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TITLE 8 SOCIAL SERVICES
CHAPTER 307 COORDINATED LONG-TERM SERVICES
PART 11 REIMBURSEMENT

8.307.11.1 ISSUING AGENCY: Human Services Department
[8.307.11.1 NMAC – N, 8-1-08]

8.307.11.2 SCOPE: This rule applies to the general public.
[8.307.11.2 NMAC- N, 8-1-08]

8.307.11.3 STATUTORY AUTHORITY: The New Mexico medicaid program is 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. See NMSA 1978 27-2-12 et. seq.
[8.307.11.3 NMAC – N, 8-1-08]

8.307.11.4 DURATION: Permanent
[8.307.11.4 NMAC – N, 8-1-08]

8.307.11.5 EFFECTIVE DATE: August 1, 2008, unless a later date is cited at the end of a section.
[8.307.11.5 NMAC – N, 8-1-08]

8.307.11.6 OBJECTIVE: The objective of these rules is to provide policies for the service portion of the New Mexico medicaid coordination of long-term services program.
[8.307.11.6 NMAC - N, 8-1-08; A, 9-1-09]

8.307.11.7 DEFINITIONS: See 8.307.1.7 NMAC.
[8.307.11.7 NMAC – N, 8-1-08]

8.307.11.8 MISSION STATEMENT: The mission of the medical assistance division is to reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.
[8.307.11.8 NMAC- N, 8-1-08; A, 9-1-09]

8.307.11.9 REIMBURSEMENT FOR COORDINATION OF LONG-TERM SERVICES:

A. **Payment for services:** The human services department (HSD) shall make actuarially sound payments under capitated risk contracts to the designated coordination of long-term services managed care organizations (CoLTS MCOs) and single statewide entity (SE). Rates, whether set by HSD or negotiated between HSD and the CoLTS MCO/SE, are considered confidential. Rates shall be appropriate for the medicaid populations to be covered and the services to be furnished under the contract. The CoLTS MCO/SE shall be responsible for the provision of services to members during the month of capitation. Medicaid members shall not be liable for debts incurred by a CoLTS MCO/SE under the CoLTS MCO's/SE's contract for providing health services to medicaid members. This shall include, but not be limited to:

- (1) the CoLTS MCO's/SE's debts in the event of its insolvency;
- (2) services provided to the member that are not included in the medicaid benefit package and for which HSD does not pay the CoLTS MCO/SE, e.g. value added services;
- (3) when the CoLTS MCO/SE does not pay the service provider that furnishes the services under contractual, referral, or other arrangement;
- (4) payments for covered services furnished under contract, referral, or other arrangement to the extent that those payments are in excess of the amount that the member would owe if the CoLTS MCO/SE provided the service directly; and

(5) if a CoLTS MCO/SE member loses eligibility for any reason and is reinstated as eligible by HSD before the end of the month, the CoLTS MCO/SE shall accept a retro capitation payment for that month of eligibility and assume financial responsibility for all medically necessary covered benefits and services supplied during that month to the member.

B. **Capitation disbursement requirements:** HSD shall pay a capitated amount to the CoLTS MCO/SE for the provision of the coordination of long-term services benefit package at specified rates. The monthly rate is based on actuarially sound capitation rate cells. The CoLTS MCO/SE shall accept the capitation rate paid each month by HSD as payment in full for all services to be provided pursuant to the agreement, including all administrative costs associated therewith. HSD or its designee will calculate or verify the CoLTS MCO's/SE's income at the end of the state fiscal year to determine if expenditures were made on the services required under the contract utilizing reported information and the department of insurance reports. Administrative costs, to be no higher than the allowable percent, including all CoLTS MCO/SE-delegated entities (if applicable), and other financial information will be monitored. The CoLTS MCO/SE does not have the option of deleting benefits from the medicaid defined benefit package. Should the CoLTS MCO/SE not meet the required administrative or direct services costs within the terms of the contract, sanctions or financial penalties may be imposed.

