

# NMAC

## Transmittal Form



Volume:  Issue:  Publication date:  Number of pages:  (ALD Use Only) Sequence No.

Issuing agency name and address:  Agency DFA code:

Contact person's name:  Phone number:  E-mail address:

Type of rule action: New  Amendment  Repeal  Emergency  Renumber  (ALD Use) Recent filing date:

Title number:  Title name:

Chapter number:  Chapter name:

Part number:  Part name:

Amendment description (If filing an amendment):  Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes  No  Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes  No  Public domain

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### Specific statutory or other authority authorizing rulemaking:

Notice date(s):  Hearing date(s):  Rule adoption date:  Rule effective date:

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# Concise Explanatory Statement For Rulemaking Adoption:

## Findings required for rulemaking adoption:

### Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

The Human Services Department (HSD) is revising this rule to ensure the agency is in compliance with Federal Medicaid requirements outlined in 42 CFR 431.52(b) which requires the provision of and payment for covered services out-of-state when they are unavailable in-state.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Kari Armijo

Check if authority has been delegated

Title:

Acting Secretary

Signature: (BLACK ink only OR Digital Signature)

Date signed:

DocuSigned by:  
  
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2/16/2023

This is an amendment to 8.321.2 NMAC, Section 37, effective 3/1/2023.

**8.321.2.37 TREATMENT FOSTER CARE I and II:** MAD pays for medically necessary services furnished to an eligible recipient under 21 years of age who has an identified need for treatment foster care (TFC) and meets the TFC I or TFC II level of care (LOC) as part of the EPSDT program. MAD covers those services included in the eligible recipient's individualized treatment plan which is designed to help him or her develop skills necessary for successful reintegration into his or her family or transition back into the community. TFC I agency provides therapeutic services to an eligible recipient who is experiencing emotional or psychological trauma and who would optimally benefit from the services and supervision provided in a TFC I setting. The TFC II agency provides therapeutic family living experiences as the core treatment service to which other individualized services can be added. The need for TFC I and II services must be identified in the tot to teen health check or other diagnostic evaluation furnished through the eligible recipient's health check referral.

**A. Eligible agencies:** In addition to the requirements of Subsections A and B of 8.321.2.9 NMAC, in order to be eligible to be reimbursed for providing TFC services to an eligible recipient, the agency must be a CYFD certified TFC agency and be licensed as a child placement agency by CYFD protective services. In lieu of New Mexico CYFD licensure and certification, an out-of-state TFC agency must have equivalent accreditation and be licensed in its own state as a TFC agency.

**B. Coverage criteria:**

(1) The treatment foster care agency provides intensive support, technical assistance, and supervision of all treatment foster parents.

(2) A TFC I and II parent is either employed or contracted by the TFC agency and receives appropriate training and supervision by the TFC agency.

(3) Placement does not occur until after a comprehensive assessment of how the prospective treatment foster family can meet the recipient's needs and preferences, and a documented determination by the agency that the prospective placement is a reasonable match for the recipient.

(4) An initial treatment plan must be developed within 72 hours of admission and a comprehensive treatment plan must be developed within 14 calendar days of the eligible recipient's admission to a TFC I or II program. See the BH policy and billing manual for the specific requirements of a TFC treatment plan.

(5) The treatment team must review the treatment plan every 30 calendar days.

(6) TFC families must have one parent readily accessible at all times, cannot schedule work when the eligible recipient is normally at home, and is able to be physically present to meet the eligible recipient's emotional and behavioral needs.

(7) In the event the treatment foster parents request a treatment foster recipient be removed from their home, a treatment team meeting must be held and an agreement made that a move is in the best interest of the involved recipient. Any treatment foster parent(s) who demands removal of a treatment foster recipient from his or her home without first discussing with and obtaining consensus of the treatment team, may have their license revoked.

(8) A recipient eligible for treatment foster care services, level I or II, may change treatment foster homes only under the following circumstances:

(a) an effort is being made to reunite siblings; or

(b) a change of treatment foster home is clinically indicated, as documented in the client's record by the treatment team.

**C. Identified population:**

(1) TFC I services are for an eligible recipient who meets the following criteria:

(a) is at risk for placement in a higher level of care or is returning from a higher level of care and is appropriate for a lower level of care; or

(b) has complex and difficult psychiatric, psychological, neurobiological, behavioral, psychosocial problems; and

(c) requires and would optimally benefit from the behavioral health services and supervision provided in a treatment foster home setting.

(2) TFC II services are for an eligible recipient who meets the criteria listed in Section 25 Subsection B of 8.321.2.9 NMAC and also meet one of the following criteria:

(a) has successfully completed treatment foster care services level I (TFC I), as indicated by the treatment team; or

(b) requires the initiation or continuity of treatment and support of the treatment foster family to secure or maintain therapeutic gains; or

(c) requires this treatment modality as an appropriate entry level service from which the client will optimally benefit.

