

FILED WITH  
NEW MEXICO STATE  
RECORDS CENTER

2021 MAR 11 PM 3: 35

# 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 Only) Most 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

### Specific statutory or other authority authorizing rulemaking:

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

FILED WITH  
NEW MEXICO STATE  
RECORDS CENTER

2021 MAR 11 PM 3:35

# 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.

8.326.10 NMAC is a repeal and replace of the existing NMAC to ratify changes that have been made to the Brain Injury Services Fund (BISF) program. Changes to the NMAC reflect :

1. Updates to and categories of "brain injury";
2. Update that program oversight is the responsibility of the Human Services Department, Medical Assistance;
3. Update and clarification of contractor roles and responsibilities;
4. Update and clarification of services available through the BISF.

Public comments were received and reviewed. One public comment was incorporated related to the 30 day time requirement for the Fiscal Intermediary Agency (FIA) to pay invoices received for the service Initial and Emergency Housing Costs. Commenter notes that participants may not receive invoices for utilities and rents until after 30 days of signing a lease agreement and requests that the FIA have 90 days to pay these invoices, allowing time for participants to submit invoices. HSD finds this request reasonable and has updated 8.326.10.13.E(5)(c) accordingly.

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

Name:

David R. Scrase

Check if authority has been delegated

Title:

Secretary

Signature: (BLACK ink only)

Date signed:

DocuSigned by:  
David R. Scrase, M.D.

3/4/2021

9DBE7D7D1B53422...

8/12/2019



FILED WITH  
NEW MEXICO STATE  
RECORDS CENTER

The New Mexico Human Services Department approved the repeal of 8.326.10 NMAC - Traumatic Brain Injury Trust Fund Program (filed 10/25/2007) and replaced it with 8.326.10 NMAC - Brain Injury Services Fund Program (adopted on 3/3/2021), effective 4/1/2021.

2021 MAR 11 PM 3:35

FILED WITH  
NEW MEXICO STATE  
RECORDS CENTER

2021 MAR 11 PM 3:35

# 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: (ALD Use Only)  
New  Amendment  Repeal  Emergency  Renumber   
Most 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

### Specific statutory or other authority authorizing rulemaking:

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

2021 MAR 11 PM 3:35

# 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.

8.326.10 NMAC is a repeal and replace of the existing NMAC to ratify changes that have been made to the Brain Injury Services Fund (BISF) program. Changes to the NMAC reflect :

1. Updates to and categories of "brain injury";
2. Update that program oversight is the responsibility of the Human Services Department, Medical Assistance;
3. Update and clarification of contractor roles and responsibilities;
4. Update and clarification of services available through the BISF.

Public comments were received and reviewed. One public comment was incorporated related to the 30 day time requirement for the Fiscal Intermediary Agency (FIA) to pay invoices received for the service Initial and Emergency Housing Costs. Commenter notes that participants may not receive invoices for utilities and rents until after 30 days of signing a lease agreement and requests that the FIA have 90 days to pay these invoices, allowing time for participants to submit invoices. HSD finds this request reasonable and has updated 8.326.10.13.E(5)(c) accordingly.

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

Name:

David R. Scrase

Check if authority has been delegated

Title:

Secretary

Signature: (BLACK ink only)

Date signed:

DocuSigned by:  
*David R. Scrase, M.D.*

3/4/2021

9DBE7D7D1B53422...

8/12/2019



2021 MAR 11 PM 3:35

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 326 CASE MANAGEMENT SERVICES**  
**PART 10 BRAIN INJURY SERVICES FUND PROGRAM**

**8.326.10.1 ISSUING AGENCY:** Human Services Department.  
[8.326.10.1 NMAC - Rp, 8.326.10.1 NMAC, 4/1/2021]

**8.326.10.2 SCOPE:** This rule applies to the general public.  
[8.326.10.2 NMAC - Rp, 8.326.10.2 NMAC, 4/1/2021]

**8.326.10.3 STATUTORY AUTHORITY:** Subsection E of Section 9-23-6 NMSA 1978  
[8.326.10.3 NMAC - Rp, 8.326.10.3 NMAC, 4/1/2021]

**8.326.10.4 DURATION:** Permanent.  
[8.326.10.4 NMAC - Rp, 8.326.10.4 NMAC, 4/1/2021]

**8.326.10.5 EFFECTIVE DATE:** April 1, 2021, unless a later date is cited at the end of a section.  
[8.326.10.5 NMAC - Rp, 8.326.10.5 NMAC, 4/1/2021]

**8.326.10.6 OBJECTIVE:** The objective of this rule is to establish policies and procedures and define standards of the New Mexico human services department (HSD) brain injury services fund program. The brain injury services fund program provides timely short term in-state non-medicaid services for persons with qualifying brain injuries that are of traumatic or other acquired origin in order to promote independence and to assist the individual in resolving a brain-injury related crisis need and access available payer sources and community resources, when there is no other funding available.  
[8.326.10.6 NMAC - Rp, 8.326.10.6 NMAC, 4/1/2021]

**8.326.10.7 DEFINITIONS:**

**A. "Acquired brain injury" (ABI)** means a brain injury that is the result of trauma arising from an insult to the brain from an outside physical force via open or closed head injury; shaken baby syndrome; anoxia; near-drowning; electrical shock; brain infection; brain tumors; cerebrovascular lesions or insults, including stroke and aneurysm; or unintended toxic or chemical exposure. The definition excludes conditions that are congenital, degenerative, induced by birth trauma, or resulting from abuse of alcohol or other substances. The injury may be focal or diffuse, causing temporary or permanent impairments in cognitive, psychosocial or physical functioning affecting one or more areas of the brain and result in partial or total functional disability. Brain injury related impairments may affect one or more areas of functioning such as: cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; information processing; sensory, perceptual, and motor abilities; physical functioning; sleep; psychosocial and behavioral functioning; and, or speech.