C. **Payment timeframes:** Clean claims as defined in Subsection L of 8.307.1.7 NMAC, *definitions*, shall be paid by the CoLTS MCO/SE to contracted and noncontracted service providers according to the following timeframe: 90 percent within 30 days of the date of receipt, and 99 percent within 90 days of the date of receipt, as required by federal guidelines in 42 CFR Section 447.45. For claims from day activity providers, assisted living providers and home health agencies including PCO and D&E providers, such turnaround times shall be 95 percent of claims within 14 calendar days and 99 percent of claims in 21 calendar days, provided such claims meet the definition of clean claims, are submitted electronically and meet all HIPAA transaction standards. The date of receipt is the date that the CoLTS MCO/SE first receives the claim, either manually or electronically. The CoLTS MCO/SE is required to date stamp all claims on the date of receipt. The date of payment is the date of the check or other form of payment. An exception to this rule may be made if the CoLTS MCO/SE and its service providers, by mutual agreement, establish an alternative payment schedule. However, any such alternative payment schedule shall first be incorporated into the contract between HSD and the CoLTS MCO/SE. The CoLTS MCO/SE shall be financially responsible for paying all claims for all covered emergency and post-stabilization services that are furnished by noncontracted service providers, at no more than the medicaid fee-for-service (FFS) rate, including medically or clinically necessary testing to determine if a physical or behavioral health emergency exists.

(1) A CoLTS MCO/SE shall pay contracted and noncontracted service providers interest on the CoLTS MCO's/SE's liability at the rate of 1.5 percent per month on the amount of a clean claim (based upon the current medicaid fee schedule) submitted by the participating service provider and not paid within 30 days of the date of receipt of an electronic claim, and 45 days of receipt of a manual claim. Interest shall accrue from the 31st day for electronic claims and from the 46th day for manual claims. The CoLTS MCO/SE shall be required to report the number of claims and the amount of interest paid, on a timeframe determined by HSD or its designee.

(2) No contract between the CoLTS MCO/SE and a participating service provider shall include a clause that has the effect of relieving either party of liability for its actions or inactions.

(3) If the CoLTS MCO/SE is unable to determine liability for, or refuses to pay, a claim from a participating service provider within the times specified above, the CoLTS MCO/SE shall make a good-faith effort to notify the participating service provider by fax, electronic or other written communication within 30 days of receipt of the claim, stating the specific reasons why it is not liable for the claim, or to request specific information necessary to determine liability for the claim.

D. **Rate setting:** Capitation rates paid by HSD to the CoLTS MCO/SE for the provision of the coordination of long-term services benefit package shall be calculated through actuarial analysis, be actuarially sound and meet the standards set by 42 CFR 438.6(c).

E. **Payment on a risk basis:** The CoLTS MCO/SE is at risk of incurring losses if its costs of providing the coordination of long-term services benefit package exceed its capitation payment. HSD shall not provide retroactive payment adjustments to the CoLTS MCO/SE to reflect the actual cost of services furnished by the CoLTS MCO/SE.

F. **Change in capitation rates:** HSD shall review the capitation rates 12 months from the effective date of the contract and annually thereafter. HSD may adjust the capitation rates based on factors such as the following: changes in the scope of work; federal requirement for modification of a waiver; new or amended federal or state laws or regulations are implemented; inflation; significant changes in the demographic characteristics of the member population occur, or the disproportionate enrollment selection of the contractor by members in a certain rate cohort. Capitation rates may also be adjusted by HSD/MAD based on federal or state appropriation changes.

G. **Solvency requirements and risk protections:** A CoLTS MCO/SE that contracts with HSD to provide coordination of long-term health services shall comply with, and be subject to, all applicable state and federal laws and regulations, including solvency and risk standards. In addition to requirements imposed by state and federal law, the CoLTS MCO/SE shall be required to meet specific medicaid financial requirements and to

provide to HSD the information and records necessary to determine the CoLTS MCO's/SE's financial condition. Requests for information and records shall be delivered to HSD or its designee, at no cost to HSD, in a reasonable time after the date of request or as specified in the contract.

