

THE DISABILITY COALITION
Advocating for People with Disabilities of All Types

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Human Services Department
Office of the Secretary
ATT: Medical Assistance Division Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Submitted electronically to madrules@state.nm.us

Re: Proposed amendments to New Mexico Administrative Code (NMAC) rule 8.314.5 NMAC, Developmental Disabilities Home and Community Based Services (HCBS) Waiver

These comments are submitted by The Disability Coalition, a cross-disability coalition of organizations in New Mexico that represent and advocate for the needs and interests of persons with disabilities. The current members of the Coalition include The Arc of New Mexico, New Mexico Developmental Disabilities Council, Disability Rights New Mexico, and two centers for independent living: the Independent Living Resource Center (based in Albuquerque and serving central New Mexico), and New Vistas (based in Santa Fe and serving north-central and northeast New Mexico). The Governor's Commission on Disability is an advisory member of the Coalition.

We appreciate the opportunity to comment on these proposed changes to the rules governing the DD waiver program. The proposal includes extensive re-writing of many of the existing provisions, and these changes generally reflect improvements to the existing rule. We note below some of the proposed provisions that we particularly support, along with a few provisions that cause concern.

Proposed amendments we particularly support:

- 1) 8.314.5.7(A) Addition of "oral care" to the definition of Activities of Daily Living.

- 2) 8.314.5.7(F)(2) Clarifies that clinical justification for needed services includes maintenance of an individual's current level of functioning or minimizing the risk of further decline. This is also noted at 8.314.5.15(C)(4).

- 3) 8.314.5.8 Establishes safeguards concerning seclusion, restraint and restrictions of persons with developmental disabilities. These provisions are particularly welcome and long overdue. A few of the terms used, such as "overcorrection", "forced physical guidance", and "privacy violations" may need definitions and/or policy guidance from the department so that all personnel working with an individual, whether paid staff or natural supports, understand and avoid such practices.

- 4) 8.314.5.14 This section eliminates references to Annual Resource Allotments for participants below age 19, which are no longer in use. It adds several services to the list of available services for persons in this age category, including behavioral support consultation, customized community support, respite, non-medical transportation, case mgt, nutritional counseling.
- 5) 8.314.5.15(C)(4) The proposed language changes applicable to therapies emphasize the role of such services in supporting independence, and specifically allow for services to maintain current functional abilities and limit deterioration.
- 6) 8.314.5.15(C)(5) We appreciate the new requirement that all Living Supports providers coordinate with other providers of waiver services, and collaborate in the implementation of positive behavior support plans. The requirement that Family Living providers arrange for transportation to needed activities including meaningful community options is welcome, but we suggest the addition of language that would emphasize that participants served through Family Living arrangements are expected to participate regularly in such community activities of their choice.
- 7) 8.314.5.15(C)(6) The proposed new language clarifies that Customized Community Supports are intended to be provided in the community to the fullest extent possible.
- 8) 8.314.5.15 (C)(12) The new provision allowing mileage reimbursement as an option for non-medical transportation provides important flexibility for participants.
- 9) 8.314.5.17 The proposed new paragraph H requires case managers to have an annual pre-ISP meeting with recipient.

Issues of Concern

- 1) 8.314.5.15 No changes are proposed to the current language in these rules referring to seven Proposed Budget Levels that are said to be typical of different service levels that meet the needs of most participants. This presumption of a “typical” budget category likely to meet an individual’s needs is inconsistent with a truly individualized service plan. All services and service levels must be built into an ISP and approved through the Outside Review process, so these unchanged provisions appear inappropriate and unnecessary. We would suggest the re-writing or elimination of these provisions.
- 3) 8.314.5.11(D)(4) This proposed change would delete the requirement that a case management agency disclose to DDSD and to the people they serve any familial relationships between a case manager and service providers. Participants should certainly be made aware of actual or potential conflicts of interest that may affect recommendations or suggestions of a particular provider made by a case manager. We strongly oppose this change.
- 4) 8.314.5.15(C)(3) This revised provision would allow nursing services to be provided remotely or by telehealth. We support this flexibility in service delivery, but we believe that the participant should have input into the decision as to whether the service is to be provided in-person or via remote or telehealth arrangement. We encourage the department to insert language indicating that the participant must specifically agree to (or at least be consulted about) a decision to provide nursing services remotely rather than in-person.

5) 8.314.5.15(C)(4) This provision includes the ability to provide therapy services via telehealth or other remote arrangements. We support this flexibility in service delivery, but again encourage the department to build in a requirement for agreement by or consultation with the participant involved.

6) 8.314.5.15(C)(7) The revised description of Community Integrated Employment emphasizes community integration, but only refers to *competitive* integrated employment as something to be achieved at some unpredicted time in the future. The Coalition believes that the state should not be subsidizing or supporting payment of sub-minimum wages to persons with disabilities. We therefore strongly encourage the department to add language in this section that prohibits agencies that provide employment to participants under this service category from paying less than the prevailing minimum wage in the community where the participant engages in this employment activity, and from placing individuals served into other employment arrangements where sub-minimum wages are provided.

Technical issues

1) 8.314.5.10(O) There appears to be a typo here: The proposed language adds a requirement to comply with the provisions of 8.315.5.10. The correct reference, noted in many of the other sub-paragraphs, should be to 8.314.5.10.

2) 8.314.5.15(C)(7) Sub-paragraphs a, b and d of this section contain citations to the “Education of the Handicapped Act”, 20 U.S.C. 1401(16) and (17). The correct current (since 1990) citation for this portion of the US Code is the “Individuals with Disabilities Education Act” (IDEA).

Thank you for consideration of our comments.

Sincerely, for The Disability Coalition,

James Jackson, Chair

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