State of New Mexico
Human Services Department
Human Services Register

I. DEPARTMENT
NEW MEXICO HUMAN SERVICES DEPARTMENT

II. SUBJECT
PERSONAL CARE OPTION (PCO) PROGRAM

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
PROPOSED REGULATIONS

V. BACKGROUND SUMMARY
Beginning in August 2008, individuals 21 years of age and older who were receiving Medicaid State Plan PCO services were gradually included in the Coordination of Long Term Services (CoLTS) program. Since CoLTS manages PCO service delivery, the Medical Assistance Division needs to amend the PCO rules to reflect these changes and to clarify the role and responsibilities of the third-party assessor (TPA) and the CoLTS managed care contractors.

VI. REGULATIONS
These proposed regulation changes refer to 8.315.4 NMAC of the Medical Assistance Program Manual. This register and the proposed changes are available on the Medical Assistance Division web site at http://www.hsd.state.nm.us/mad/registers. If you do not have Internet access, a copy of the regulations may be requested by contacting the Medical Assistance Division at (505) 827-3156.

VII. EFFECTIVE DATE
The Department proposes to implement these regulations effective March 15, 2010.

VIII. PUBLIC HEARING
A public hearing to receive testimony on these proposed regulations will be held at 11: 00 a.m., on January 11, 2010 in the Rio Grande Room of the Toney Anaya Building at 2550 Cerrillos Road, Santa Fe, New Mexico.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Division toll free at 1-888-997-2583 and ask for extension 7-3156. In Santa Fe, call (505) 827-3156. The

Department's TDD system may be accessed toll free at 1-800-659-8331 or in Santa Fe by calling (505) 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

IX ADDRESS

Interested persons may address written or recorded comments to:

Kathryn Falls, Secretary-Designate
Human Services Department
PO Box 2348
Santa Fe, New Mexico 87504-2348

These comments must be received no later than 5:00 p.m. on January 11, 2010. Written and recorded comments will be given the same consideration as oral comments made at the public hearing. Interested persons may also address comments via electronic mail to: Magdalena.Romero@state.nm.us.

X PUBLICATIONS

Publication of these regulations approved by:

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KATHRYN FALLS, SECRETARY-DESIGNATE
HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 315 OTHER LONG TERM CARE SERVICES
PART 4 PERSONAL CARE OPTION SERVICES

8.315.4.8 MISSION STATEMENT: [~~The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of medicaid-eligible individuals by furnishing payment for quality health services at levels comparable to private health plans.~~] To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities. [8.315.4.8 NMAC - Rp 8 NMAC 4.MAD.002, 7/1/04; A, 3/15/10]

8.315.4.9 PERSONAL CARE OPTION SERVICES: [~~Personal care option (PCO) is a program for qualified~~] Personal care option (PCO) services have been established by the New Mexico human services department (HSD), medical assistance division (MAD) to assist individuals 21 years of age or older who are eligible for full medicaid coverage[~~,~~]. The PCO program is for qualified individuals who satisfy medicaid program requirements and meet the nursing facility [~~(high or low NF)~~] level of care criteria pursuant to Attachment II of 8.312.2-UR, *Long Term Care Services Utilization Review Instructions for Nursing Facilities.* These utilization review instructions can be obtained from the medical assistance division. These regulations describe program service options and corresponding eligible providers, eligible populations, covered PCO services, non-covered services, the assessment and utilization review process, transfer process, discharge process and provider reimbursement, when appropriate, state designee(s) or contractors. [~~It should be noted that~~] Personal care services for individuals under the age of 21 are reimbursed by the New Mexico medicaid program through the early periodic screening, diagnostic and treatment (EPSDT) services described in 8.323.2 NMAC, *EPSDT Personal Care Services.*

A. The [~~goal of the PCO program is~~] goals of the PCO services are to avoid institutionalization, maintain or increase the individual's functional level and maintain or increase the individual's independence. [~~The PCO program does not provide services 24 hours a day.~~] PCO services are allocated for a reasonable accommodation of tasks but do not provide round-the clock services. An individual who requires 24-hour care must be able to demonstrate that, in addition to the personal care attendant, other supports are in place to meet those additional needs of the individual not covered by the PCO services to ensure his/her safety. PCO services are not provided for short-term care, interim care or care for rehabilitative purposes. HSD/MAD and the aging and long term services department, elderly and disability services division (ALTSD/EDSD), reserve the right to exercise the authority to change and individual's election of service delivery (delegated or directed) or discontinue PCO services due to non-compliance with medicaid or program requirements.

B. [~~An individual may be physically capable of performing ADLs or IADLs but may have limitations in performing these activities because of a cognitive impairment. PCO services may be required because a cognitive impairment prevents an individual from knowing when or how to carry out the task. In such cases, personal care may include cueing along with supervision to ensure that the individual performs the task properly.~~] PCO is a medicaid service, not a medicaid category, and services under this option are delivered pursuant to a [~~personal care service plan (PCSP)~~] individual plan of care (IPoC). PCO services include a range of services to consumers who are unable to perform some/all activities of daily living (ADLs) or independent activities of daily living (IADLs) because of a disability or a functional limitation(s) due to chronic, long-term conditions. PCO services permit an individual to live in his or her [~~home~~] residence rather than an institution and allow him or her to maintain or increase independence. [~~These services include, but are not limited to, bathing, dressing, grooming, eating, toileting, shopping, transporting, caring for assistance animals, cognitive assistance and communicating.~~] Consumers will be allocated time based on an evaluation of their functional needs. A consumer may find that to have complete coverage of his or her individual needs, he or she will have to assume responsibility for the difference in the time allocated in the IPoC and the amount of time requested.

[~~B.~~] C. An individual may be physically capable of performing ADLs or IADLs but may have limitations in performing these activities because of a cognitive impairment. PCO services may be required because a cognitive impairment prevents an individual from knowing when or how to carry out the task. In such cases, personal care may include cueing along with supervision to ensure that the individual performs the task properly.

