

September 12, 2017

The Human Services Department (the Department), Medical Assistance Division (MAD), is amending the following rule that is part of the New Mexico Administrative Code (NMAC): 8.314.3 NMAC, *Long Term Care Services - Waivers, Medically Fragile Home and Community-Based Services Waiver Services*.

On February 1, 2017, the Department received approval from the Centers for Medicare and Medicaid Services (CMS) to renew its New Mexico Medically Fragile 1915 (c) Home and Community-Based (HCBS) Waiver with an effective date of July 1, 2016. This rule is being amended to align services and definitions with the approved Medically Fragile Waiver and the CMS HCBS Settings Final Rule.

**Throughout the rule:**

1. Adds language to ensure that services are provided in accordance with the CMS HCBS Setting Final Rule. Services covered under the Medically Fragile Waiver program must ensure the recipient's right to privacy, dignity, and respect. Further, services must ensure the recipient's right to freedom from coercion and restraint.
2. Updates and standardizes language and acronyms with other New Mexico Medicaid programs.

**Section 7**

Definitions applicable to the Medically Fragile Waiver program are added to this section.

**Section 8**

This section is updated to align the program mission statement with the Human Services Department mission statement.

**Section 9**

This section is updated to clarify that services are provided for individuals diagnosed with a medically fragile condition before the age of 22 and who require the same level of care as those in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

**Section 10**

**Subsection H** – the list of allowed licenses is updated for behavior support providers to align with the approved Medically Fragile 1915(c) waiver.

**Subsection I** – removed institutional respite as a covered service and updated the respite service to clarify that respite may be provided in the participant's home or private place of residence, the private residence of a respite care provider, or specialized foster care home to align with the approved Medically Fragile Waiver. The final approval of where respite services are provided is made by the participant or the participant's representative.

**Section 11**

This section has been updated to clarify provider responsibility to comply with all federal and state laws, regulations, rules, executive orders provider agreements, and service standards.

### **Section 12**

This section is updated to reflect that enrollment is contingent upon the applicant meeting eligibility requirements and the availability of funding as approved by the New Mexico legislature, and the number of federally authorized unduplicated eligible recipients.

### **Section 13**

This section is updated to align with the CMS HCBS Final Settings Rule. Language has been added clarifying the recipient's right to privacy, dignity, and respect as well as freedom from coercion and restraint.

**Subsection B** – language is added that home health aide services are provided in the eligible recipient's own home or in the community.

**Subsection C** – language clarifies that private duty nursing is provided in the recipient's own home.

**Subsection F** – institutional respite is removed as a covered service to align with the approved Medically Fragile 1915(c) waiver. Language is added to clarify that respite may be provided in the eligible recipient's home and that the participant has the option to give final approval of where respite services will be provided. Limitation of respite service to 14 days or 336 hours per budget year is added to align with the approved Medically Fragile 1915(c) waiver.

**Subsection H** – language is added requiring that specialized medical equipment meets applicable standards of manufacture, design, and installation. Clarification added that medical equipment and supplies that are furnished by the Medicaid state plan are not covered under this service.

### **Section 18**

A recipient's right to a HSD administrative hearing is added to this rule to align with the approved Medically Fragile 1915(c) waiver and Code of Federal Regulations (CFR). This section outlines the circumstances under which a recipient has the right to request a fair hearing.

### **Section 19**

The option for recipient to request a continuation of benefits related to an administrative hearing is added to this rule to align with the approved Medically Fragile 1915(c) waiver.

### **Section 20**

The recipient grievance system is added to this rule to align with the approved Medically Fragile 1915(c) waiver.

NM Stat § 9-8-6 (2016) authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

The register for these proposed amendments to this rule will be available September 12, 2017 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD in Santa Fe at 505-827-6252.

A public hearing to receive testimony on this rule will be held in Hearing Room 1, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico, 87505 on Friday, October 13, 2017 at 10:00 a.m., Mountain Daylight Time (MDT).

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-

2348. Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to [madrules@state.nm.us](mailto:madrules@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. MDT, October 15, 2017.

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 MAD in Santa Fe at 505-827-6252. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.