Doña Ana County

May 6, 2024

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

Re: Public Comment for Medication Assisted Treatment Services in Correctional Setting Rule

Secretary Armijo:

Thank you for the opportunity to comment on 8.325.12 NMAC, Medication Assisted Treatment Services in Correctional Settings. Below are some general and rule specific comments.

General Comments

1. References to medication assisted treatment (MAT) should be changed to medications for addiction treatment (if keeping the MAT acronym is important). It is important to elevate the importance of the medications alone without the requirement for behavioral health therapy. The current definition of MAT in the rule includes counseling. However, the definition of MAT in the legislation (New Mexico 2023 SB425) does not include counseling.
2. It is likely that an FDA-approved medication for stimulant use disorder will be available in the future. For the rule to be more inclusive of polysubstance use and to minimize continuous revisions to the rule as medications for other substance use disorders (SUD) are approved, the rule could say *"mediations for addiction treatment" or "...the treatment of substance use disorders for which medications are indicated."*
3. The rule should include wording to clarify that individuals with alcohol use disorder (AUD) are eligible for evidence-based treatment with medications as well. For example, in 8.325.12.2 the SCOPE should read, *"This rule governs delivery of medication for addiction treatment for substance use disorders, including medications for opioid use disorder and alcohol use disorder, to individuals in correctional facilities."* There are numerous other places throughout the rule in which alcohol use disorder (AUD) should be explicitly inserted.

Rule-specific Comments

Scope

1. 8.325.12.2 The rule should include AUD. The rule language could say, *"This rule governs delivery of medication for addiction treatment for substance use disorders, including medications for opioid use disorder and alcohol use disorder, to individuals in correctional*

facilities." Or the rule could say for *"...substance use disorders for which medications are indicated,"* to be as broad as possible and to reduce the need for revisions to the rule as treatments evolve.

Definition

1. 8.325.12.7R defines reentry services but does not reference application for or reactivation of Medicaid coverage. The definition should read as follows: *"Reentry services aim to reduce recidivism and improve public safety by supporting individuals toward independent living skills. Services must include application for or reactivation of insurance coverage. Services may include psychological and financial counseling, education, skill development, employment, housing, transportation and various types of supportive services."* Medicaid and Medicare coverage is not mentioned until 8.325.12.9.E5d under the heading of reentry services, which is the appropriate categorization, but this is buried too deeply given its importance.

Program-Required Elements

1. 8.325.12.9A1—the Substance Abuse and Mental Health Services Administration (SAMHSA) expanded the definition of long-term care facility. Under certain circumstances, prisons and jails can dispense methadone without becoming a licensed opioid treatment program (OTP). This update to the SAMHSA OTP regulations is not reflected in the rule.
2. 8.325.12.9B1—prescriptive decisions around wait times and clinical decisions should be in protocols. The rule can set the minimum expectations but make it clear that the facilities should provide services as soon as possible. The minimum may change over time as prisons and jails gain capacity. If the minimum changes, the rule will have to be updated. At minimum, the rule should require screening be done at intake to the facility and should occur within four hours of arrival at the facility by qualified health care personnel or healthcare-trained correctional personnel. Of note, the National Commission on Correctional Health Care recommends screening as soon as possible upon acceptance into custody. A screening should also be done at any time during a person's confinement.
3. 8.325.12.9B2—similarly, the rule should set the minimum assessment wait time expectations, but details should be in protocols. The rule should require an assessment immediately following a positive screening and should be completed within 24 hours. Assessments should be done by qualified Drug Enforcement Administration-registered practitioners with the appropriate license and certification in compliance with the state practice acts and trained to use the assessment instrument. Screenings and assessments should be required to be done with evidence-based, validated tools. Optimally the prison and jail systems should use the same tool.
4. 8.325.12.9B.2b—this should be modified to include the italicized wording: *"...individuals diagnosed with a substance use disorder, including opioid use disorder and/or alcohol use disorder, for which there are federal Food and Drug Administration approved medications. For persons specifically identified with opioid use disorder or alcohol use disorder, Food and Drug Administration -approved medications shall be offered and provided."*
5. 8.325.12.9C5—the rule should set the minimum timeframes expected for engaging with program participants but not be so prescriptive that carceral facilities are unable to innovate. For example, the rule could specify after a month in treatment to demonstrate the at least annually is not frequent enough: *"...prison program providers must assess participants after X month (Doña Ana County should consultant with correctional health providers on the timeframe) of participation and then at least annually. Jail program providers must assess participants after X month of participation and then before release."*

6. 8.325.12.9D1—this should specify that dose and duration of treatment are solely clinical decisions to avoid facility administrators and/or security protocols dictating clinical decisions.
7. 8.325.12.9E2—this discusses the role of qualified or certified community support workers but doesn't refer to what entity may employ them, e.g., prison, jail, facility health services provider, Medicaid managed care organization, or community- based organization, as well as how they should be paid. The rule should allow any of those entities to do so and should address financing. The NMHCA should work with appropriate agencies to ensure qualified or certified community support workers can enter facilities to provide services. Many jurisdictions have restrictions on people with histories of incarceration working in prisons and jails. These restrictions should be minimized for qualified or certified community support workers.
8. 8.325.12.9.E5e—the reentry services section correctly requires providing naloxone rescue kits or a naloxone rescue kit prescription to those being released from a correctional facility. This is a best practice that should be retained in the rule.
9. 8.325.12.9.F—the transitional services section should state that a sending correctional facility must transmit a person's medical record to the next provider, i.e., the receiving correctional facility, the person's managed care organization or primary care provider, or the person's anticipated community SUD treatment facility. The rule should require transmittal of person's medical record in a HIPAA-approved manner.

   Transitional services section should also require the releasing correctional facility to supply a 30-day supply of any prescribed and over the counter medication as well as any needed durable medical equipment. New Mexico submitted an 1115 reentry waiver request to the Centers for Medicare & Medicaid Services (CMS) to cover selected health services for people who are soon to be released from incarceration. In the April 2023 state Medicaid director letter, CMS outlined expected 1115 reentry waiver benefits to include case management, medication assisted treatment, and a 30-day supply of all prescription medications upon release from incarceration. The rule should align with CMS's benefits expectations so facilities are poised to provide services that can be Medicaid reimbursed should CMS approve the state's 1115 reentry waiver.
10. 8.325.12.9G5—it is important that program participants are retained in the program. Program participant safeguards could be supplemented as follows: *"Medications for addiction treatment services shall not be denied to any eligible program participant as a form of disciplinary action unless that action is directly related to program participation or egregious program abuse and only then if all other reasonable sanctions have been tried and failed, and authorities are satisfied that the offending patient is not being subject to peer coercion."*

Staffing, Administration and Education

1. 8.325.12.11B—recommend changing from *"medication assisted to treatment" to "facilitate timely access to medications for addiction treatment..."*
2. 8.325.12.11C—the trainings should be broad and cover various SUDs, including AUD, stimulant use disorder, and polysubstance use. The facilities will need help developing the content of the training. Other agencies such as the Department of Health should provide technical assistance to the facilities on developing and delivering the trainings. The rule could read, *"Provide trainings and technical assistance on substance use disorders (disease course and evidence-based treatment modalities), including alcohol use disorder, opioid use disorder, and medications for addiction treatment."*

3. In 8.325.12.11D, the rule requires anti-stigma training, which is important. For clarity, it should specify that both correctional and clinical staff should be required to participate, and training should be offered annually or as part of onboarding for new employees.

Respectfully,

Jamie Michael
HHS Director