[~~C.~~] D. Individuals eligible for PCO services will [~~have the option of choosing~~] indicate their preference of the consumer-directed personal care model or the consumer-delegated personal care model. The state agencies reserve the right to designate the consumer-delegated model if the consumer demonstrates that he/she is unwilling or lacks the ability or family/community support to follow the rules and regulations of the consumer-directed model. Under both models, the consumer may select a family member (except a spouse), friend, neighbor or other individual as [~~their~~] the attendant. The consumer-directed model allows the consumer to act as the employer, and

oversee his/her own service care delivery, and [~~is required~~] requires the consumer to work with a fiscal intermediary agency to process all financial paperwork to medicaid or its designee CoLTS MCO. Under the consumer-delegated model, the consumer chooses the agency to perform all employer-related tasks and the agency is responsible for ensuring all service delivery to the consumer. Consumers transferring between service models can switch models one time within a plan year but will also be allowed a transfer back to the original model with that same plan year.

[~~D.~~] E. The third-party assessor or MAD's designee is responsible for explaining both models to each individual initially and annually thereafter, assessing each individual applying for PCO services, making a medical level of care determination and allocating PCO services based on that individual's needs. Medicaid-eligible individuals or their personal representatives (as defined in 8.300.2.7 NMAC) may contact their [~~SALUD! managed care organization (MCO) or MAD's designated~~] third-party assessor to apply for personal care option services. [8.315.4.9 NMAC - Rp 8 NMAC 4.MAD.738, 7/1/04; A, 8/13/04; A, 3/15/10]

8.315.4.10 CONSUMER-DIRECTED PERSONAL CARE: HSD has established consumer-directed personal care for PCO services to allow consumers the option of directing their own care. The consumer or the consumer's personal representative retains responsibility for performing certain employer-related tasks. This section defines the consumer or personal representative, the consumer directed personal care agency, eligible consumer directed agencies, and consumer-directed personal care attendant responsibilities and requirements. A consumer who does not follow the medicaid or PCO rules and regulations, or who demonstrates that he or she is unwilling or lacks the ability or family/community support to follow the rules and regulations, may be referred to training on how to direct his or her own care by the program, may be transferred to the delegated model for the delivery of PCO services, or may have PCO services discontinued.

A. **The consumer's or personal representative's responsibilities** include:

(1) interviewing, hiring, training, terminating, and scheduling personal care attendants. This includes, but is not limited to:

(a) verifying that the attendant possesses a current/valid [~~New Mexico~~] driver's license if there are any driving-related activities listed on the [~~personal care service plan (PCSP)~~] IPoC; a copy of the current driver's license must be maintained in the attendant's personnel file at all times;

(b) verifying that the attendant has proof of current liability automobile insurance if the consumer is to be transported in the attendant's vehicle at any time; a copy of the current proof of insurance must be maintained in the attendant's personal file at all times; and

(c) identifying training needs [~~for the attendants~~]; this includes training his or her own attendant(s) or arranging for training for the attendant(s).

(2) developing a list of attendants who can be contacted when an unforeseen event occurs that prevents the consumer's regularly scheduled attendant from providing services; making arrangements with attendants to ensure coverage and notifying the agency when arrangements are changed;

(3) verifying that services have been rendered by completing, signing and submitting documentation the agency for payroll; a consumer or his/her personal representative is responsible for ensuring the submission of accurate timesheets/logs; payment shall not be issued without appropriate documentation; when applicable, a consumer will immediately notify the agency that he or she has lost his or her financial eligibility and because of this the consumer is not eligible to receive PCO services; a consumer who has lost his or her financial eligibility is not authorized to approve employment of his or her attendant(s) or receive services under the program; an ineligible consumer shall not approve a timesheet for the attendant to be turned in to the agency; a consumer who receives services during the time he/she is not financially eligible for medicaid is personally responsible for the payment of those services and could be charged with medicaid fraud; agencies are not authorized to bill medicaid for services the consumer was not eligible to receive, and therefore, should not request it; and the TPA/MCO is not directed pay claims for ineligible members.

(4) notifying the agency, within one [~~(1)~~] working day, of the date of hire [~~and/or~~] or the date of termination of his/her attendant and ensure that all relevant employment paperwork and other applicable paperwork have been completed and submitted; this may include, but is not limited to: employment application, verification of employee abuse registry check, criminal history screening, doctor's release to work (when applicable), photo identification, proof of eligibility to work in the United States (when applicable), copy of driver's license, and proof of insurance;

(5) notifying and submitting a report of an incident to the agency, within 24 hours, so that the agency can submit an incident report [~~to MAD or its designee~~] as directed in the standards manual on behalf of the consumer; the consumer or his/her personal representative is responsible for completing the incident report;

(6) ensuring that the elected individual for hire has submitted to a request for a nationwide criminal history screening, pursuant to 7.1.9 NMAC and in accord with NMSA 1978, Section 29-17-1 of the Caregivers Criminal History Screening Act, within [~~30~~] 20 calendar days of the individual beginning employment; the consumer must work with the elected agency to complete all paperwork required for submitting the nationwide criminal history screening; the consumer may conditionally (temporarily) employ the individual contingent upon the receipt of written notice of the nationwide criminal history screening; a consumer may not continue employing an attendant who does not successfully pass a nationwide criminal history screening; [~~and~~]

(7) obtaining from the attendant a signed agreement, in which the attendant agrees that he or she will not provide PCO services while under the influence of drugs [~~and/or~~] or alcohol and therefore acknowledges that if he or she is under the influence of drugs [~~and/or~~] or alcohol while providing PCO services he or she will be immediately terminated; the consumer or his personal representative shall not employ an attendant who has previously been terminated from employment for use of drugs [~~and/or~~] or alcohol while providing PCO services;

(8) [~~ensuring that if the attendant is the consumer's legal guardian or attorney-in-fact and is the elected individual for hire, prior approval has been obtained from MAD or its designee;~~] electing an alternate personal representative (other than the legal guardian or attorney-in-fact) to verify services were delivered by the attendant and to sign and approve the time sheet/log if the consumer's legal guardian or attorney-in-fact is the attendant; any PCO services provided by the consumer's legal guardian or attorney-in-fact *MUST* be [~~justified, in writing, by the PCO agency and consumer and submitted for approval to MAD or its designee prior to employment; the justification must demonstrate and prove the lack of other qualified attendants in the applicable area; documentation of approval by MAD or its designee must be maintained in the consumer's file; the consumer is responsible for immediately informing the agency if the consumer has appointed or elects a legal guardian or attorney-in-fact any time during the plan year~~] verified and the time sheet/log signed by the alternate personal representative;

(9) taking the medical assessment form (MAD 075) or successor document once a year to his or her doctor and submitting it to the TPA or alternative medicaid designee for review; this must be done 60 days prior to his or her level of care (LOC) expiring to ensure that there will be no break in services; a consumer who does not submit a timely MAD 075 will experience a break in service; in addition, the consumer must allow the alternative medicaid designee to complete assessment, visits, and other contacts necessary to avoid a break in service.