**B. "Activities of daily living" (ADL)** means the basic tasks that are necessary for independent functioning to care for one's personal needs and may include bathing and showering, personal hygiene and grooming, dressing, toileting, transferring or moving the physical body in space while performing activities, and self-feeding. Instrumental activities of daily living (IADLs) are not necessary for fundamental functioning but do allow an individual to live independently in their home or community; these include cleaning and maintaining the home, doing laundry, managing personal finances, preparing meals, shopping for groceries, taking prescribed medications, and using the telephone or other communication devices.

**C. "Brain injury".** See definition for acquired brain injury and traumatic brain injury.

**D. "Brain injury services fund (BISF) program"** means a non-medicaid program administered by HSD through programmatic oversight and contractual management of agencies, providing short-term crisis interim home and community-based services for eligible individuals living with brain injury, who have a defined crisis related to living with brain injury and no responsible funding source to pay for needed services or goods. Direct participant care services are provided through service coordination or BISF home and community-based services.

**E. "Crisis"** means an emergency or unstable situation that has reached a critical phase with a distinct possibility of adverse outcome and poses a serious potential danger. As related to a brain injury, a crisis may include homeless status, unemployment, substantial loss of income, lack of health insurance or means to pay for brain-injury related healthcare, separation from support systems, abandonment or other endangering circumstances.

2021 MAR 11 PM 3:35

For the purposes of the BISF, the absence of service coordination, long-term care, long-term case management or need for long-term case management does not constitute a crisis.

**F. "Crisis interim period"** means a short-term period of six months upon which an enrolled participant can be reassessed to extend approved services for another six month period depending upon available funding and limited to no more than one consecutive year, if the crisis has not resolved and goals for independent living have not reached completion, or until another funding source has been obtained. Time limitations on services apply to both service coordination and to BISF HCBS.

**G. "Education"** means providing individuals living with brain injury training and understanding of brain injury, acquiring life skills or fulfilling activities of daily living, which can be applied day to day, to assist in the attainment of an independent lifestyle.

**H. "Fiscal intermediary agency"** means an agency that arranges for BISF home and community-based services and goods and processes payment or reimbursement for services and goods for eligible participants of the New Mexico human services department brain injury services fund program.

**I. "Formulary" or "BISF formulary"** means the list of medications approved by the BISF program for treatment of specific categories of brain injury symptoms and related conditions. Coverage is in the form of copayments for participants who have no other responsible payer sources. Approved generic and brand name medications are categorized by class or function. BISF service coordinators are authorized to review prescribed participant medications against the formulary in the event that other responsible payer sources to cover the medication do not exist prior to referral for BISF HCBS.

**J. "Grievance"** means a complaint or disagreement with regard to how or whether a service provided through the program is or can be provided.

**K. "Home and community-based services" (HCBS)** are defined as services to promote independent living that are provided in a person's home or community, i.e., those not provided under institutional care. BISF HCBS are those that may be required when there is an imminent risk to a participant's health and safety; there has been a sudden change in the medical, psychological or physical condition of a participant; when there is acceleration in the amount of services needed; when needs have suddenly changed; or when another payer source will not pay for the unique brain injury services assessed as a need.

**L. "Human services department (HSD)"** is the New Mexico state government agency that administers services to New Mexico's more vulnerable populations to improve health outcomes through state and federal funding. The brain injury services fund is administered through the medical assistance division and receives only state funding.

**M. "ICD code"** means an international classification of diseases diagnosis, which includes codes for traumatic and other acquired brain injuries and has been documented in writing by a duly licensed medical professional or psychologist for the purpose of assisting an individual with brain injury to qualify for the BISF program. Current ICD codes may be accepted from medical doctors (MDs), osteopathic doctors (DOs), certified nurse practitioners (CNP), physician assistants (PAs), and Ph.D. psychologists.

**N. "Imminent"** means impending and threatening, referring to a crisis that is bound to happen with a clear and present danger to the health and safety of a person who has sustained a brain injury and who has exhausted all available resources.

**O. "Independence"** means the ability to live in a home and community setting and perform activities of daily living with little or no assistance from others while having access to available community resources.

**P. "Individual"** means a person living with brain injury and may be an applicant or a program participant.

**Q. "Independent living plan" (ILP)** means a written person-centered plan that outlines definite goals for resolving a participant's identified crisis which is designed to assist the participant toward greater independence; lists measurable objectives in the form of action steps and strategies that are targeted to comprehensively address and resolve each identified crisis; and specifies a plan for discharge. The ILP identifies all services and supports as well as payer sources that are assisting the participant toward greater independence, specifying those that pertain directly to service coordination and BISF HCBS. It must also list ancillary services and supports, not paid for by the BISF program, noting related payer sources, as well as services refused but needed to resolve or address identified crises.

**R. "Interim"** means a time period defined by the BISF program in which temporary services are provided. The interim period for the BISF program is six months.

**S. "Legal resident of New Mexico"** means a person residing in New Mexico at the time of application.



MAR 11 PM 3:35

**T. "Life skills coach"** means a person, who may be defined as a "life coach", is certified through an accredited organization, and provides targeted customized training to an individual with brain injury to assist in relearning and completing activities of daily living while addressing related cognitive, behavioral or social impairments that are preventing the return to independent functioning.

**U. "Participant"** means a person living with brain injury, who has qualified for, been approved for, and is actively receiving BISF program services, while working toward greater independence and resolution of crisis needs.

**V. "Payer of last resort"** refers to the BISF Program as a source of funding available to pay for BISF HCBS only after all payer sources with responsibility to pay have been denied or exhausted including private insurance, medicaid, medicare, Indian health services, veterans administration, adult protective services and other state or federal programs, or community programs in which the participant participates voluntarily.

