



Michelle Lujan Grisham, Governor
David R. Scrase, M.D., Secretary
Nicole Comeaux, J.D., M.P.H, Director

October 26, 2021

RE: Tribal Notification to Request Advice and Comments Letter 21-21: Proposed amendments to 8.100.970, *General Provisions for Public Assistance Programs, Oversight-Program Participation Hearings*

Dear Tribal Leadership, Indian Health Service, Tribal Health Providers, and Other Interested Parties:

Seeking advice and comments from New Mexico's Indian Nations, Tribes, Pueblos and their health care providers is an important component of the government-to-government relationship with the State of New Mexico. In accordance with the New Mexico Human Services Department's (HSD's) Tribal Notification to Request Advice and Comments process, this letter is to inform you that HSD, through the Medical Assistance Division (MAD), is accepting written comments until **5:00 p.m., Mountain Time (MT) on November 30, 2021** regarding proposed amendments to the following New Mexico Administrative Code (NMAC) rule 8.100.970, *General Provisions for Public Assistance Programs, Oversight-Program Participation Hearings*. The Department issued emergency rule changes on October 26, 2021 with an effective date of November 1, 2021 and is re-promulgating this rule in full within six months of issuance of the emergency rule in accordance with the New Mexico State Rules Act.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: October 26, 2021

Hearing Date: November 30, 2021

Adoption Date: Proposed as March 1, 2022

Technical Citations: 45 CFR 155 subpart F

The Department is proposing to amend the rule as follows:

Background

New Mexico's Health Insurance Exchange (NMHIX; aka beWellnm) is transitioning from utilizing the federal IT platform of Healthcare.gov to a state-based IT platform. Given this transition, HSD must collaborate with NMHIX on IT and program integration. One aspect of program integration pertains to appeals rights for adverse actions impacting an enrollee's eligibility for qualified health plans through NMHIX, federal tax credits and cost-sharing reductions, and other issues pertaining to beWellnm coverage. While using the federal Healthcare.gov platform, NMHIX has been working with the federal government on such appeals, when necessary. With the move to a state-based platform, NMHIX has requested that HSD take on the role of providing first tier appeals of adverse actions by enrollees. Thus, HSD must promulgate rules pertinent to providing those appeals for NMHIX enrollees or

potential enrollees.

The Department is proposing to amend the rule as follows:

8.100.970 – NMAC-General Provisions for Public Assistance Programs – Oversight-Program Participation Hearings.

These rules are being updated to integrate functions of providing first tier appeals for New Mexicans purchasing coverage through New Mexico's Health Insurance Exchange (NMHIX; aka beWellnm).

Estimated Total Financial Impact

HSD estimates that providing Fair Hearing functions for beWellnm appeals will result in an increase of twenty-five (25) Fair Hearings per year. HSD staff estimates each case will cost \$194.48. This will result in an estimated \$4862.00 in fiscal impact annually to the Department. Costs might be allocated between NMHIX and HSD. Final allocations, if any, have yet to be determined.

Tribal Impact

Ensures continued access to opportunities to appeal adverse decisions for tribal members enrolled in qualified health plans through the New Mexico Health Insurance Exchange (NMHIX; aka beWellnm).

Tribal Advice and Comments

Tribes and tribal healthcare providers may view the proposed NMAC rules on the HSD webpage at: <https://www.hsd.state.nm.us/providers/written-tribal-consultations/>. *Notification Letter 21-21.*

A written copy of these documents may be requested by contacting the HSD Medical Assistance Division (HSD/MAD) in Santa Fe at (505) 827-1337.

Important Dates

A public hearing to receive testimony on this proposed rule will be held **via conference call** on November 30, 2021 at 10:00 a.m., Mountain Time (MT). **Conference phone number: 1-800-747-5150. Access Code: 2284263.**

Written advice and comments must be received no later than 5:00 p.m. MT November 30, 2021. Please send your advice, comments or questions to the MAD Native American Liaison, Theresa Belanger, at (505) 670-8067 or by email to theresa.belanger@state.nm.us.

All comments and responses will be compiled and made available after December 14, 2021.

Sincerely,



Nicole Comeaux, J.D., M.P.H, Director
Medical Assistance Division