National Association for Behavioral Healthcare

Access. Care. Recovery.

September 11, 2026

Kari Armijo
Cabinet Secretary
New Mexico Health Care Authority
Office of the Secretary
ATTN: Medical Assistance Division Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

**RE: Proposed Amendments to 8.296.400 NMAC**

*Submitted Electronically*

Dear Secretary Armijo:

The National Association for Behavioral Healthcare (NABH)[1] appreciates the opportunity to comment on the New Mexico Health Care Authority's (HCA) proposed amendments to 8.296.400 NMAC to implement the Medicaid community engagement requirement. NABH represents 15 facilities in New Mexico that provide mental and substance use disorder treatment across the continuum of care.

NABH has developed the *NABH Implementation Guide*, which provides best practices for states to minimize disruptions associated with the community engagement requirement for people with behavioral health conditions. Based on the *NABH Implementation Guide*, we have identified several opportunities for New Mexico to streamline processes in accordance with the Centers for Medicare & Medicaid Services' (CMS) Interim Final Rule (IFR).[2] Our recommendations are described below.

Clarifying the Medically Frail Exclusion

We encourage HCA to implement four pathways to identify individuals who qualify for the medically frail exclusion due to a substance use disorder or disabling mental disorder, in accordance with CMS' IFR:

1. ***Ex parte* verification using available state data (e.g., claims) from the past 12 months**. Data indicating individuals have a behavioral health condition that impairs their ability to perform community engagement activities include:
    a. Diagnosis[3] (individual and co-occurring conditions);
    b. Service use (e.g., intensive outpatient program, partial hospitalization program, assertive community treatment, residential treatment, inpatient, prescriptions); and
    c. Diagnosis in combination with service use.

[1] NABH represents behavioral healthcare systems that provide mental and substance use disorder treatment across the entire continuum of care, including inpatient, residential treatment, and outpatient programs, including partial hospitalization, intensive outpatient, and Opioid Treatment Programs. Our membership includes behavioral healthcare providers in 49 states, Washington, D.C., and Puerto Rico.
[2] Centers for Medicare & Medicaid Services. Medicaid Program; Community Engagement Requirement for Certain Individuals: Interim Final Rule with Comment Period (published June 3, 2026). https://www.federalregister.gov/documents/2026/06/03/2026-11094/medicaid-program-community-engagement-requirement-for-certain-individuals.
[3] CMS guidance indicates that a diagnosis, independent of other information about functional impairment, can be used by states to determine that an individual meets medically frail exclusion criteria. For more information about how states can verify medically frail exclusion status in accordance with CMS' IFR, visit https://www.medicaid.gov/resources-for-states/working-families-tax-cut-legislation/community-engagement/ImplementingMedicalFrailtyDeck.pdf.

i. See the *NABH Implementation Guide* for more information and practical resources, including (1) definitions of key medical frailty exclusion terms and (2) a code list of behavioral health conditions and procedures. Additionally, HCA should engage public stakeholders, including behavioral healthcare providers, in the development of its definitions and code list (including qualifying conditions).

2. **Self-attestation of medical frailty via a screener**. Incorporating a screener is critical to capturing all individuals who qualify for the medically frail exclusion due to a substance use disorder or disabling mental disorder, recognizing significant behavioral healthcare access barriers that impede individuals' ability to receive a formal diagnosis after symptoms emerge, as well as the challenges many individuals with behavioral health conditions would face in collecting and submitting paperwork to verify their condition.
    a. See the *NABH Implementation Guide* for more information and practical resources, including a medical frailty screener for behavioral health conditions.

3. **Exclusion request by an individual or their treatment provider when the individual has a qualifying condition but is not identified *ex parte* or via a screener**. HCA may not identify all individuals with qualifying conditions, for example, if data issues arise or if an individual is a new Medicaid applicant. Therefore, after HCA has attempted to verify medically frail exclusion status *ex parte* and via a screener, it should send a notice to individuals that clearly outlines how to submit an exclusion request. Additionally, this information should be publicly available online to enable individuals or their treatment providers to request an exclusion at any time. Further, the exclusion request process should use a standard form (with an online option).

4. **Exclusion request by an individual or their treatment provider when the individual has a behavioral health condition that is not on New Mexico's list of qualifying conditions but significantly impairs their ability to perform community engagement activities**. The state should implement this exclusion request process in the same way as described above for Pathway 3.

Additionally, we recommend that HCA:

- Reverify medical frailty exclusion status no more frequently than every 12 months (as permitted in CMS' IFR); and
- Prioritize assigning individuals who receive substance use disorder treatment to the medical frailty exclusion over the separate substance use disorder treatment participation exclusion, and qualifying for the medical frailty exclusion does not require ongoing engagement with specific treatment provider types.

We request that HCA incorporate the above recommendations into the regulation, along with clear operational guidance for behavioral healthcare providers and applicants and beneficiaries with behavioral health conditions.

Short-Term Hardship Exception for Inpatient Services and Other Services of Similar Acuity

We support HCA's adoption of the optional short-term hardship exceptions, which will enable individuals to maintain Medicaid coverage when circumstances beyond their control prevent them from performing community engagement activities. Within the exception for individuals receiving inpatient services and other services of similar acuity, we recommend specifying the following behavioral healthcare settings and services: inpatient psychiatric care, residential treatment, partial hospitalization programs, and assertive

National Association for Behavioral Healthcare

Access. Care. Recovery.

community treatment. Doing so aligns with CMS' IFR because admission to these settings and services requires that the patient either (1) has an inpatient-level acuity, or (2) would be admitted to an inpatient setting if they did not receive the services.

However, it is important to note that the short-term hardship exception for inpatient services or other services of similar acuity should not be used for people with behavioral health conditions (with limited exceptions), as admission to an inpatient or applicable noninstitutional care setting for a behavioral health condition is a clear indicator of medical frailty. Unlike many physical health conditions, behavioral health conditions are inherently chronic, and discharge from an intensive care setting is *not* associated with symptom remission or restoration of functioning. Therefore, HCA should exclude individuals who receive these services due to medical frailty.

Thank you for considering NABH's comments on the proposed amendments to 8.296.400 NMAC. Additionally, we encourage you to review the *NABH Implementation Guide* in full for comprehensive recommendations, action steps, and practical resources associated with implementing the community engagement requirement for Medicaid beneficiaries and applicants with behavioral health conditions. Please contact me (scottd@nabh.org) with questions.

Sincerely,

Scott Dziengelski
President and Chief Executive Officer

900 17th Street, NW, Suite 420
Washington, DC 20006-2507
www.nabh.org