**W. "Residency"** means the status of a person who is a legal resident of New Mexico and is able to produce documentation of a physical address within New Mexico at which the person resides within a home and community setting. It does not include residence in an institution wherein the individual is unable to function independently.

**X. "Risk"** means a possible loss or injury, a hazard increasing the probability or chance that loss or injury will occur.

**Y. "Self-determination"** means the right of individuals to make decisions that direct the path their life follows with regard to medical, financial and all other matters, including the right to refuse measures needed to improve their outcome.

**Z. "Service coordination"** means the goal-oriented initiation, organization and management of a BISF participant's services, including determination of eligibility, initial and interim assessments, development and monitoring of the participant's independent living plan (ILP), referrals for BISF program and community resources, assistance with benefits applications for other payer sources, and problem-solving to assist in the resolution of the crisis that motivated entry to the BISF program, while moving the participant toward greater independence in daily living. Service coordination may continue during resolution of an identified crisis need. Service coordination is not defined as case management, and the need for long-term case management does not constitute a qualifying crisis for remaining on the BISF.

**AA. "Short-term"** means an intervention period with beginning and end points within which BISF funding for service coordination or BISF HCBS may be used to prevent or alleviate a crisis situation until circumstances stabilize or other funding is obtained.

**BB. "Traumatic brain injury (TBI)"** means an insult to the brain from an outside physical force that may or may not have produced a diminished or altered state of consciousness causing temporary or permanent impairments in one or more areas of the brain and resulting in partial or total functional disability and or psychosocial disorientation. The term applies to open or closed head injuries resulting in an impairment of cognitive, psychosocial or physical functions. Brain injury related impairments may occur in one or more areas such as: cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; information processing, sensory, perceptual, and motor abilities; physical functioning; sleep; psychosocial and behavioral functioning; and speech.

[8.326.10.7 NMAC - Rp, 8.326.10.7 NMAC, 4/1/2021]

**8.326.10.8 MISSION STATEMENT:** To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.326.10.8 NMAC - Rp, 8.326.10.8 NMAC, 4/1/2021]

**8.326.10.9 BISF ELIGIBILITY REQUIREMENTS:** Enrollment into the BISF, as a non-entitlement program, is on a voluntary basis and occurs in up to six month increments. To be eligible for the BISF program, an applicant with a crisis need must meet the following requirements:

**A. Diagnosis:** Individuals are eligible for BISF services if they have a qualifying diagnosis of brain injury of ABI or TBI which has been documented in writing by a duly licensed medical professional or psychologist. A qualifying diagnosis of brain injury is confirmed by the licensed health practitioner's assignment of the current international classification of diseases (ICD) code.

**B. Residency:** Eligible individuals must be legal residents of the state of New Mexico. Eligible participants must be able to produce documentation of the physical location of their New Mexico residence. Those residing in an institution or are in the process of transitioning to an institutional setting are not eligible for services



through the BISF program. Those participants who have a confirmed discharge date from an institutional setting and are transitioning into the community are eligible for BISF services for a 30-day period prior to the planned discharge date to assist with setting up needed supports and services. For homeless participants with brain injury, the physical address constitutes the agreed-upon location at which the participant routinely meets with the BISF service coordinator and at least one other community case manager, if available.

**C. Service Coordination Duplication:** Those participants served by other service coordination programs, care coordination or case management systems are not eligible to receive service coordination through the BISF program, unless transitioning between programs and with HSD approval. Such programs might include comparable services offered through any of the following:

- (1) medicaid managed care organization (MCO), including community benefit;
- (2) medicaid home and community-based services waivers;
- (3) early and periodic screening, diagnosis and treatment;
- (4) family infant toddler;
- (5) program of all-inclusive care for the elderly (PACE);
- (6) health management organizations (HMOs); and
- (7) other private insurances.

**D. Determination of eligibility:** The service coordination contractor is responsible for determining eligibility for the BISF program and maintaining documentation of eligibility status. Proof of eligibility status including current qualifying ICD codes must be provided to the HSD or its designee upon request.

**E. Re-enrollment into the BISF for reactivation of services:** Former program participants, who disenrolled from the program due to resolution of their crisis needs, may seek to re-enroll in the BISF, in the event that a new crisis arises with which they require the program's assistance. Re-enrollment allows for the reactivation of service coordination and BISF HCBS without providing a new ICD code, in the event that a qualifying code continues to be on file.

**F. Continuation of BISF services beyond one consecutive service year.** Program participants who have not experienced a resolution of their crisis need(s) within two consecutive six month interims of service may be eligible to continue service coordination or BISF HCBS for additional interim periods for up to another service year as funding allows. The petition for continuation of services requires written justification by the service coordination agency, following the standards established by HSD. In no case will continuation of services be permitted without written approval by HSD to extend services beyond one service year.

**G. Disenrollment from the BISF:** Disenrollment from the BISF may be voluntary or involuntary.

**(1) Voluntary disenrollment:** Participants may voluntarily disenroll from the program without cause at any time. In addition, participants are no longer eligible to receive service coordination or BISF HCBS services when any of the following apply:

- (a) other responsible payer sources have been identified and have begun coverage;
- (b) the crisis or crises that caused the participant to seek enrollment have been

resolved; or

(c) upon a permanent move out of the state of New Mexico. The service coordination agency will give such participants reasonable advance notice of pending disenrollment and continue furnishing any needed services until the terms for disenrollment have been met and the disenrollment is complete. Upon disenrollment, all services will be inactivated.