(10) reporting to the PCO agency/fiscal intermediary if her or she is hospitalized, incarcerated, or entering into an institutional setting; services cannot be provided to the consumer during hospitalization/incarceration/institutionalization; a consumer cannot authorize employment of his or her attendant(s), receive services under the program, or allow the attendant to turn in a timesheet to the PCO agent/fiscal intermediary during hospitalization/incarceration/institutionalization; a consumer who receives services or signs timesheets/logs during the time he/she is hospitalized/incarcerated/institutionalized will be personally responsible for the payment of those services and could be charged with medicaid fraud; consumers should know that PCO agencies/fiscal intermediaries are not authorized to bill medicaid or its designee, for services the consumer was not eligible to receive; and

(11) complying with all medicaid program requirements; failure to comply with requirements could result in a change from the consumer-directed model to the consumer-delegated model or discontinuation of PCO services.

B. **The consumer-directed personal care agency's responsibilities include:**

(1) [~~furnishing~~] acting as co-employer with the consumer to furnish fiscal intermediary services to medicaid consumers that comply with all specified medicaid participation requirements outlined in 8.302.1 NMAC, *General Provider Policies*;

(2) verifying every month that all consumers are eligible for full medicaid coverage prior to furnishing services pursuant to Subsection A of 8.302.1.11 NMAC, [~~*General Provider Policies*~~] *provider responsibilities and requirements;* PCO agencies must document the date and method of eligibility verification; possession of a medicaid card does not guarantee a consumer's financial eligibility because the card itself does not include financial eligibility, dates or other limitations on the consumer's financial eligibility; PCO agencies [~~that provide PCO services to~~] must notify consumers who are not financially eligible and inform the consumer that he or she cannot authorize employment for his or her attendant(s) until financial eligibility is resumed; PCO agencies cannot bill medicaid [~~or the consumer~~] or its designee for PCO services rendered to the consumer if he or she is not financially eligible;

(3) maintaining appropriate recordkeeping of services provided and fiscal accountability as required by the provider participation application (PPA), also known as the MAD 335;

[~~(3)~~] (4) maintaining records, as required by the provider participation agreement (PPA), also known as the MAD 335 and as outlined in 8.302.1 NMAC, *General Provider Policies*, that are sufficient to fully disclose the extent and nature of the services furnished to the consumers[~~, as outlined in 8.302.1 NMAC, *General Provider Policies*~~]; timesheets are required and must include the attendant's time of arrival to and departure from the consumer's residence and must contain a narrative description of services provided on a daily basis; the agency may elect to maintain this narrative on a separate log in the consumer's residence; if a log is maintained, the log must be paired with the weekly timesheet and copies of both the timesheet and the log must be kept in the consumer's file; a check off list is considered sufficient documentation of service delivery; the attendant, consumer or personal representative, and a PCO agency representative must sign each timesheet/log verifying delivery of services; timesheets/logs without all required signatures will not be reimbursed by medicaid or its designee; attendants who are the consumer's legal guardian or attorney-in-fact are required to sign his/her timesheet/log but are not authorized to approve his or her own timesheet/log; attendants that meet this definition must sign his/her timesheet/logs signed and approved by the consumer's alternate personal representative to verify delivery of services; the attendant (legal guardian or attorney-in-fact), the alternate personal representative and a PCO agency representative must sign each timesheet/log to verify delivery of services; timesheets/logs without all required signatures will not be reimbursed by medicaid or its designee;

[~~(4)~~] (5) passing random and targeted audits, conducted by the department or its audit agent, that ensure agencies are billing appropriately for services rendered; the department or its designee will seek recoupment of funds from agencies when audits show inappropriate billing or inappropriate documentation for services;

[~~(5)~~] (6) providing either the consumer-directed or the consumer-delegated models, or both models;

[~~(6)~~] (7) furnishing their consumers, upon request, with information regarding each model; if the consumer chooses a model that an agency does not offer, the agency must refer the consumer to an agency that offers that model; the third-party assessor, or alternative medicaid designee, is responsible for explaining each model in detail to consumers on an annual basis;

[~~(7) maintaining appropriate record keeping of services provided and fiscal accountability as required by the MAD 335;~~]

(8) ensuring that each consumer [~~served~~] receiving PCO services has a current, approved [~~PCSP~~] IPoC on file;

(9) performing the necessary nationwide criminal history screening, pursuant to 7.1.9 NMAC and in accord with NMSA 1978, Section 29-17-1 of the Caregivers Criminal History Screening Act, on all potential personal care attendants; nationwide criminal history screenings must be performed by an agency certified to conduct such checks; the agency must work with the consumer to ensure the paperwork is submitted within the first [~~30~~] 20 calendar days of hire; consumers under the consumer-directed model may conditionally (temporarily) employ an attendant until such check has been returned from the certified agency; if the attendant does not successfully pass the nationwide criminal history screening, the consumer may not continue to employ the attendant;

(10) obtaining from the consumer or his or her personal representative a signed agreement with the attendant in which the attendant agrees that he or she will not provide PCO services while under the influence of drugs [~~and/or~~] or alcohol and acknowledges that if he is under the influence of drugs [~~and/or~~] or alcohol while providing PCO services he will be immediately terminated; the agency must maintain a copy of the signed agreement in the attendant's personnel file, for the consumer.