(1) **Reinsurance:** A CoLTS MCO participating in the coordination of long-term services program shall purchase reinsurance at a minimum of \$1,000,000.00 in reinsurance protection against financial loss due to outlier (catastrophic) cases. The CoLTS MCO shall provide documentation to HSD or its designee that reinsurance is in effect through the term of the contract and that the amount of reinsurance is sufficient to cover probable outlier cases or overall member utilization at an amount greater than expected. Pursuant to 42 CFR 438.6(e)(5), contract provisions for reinsurance, stop-loss limits, and other risk-sharing methodologies shall be computed on an actuarially sound basis.

(2) **Third party liability (TPL):** The CoLTS MCO/SE shall be responsible for identifying a member's third party coverage and coordinating benefits with third parties as required by federal law. The CoLTS MCO/SE shall inform HSD or its designee when a member has other health care insurance coverage. The CoLTS MCO shall have the sole right of subrogation, for 12 months from when it incurred the cost on behalf of the member, to initiate recovery or to attempt to recover any third-party resources available to medicaid members; and shall make records pertaining to third party collections for members available to HSD or its designee for audit and review. If the CoLTS MCO has not initiated recovery or attempted to recover any third-party resources available to medicaid members within 12 months, HSD will pursue the member's third party resources. The CoLTS MCO/SE shall provide to HSD or its designee for audit and review all records pertaining to TPL collections for its members.

(3) **Fidelity bond requirement:** The CoLTS MCO/SE shall maintain a fidelity bond in the maximum amount specified under the Insurance Code.

(4) **Net worth requirement:** The CoLTS MCO/SE shall comply with the net worth requirements of the Insurance Code.

(5) **Solvency cash reserve requirement:** The CoLTS MCO/SE shall have sufficient reserve funds available to ensure that the provision of services to medicaid members is not at risk in the event of CoLTS MCO/SE insolvency.

(6) **Per enrollee cash reserve:** The CoLTS MCO/SE shall maintain three percent of the monthly capitation payments per member with an independent trustee during each month of the agreement. HSD shall adjust this cash reserve requirement annually, or as needed, based on the number of CoLTS MCO/SE members, or the failure of the CoLTS MCO/SE to maintain a cash reserve equal to three percent, and shall notify the CoLTS MCO/SE of the cash reserve requirement. Each CoLTS MCO/SE shall maintain its own cash reserve account. This account may be accessed solely for payment of services to the CoLTS MCO's/SE's members in the event that the CoLTS MCO/SE becomes insolvent. Money in the reserve account remains the property of the CoLTS MCO/SE, and any interest earned (even if retained in the account) shall be the property of the CoLTS MCO/SE. Failure to maintain the reserve as directed above will result in financial penalties equal to the amount of the shortfall in the account each month. If the cash reserve amount exceeds 105 percent of an amount equal to three percent of annualized capitation as determined above for more than two months, HSD will direct the CoLTS MCO/SE to reduce the reserve to the 100 percent level and the CoLTS MCO/SE shall comply with such direction within 90 days.

(7) The CoLTS MCO may satisfy all or part of the insolvency reserve requirements under Paragraph (6) of Section G of 8.307.11.9 NMAC in writing with evidence of adequate protection through any combination of the following that must be approved by the state: net worth of the CoLTS MCO (exclusive of any restricted cash reserve); performance guarantee; insolvency insurance; irrevocable letter of credit; surety bond; or a formal written guarantee from the CoLTS MCO's parent organization. At least 50 percent of the total insolvency reserve must be restricted cash reserves.

H. **Inspection and audit for solvency requirements:** The CoLTS MCO/SE shall meet all requirements for state licensure with respect to inspection and auditing of financial records. The CoLTS MCO/SE shall provide to HSD or its designee all financial records required by HSD. HSD, or its designee, may inspect and audit the CoLTS MCO's/SE's financial records at least annually or at HSD discretion.

I. **Special payment requirements:** This section lists special payment requirements by service provider type:

(1) **Reimbursement for federally qualified health centers (FQHCs):** Under federal law, FQHCs shall be reimbursed at 100 percent of reasonable cost under a medicaid FFS or managed care program. The FQHC may waive its right to 100 percent of reasonable cost and elect to receive a rate negotiated with the CoLTS MCO/SE. HSD shall provide a discounted wrap-around payment to FQHCs that have waived a right to 100 percent reimbursement of reasonable cost from the CoLTS MCO/SE.