**(2) Involuntary disenrollment:** Participants of the BISF may be disenrolled involuntarily if any of the following circumstances apply, subsequent to reasonable efforts of the service coordination agency to provide technical assistance to improve the participant's understanding of program expectations and as noted below:

(a) The participant refuses to act in accordance with the requirements of their independent living plan (ILP) or otherwise participate in the resolution of their crisis needs, exercising the capabilities that remain within their power or that of their authorized representative. This describes participants who repeatedly fail to follow through with keeping appointments with the service coordinator or access needed and recommended services;

(b) The participant refuses to act in accordance with the program's participant rights and responsibilities, as explained by the service coordination agency and signed by the participant upon program intake;

(c) The participant's physical, behavioral, psychosocial or service needs exceed that which can be reasonably provided by the program or be met with available funding;

(d) The participant engages in disruptive or threatening behavior. This describes a participant whose behavior jeopardizes his or her health or safety, or the safety of others. In these cases, and with

2021 MAR 11 PM 3:35

justifiable cause for the service coordinator's safety, the service coordination agency may elect to disenroll such participant without providing further remedy or technical assistance.

- (e) Prior to disenrollment for any of the above, the service coordination agency proposing to disenroll a participant involuntarily is required to:
    - (i) document the reasons for proposing to disenroll the participant as well as any and all efforts to remedy the situation; and
    - (ii) submit the written request to involuntarily disenroll the participant to HSD, along with supporting documentation for HSD's review and determination that the service coordination agency has provided acceptable grounds for the participant's disenrollment.
- [8.326.10.9 NMAC - Rp, 8.326.10.9 NMAC, 4/1/2021]

**8.326.10.10 BISO CONTRACTED ENTITIES AND CONTRACTORS:** Brain injury services fund (BISO) services are provided through two contractor components, service coordination and fiscal intermediary agent for BISO HCBS.

**A. Service coordination services:** Service coordination services serve a problem-solving function. They are intended to resolve a participant's stated crisis need, ensure service continuity, prevent fragmentation of services and endeavor to tap into any and all resources that are appropriate and accessible, including community-based supports, while resolving the crisis that brought the participant into the program. The intent of service coordination is to augment, not replace, the participant's natural supports in a manner that facilitates independent living and self-determination. All participants must have a BISO program service coordinator before they can receive any other BISO program services.

**(1) Qualifications for service coordination:** Service coordination agencies serving the BISO program must ensure the following pertaining to staff qualifications:

- (a) have a current social worker license in good standing with the New Mexico board of social work examiners; or
- (b) have a current registered nurse license, in good standing from the New Mexico board of nursing; or
- (c) have a bachelor's degree in social work, counseling, nursing, special education or closely related field plus one-year clinical experience related to the brain injury population working in any of the following settings:
  - (i) home health or community health program;
  - (ii) hospital;
  - (iii) private practice;
  - (iv) publicly funded institution or long-term care program;
  - (v) mental health program;
  - (vi) school or school health setting;
  - (vii) community-based social service program; or
  - (viii) other programs addressing the needs of individuals with brain injury.

**(d)** With prior approval from the HSD BISO program manager or designee, exceptions to service coordinator qualifications can be made; contractors requesting qualification exceptions must demonstrate that applicant candidates have relevant education, internships or volunteer experience. Other qualifications may be:

- (i) associates degree and a minimum of three years of experience in the mental health or brain injury field; or
- (ii) high school graduation or general educational development (GED) test and a minimum of five years of experience in the mental health or brain injury field.

**(e)** All BISO service coordinators whether subcontracting or employed by a BISO program contracted agency must meet these requirements and attend continuing education as determined by HSD.

**(2) Scope of services:** Service coordination includes but is not limited to facilitating eligibility determination for individuals applying to the BISO; conducting an in-person assessment; developing an independent living plan (ILP); coordination and documentation of the delivery of services; maintaining a complete permanent case record for each participant which includes documentation as prescribed by HSD; and creating a transition plan for discharge from the BISO program, coordinating with other case managers, as needed.

**(a)** Service coordinators must identify, and resolve known or suspected issues that may have an impact on the safety and well-being of the participant.



(b) Service coordinators must evaluate and monitor direct service and implementation of the ILP through face-to-face contact with the participant at a frequency prescribed by HSD.

(c) Service coordination agencies are required to maintain a 24-hour emergency response system that allows participants to contact the agency and respond to individual emergency situations within a reasonable amount of time after notification on a 24-hour basis. An emergency response written policy is to be provided to all program participants.

**B. Fiscal intermediary agent (FIA):** The fiscal intermediary agent (FIA) serves as the intermediary for the arrangement and payment of brain injury specific home and community-based services (HCBS). BISF services are only accessible through the coordination of a BISF program service coordination agency and are limited to filling a participant's needs as outlined in the participant's independent living plan (ILP), when there is an imminent risk to the participant's health and safety.

(1) **Qualifications for FIA:** FIA service staff must demonstrate the following qualifications:

(a) have a bachelor's degree in business, social work, counseling, nursing, special education or closely related field; and

(b) have experience related to the brain injury population, working in any of the following settings:

(i) home health or community health program;

(ii) hospital;

(iii) private practice;

(iv) publicly funded institution or long-term care program;

(v) mental health program; or

(vi) community-based social service program; or other program addressing

the needs of individuals with brain injuries.

(c) With prior approval from the BISF program manager or designee, exceptions to FIA personnel qualifications can be made. Contractors requesting qualification exceptions must demonstrate relevant education internships or volunteer experience. Other qualifications may be:

(i) associate degree and experience in the mental health or brain injury field; or

(ii) high school graduation or general educational development (GED) test and extensive experience in the mental health or traumatic brain injury field.

(d) All BISF FIA staff employed by the agent, must meet these requirements and attend continuing education as determined by HSD. Contracted FIA service providers must have the required education and be duly licensed by the state of New Mexico within their respective disciplines.

(2) **Scope of services:** 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 are duly licensed by the state of New Mexico or otherwise certified within their respective disciplines; procure goods and arrange contracts and letters of agreement with vendors and contractors who provide the goods, services and supports; receive service and goods referral requests submitted by BISF service coordinators for prior authorization; and arrange for delivery of BISF goods and services.