(11) obtaining a signed agreement from each consumer accepting responsibility for all aspects of care and training not included under the consumer-directed option; mandatory training in CPR and first aid for all attendants, competency testing, TB testing, hepatitis B immunizations and supervisory visits are not included in the consumer-directed option; a copy of the signed agreement must be maintained in the consumer's file;

(12) verifying that if the consumer has elected the consumer's legal guardian or attorney-in-fact as [~~his/her~~] the attendant, [~~the agency and~~] the consumer has obtained an alternate personal representative to verify delivery of services and to sign and approve the attendant's timesheet/log and identify qualified alternate parties in consumer file in advance [~~prior approval from MAD or its designee~~]; any personal care services provided by the consumer's legal guardian or attorney-in-fact *MUST* be [~~justified, in writing, by the agency and consumer and submitted for approval to MAD or its designee prior to employment; the justification must demonstrate and prove the lack of other qualified attendants in the applicable area; documentation of approval by MAD or its designee must be maintained in the consumer's file; the agency must inform the consumer that if the consumer is appointed or elects a legal guardian or attorney-in-fact any time during the plan year, the consumer must notify the agency immediately and the agency must ensure appropriate documentation is maintained in the consumer's file~~] verified by the alternate personal representative; documentation must be maintained in the consumer's file regarding the identity of the alternate personal representative;

(13) producing reports or documentation as required by the department or its designee;

(14) verifying that consumers will not be receiving services through the following programs while they are receiving PCO services: a medicaid home and community-based waiver (HCBW) except for CoLTS "c" waiver services, medicaid certified nursing facility (NF), intermediate care facility/mentally retarded (ICF/MR), program of all-inclusive care for the elderly (PACE), [~~CYFD~~] or aging and long term services department (ALTSD) adult protective services (APD) attendant care program[~~, or medicaid hospice~~]; an individual residing in a NF or ICF/MR or receiving community-based services is eligible to apply for PCO services; all individuals must meet the financial/medical eligibility requirements under the PCO program to receive PCO services; the third-party assessor, [~~MAD~~] medicaid, or its designee must conduct an assessment or evaluation to determine if the transfer is appropriate and if the PCO program would be able to meet the needs of that individual;

(15) processing all claims for PCO services; payment shall not be issued without appropriate documentation;

(16) making a referral to an appropriate social service or legal [~~agency(s)~~] agency for assistance, if the agency questions whether the consumer is able to direct his/her own care or is non-compliant with rules and regulations;

(17) establishing and explaining to the consumer the necessary payroll documentation needed for reimbursement of PCO services, such as time sheets/logs and tax forms;

(18) performing payroll activities for the attendants, such as, but not limited to, income tax and social security withholdings;

(19) informing the consumer and his/her attendant on the responsibilities of the agency;

(20) arranging for state of New Mexico workers' compensation insurance for all attendants;

(21) informing the consumer of available resources for necessary training, if requested by the consumer, in the following areas:

(a) hiring, recruiting, training, and supervision of attendants, including advertising and interviewing techniques; and

(b) evaluating methods of attendant competence and effectiveness.

(22) [~~submitting written incident reports to MAD or its designee, on behalf of the consumer, by fax, within 24 hours of the incident being reported to the agency; the agency must provide the consumer with an appropriate form for completion; reportable incidents may include, but are not limited to~~] immediately reporting abuse, neglect or exploitation pursuant to NMSA 1978, Section 27-7-30 and in accord with the Adult Protective Services Act. Abuse, neglect and exploitation are defined below:

[~~(a) abuse, neglect and exploitation~~]:

[~~(i)~~] (a) Abuse is defined as the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish to a consumer.

[~~(ii)~~] (b) Neglect is defined as the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness to a consumer.

[~~(iii)~~] (c) Exploitation is defined as the deliberate misplacement or wrongful, temporary or permanent use of a consumer's belongings or money without the voluntary and informed consent of the consumer.

(23) submitting written incident reports to medicaid or its designee, on behalf of the consumer, within 24 hours of the incident being reported to the PCO agency; the PCO agency must provide the consumer with an appropriate form for completion; reportable incidents may include, but are not limited to:

[~~(b)~~] (a) death:

(i) Unexpected death is defined as any death of an individual caused by an accident, or an unknown or unanticipated cause.

(ii) Natural/expected death is defined as any death of an individual caused by a long-term illness, a diagnosed chronic medical condition, or other natural/expected conditions resulting in death.

[~~(c)~~] (b) other reportable incidents:

(i) Environmental hazard is defined as an unsafe condition that creates an immediate threat to life or health of a consumer.

(ii) Law enforcement intervention is defined as the arrest or detention of a person by a law enforcement agency, involvement of law enforcement in an incident or event, or placement of a person in a correctional facility.

(iii) Emergency services refers to admission to a hospital or psychiatric facility or the provision of emergency services that results in medical care that is not anticipated for this consumer and that would not routinely be provided by a primary care provider.

[~~(23) obtaining from the consumer a signed contract with the attendant in which the attendant acknowledges that if he is under the influence of drugs and/or alcohol while providing PCO service, it will be grounds for immediate termination;~~]

(24) maintaining a consumer file and an attendant personnel file for the consumer for a minimum of six years; and

(25) informing the consumer, within the 90-day time period prior to the IPoC expiring, a minmum of three times, that his/her annual review is due and he/she must submit medical documentation, including the medical assessment form (MAD 075), to the TPA for level-of-care determination and to ensure that a break in services does not occur; documentation must be in the consumer's file demonstrating the consumer was informed.

C. **Eligible consumer-directed agencies:** Personal care agencies must be certified by [~~MAD~~] medicaid or its designee. [~~(A detailed guideline for all of the requirements can be obtained through MAD's fiscal agent.)~~] An agency listing, by county, is maintained by medicaid or its designee. All certified PCO agencies are required to select a county in which to establish and maintain an official office for conduct of business with published phone number and hours of operation; the PCO agency must provide services in all areas of the county in which the main office is located. The PCO agency may elect to serve any county within 100 miles of the main office. The PCO agency may elect to establish branch office(s) within 100 miles of the main office. The PCO agency must provide PCO services to all areas of any county(ies) selected to provide services. To be certified by [~~MAD~~] medicaid or its designee, agencies must meet the following conditions and submit a packet [~~(contents 1-5 described below)~~] (contents 1-6 described below) for approval to [~~MAD's~~] medicaid's fiscal agent or its designee containing the following:

(1) a completed medicaid provider participation application (MAD 335);

(2) copies of successfully passed nationwide caregivers criminal history screenings on employees who meet the definition of "caregiver" and "care provider" pursuant to 7.1.9 NMAC and in accord with NMSA 1978, Section 29-17-1 of the Caregivers Criminal History Screening Act;

(3) a copy of a current/valid business license or evidence of non-profit status; after certification, a copy of the business license/evidence of non-profit status must be kept current and submitted annually;

(4) proof of liability and workers' compensation insurance; after certification, proof of liability and workers' compensation insurance must be submitted annually;

(5) a copy of written policies and procedures that address:

(a) [~~MAD's~~] medicaid's personal care option provider policies;

(b) personnel policies; and

(c) office requirements that include but are not limited to:

(i) [~~Agencies must establish and maintain an official office for the conduct of business with posted hours of operation and a published phone number. Branch offices must be within a one hundred (100) mile radius of the agency's main office's physical location. In order to ensure the health and safety of consumer, the main agency can service up to a one hundred (100) mile radius of the agency's physical location. The satellite office can also service up to one hundred (100) mile radius of its actual physical location~~]. contact information, mailing address, physical location if different from mailing address, and hours of operation for the main office and branch offices if any; selected counties for the area(s) of service;

(ii) [~~Agencies offices must meet~~] meeting all Americans with Disabilities Act (ADA) requirements.