(3) An eligible recipient has the right to receive services from any MAD TFC enrolled agency of his or her choice.

**D. Covered services:** The family living experience is the core treatment service to which other individualized services can be added, as appropriate to meet the eligible recipient's needs.

(1) The TFC parental responsibilities include, but are not limited to:

- (a) meeting the recipient's base needs, and providing daily care and supervision;
- (b) participating in the development of treatment plans for the eligible recipient by providing input based on his or her observations;
- (c) assuming the primary responsibility for implementing the in-home treatment strategies specified in the eligible recipient's treatment plan;
- (d) recording the eligible recipient's information and documentation of activities, as required by the TFC agency and the standards under which it operates;
- (e) assisting the eligible recipient with maintaining contact with his or her family and enhancing that relationship;
- (f) supporting efforts specified by the treatment plan to meet the eligible recipient's permanency planning goals;
- (g) reunification with the recipient's family. The treatment foster parents work in conjunction with the treatment team toward the accomplishment of the reunification objectives outlined in the treatment plan;
- (h) assisting the eligible recipient obtain medical, educational, vocational and other services to reach goals identified in treatment plan;
- (i) ensuring proper and adequate supervision is provided at all times. Treatment teams determine that all out-of-home activities are appropriate for the recipient's level of need, including the need for supervision; and
- (j) working with all appropriate and available community-based resources to secure services for and to advocate for the eligible recipient.

(2) The treatment foster care agency provides intensive support, technical assistance, and supervision of all treatment foster parents. The following services must be furnished by both TFC I and II agencies unless specified for either I or II. Payment for performance of these services is included in the TFC agency's reimbursement rate:

- (a) facilitation, monitoring and documenting of treatment of TFC parents initial and ongoing training;
- (b) providing support, assistance and training to the TFC parents;
- (c) providing assessments for pre placement and placement to determine the eligible recipient's placement is therapeutically appropriate;
- (d) ongoing review of the eligible recipient's progress in TFC and assessment of family interactions and stress;
- (e) ongoing treatment planning as defined in Subsection G of 8.321.2.9 NMAC and treatment team meetings;
- (f) provision of individual, family or group psychotherapy to recipients as described in the treatment plan. The TFC therapist is an active treatment team member and participates fully in the treatment planning process;
- (g) family therapy is required when client reunification with their family is the goal;
- (h) ensuring facilitation of age-appropriate skill development in the areas of household management, nutrition, physical and emotional health, basic life skills, time management, school attendance, money management, independent living, relaxation techniques and self-care techniques for the eligible recipient;
- (i) providing crisis intervention on call to treatment foster parents, recipients and their families on a 24-hour, seven days a week basis including 24-hour availability of appropriate staff to respond to the home in crisis situations;
- (j) assessing the family's strengths, needs and developing a family service plan when an eligible recipient's return to his or her family is planned;
- (k) conducting a private face-to-face visit with the eligible recipient within the first two weeks of TFC I placement and at least twice monthly thereafter by the treatment coordinator;

- (l) conducting a face-to-face interview with the eligible recipient's TFC parents within the first two weeks of TFC I placement and at least twice monthly thereafter by the treatment coordinator;
- (m) conducting at a minimum one phone contact with the TFC I parents weekly; phone contact is not necessary in the same week as the face-to-face contact by the treatment coordinator;
- (n) conducting a private face-to-face interview with the eligible recipient's TFC II parent within the first two weeks of TFC II placement and at least once monthly thereafter by the treatment coordinator;
- (o) conducting a face-to-face interview with the eligible recipient's TFC II parent within the first two weeks of TFC II placement and at least once monthly thereafter by the treatment coordinator; and
- (p) conducting at a minimum one phone contact with the TFC II parents weekly; phone contact is not necessary in the same week as the face-to-face contact by the treatment coordinator.

**E. Non-covered service:** TFC I and II services are subject to the limitations and coverage restrictions that exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for all non-covered MAD behavioral health services or activities. Specific to TFC I and II services MAD does not cover:

- (1) room and board;
- (2) formal educational or vocational services related to traditional academic subjects or vocational training;
- (3) respite care; and
- (4) CCSS except as part of the discharge planning from either the eligible recipient's TFC I or II placement.

**F. Prior authorization:** Before any TFC service is furnished to an eligible recipient, prior authorization is required from MAD or its UR contractor. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

**G.** A TFC agency must submit claims for reimbursement on the CMS-1500 form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements and see 8.302.2 NMAC. [8.321.2.37 NMAC - Rp, 8.321.2.37 NMAC, 8/10/2021; A/E, 3/1/2023]