



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT
NEW MEXICO HUMAN SERVICES DEPARTMENT

II. SUBJECT
8.326.10 NMAC, BRAIN INJURY SERVICES FUND PROGRAM

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
FINAL RULE

V. BACKGROUND SUMMARY

New Mexico Human Services Register Volume 43, Register 16, dated August 25, 2020, issued the proposed rule, 8.326.10 NMAC, Brain Injury Services Fund Program.

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: August 25, 2020

Hearing Date: September 28, 2020

Adoption Date: April 1, 2021

Technical Citations: CFR does not apply.

A public hearing was held on September 28, 2020 to receive public comments and testimony on this proposed rule. The Human Services Department (the Department) received two (2) verbal comments and one (1) written comment.

Summary of Comments:

Section 7, Subsection H

Comment was received that paragraph H of 8.326.10.7 NMAC includes the statement that “Coverage is in the form of copayments for participants who have no other responsible payer sources.” Commentor recommends striking this specific sentence from the paragraph stating that the statement implies that the program will only cover copayments for medications. Commentor states that they believe that the program intends to continue to cover medication for those individuals that have no insurance to cover medications.

Department Response: The citation does not correspond to the language published in 8.326.10.7.H NMAC, which relates to the definition of “Fiscal Intermediary Agency”. The language referenced relates to 8.326.10.7.I NMAC, relating to the definition of “Formulary”.

The service description for Prescribed Medications as outlined in 8.326.10.13.E (9) specifies that this service is copayment assistance to cover prescription medications that are medically necessary to treat symptoms arising from a participant’s brain injury or directly related conditions. Recommendation to include coverage for medication for individuals that have no insurance will not be incorporated.

Section 10, Subsection B

Comment was received that paragraph (2) of Subsection B of 8.326.10.10 NMAC states “Fiscal intermediary agent services include but are not limited to the following activities: maintain a network of providers of brain injury related services and goods and ensure that subcontracted providers...”. Commentor requests that the word ‘subcontracted’ be removed from this sentence because the term ‘subcontract’ in the FIA contract with HSD generally refers to situations in which the FIA would contract with an individual or entity for the performance of some aspect of its own scope of work as Fiscal Intermediary Agent. Network vendors and providers are not subcontractors providing fiscal intermediary services.

Department Response: The Department appreciates the comment. The language stands as proposed.

Section 10, Subsection C

Comment was received that paragraph (7) of Subsection C of 8.326.10.10 NMAC requires Agencies contracted to provide BISF service coordination or fiscal intermediary service to have a governing board with at least one external member with a brain injury, a family member with a

brain injury or professional working with brain injury. Commentor states that because not all eligible business structures have a governing board, we recommend the following language: “have a governing board, if applicable to the business structure, with at least one external member with a brain injury, a family member with a brain injury or professional working with brain injury.”

Department Response: The Department appreciates the comment. The language stands as proposed.

Section 13

Comment was received related to 8.326.10.13 NMAC, opening paragraph on BISF HCBS which states “BISF HCBS funding can only be used for services using in-state providers”. Commentor recommends adding the words “as appropriate” since GRT must be paid by the provider in-state and in the interests of meeting requirements related to NM Taxation and Revenue Department.

Department Response: The Department appreciates the comment. The language stands as proposed.

Section 13, Subsection E

Comment was received that subparagraph (c) of Paragraph (5) of Subsection E of 8.326.10.13 NMAC requires service coordinators to submit start up and or emergency utility costs to the FIA to be paid within 30 days of the signed rental agreement. We recommend extending this timeframe to 90 days since it may take 30 days or more for program participants to receive their first utility bills.

Department Response: The Department incorporates this comment as proposed.

Comment was received that paragraph (8) of Subsection E of 8.326.10.13 NMAC eliminates coverage of health insurance deductibles. Commentor notes that since there are other measures in the rule that provide for cost containment, such as yearly per person spending caps, commentor recommends covering health insurance deductibles; otherwise, participants may not have other means to access needed services.

Department Response: The Department appreciates the comment. The language stands as proposed.

Section 14, Subsection H

Comment was received that in 8.326.10.14.H NMAC, “Non-Covered Goods and Services” explanation that the word “certification” is not required, language could better reflect the intents of the ADA and State Service Animals Act” and the states should consider including the words “Emotional Support Animals (ESAs)” as they are also frequently utilized by people with disabilities.

Department Response: The Department appreciates the comment. The language stands as proposed.

General

Comment was received that applauds the Department’s proposed changes” to the BISF, noting special support for serving those with other Acquired Brain Injuries; the ability to obtain a written diagnosis from a wider variety of medical professionals; the expansion of the crisis interim period from three months to six months; more specific requirements for grievances and appeals processes; and the requirement that contracted agencies have a governing board with brain injury representation.

Department Response: The Department appreciates the comment.

VI. RULES

These amendments will be contained in 8.326.10 NMAC. The final register and rule languages are available on the HSD website at:

<https://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and <https://www.hsd.state.nm.us/LookingForInformation/medical-assistance-division-1.aspx>. If you do not have internet access, a copy of the final register and rules may be requested by contacting the Medical Assistance Division at (505) 827-1337.

VII. EFFECTIVE DATE

This rule will have an effective date of April 1, 2021.

VIII. PUBLICATION

Publication of this rule approved by:

DocuSigned by:
David R. Scrase, M.D. _____
9DBE7D7D1B53422...), SECRETARY
HUMAN SERVICES DEPARTMENT

