



State of New Mexico  
Human Services Department  
Human Services Register



**I. DEPARTMENT**

NEW MEXICO HUMAN SERVICES DEPARTMENT

**II. SUBJECT**

EMERGENCY MEDICAL SERVICES FOR UNDOCUMENTED ALIENS

**III. PROGRAM AFFECTED**

(TITLE XIX) MEDICAID

**IV. ACTION**

PROPOSED RULES

**V. BACKGROUND SUMMARY**

The Human Services Department, Medical Assistance Division, is proposing amendments to 8.325.10 NMAC, *Emergency Services to Undocumented Aliens*, to clarify regulatory language and accuracy with existing rules and provider participation agreements.

The Centers for Medicaid and Medicare Services (CMS) issued new information concerning an interim final rule that supports states in providing prenatal and postpartum to undocumented alien pregnant women.

**VI. REGULATIONS**

These proposed rule changes refer to 8.325.10 NMAC of the Medical Assistance Program Manual. This register and the proposed changes are available on the Medical Assistance Division web site at <http://www.hsd.state.nm.us/mad/register/>. If you do not have Internet access, a copy of the regulations may be requested by contacting the Medical Assistance Division at 827-3156.

**VII. EFFECTIVE DATE**

The Department proposes to implement these rules effective July 1, 2008

**VIII. PUBLIC HEARING**

A public hearing to receive testimony on these proposed rules will be held at 2:30 p.m., on May 12, 2008, in Room 300 of the Health Policy Commission, 2055 S. Pacheco St., Santa Fe, New Mexico. Parking accessible to persons with physical impairments will be available.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Division

toll free at 1-888-997-2583 and ask for extension 7-3156. In Santa Fe call 827-3156. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

#### **IX. ADDRESS**

Interested persons may address written or recorded comments to:

Pamela S. Hyde, J.D., Secretary  
Human Services Department  
P.O. Box 2348  
Santa Fe, New Mexico 87504-2348

These comments must be received no later than 5:00 p.m., on May 12, 2008. Written and recorded comments will be given the same consideration as oral comments made at the public hearing. Interested persons may also address comments via electronic mail to:

[Magdalena.Romero@state.nm.us](mailto:Magdalena.Romero@state.nm.us).

#### **X. PUBLICATIONS**

Publication of these rule approved by:

PAMELA S. HYDE, J.D., SECRETARY  
HUMAN SERVICES DEPARTMENT

**SPECIALTY SERVICES**  
**EMERGENCY SERVICES FOR UNDOCUMENTED ALIENS**

**EFF:proposed**

**TITLE 8            SOCIAL SERVICES**  
**CHAPTER 325 SPECIALTY SERVICES**  
**PART 10           EMERGENCY SERVICES FOR UNDOCUMENTED ALIENS**

**8.325.10.1        ISSUING AGENCY:** New Mexico Human Services Department (HSD).  
[2/1/95; 8.325.10.1 NMAC - Rn, 8 NMAC 4.MAD.000.1, 12/1/03, A, 7/1/08]

**8.325.10.3        STATUTORY AUTHORITY:** The New Mexico medicaid program [~~is~~] and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, [~~as amended and by the state human services department pursuant to state statute.~~] as amended, or state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991).  
[2/1/95; 8.325.10.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 12/1/03; A, 7/1/08]

**8.325.10.5        EFFECTIVE DATE:** February 1, 1995, unless a later date is cited at the end of a section.  
[2/1/95; 8.325.10.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 12/1/03; A, 7/1/08]

**8.325.10.6        OBJECTIVE:** The objective of these [~~regulations~~] rules is to provide [~~policies~~] instructions for the service portion of the New Mexico [~~medicaid program~~] medical assistance programs. [~~These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement.~~]  
[2/1/95; 8.325.10.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 12/1/03; A, 7/1/08]

**8.325.10.8        MISSION STATEMENT:** The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of [~~medicaid-eligible individuals~~] eligible recipients by furnishing payment for quality health services at levels comparable to private health plans.  
[2/1/95; 8.325.10.8 NMAC - Rn, 8 NMAC 4.MAD.002, 12/1/03; A, 7/1/08]

**8.325.10.9        EMERGENCY SERVICES FOR UNDOCUMENTED ALIENS:** The New Mexico [~~medicaid program (medicaid)~~] MAD is required to pay for necessary emergency services furnished to individuals who are undocumented aliens, reside in New Mexico and meet the requirements for [~~medicaid~~] MAD eligibility [42 CFR 440.255(c)]. [~~This section gives the definition of an emergency situation, eligible recipients, covered services, service limitations and general reimbursement methodology.~~]  
[2/1/95; 8.325.10.9 NMAC - Rn, 8 NMAC 4.MAD.769, 12/1/03; A, 7/1/08]

