



DISABILITY RIGHTS NEW MEXICO

3916 Juan Tabo Blvd., NE • Albuquerque, New Mexico 87111

TEL: (505) 256-3100 • FAX: (505) 256-3184

State-wide Toll Free 1-800-432-4682

WEBSITE: www.drn timer.org • EMAIL: info@drnm.org

Gary Housepian, Chief Executive Officer

Promoting and Protecting the Rights of Persons with Disabilities

9 May 2024

Human Services Department
Office of the Secretary
ATTN: Medical Assistance Division Public Comments
P.O. Box 2348
Santa Fe, NM 87504-2348
Submitted via e-mail to: HSD-MADrules@HSD.NM.gov

Re: Proposed rules for 8.325.12 NMAC

HSD:

Please accept these brief comments from Disability Rights New Mexico (DRNM), our state's Protection & Advocacy System, a federally-authorized nonprofit organization serving to protect, promote, and expand the legal rights of people with disabilities. We offer these summary thoughts of our perspective on the proposed 8.325.12 NMAC. We thank you in advance for considering our input.

While DRNM is pleased that this proposed rule has finally been published, we strongly urge HSD to move up the "EFFECTIVE DATE" significantly in 8.325.12.5. September 1 is inadequate. June 1 would be achievable and much better; anything later than July 1 would be entirely inappropriate. I point to a few specific reasons for moving that implementation date:

- This delay in implementation would be inconsistent with and further flaunt the statutory requirement for the rule's completion by **December 1, 2023**, as clarified in NMSA 24-1-5.11(B).
- Implementation as soon as possible is necessary to bring New Mexico into compliance with federal laws such as the Americans with Disabilities Act, the Rehabilitation Act, the Patient Protection and Affordable Care Act, and the 8th Amendment of the U.S. Constitution.
- The unnecessary delay would contradict the spirit of the Settlement Agreement issued as a federal court order on March 5 in *Disability Rights New Mexico v. Tafoya Lucero, et al.* (1:22-CV-00954-WJ-JFR, Doc. 59).
- That Settlement Agreement was negotiated for nearly a year, and we know from public records that these rules were essentially complete many months before publication; both HSD and the New Mexico Corrections Department have had ample time to hit this ground running.
- Lastly, and by far most importantly, a sooner implementation date will **save lives!** That is the purpose of this rule, which it can achieve – but only when put to use. Vulnerable people await and will benefit from the implementation of this rule. Please help them as soon as possible.

The other most significant substantive problem with this rule that jumps out to DRNM is exemplified at the end of 8.325.12.9(C)(3): "... taking into consideration security, health and safety level, and community resource availability." I don't know what a "health and safety level" is; do the medical providers know? But I definitely know that medical providers do not defer treatment questions to "security" or "community resource availability" for orthopedic issues, seizure disorders, diabetes control, etc., etc. Why for MAD/MOUD? These patients are entitled to appropriate treatment, and that should be the sole focus of their medical providers working collaboratively with patients on medication decisions.

The undefined "security" and "availability" loopholes would possibly leave the door open for administrative and punitive decisions to overrule medical decisions regarding **medical care**. This would be dangerous and wrong. Furthermore, this would violate the *Order and Settlement Agreement* issued by the United States District Court of New Mexico in *Disability Rights New Mexico v. Tafoya Lucero, et al.* (1:22-CV-00954-WJ-JFR, Doc. 59). Treatment follows an "assessment [which] shall be consistent with the **current standards of medical care**" and which clearly defers to the "judgment of the medical provider" while complying with "medical privacy laws" (p. 6, paragraph 6.d; emphasis added). The treatment must conform to "appropriate **medical standards of care**" (p. 6, paragraph 6.f; emphasis added). These standards of medical care do not and cannot defer to "security" or "availability" issues.

Our final comment of substance relates to program reporting. Please amend 8.325.12.12(A) to clarify that this annual report shall be in writing. We believe that the report due on October 1, 2023 was not completed, and if it was completed at all, it was done late and only as a legislative hearing presentation. This report will be of interest to many, and will assist some of them in saving the lives of people needing MAT/MOUD. The report is worth the commitment to having it put in writing.

In what appears to be an errant typo, the copy of the proposed 8.325.12 I found is stamped with "8.314.7 NMAC" on every page. The Support Waiver is a great program too, but I don't think you want it referenced here.

Thank you for your consideration of DRNM's comments, and for your service to our shared constituents. Without question this rule will benefit some of New Mexico's most vulnerable people. We appreciate your prompt and thorough attention to making this critical medical treatment available to them.

Please do not hesitate to contact me with any questions.

Sincerely,



Tim Gardner
Legal Director