(iii) If PCO agencies have branch offices, the branch office must have a qualified on-site administrator to handle day-to-day operations who receives direction and supervision from the main/central office.

(d) quality improvement program to ensure adequate and effective operation, including documentation of quarterly activity that address, but are not limited to:

(i) service delivery;

(ii) operational activities;

(iii) quality improvement action plan; and

(iv) documentation of activities.

(6) a copy of a current and valid home health license, issued by the department of health, division of [health improvement, licensing and certification (pursuant to 7.28.2 NMAC) may be submitted in lieu of requirements (3) and (5) above. After certification, a copy of a current and valid home health license must be submitted annually along with proof of liability and workers' compensation insurance;

(7) after the packet is received and reviewed by [~~MAD~~] medicaid or its designee, the agency will be contacted to complete the rest of the certification process. This will require the agency to:

(a) attend a mandatory [~~MAD~~] medicaid or its designee's provider training session prior to the delivery of PCO services; and

(b) possess a letter from [~~MAD~~] medicaid or its designee changing provider status from "pending" to "active".

(8) any professional authorized to complete the medical assessment form (MAD 075) under the PCO program cannot also become a personal care agency.

D. **The consumer-directed personal care attendant responsibilities and requirements include**:

(1) being hired by the consumer;

(2) not being the spouse or minor child of the consumer pursuant to 42 CFR Section 440.167 and CMS state medicaid manual section 4480-D;

(3) providing the consumer with proof of and copies of current/valid New Mexico driver's license and motor vehicle insurance policy if the attendant will be transporting the consumer;

(4) being 18 years of age or older;

(5) ensuring that he/she has signed his/her timesheet/log verifying the services he/she provided to the consumer; if the attendant is the consumer's legal guardian or attorney-in-fact [~~and is the elected individual for hire, prior approval has been obtained from MAD or its designee; any PCO services provided by the consumer's legal guardian or attorney-in-fact *MUST* be justified, in writing, by the agency and consumer and submitted for approval to MAD or its designee prior to employment; the justification must demonstrate and prove the lack of other qualified attendants in the applicable area; documentation of approval by MAD or its designee must be maintained in the consumer's file~~]; he/she must also ensure that the timesheet/log is signed by the consumer's alternate personal representative to verify delivery of services; [~~and~~]

(6) successfully passing a nationwide criminal history screening, pursuant to 7.1.9 NMAC and in accord with NMSA 1978, Section 29-17-1 of the Caregivers Criminal History Screening Act, performed by an agency certified to conduct such checks; attendants are required to submit to a criminal history screening within the first [~~30~~] 20 calendar days of hire; an attendant may be conditionally (temporarily) hired by the consumer contingent upon the receipt of written notice of the nationwide criminal history screening; attendants who do not successfully pass a nationwide criminal history screening are not eligible for continued employment under the PCO program[~~.~~] ; and

(7) [~~Ensuring~~] ensuring while employed as an attendant he/she will not be under the influence of drugs [~~and/or~~] or alcohol while performing PCO services; the attendant must complete and sign an agreement with the consumer or the consumer's personal representative in which the attendant acknowledges that if he/she is under the influence of drugs [~~and/or~~] or alcohol while providing PCO services he will be immediately terminated; attendants who have been terminated for use of drugs [~~and/or~~] or alcohol while providing PCO services are not eligible for further employment under the PCO program.

[8.315.4.10 NMAC - Rp 8 NMAC 4.MAD.738.1, 7/1/04; A, 8/13/04; A, 3/15/10]

8.315.4.11 CONSUMER-DELEGATED PERSONAL CARE: HSD has established consumer delegated personal care, under the PCO program, to allow consumers the option of selecting an agency to provide services and perform employer related tasks. The agency contracts with [~~the department to perform employer-related~~] medicaid or its designee to perform these tasks. This section defines eligible agencies and the responsibilities of the consumer or the personal representative, attendants, and agencies under the delegated model. A consumer who does not follow the medicaid or PCO rules and regulations or demonstrates that he/she is unwilling or lacks the ability or family/community support to follow the rules and regulations may be referred to have PCO services discontinued.

A **The consumer's or personal representative's responsibilities** include:

(1) verifying that services have been rendered by signing accurate time sheets/logs being submitted to the agency for payroll.; a consumer should not sign time sheets/logs that are inaccurate or sign time sheets that are blank or post-dated because he/she could be charged with medicaid fraud; a consumer is responsible for reporting to the aging and long term services department, elderly & disability services division (ALTSD/EDSD) any PCO agency that requests him/her to sign blank time sheets/logs or post-dated time sheets/logs;

(2) electing an alternate personal representative (other than the legal guardian or attorney-in-fact) to verify services were delivered by the attendant and to sign and approve the time sheet/log, if the consumer's legal guardian or attorney-in-fact is the attendant; any PCO services provided by the consumer's legal guardian or attorney-in-fact *MUST* be verified and the time sheet/log signed by the alternate personal representative;

(3) taking the medical assessment form (MAD 075) once a year to his/her doctor and submitting it to the third-party assessor (TPA) or medicaid's alternative designee for review; this must be done as required prior to

his/her personal care services plan LOC expiring to ensure that there will be no break in services; a consumer who does not submit a timely MAD 075 to the TPA or alternative medicaid designee could experience a break in services; In addition, the consumer must allow the alternative medicaid designee to complete assessment visits and other contacts necessary to avoid a break in services;

