



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

November 9, 2021

RE: Tribal Notification to Request Advice and Comments Letter 21-24: Proposed amendments 8.314.5 NMAC.

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 October 29, 2021** regarding proposed amendments to the following New Mexico Administrative Code (NMAC) rule 8.314.5 NMAC, Developmental Disabilities Home and Community Based Services (HCBS) Waiver.

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: November 9, 2021

Hearing Date: December 13, 2021

Adoption Date: Proposed as April 1, 2022

Technical Citations: 42 CFR 438 subparts A through J; 42 CFR 441 subpart G

The Department is proposing to amend the rule as follows:

Throughout the rule

Language has been edited throughout the document to align with the Developmental Disabilities (DD) waiver application submitted to the Centers for Medicare and Medicaid Services (CMS) on April 1, 2021, as well as with other 1915(c) HCBS waivers in the state of New Mexico.

Section 7

Definitions are amended as follows:

Subsection A- Activities of daily living (ADLs): to include "oral care."

Subsection F- Clinical justification: (2) to include "and to maintain current level of function or minimize current level of function or minimize risk of further decline."

Subsection H- New definition added "Electronic Visit Verification (EVV): A telephone and computer-based system that electronically verifies the occurrence of selected services, as

required by the 21st Century CURES Act. The EVV system verifies the occurrence of authorized service visits electronically by documenting the precise time and location where service delivery visit begins and ends. EVV is implemented according to federal requirements and timelines. The 21st Century CURES Act requires EVV for personal care services (PCS), defined as services that provide assistance with activities of daily living (ADLs) or instrumental activities for daily living (IADLs) effective January 1, 2020 and for home health services effective January 1, 2023.”

Section 8

New section added “Safeguards Concerning Restraints, Restrictions and Seclusion”.

Section 9

Subsection F – Language is updated to include that all providers have a responsibility to monitor settings to ensure that the setting supports health and safety based upon the individual’s needs, decisions or desires.

Section 10

Subsection D – Qualifications of case management provider agency is updated to require case managers to hold a bachelor’s or master’s degree in social work, psychology, sociology, counseling, nursing, special education, or a closely related field or to have a minimum of 6 years of direct experience related to the delivery of social services to people with disabilities.

Subsection O – Revised qualifications for a non-medical transportation provider agency to include the requirement for a business license and drivers must have a valid driver’s license and not have a disqualifying conviction after submitting to the Caregiver Criminal History Screening (CCHS).

Subsection P – Revised qualifications for assistive technology provider agencies to allow providers to also be direct vendors of approved technology

Subsection T – Revised qualification to allow additional certification types for socialization and sexuality education providers.

Subsection U – Language added requiring customized in-home supports provider agencies to comply with Electronic Visit Verification (EVV) requirements and allowance for legal guardians who are also natural or adoptive family members, relatives, or natural family members to provide Customized In-Home Supports service if they meet the DOH/DDSD requirements.

Section 14

Subsections A and B – The children’s annual resource allotment (ARA) was removed as were references to services available with the ARA and those available to children outside of the ARA. A combined list of services was added.

Section 15

Subsection C

Language added to therapy services and behavioral support consultation to allow for greater use of telehealth and remote service delivery in specified circumstances and as appropriate.

Paragraph 5 of Subsection C – Definition of living supports is revised to clarify the scope of service and provider requirements to provide recipients services from a registered dietician or licensed nutritionist as needed and to have a licensed nurse on staff or under contract available on call as needed.

Paragraph 7 of Subsection C – Revised community integrated employment services to clarify supports may not duplicate services available through the New Mexico Public Education Department or the Individuals with Disabilities Education Act (IDEA).

Paragraph 13 of Subsection C – Removed Supplemental dental care as a covered service. Waiver recipients will continue to access dental services from their MCO.

Paragraph 16 of Subsection C – Personal Support Technology renamed “Remote” Personal Support Technology.

Paragraph 17 of Subsection C – Revised definition for Preliminary Risk Screening and Consultation to include that this service is designed to assess continued risk of sexually inappropriate or offending behavior in persons who exhibit or have a history of exhibiting risk factors for these types of behaviors. This service is part of a variety of support services that promotes community safety and recues the impact of interfering behaviors that compromises the individual’s quality of life.

Paragraph 18 of Subsection C – Revised definition for Socialization and Sexuality Education to include the Friends & Relationships Course that is a comprehensive lifelong adult education program.

Paragraph 19 of Subsection C – Service description of customized in-home supports is revised to clarify the service is provided in the individual’s own home or family home, services may include an on-site response plan with use of remote support technology, and the service is intended to be intermittent support.

Estimated Total Financial Impact

HSD does not anticipate the proposed changes to have a financial impact.

Tribal Impact

HSD does not anticipate a service or financial impact to individuals, tribes and their healthcare providers by implementing the changes described above.

Tribal Advice and Comments

Tribes and tribal healthcare providers may view the proposed NMAC 8.314.5 on the HSD webpage at: <https://www.hsd.state.nm.us/providers/written-tribal-consultations/>. *Notification Letter 21-24.*

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 **Monday, December 13, 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 5:00 p.m. MT on December 13, 2021. Please send your advice, comments or questions to the MAD Native American Liaison, Theresa Belanger, at (505) 670-8067 or by email to theresa.belanger@state.nm.us.

All comments and responses will be compiled and made available after January 3, 2022.

Sincerely,



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