(a) Prior to arranging for and funding requested services or goods, the FIA must verify that other responsible payer source coverage is not available to pay for services or goods and that the participant has exhausted any other financial resources.

(b) The FIA must monitor and document service expenditures for participants receiving BISF HCBS and ensure that coverage does not exceed the allowable limits set by HSD;

(c) The FIA must assure that subcontracted providers and vendors are providing the services and goods as contracted and ensure timely reimbursement to such providers and vendors.

**C. General administrative requirements:** Agencies contracted to provide BISF service coordination or fiscal intermediary services are required to:

(1) have and follow confidentiality standards;

(2) maintain a current business license issued by the state, county or city government if required;

(3) comply with all applicable federal or state regulations, policies and procedures that apply to their business and to their contract with HSD;

(4) demonstrate financial solvency;

(5) maintain full professional liability insurance coverage;

(6) establish and maintain written policies and procedures related to:



2021 MAR 11 PM 3:36

- (a) service provision and appropriate supervision;
  - (b) professional documentation standards;
  - (c) training and education on brain injury; and
  - (d) grievances and appeals as outlined in 8.326.10.15 NMAC in a manner that is accommodating to those living with brain injury and agreeable to the HSD BISF program; and
- (7) 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;
- (8) maintain an in-house directory of brain injury resources for each region served.
- [8.326.10.10 NMAC - Rp, 8.326.10.10 NMAC, 4/1/2021]

**8.326.10.11 CONFLICT OF INTEREST:** Contracted entities and providers, who provide direct BISF services, must avoid conflict of interest or duplication of services and may not:

- A. provide direct intervention services, such as individual therapy, group therapy, support groups, homemaker services, personal attendant services, life skills coaching services, psychosocial rehabilitation services, or duplicate BISF HCBS or fiscal intermediary services for enrolled BISF participants, when they are also contracted to provide service coordination services;
  - B. accept gifts from existing or potential vendors in exchange for a contract relationship or other favorable treatment;
  - C. charge BISF program participants for their services; and
  - D. in no instance shall a service coordination agency or fiscal intermediary agent, contracted by HSD for BISF program services, direct the provider, vendor or contractor that shall provide a participant's services or goods.
- [8.326.10.11 NMAC - Rp, 8.326.10.11 NMAC, 4/1/2021]

**8.326.10.12 INDEPENDENT LIVING PLAN:** An independent living plan (ILP) is required for each interim service period that includes all the services, goods, and supports recommended to the participant including referrals to BISF HCBS and any other potential resources available in the local community that are needed to resolve the identified crisis. BISF HCBS cannot be initiated until the service coordinator has included the services in the ILP and completed the appropriate referrals. The ILP is to be written and developed by the service coordinator with the participation of the participant and shall include:

- A. person-centered goals and action steps needed to complete goals;
  - B. education and support necessary to reach goals and objectives;
  - C. number of hours per month the participant will receive BISF service coordination and other identified BISF services;
  - D. expected measurable outcomes;
  - E. time frames for reaching goals and meeting objectives;
  - F. plans for discharge or transference to another program or payer source;
  - G. identification of all persons, services or products necessary to reach the participant's goals and accomplish their objectives; and
  - H. estimation of cost of services or goods provided by HCBS.
- [8.326.10.12 NMAC - Rp, 8.326.10.12 NMAC, 4/1/2021]

**8.326.10.13 BRAIN INJURY SERVICES FUND HOME AND COMMUNITY-BASED SERVICES:** BISF home and community-based services (HCBS) and goods are for outpatient care administered within the state of New Mexico and must address the participant's assessed needs and include the expectation of individual and family participation. BISF HCBS are designed to resolve a participant's identified crisis, enhance the individual's self-determination and promote independence. BISF HCBS funding can only be used for services and goods that are documented in the participant's ILP and or substantiated by physician's orders or other required documentation, as appropriate. As the payer of last resort, BISF funding may be used for the purchase of authorized services or goods that are not covered by medicaid, medicare, the special education-individuals with disability education act (IDEA) program, department of vocational rehabilitation (DVR), private insurance or other responsible payer sources. The delivery of all BISF HCBS will be in accordance with the standards set by HSD.

- A. **BISF HCBS eligibility requirements:** BISF HCBS can only be provided to program participants who have a current BISF service coordinator and have met BISF program requirements. Eligibility for BISF HCBS is based upon the service coordinator's assessment of participant needs, verification that no responsible payer source exists, and receipt of supporting medical documentation, as appropriate to justify the need for a requested service or

2021 MAR 11 PM 3:36

good. Referrals for qualifying participants are submitted to the FIA, who arranges and pays for authorized goods and services in 90-day increments.

**B. Funding limits per participant:** There is a maximum yearly and lifetime coverage for eligible participants as determined by their assessed needs. Funding is also limited by legislative or departmental appropriation. Coverage limitations for qualifying participants are as follows:

(1) No more than the annual budgetary cap per participant as prescribed by HSD, unless through approved written exception by HSD; this value represents a maximum amount that may be budgeted and is not a guaranteed annual budget assignment.

(2) \$75,000 lifetime maximum for combined services and goods;

(3) \$10,000 lifetime limit on environmental modifications; and

(4) only one emergency housing assistance per participant in a lifetime, unless an exception is made in writing by the BISF program manager at the HSD.

**C. Duration of services:** BISF HCBS funding and approved services are provided in six month increments with the following provisions:

(1) BISF HCBS are provided as funding limits allow only until other responsible payer sources are available, or the crisis has been otherwise resolved.

(2) BISF HCBS can only be continued for one additional interim, up to one year with documentation that the needs being addressed still exist and cannot be provided by another responsible payer. Continuation of BISF HCBS for requested services is contingent upon completion of a six-month written recertification conducted by the participant's service coordinator in accordance with program standards. As applicable, this will include orders from a physician or licensed medical provider stating support for ongoing services.