(4) reporting to the PCO agency and alternative Medicaid designee if he/she is hospitalized, incarcerated or entering into an institutional setting; services cannot be provided to the consumer during hospitalization/incarceration/institutionalization; a consumer cannot authorize employment of his/her attendant(s), receive services under the program or allow the attendant to turn in a timesheet to the agency during hospitalization/incarceration/institutionalization; a consumer who receives services or signs timesheets/logs during the time he/she is hospitalized/incarcerated/institutionalized will be personally responsible for the payment of those services and could be charged with medicaid fraud; PCO agencies are not authorized to bill medicaid for services the consumer was not eligible to receive;

(5) allowing the PCO agency to conduct a monthly face-to-face supervisory visit in the consumer's residence; during the monthly supervisory visit, the consumer should report changes in his/her health, incidents and any other appropriate information to agency personnel.; the supervisory visit requires signed documentation attesting to the visit; during the monthly, face-to-face home supervisory visit conducted by the personal care agency, the consumer or personal representative must sign the monthly home visit sheet; a consumer should contact medicaid, or its alternative designee if his/her agency is not conducting monthly, face-to-face home supervisory visits; and

(6) complying with all medicaid and program requirements; failure to comply with requirements could result in discontinuation of PCO services.

[~~A.~~] B. **The consumer-delegated agency responsibilities** include, but are not limited to the following:

(1) employing, terminating and scheduling qualified attendants;

(2) conducting or arranging for training of all attendants for a minimum of [~~twelve (12)~~] 12 hours per year; initial training must be completed within the first three [~~(3)~~] months of employment and must encompass:

(a) an overview of the PCO program;

(b) living with a disability or chronic illness in the community;

(c) cardiopulmonary resuscitation (CPR) and first aid training; and

(d) a written competency test with a minimum passing score of [~~seventy-five (75%)~~] 80 percent or better; expenses for all trainings are to be incurred by the agency; other trainings may take place throughout the year as determined by the agency; the agency must maintain in the attendant's file copies of all trainings, certifications, and specialty training the attendant completed; CPR and first aid certifications must be kept current;

(i) documentation of all training must include at least the following information: 1) name of individual taking training; 2) title[~~, purpose, and objectives of class~~]; 3) [~~name of instructor~~] source of instruction; 4) number of hours of instruction; 5) date instruction was given;

(ii) documentation of competency testing must include at least the following: 1) name of individual being evaluated for competency; 2) date and method used to determine competency; 3) copy of the attendant's graded and passed competency test in the attendant's personnel file; special accommodations must be made for attendants who are not able to read or write or who speak/read/write a language other than English.

[~~(3) submitting to the department of health (DOH) for inclusion on the PCO attendant registry names of all qualified PCO attendants who have completed the required training and competency testing per subparagraphs (a) through (d) of Paragraph (2) of Subsection A of 8.315.4 NMAC; the agency must verify with DOH that PCO attendants previously employed by other PCO agencies are in good standing with DOH on the PCO attendant registry and cannot employ attendants who are not in good standing;~~]

[~~(4)~~] (3) developing and maintaining a [~~registry of~~] procedure to ensure trained and qualified attendants are available as backup for regularly scheduled attendants and emergency situations; complete instructions regarding the consumer's care and a list of attendant duties and responsibilities must be available in each consumer's home;

[~~(5)~~] (4) complete instructions regarding the consumer's care and a list of attendant duties and responsibilities must be available in each consumer's residence.

(5) informing the attendant of the risks of hepatitis B infection per current department of health recommendation and offering hepatitis B immunization at the time of employment at no cost to the attendant; attendants are not considered to be at risk for hepatitis B since only non-medical services are performed; therefore, attendants may refuse the vaccine; documentation of the immunization, prior immunization, or refusal of immunization by the attendant must be in the attendant's personnel file;

[~~(6) providing the attendant with information on community resources and information about the specific populations being served;~~]

[~~(7)~~] (6) obtaining a copy of the attendant's current/valid [~~New Mexico~~] driver's license or other current/valid photo id, if the consumer is to be transported by the attendant, obtaining [~~and~~] a copy of the attendant's current/valid driver's license and current motor vehicle insurance policy [~~if the consumer is to be transported by the attendant~~]; maintaining copies of [~~the driver's license and motor vehicle insurance policy must be maintained~~] these documents in the attendant's personnel file at all times;

[~~(8)~~] (7) complying with federal and state regulations and labor laws;

[~~(9)~~] (8) preparing all documentation necessary for payroll; [~~and~~]

[~~(10)~~] (9) producing reports and documentation as required by [~~the department.~~] medicaid or its designee;

[~~(11)~~] (10) complying with all specified medicaid participation requirements outlined in 8.302.1 NMAC, *General Provider Policies*;

[~~(12)~~] (11) verifying every month that all consumers are eligible for full medicaid coverage prior to furnishing services pursuant to Subsection A of 8.302.1.11 NMAC, [~~*General Provider Policies]*~~ *provider responsibilities and requirements;* agencies must document the date and method of eligibility verification; possession of a medicaid card does not guarantee a consumer's financial eligibility because the card itself does not include financial eligibility, dates or other limitations on the consumer's financial eligibility; agencies that provide PCO services to consumers who are not financially eligible cannot bill medicaid or the consumer for PCO services rendered to the consumer;

[~~(13)~~] (12) maintaining records that are sufficient to fully disclose the extent and nature of the services furnished to the consumers as outlined in 8.302.1 NMAC, *General Provider Policies*; time sheets are required to include: client name, caregiver name, date of service, time in, time out, number of hours worked, and tasks performed on a daily basis; dated client signature, dated caregiver signature, and an anti-fraud statement giving assurance by both parties that the tasks were performed and times are accurate. The PCO agency may elect to keep a log/check off list, in addition to the time sheet, in the consumer's home, describing services provided on a daily basis; if a log/check off list is maintained, the log must be paired with the weekly time sheet and copies of both the time sheet and the log/check off list must be kept in the consumer's file. The attendant, the consumer or his/her personal representative and an agency representative must sign each time sheet/log/check off list verifying delivery of services; time sheets/logs/check off list without all required signatures are not subject to medicaid reimbursement. Attendants who are the consumer's legal guardian or attorney-in-fact are required to sign his/her time sheet/log/check off list but are not authorized to approve his/her own time sheet/log/check off list; attendants that meet this definition must have his/her time sheets/logs/check off list signed and approved by the consumer's alternate personal representative to verify delivery of services; the attendant (legal guardian), the alternate personal representative and an agency representative must sign each time sheet/log/check off list to verify delivery of services; time sheets/logs/check off list without all required signatures are not subject to medicaid reimbursement;

