DISABILITY RIGHTS NEW MEXICO

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Gary Housepian, Chief Executive Officer

Promoting and Protecting the Rights of Persons with Disabilities

11 March 2022

Human Services Department
Office of the Secretary
ATT: Medical Assistance Division Public Comments
P.O. Box 2348
Santa Fe, NM 87504-2348
Submitted as a PDF attachment by e-mail to MADrules@state.nm.us

Re: Proposed amendments to 8.320.6 NMAC

HSD/MAD:

Please accept these brief comments from Disability Rights New Mexico (DRNM), our state's Protection & Advocacy System, a federally-authorized nonprofit organization serving to protect, promote, and expand the legal rights of people with disabilities.

First and foremost, DRNM thanks HSD for the inclusion of 504 plans and IHCPs in the covered services. This covers a critical gap for New Mexico's families.

DRNM of course supports an expansion of service providers, but we are naturally concerned about the quality and oversight of "unlicensed" providers offering "delegated nursing services" under the proposed 8.320.6.11(B)(15). HSD's cover letter announcement for the proposed amendments highlights the need to increase providers in "rural and underserved areas" (2/3/22 "Interested Parties" letter, p. 2), but the proposed change seems equally open to allow for cutting corners to save money at the expense of student safety. We ask, at a minimum, that the final rules include: [1] a specific citation to the applicable NM Board of Nursing standards for "delegated nursing services" in 8.320.6.11(B)(15), and [2] language to limit the use of unlicensed services to cover insufficient access to RNs or the other 8.320.6.11(B) providers.

We are confused by the proposed additions to 8.320.6.12(B)(3)(c). Why specify "IEP/IFSP"? Why are 504s and IHCPs excluded here? We presume this is just an editing error, since 504s and IHCPs are what make this entire proposed amendment worth doing and are explicitly added to the proposed 8.320.6.12(B)(1), (B)(2), and even (B)(3)(a). DRNM strongly suggests adding 504 plans and IHCPs to the "IEP/IFSP" language in the proposed 8.320.6.12(B)(3)(c).

Maybe we are missing something here? If so, please explain. Otherwise, DRNM reasserts our point from the paragraph immediately above with regards to the proposed changes in 8.320.6.13(B)(3).

The inclusion of 504 plans and IHCPs should certainly extend to transportation services in 8.320.6.13(E). We do not notice any proposed changes here. The language specifically identifies qualifying plans as an "IEP or IFSP" in (E), (E)(1), and (E)(2); each of those should also include 504 plans and IHCPs.

While amending 8.320.6.13(E), this would be a good time to improve the language regarding the bus in (E)(3). Transportation doesn't actually have to be provided only in a "modified school bus," does it? That doesn't make sense. We presume the intention here is to emphasize accessible transportation, and we hope HSD will clarify that here.

We can only imagine that the omission of 504 plans and IHCPs along with the "IEP or IFSP" in 8.320.6.13(G) is a mere oversight. Please amend.

Regarding the addition of "Delegated nursing services" in the proposed 8.320.6.13(G), DRNM reiterates our concerns as stated above covering the proposed addition of 8.320.6.11(B)(15). We also reiterate our plea to reconsider, or to at least: [1] specifically cite relevant NM Board of Nursing guidance, and [2] limit use to necessitating conditions.

DRNM appreciates the proposed addition of 8.320.14(D). But for the sake of clarity and consistency, why not include 504 plans and IHCPs along with the "IEP or IFSP" in 8.320.14(C)?

Thank you in advance for consideration of our comments. Don't hesitate to contact us with any questions or other feedback.

Sincerely,

Tim Gardner
Legal Director