(3) BISF HCBS may be extended or continue past the six-month duration, until a necessary product can be obtained or in the case of environmental modification and retrofit automobile services, the modification to the participant's environment or automobile can be completed. Any cause for delay must be recorded by the service provider in the participant's record and provided to the service coordination agency. The record must be updated, until completion of the project or modification has been completed or the goods ordered are delivered.

(4) Exceptions to the six-month interim timeline beyond two consecutive interims, may be requested by the service coordination agency in writing through HSD's process for extending services and referrals on the basis of one or more unresolved crises, ongoing participant needs and available funding.

(5) After a participant's BISF HCBS have been inactivated, services may be reestablished through the BISF service coordinator due to an exacerbated condition or situation that has caused a critical need that cannot be covered by other responsible payer sources.

(6) Participants who are receiving BISF HCBS may be eligible to access additional BISF HCBS funding, beyond the prescribed limits, if the person has experienced a sudden, drastic and accelerated change in needs impacting health and safety, such as an exacerbated medical or psychological condition. Participants accessing BISF HCBS on an escalated basis will require medical documentation to establish a higher order of need. Escalated services may or may not be provided as funding allows on a short-term basis, per program requirements.

**D. Freedom of choice:** Each participant receiving BISF HCBS shall be informed of all available service providers, vendors or contractors that are eligible to provide the needed services or goods in their region. The participant shall be the sole decision maker of who is to provide services or goods from all eligible entities that could fill his or her needs. The BISF program cannot guarantee that all services will be available in all regions or that a preferred provider will agree to work with the program.

**E. Service descriptions:** Services that require physician's orders include but are not limited to home health aide, nursing services, neuropsychological evaluations, novel or unconventional therapies, durable medical equipment over \$250, and other non-standard services and goods. Requested services and goods cannot be accessed until authorized in writing by the FIA, who arranges and pays for approved BISF HCBS and goods. BISF HCBS funding may be used to pay for services and goods that meet the noted criteria in the following categories, with special requirements, as noted:

(1) **Assistive technology assessment services:** Assistive technology assessment services are the systematic application of technologies to assist persons diagnosed with brain injury to improve communication skills and the ability to perform activities of daily living. An assistive technology assessment is required to justify the purchase of assistive technology or adaptive equipment that is needed to address symptoms of the participant's brain injury. Services shall be provided by an individual or agency with a minimum of a master's degree in assistive technologies; an individual or agency certified by the rehabilitation engineering and assistive technologies society of



2021 MAR 11 PM 3:36

North America (RESNA); an individual or agency demonstrating a working knowledge of assistive technologies; or a licensed physician or rehabilitation provider agency. Services shall include assessment, recommendations and training by a qualified healthcare professional.

(2) **Durable medical equipment and assistive technology:** Durable medical equipment (DME) refers to any equipment that is used to serve a medical purpose or provides therapeutic benefits to a patient in need because of certain medical conditions, related to a participant's brain injury. Assistive or adaptive technology refers to any "product, device, or equipment, whether acquired commercially, modified or customized, that is used to maintain, increase, or improve the functional capabilities" of a person living with brain injury. DME or adaptive equipment is intended to fill the assessed medical, therapeutic or functional needs of participant and a prescription and a written assessment provided by a physician or licensed therapist must be submitted to justify the equipment requested if the cost of the DME is more than \$250.

(3) **Environmental modifications:** Environmental modifications refer to alterations required to make the participant's home more accessible because of their brain injury and related physical limitations. Environmental modifications include but are not limited to, widening doorways, installing ramps and modifying bathrooms. Funds cannot be used to cover home improvements; expenses related to home maintenance or other repairs that would otherwise be incurred as a responsible homeowner or tenant; or be applied toward the purchase of a home. The following criteria for environmental modifications must be adhered to:

(a) An assessment for the proposed environmental modification must be done by a licensed physical or occupational therapist to justify the service.

(b) For any modification over \$250, contractor bids must be obtained by the service coordinator which must include blueprint, written description of plan and price itemization for materials and labor, along with any other supporting documentation.

(c) Only contractors with a current license in good standing can be engaged to do environmental modifications.

(d) Funds for environmental modifications are limited to a \$10,000 lifetime maximum.

(e) The participant shall provide proof of property ownership, and, if residing in or renting property owned by another party, provide written permission from the landlord prior to pursuing any BISF funded environmental modification;

(f) The FIA in collaboration with the participant's service coordinator shall show evidence that BISF funding was the most appropriate payer source to fund the requested environmental modification;

(g) For instances when costs related to a needed environmental modification cannot be covered in total by another funding source, documentation of collaboration with other funding sources must be submitted to the FIA and include:

- (i) a detailed description and plan for the project including total cost;
- (ii) the specific portion to be funded by the BISF program as the payer of

last resort; and

(iii) the contractor's written acknowledgment of the specific portion and amount of the project for which the BISF program is responsible.

(h) All requests, plans and related documentation for environmental modifications shall be submitted by the BISF service coordinator for review and written approval by HSD, prior to submitting a referral.

(4) **Home health aide, homemaker or companion:** A home health aide, homemaker or companion from a licensed agency may be contracted to assist participants in gaining functional independence with activities of daily living, performance of general household tasks, and enable the eligible participant to accomplish tasks he or she would normally do for himself or herself if he or she did not have a brain injury. Providers of these services must meet the quality personnel standards as stipulated by the agency and state licensing. The required license of contractors providing these services must be in good standing and current. Provision of authorized services must adhere to the following requirements:

(a) Participants must require regular assistance with activities and or instrumental activities of daily living, as prescribed by the HSD BISF program.