[~~(14)~~] (13) passing random and targeted audits, conducted by the department or its audit agent, that ensure agencies are billing appropriately for services rendered; [~~dhe department~~] medicaid or its alternative designee will seek recoupment of funds from agencies when audits show [~~inappropriate~~] erroneous billing or insufficient documentation for services;

[~~(15)~~] (14) providing either the consumer-directed or the consumer-delegated models, or both models;

[~~(15) furnishing their consumers, upon request, with information regarding each model; if the consumer chooses a model that an agency does not offer, the agency must refer the consumer to an agency that offers that model; the third-party assessor is responsible for explaining each model in detail to consumers on an annual basis;~~]

[~~(17)~~] (15) maintaining appropriate record keeping of services provided and fiscal accountability as required by the MAD 335;

[~~(18)~~] (16) ensuring that each consumer served has a current, approved [~~PCSP~~] IPoC on file;

[~~(19)~~] (17) performing the necessary nationwide criminal history screening, pursuant to 7.1.9 NMAC and in accord with NMSA 1978, Section 29-17-1 of the Caregivers Criminal History Screening Act; the agency must ensure that the individual has submitted to a request for a nationwide criminal history screening within [~~30~~] 20 calendar days of the individual beginning employment; nationwide criminal history screening must be performed by an agency certified to conduct such checks; agencies under the consumer-delegated model may conditionally (temporarily) employ an attendant until the nationwide criminal history screening has been returned from the

certified agency; if the attendant does not successfully pass a nationwide criminal history screening, the agency may not continue employment;

[~~(20)~~] (18) obtaining from the attendant a signed agreement, in which the attendant agrees that he will not provide PCO services while under the influence of drugs [~~and/or~~] or alcohol and acknowledges that if he is under the influence of drugs [~~and/or~~] alcohol while providing PCO services he will be immediately terminated; the agency shall not employ an attendant who has previously been terminated from employment for use of drugs [~~and/or~~] or alcohol while providing PCO services;

[~~(21)~~] (19) ensuring that if the consumer has elected the consumer's legal guardian or attorney-in-fact as his/her attendant, the agency has obtained [~~prior approval from MAD or its designee;~~] from the consumer an alternate personal representative to verify delivery of services and to sign off on attendant's time sheet/log/check off list; and identify alternate parties in the consumer's file in advance; [~~any~~] all PCO services provided by the consumer's legal guardian or attorney-in-fact *MUST* be [~~justified, in writing, by the agency and consumer and submitted for approval to MAD or its designee prior to employment; the justification must demonstrate and prove the lack of other qualified attendants in the applicable area; documentation of approval by MAD or its designee must be maintained in the consumer's file; the agency must inform the consumer that if the consumer is appointed or elects a legal guardian or attorney-in-fact any time during the plan year, they must notify the agency immediately~~];verified by someone other than the consumer or his/her legal guardian or attorney-in-fact; documentation must be maintained in the consumer's file reflecting whom the consumer has elected as the alternate personal representative;

[~~(22) producing reports as required by the department;~~]

[~~(23)~~] (20) verifying that consumers will not be receiving services through the following programs, while they are receiving PCO services: a medicaid home and community-based waiver (HCBW), except for CoLTS "c" waiver services, medicaid certified nursing facility (NF), intermediate care facility/mentally retarded (ICF/MR), PACE, [~~CYFD~~] or ALTSD APS attendant care program, [~~or medicaid hospice~~]; an individual residing in a NF or ICF/MR or receiving community-based services is eligible to apply for PCO services to facilitate NF discharge; all individuals must meet the financial/medical eligibility requirements under the PCO program to receive PCO services; the third-party assessor, [~~MAD~~] medicaid, or its designee must conduct an assessment or evaluation to determine if the transfer is appropriate and if the PCO program would be able to meet the needs of that individual;

[~~(24)~~] (21) processing all claims for PCO services; payment shall not be issued without appropriate documentation;

[~~(25)~~] (22) making a referral to an appropriate social service agency [~~or~~] legal agency(s) or medicaid designee for assistance, if the agency questions whether the consumer is able to direct his/her own care;

[~~(26)~~] (23) establishing and explaining to all their consumers and all attendants the necessary [~~payroll~~] documentation needed for reimbursement of PCO services[~~, such as time sheets and tax forms~~];

[~~(27)~~] (24) performing payroll activities for the attendants[~~, such as, but not limited to income tax and social security withholdings~~];

[~~(28)~~] (25) informing the consumer and his/her attendant on the responsibilities of the agency;

[~~(29)~~] (26) providing state of New Mexico workers' compensation insurance for all attendants;

[~~(30)~~] (27) [~~submitting written incident reports to MAD or its designee~~] immediately reporting abuse, neglect or exploitation pursuant to NMSA 1978, Section 27-7-30 and in accord with the Adult Protective Services Act, by fax, within 24 hours of the incident being reported to the agency; reportable incidents may include, but are not limited to abuse, neglect and exploitation as defined below:

[~~(a) abuse, neglect and exploitation:~~]

[~~(i)~~] (a) Abuse is defined as the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish to a consumer.

[~~(ii)~~] (b) Neglect is defined as the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness to a consumer.

[~~(iii)~~] (c) Exploitation is defined as the deliberate misplacement or wrongful, temporary or permanent use of a consumer's belongings or money without the voluntary and informed consent of the consumer.

[~~(31)~~] (28) submitting written incident reports to ALTSD and the consumer's MCO by fax or email within 24 hours of the incident being reported to the PCO agency; reportable incidents include, but are not limited to:

[~~(b)~~] (a) death:

(i) Unexpected death is defined as any death of an individual caused by an accident, or an unknown or unanticipated cause.

(ii) Natural/expected death is defined as any death of an individual caused by a long-term illness, a diagnosed chronic medical condition, or other natural/expected conditions resulting in death.

[~~(c)~~] (b) other reportable incidents:

(i) Environmental hazard is defined as an unsafe condition that creates an immediate threat to life or health of a consumer.

(ii) Law enforcement intervention is defined as the arrest or detention of a person by a law enforcement agency, involvement of law enforcement in an incident or event, or placement of a person in a correctional facility.