**8.325.10.10       ELIGIBLE PROVIDERS:** [~~Upon approval of New Mexico medical assistance program provider participation agreements by the New Mexico medical assistance division (MAD), all providers who furnish emergency services for conditions that meet the definition of an emergency for certain eligible individuals who are undocumented aliens are eligible to be reimbursed for furnishing those services.~~] Upon approval of a New Mexico medical assistance division provider participation agreement by MAD or its designee, licensed practitioners or facilities that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. When enrolled, providers receive instruction on how to access these documents. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to request hard copies of any program rules manuals, billing utilization review instructions, and other pertinent materials and to obtain answers to questions on or not covered by these materials. To be eligible for reimbursement, a provider is bound by the provisions of the MAD provider participation agreement.  
[2/1/95; 8.325.10.10 NMAC - Rn, 8 NMAC 4.MAD.769.1, 12/1/03; A, 7/1/08]

**8.325.10.11       PROVIDER RESPONSIBILITIES:** [~~Providers who furnish services to medicaid recipients must comply with all specified medicaid participation requirements. See 8.302.1 NMAC, General Provider Policies. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance. Providers must maintain records that are sufficient to fully disclose the extent and nature of the services furnished to recipients. See 8.302.1 NMAC, General Provider~~]

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~~Policies.]~~ A provider who furnishes services to medicaid and other health care eligible recipients agrees to comply with all federal and state laws and regulations relevant to the provision of medical services as specified in the MAD provider participation agreement. A provider also agrees to conform to MAD program rules and instructions as specified in this manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or up-coding services.

[2/1/95; 8.325.10.11 NMAC - Rn, 8 NMAC 4.MAD.769.2 & A, 12/1/03; A, 7/1/08]

**8.325.10.12 ELIGIBLE INDIVIDUALS:**

A. Individuals who are undocumented, illegal, and non-immigrant aliens and who meet all the eligibility criteria for MAD for JUL Medicaid (category 072), children meeting applicable age requirements (category 032), ~~medicaid for~~ pregnant women (category 030 or 035), or supplemental security income (SSI), except for citizenship or legal alien status, are eligible to receive emergency services.

B. Eligibility determinations are made by local county income support division (ISD) offices after the receipt of emergency services. The individual is responsible for completing an application at the local county ISD office and for providing all necessary documentation to prove that he or she meets the applicable eligibility criteria.

(1) Individuals must apply for ~~medicaid~~ coverage at the ISD office no later than the last day of the third month following the month in which the alleged emergency services were received.

(2) Individuals are responsible for notifying providers of the approval or denial of ~~a medicaid~~ an application.

(3) If an application is denied or an application for ~~medicaid~~ coverage is not filed by the last day of the third month following the month in which the alleged emergency services were received, the individual is responsible for payment of the provider bill.

(4) If reimbursement for services is denied by ~~medicaid~~ MAD, the individual is responsible for payment and can be billed directly for payment by the provider.

[2/1/95; 8.325.10.12 NMAC - Rn, 8 NMAC 4.MAD.769.3 & A, 12/1/03; A, 7/1/08]

**8.325.10.13 COVERAGE CRITERIA:**

A. "Emergency" ~~is defined as a medical condition, including all emergency labor and delivery, which including all emergency inductions and unscheduled cesarean sections~~ as defined for EMSA includes labor and delivery including prenatal and postpartum care, inductions and cesarean sections, as well as any other medical condition, manifesting itself with acute symptoms of sufficient severity such that the absence of immediate emergency medical attention could reasonably be expected to result in one of the following:

- (1) the individual's death;
- (2) placement of the individual's health in serious jeopardy;
- (3) serious impairment of bodily functions; or
- (4) serious dysfunction of any bodily organ or part.

B. ~~Only medical services that are~~ Services are covered only when necessary to treat [and/or] or evaluate a condition meeting the definition of emergency and are covered only for the duration of that emergency.

C. After delivery, a child can have legally documented or citizenship status because of its birth in the United States and, therefore, is not eligible for emergency services for undocumented aliens. The child may be eligible for another ~~medicaid~~ MAD category of eligibility on ~~his/her~~ his or her own.