(b) Family members, who reside in the same household, cannot serve as paid caregivers, unless:



2021 MAR 11 PM 3:36

(i) the participant and family member reside in a remote area, where no professional caregiver or respite services are available, and the needs of the participant prevent the in-home caregiver from engaging in employment outside the home; or

(ii) the intensiveness of the participant's behavioral or mental health needs prevent outside caregivers from entering the home and administering effective care. These needs shall be justified in writing through a signed letter from the participant's licensed medical or mental health care providers and submitted to HSD or designated representative for review and approval. Such justification shall be updated annually, for as long as the participant remains eligible for BISF services.

(c) In-home family caregivers who meet the criteria noted in Subparagraphs (a) and (b) of Paragraph (4) of Subsection E of 8.326.10.13 NMAC must be trained and employed by a licensed agency that meets the quality personnel standards, as stipulated by the agency and state licensing, and timesheets shall be submitted, as requested.

(5) **Initial and emergency housing costs:** Assistance to pay initial or emergency rent, security deposit and utility start-of-service or one-month maintenance of service charges may be provided as once in a lifetime occurrence. Documentation submitted by BISF service coordinators with any housing referral to the FIA shall adhere to the guidelines below and be maintained in the participant's BISF record:

(a) a completed housing plan worksheet and budget, which includes documentation that the participant has sufficient resources to sustain ongoing housing expenses for the chosen housing; documentation that no other payer source was available to cover the housing expenses; the rental price range that would be sustainable for the participant; and detail regarding the manner in which initial housing or utility costs will be paid.

(b) a copy of a lease or rental agreement letter that contains the name of the leaser, the address of the property and a contact name and phone number for verification of rental intent.

(c) start up and or emergency utility costs shall be submitted to the FIA to be paid within 90 days of the signed rental agreement.

(6) **Nursing care:** Brain injury related private duty nursing services covered by BISF HCBS must be in compliance with the New Mexico Nurse Practice Act and provided in the participant's home under the orders of the participant's physician. These services may be provided by a licensed registered nurse (RN) or a licensed practical nurse (LPN).

(7) **Nutritional consultation:** Coverage includes consultation and follow-up with a registered dietician or nutritionist, who is licensed with the New Mexico board of nutrition and dietetics; qualified providers may include specialists such as MDs, DOs, Ph.D.s, RDs, LDs, or DCs.

(8) **Physician or medical provider services for outpatient health insurance:** Coverage of copayments for physician services or the treatment of a participant's brain injury or conditions directly related to the brain injury requires treatment verification by the office of the licensed medical professional or therapist. Payments of insurance premiums and or deductibles are not covered by the BISF program.

(9) **Prescribed medications:** Copayment assistance may be used to cover prescription medications that are medically necessary to treat symptoms arising from a participant's brain injury or directly related conditions. Reimbursement for this service requires adherence to the following guidelines:

(a) prescription medications eligible for reimbursement must be listed in the approved BISF program formulary. Exceptions to the BISF program formulary must be approved in writing from the HSD BISF program manager or designee;

(b) participants may not be reimbursed for prescription medications in cases where the receipt evidencing purchase is submitted more than 90 days past the date the prescription was filled;

(c) the participant must submit the pharmacy print out, which identifies the participant's name, the date, doctor's name, name of the medication and the price paid; and

(d) if feasible, and the FIA is able to set up an agreement with certain pharmacies, participants may have scripts filled with the billing sent directly to the FIA for payment; the service coordinator is responsible for checking receipts submitted by participants to avoid duplicate payments on those submitted through the pharmacy.

(10) **Professional life skills coaching and organizer services:** This interim service may be accessed to assist a participant in learning or re-learning life skills that are required in order to function independently in their home environment, in their job or in their community. These services are provided by individuals with appropriate certification and require the provider to address the cognitive, behavioral or social impairments that are preventing the return to independent functioning. The service may include assistance with home organization or management, time management, records management, and organization and management of

2011 MAR 11 AM 2:26

finances, as well as coaching in appropriate social interactions; effective communication skills; anger management; self-care/health management; pursuit of education or employment; childcare and parenting skills; accessing and navigating community resources; mindfulness training and any other cognitive, social, or behavioral skills identified in the participant's ILP. The services of the life skills coach are not to be used as a substitute for the participant's task performance. The services are customized for each participant and are usually provided in the person's home, place of work or wherever an activity would normally occur. Services are to be provided at a frequency that will best facilitate the transfer of needed skills, following an evaluation conducted by the coach. Life skills may also be provided to family members to help them adjust to their changed roles and circumstances following the brain injury of their family member. Service limitations apply as prescribed by HSD.

**(11) Respite care:** A participant's primary caregiver may be provided temporary respite, if the caregiver lives in the same household as the participant. Respite may be provided for a period up to 72 hours per week and may or may not include overnight hours. BISF HCBS funds cannot be used to pay for respite care provided by home health aides or salaried employees.

**(12) Retrofit automobile:** This service is used to modify an automobile specifically for the use of a participant with brain injury. The service is limited to installation of a van lift; hand or pedal controls; and modified seating. Funds cannot be used for the purchase of an automobile or be applied toward the cost of auto repairs or maintenance that would be otherwise incurred by the responsible vehicle owner or lessee. Any request for retrofit of an automobile will begin with a referral by the service coordinator identifying a certified driver rehabilitation specialist (CDRS), who will assess the abilities of the participant with brain injury, complete an evaluation, make recommendations for the vendor who will perform the installation, and provide any training on the use of specialized equipment or controls, once the installation is completed. The CDRS may or may not be affiliated with the vendor who completes the installation; a separate referral may be needed for the vendor completing the installation.