(2) **Reimbursement for providers furnishing services to Native Americans:** If an Indian health service (IHS) or tribal 638 provider delivers services to a CoLTS MCO/SE member, the CoLTS MCO/SE shall reimburse the provider at the rate established by the office of management and budget (OMB) for specified services at IHS facilities, and tribal 638 providers. Pharmacy, inpatient physician, case management and ambulatory surgical center services shall be paid at the fee schedule established by HSD. Services reimbursed at the OMB rate are not subject to prior authorization.

(3) **Reimbursement for family planning services:** The CoLTS MCO shall reimburse out-of-network family planning providers for services provided to its members at a rate at least equal to the medicaid FFS rate for the provider type.

(4) **Reimbursement for women in the third trimester of pregnancy:** If a woman in the third trimester of pregnancy at the time of her enrollment in coordinated long-term services has an established relationship with an obstetrical provider and desires to continue that relationship, and the provider is not contracted with the CoLTS MCO, the CoLTS MCO shall reimburse the out-of-network provider for services directly related to the pregnancy, including delivery and two months of post-partum related care.

(5) **Reimbursement for members who disenroll while hospitalized:** Regarding CoLTS MCO and medicaid fee-for-service (FFS) members: If a CoLTS MCO or FFS member is hospitalized at the time of enrollment into or disenrollment from managed care or upon an approved switch from one CoLTS MCO to another, the originating CoLTS MCO shall be responsible for payment of all covered inpatient facility and professional services provided within a licensed acute care facility, or a non-psychiatric specialty unit or hospitals as designated by the New Mexico department of health. The payer at the date of admission remains responsible for the services until the date of discharge. Upon discharge, the member will then become the financial responsibility of the organization or entity receiving capitation payments or FFS in the case of disenrollment from Salud! Regarding Salud! MCO and CoLTS MCO members: For members transitioning to CoLTS from Salud! or from CoLTS to Salud!, the originating MCO shall be responsible for payment of all covered inpatient facility and professional services up to the date of disenrollment from Salud! to CoLTS or disenrollment from CoLTS to Salud!. For either transition, services provided at a free-standing psychiatric hospital or within a psychiatric unit of an acute care hospital are the responsibility of the SE.

(6) **Sanctions for noncompliance:** HSD may impose financial penalties or sanctions against a CoLTS MCO/SE that fails to meet the financial requirements specified in this section or additional requirements specified in the terms of the medicaid coordination of long-term services contract or federal medicaid law.

J. **Recoupment payments:** HSD shall recoup payments for CoLTS MCO members who are incorrectly enrolled with more than one CoLTS MCO, payments made for CoLTS MCO/SE members who die prior to the enrollment month for which payment was made; or payments to the CoLTS MCO/SE for members whom HSD later determines were not eligible for medicaid during the enrollment month for which payment was made. Any duplicate payment identified by either the CoLTS MCO/SE or HSD shall be recouped upon identification. In the event of an error that causes payment(s) to the CoLTS MCO/SE to be issued by HSD, HSD shall recoup the full amount of the payment. HSD shall provide the CoLTS MCO/SE with a detailed listing of specific members and the associated recoupment for each on a monthly basis, if applicable. Interest shall accrue at the statutory rate on any amounts not paid and determined to be due after the 30th day following the notice. Any process that automates recoupment procedures shall be discussed in advance by HSD and the CoLTS MCO/SE, and documented in writing prior to implementation of the new automated recoupment process. The CoLTS MCO/SE has the right to dispute any recoupment action in accordance with contractual provisions.

K. HSD shall pay interest at nine percent per annum on any capitation payment due to the CoLTS MCO/SE that is more than 30 days late. No interest or penalty shall accrue for any other late payments or reimbursements.

L. HSD may initiate an alternate payment methodology for specified program services or responsibilities.

[8.307.11.9 NMAC - N, 8-1-08; A, 9-1-09]

HISTORY OF 8.307.11 NMAC: [RESERVED]