitions Policy and Human Rights Committee Policy, outlines the strict guidelines for the reporting, monitoring and use of emergency physical restraints and restrictive interventions.
8. Technical corrections were made to *Appendix C* to remove Personal Support Services (PSS). CMS previously approved the removal of PSS in a waiver amendment dated February 23, 2013. The scope of PSS is provided under Community Integrated Supports (CIS) and Community Integrated Employment (CIE).
9. *Appendix I-2 a: Rate Determination Methods* has been updated to describe plans for a comprehensive review of current rate methodology to assure that rates continually afford members’ access to services and are consistent with efficiency, economy, and quality of care.

Tribal Impact: HSD does not anticipate a service or financial impact to individuals, tribes and their healthcare providers by implementing the changes described above in numbers 1 thru 8.

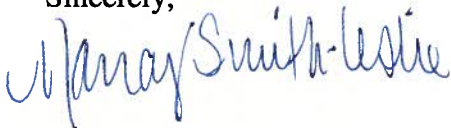
The draft waiver renewal application is available on the HSD webpage at: <http://www.hsd.state.nm.us/providers/written-tribal-consultations.aspx>

IMPORTANT DATES

- Written comments must be submitted by 5:00 p.m. Mountain Daylight Time (MDT) on **Wednesday, February 1, 2017**. Please send your comments or questions to the MAD Native American Liaison, Ms. Theresa Belanger at phone number: (505) 827-3122 or by email to: Theresa.Belanger@state.nm.us.
- A public hearing for HSD to accept comments on the DDW renewal application is scheduled to be held in the Rio Grande Conference Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM, 87505 on **Wednesday, February 1, 2017**. For the public's convenience, one session is scheduled at 10:00 a.m., with a repeat session at 1:00 p.m. at the same location for those who are unable to attend the morning session.
- All comments and HSD responses will be compiled and posted on the HSD website after February 15, 2017.

Thank you in advance for your input and for your continued support of the Department's Native American initiatives.

Sincerely,



Nancy Smith-Leslie, Director
Medical Assistance Division

Cc: Cathy Stevenson, Director, DOH/ Developmental Disabilities and Supports Division (DDSD)
Roberta Duran, Deputy Director, DOH/DDSD
Angela Medrano, Deputy Director, HSD/MAD
Theresa Belanger, Native American Liaison, HSD/MAD