**(13) Transportation (public or private):** Requests to cover private or public in-state transportation for participants with brain injury must adhere to the following guidelines:

**(a)** Funds may be authorized for mileage reimbursements for the use of the participant's private vehicle for the purpose of getting to medical and therapy care for treatment of conditions directly related to the brain injury. Approved mileage reimbursements will:

- (i)** require prior approval by the BISF service coordinator for identified destinations and be authorized for payment by the BISF FIA;
- (ii)** cover costs of actual mileage at no more than the current state approved rates;
- (iii)** not be authorized to pay for gas, mileage or wear and tear on any other vehicle not privately owned by the participant with brain injury;
- (iv)** not cover overnight costs for participant or caregiver lodging or per diem; and
- (v)** not be covered for requests submitted more than 90 days past the date the transportation was provided, or the trip was taken.

**(b)** Funds may be used to purchase public transportation in the form of bus, van or rail passes for participants and their caregivers.

**(14) Therapies and alternative therapies:** All therapists providing traditional and alternative therapy services must hold a current license and be in good standing from their respective licensing authority. Service limitations on alternative therapies, such as massage, acupuncture and chiropractic care may apply, as specified by the HSD. BISF HCBS funds may be used to cover copayments for medically necessary therapies, as listed below:

- (a)** outpatient mental or behavioral health;
- (b)** physical therapy;
- (c)** occupational therapy;
- (d)** speech and language therapy;
- (e)** massage therapy;
- (f)** acupuncture; and
- (g)** chiropractic care.

**(15) Other use of BISF HCBS funds:** BISF HCBS funds may be used to provide other limited services in the absence of another payer source. Those services provided by a licensed practitioner may require an order or a letter of recommendation from a licensed physician or therapist. Requests for these services



2021 MAR 11 PM 3:26

must be submitted by the service coordinator in writing for written authorization by the HSD BISF program manager or designee and include:

- (a) Special training and education to the participant and family in the use of tools and methods needed to promote recovery and independence of the participant.
- (b) Neuropsychological evaluations to determine a course of treatment for a participant who has already met the BISF program's eligibility criteria. The participant must present a physician's order or letter of recommendation for prior authorization, before accessing the service.
- (c) Special health and dietary items that are needed because of conditions directly related to the brain injury.
- (d) Health and housing advocate through independent contractors or peer mentors for attendance and advocacy at medical or therapy appointments or providing assistance in locating safe and affordable housing.

F. Providers or vendors of BISF HCBS sub-contracted by the FIA may not charge program participants for services already arranged and authorized through the BISF, unless the program has authorized direct reimbursement to the participant.

G. Only the HSD BISF program manager or designee can make exceptions or waivers of requirements regarding the provision of BISF HCBS with the following stipulations:

- (1) requests for waivers to the provisions and services provided by the BISF program must be made by the service coordination agency in writing;
- (2) requests must have accompanying documentation justifying the exception; and
- (3) written approval from HSD must be placed in the participant's record by both the FIA and the service coordination agency.

[8.326.10.13 NMAC - Rp, 8.326.10.13 NMAC, 4/1/2021]

**8.326.10.14 NON-COVERED SERVICES AND GOODS:** Costs not covered by BISF HCBS include:

- A. Dental exams, visits, procedures or equipment;
- B. Optical exams, visits, glasses, lenses or other equipment;
- C. Hearing exams, visits or aids or other equipment;
- D. Experimental therapies;
- E. Computers and internet;
- F. Cell phones or cell phone carrier service;
- G. Organizational supplies;
- H. Service animals, certification or training of service animals, veterinary, grooming, boarding or maintenance costs;
- I. Health insurance deductibles or premiums; and
- J. Institutional care, nursing facility or hospital care costs.

[8.326.10.14 NMAC - Rp, 8.326.10.14 NMAC, 4/1/2021]

**8.326.10.15 SERVICE AUTHORIZATION AND REIMBURSEMENT:** Funding for BISF service coordination, BISF HCBS and fiscal intermediary agent services is based upon trust fund revenues and legislative or departmental appropriation. Billings and receipts for all approved goods, services and supports, shall be submitted for payment or reimbursement within 90 days of the service date, by the participant, service coordinator or vendor, following all HSD BISF program instructions. Reimbursement for goods, services and supports are made at a predetermined reimbursement rate. The HSD reserves the right to approve or disapprove any and all vendors or subcontractors used by the BISF HCBS fiscal intermediary agent.

[8.326.10.15 NMAC - Rp, 8.326.10.15 NMAC, 4/1/2021]

**8.326.10.16 GRIEVANCE AND APPEALS PROCESSES FOR THE BRAIN INJURY SERVICES FUND PROGRAM:** The BISF program allows for a grievance or complaint process that affords program participants the opportunity to register grievances or complaints concerning the provision of services that are administered through the BISF program.

- A. **Grievances:**
  - (1) Program participants may register complaints with the service coordination and FIA contractors.

(2) Individual BISF contractors will have written grievance procedures approved by HSD, which provide the participant or their representative with a process for expressing dissatisfaction with the program services.

(3) The contractor's written grievance procedure is to be available upon request by program participants, HSD or its assigns.

**B. Appeals:**

(1) If the participant or their representative do not agree with the outcome of a formal grievance filed and reviewed at the BISF contracted agency, they may appeal, in writing, to the HSD BISF program manager.

(2) The HSD BISF program manager or designee will review the written appeal along with any supporting documentation as applicable and will respond in writing to the participant filing the appeal within 30 days with notification of the outcome to the provider agencies involved.

[8.326.10.16 NMAC - Rp, 8.326.10.15 NMAC, 4/1/2021]

**HISTORY OF 8.326.10 NMAC: [RESERVED]**

**History of Repealed Material:**

8.326.10 NMAC - Traumatic Brain Injury Trust Fund Program (filed 10/25/2007) repealed effective 4/1/2021.

**Other History:**

8.326.10 NMAC - Traumatic Brain Injury Trust Fund Program (filed 10/25/2007) was replaced by 8.326.10 NMAC - Brain Injury Services Fund Program, effective 4/1/2021.