D. Determination of coverage is made by MAD or its designee.

[2/1/95; 8.325.10.13 NMAC - Rn, 8 NMAC 4.MAD.769.4 & A, 12/1/03; A, 7/1/08]

**8.325.10.14 SERVICE LIMITATIONS:** ~~Medicaid~~ MAD covers only those emergency medical services furnished in the state of New Mexico. To meet the categorical eligibility requirements, ~~individuals~~ eligible recipients who are undocumented aliens must be residents of the state of New Mexico. Proof of residence must be furnished by the undocumented alien to the local county ISD office. Individuals traveling through New Mexico, entering the United States through New Mexico en route to another destination, visiting in New Mexico or touring New Mexico with a tourist visa do not meet the residence requirement.

[2/1/95; 8.325.10.14 NMAC - Rn, 8 NMAC 4.MAD.769.5, 12/1/03; A, 7/1/08]

**8.325.10.15 NONCOVERED SERVICES:** ~~Medicaid~~ MAD does not cover any medical service that is not necessary to treat ~~and/or~~ or evaluate a condition for an individual who is an undocumented alien that does not meet the definition of emergency. ~~Medicaid~~ Additionally, MAD does not cover the following specific services:

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- A. long term care;
- B. organ transplants;
- C. rehabilitation services;
- D. ~~[surgical procedures; including scheduled cesarean sections, other than unscheduled emergency procedures]~~ elective surgical procedures;
- E. psychiatric or psychological services;
- F. durable medical equipment or supplies;
- G. eyeglasses;
- H. hearing aids;
- I. ~~[outpatient prescriptions;]~~ outpatient prescriptions other than for prenatal and postpartum care;
- J. podiatry services;
- ~~[K. prenatal care;~~
- ~~L.]~~ K. well child care;
- ~~[M.]~~ L. routine dental care;
- ~~[N.]~~ M. routine dialysis services,
- ~~[O.]~~ N. any medical service furnished by ~~[a border or]~~ an out-of-state provider;
- ~~[P.]~~ O. non-emergency transportation; and
- ~~[Q.]~~ P. preventive care.

[2/1/95; 8.325.10.15 NMAC - Rn, 8 NMAC 4.MAD.769.6 & A, 12/1/03; A, 7/1/08]

**8.325.10.16 UTILIZATION REVIEW:** All claims for services furnished to ~~[individuals]~~ eligible recipients who are undocumented aliens are reviewed by MAD or its designee before payment to determine if the circumstances warrant coverage. If the MAD medical director or another physician appointed by MAD to perform this specific task determined that the services were furnished in a non-emergency situation, a claim for services is denied and payment for services becomes the responsibility of the individual.

A. **Eligibility determination:** Undocumented aliens who request ~~[medicaid]~~ MAD coverage for services must meet specific categorical eligibility requirements. Eligibility determinations by local county ISD offices must be made before the review for medical necessity.

B. **Reconsideration:** Providers and undocumented aliens are given notice of the denial of ~~[medicaid]~~ MAD payment. Providers ~~[or aliens]~~ can request a re-review and reconsideration of denied medical claims. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions*. Aliens can also request a hearing. See 8.352.2 NMAC, Recipient Hearings.

[2/1/95; 8.325.10.16 NMAC - Rn, 8 NMAC 4.MAD.769.7 & A, 12/1/03; A, 7/1/08]

**8.325.10.17 REIMBURSEMENT:**

A. Providers furnishing services to undocumented aliens must submit claims for reimbursement on the ~~[HCFA 1500 or UB 92]~~ CMS 1500 or UB 94 claim form or its successor, depending on the provider type. See 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, providers receive instructions on documentation, billing and claims processing. ~~[Reimbursement to professional service providers for covered emergency services is made at the lesser of the following:~~

~~\_\_\_\_\_ (1) the provider's billed charge; or~~

~~\_\_\_\_\_ (2) the MAD fee schedule for the specific service or procedure.~~

~~\_\_\_\_\_ B. The provider's billed charge must be their usual and customary charge for services.~~

~~\_\_\_\_\_ C. "Usual and customary" charge refers to the amount which an individual provider charges the general public in the majority of cases for a specific procedure or service.~~

~~\_\_\_\_\_ D. Reimbursement for institutional service providers is made at the rate specified in the specific service sections of this manual.]~~

Reimbursement is made according to the rules applicable to the provider rendering the service.

[2/1/95; 8.325.10.17 NMAC - Rn, 8 NMAC 4.MAD.769.8, 12/1/03; A, 7/1/08]