(iii) Emergency services refers to admission to a hospital or psychiatric facility or the provision of emergency services that results in medical care that is not anticipated for this consumer and that would not routinely be provided by a primary care provider; and

(iv) Any report made to APS.

[~~(31)~~] (29) conducting face-to-face supervisory visits in the consumer's [~~home~~] residence, once a month at a minimum (12 per service plan year). [~~, which must include a face-to-face interview with the consumer, and/or his/her personal representative~~]; the supervisory visit must be conducted in person at the consumer's residence by the attendant's supervisor or higher ranked agency personnel; documentation of each visit must be maintained in the consumer's file and must include:

(a) date;

(b) time in and time out;

(c) name of individual conducting the supervisory visit and their job title;

(d) individuals present during the visit;

(e) review of personal care service plan;

(f) health and safety issues such as but not limited to: falls, hospitalizations, change in condition, change in needs, quality of care being provided and if the consumer is satisfied with their current attendant;

(g) signature of consumer or consumer's legal guardian or attorney-in-fact; and

(h) telephone conversations with the consumer or his/her personal representative, meetings in the PCO agency's office or at any other location other than the consumer's residence are not considered supervisory visits and cannot take the place of a supervisory visit.

[~~(32) documenting in the consumer's file the safety of the service and the quality of care provided to the consumer;~~

~~(33) arranging regular staff meetings and in-service training programs for attendants; agencies must bear expenses for all trainings but is not required to pay attendants for his/her training time; attendants must receive a minimum of 12 hours training per year, which must include CPR and first aid and should be in conjunction with the consumers needs; agencies must ensure CPR and first aid trainings are completed within the first three (3) months of employment; agencies must annually resubmit to DOH the names of all qualified PCO attendants upon completion of their annual in-service requirements; agencies must ensure that mandatory trainings are kept current and that copies of all trainings and certifications are in the attendant's personnel file;~~]

[~~(34)~~] (30) maintaining an accessible and responsive 24-hour communication system for consumers to use in emergency situations to contact the agency;

[~~(35) maintaining a roster of trained and qualified attendants for backup of regular scheduling and emergencies;~~

~~(36) offering hepatitis B immunization at the time of employment at no cost to the attendant and inform the attendant of the risks of hepatitis B infection; the attendant may refuse hepatitis B vaccination; documentation of current immunization, prior immunization, or refusal of immunization must be maintained in the attendant's personnel file;~~]

[~~(37)~~] (31) [~~obtaining a current tuberculosis (TB) skin test or chest x-ray upon initial employment; TB testing must be conducted thereafter, pursuant to the current standards of the department of health; the results of the TB skin test or chest x-ray must be documented in the attendant's personnel file; if the individual tests positive for TB, he/she cannot be hired as an attendant; the individual must be referred to his/her physician or to the department of health for infectious disease treatment; when the individual has received appropriate treatment, he/she may be employed as the attendant; there must be documentation of treatment from a medical professional in the attendant's personnel file; the agency must incur expenses for TB tests~~] following current recommendations of the state department of health for preventing the transmission of tuberculosis (TB) for attendants upon initial employment and as needed; and

[~~(38) conducting or arranging for a written competency test (approved by MAD or its designee as stated in Paragraph (6) of Subsection B of 8.315.4.11 NMAC of these regulations), at the agency's expense, for all eligible attendants; the attendant must successfully pass a written test with seventy-five percent (75%) or better within the first three (3) months of employment; a copy of the test must be in the attendant's personnel file; special accommodations must be made for attendants who are not able to read or write or who speak/read/write a language other than English~~];

(32) verifying initially upon employment, and annually thereafter, that attendants are not on the employee abuse registry pursuant to 8.11.6 NMAC and in accord with Employee Abuse Registry Act.

[~~B.~~] C. **Eligible consumer-delegated agencies:** Personal care agencies must be certified by [~~the MAD~~] medicaid or its designee. [~~(A detailed guideline to all of the requirements can be obtained through MAD's fiscal agent.)~~] A PCO agency listing, by county, is maintained by medicaid or its designee. All certified PCO agencies are required to select a county in which to establish and maintain an official office for conduct of business with published phone number and hours of operation; the PCO agency must provide services in all areas of the county in which the main office is located. The PCO agency may elect to serve any county within 100 miles of the main office. The PCO agency may elect to establish branch office(s) within 100 miles of the main office. The PCO agency must provide PCO services to all areas of any county(ies) selected to provide services. To be certified by [~~MAD~~] medicaid or its designee, agencies must meet the following conditions and submit a packet [~~(contents 1-5 described below)~~] (contents 1-6 described below) for approval to [~~MAD's~~] medicaid's fiscal agent or its designee containing the following:

(1) a completed medicaid provider participation application (MAD 335);

(2) copies of successfully passed nationwide caregivers criminal history screenings on employees who meet the definition of "caregiver" and "care provider" pursuant to 7.1.9 NMAC and in accord with NMSA 1978, Section 29-17-1 of the Caregivers Criminal History Screening Act;

(3) a copy of a current/valid business license or evidence of non-profit status; after certification, a copy of the business license/evidence of non-profit status must be kept current and submitted annually;

(4) proof of liability and workers' compensation insurance; after certification, proof of liability and workers' compensation insurance must be submitted annually to medicaid or its designee;

(5) a copy of written policies and procedures that address:

(a) [~~MAD's~~] medicaid's personal care option provider policies;

(b) personnel policies; and

(c) office requirements that include but are not limited to:

(i) [~~*Agencies must establish and maintain an official office for the conduct of business with posted hours of operation. Branch offices must be within a one hundred (100) mile radius of the agency's main office's physical location. In order to ensure the health and safety of consumer, the main agency can service up to a one hundred (100) mile radius of the agency's physical location. The satellite office can also service up to one hundred (100]) mile radius of its actual physical location.]*~~] contact information, mailing address, physical location if different from mailing address, and hours of operation for the main office and branch office(s), if any and selected county(ies) for the PCO agency's service area(s);

(ii) [~~Agencies must meet~~] meeting all Americans with Disabilities Act (ADA) requirements.

(iii) If PCO agencies have branch offices, the branch office must have a qualified on-site administrator to handle day-to-day operations who receives direction and supervision from the main/central office.

(d) quality improvement program to ensure adequate and effective operation, including documentation of quarterly activity that address, but are not limited to:

(i) service delivery;

(ii) operational activities;

(iii) quality improvement action plan; and

(iv) documentation of activities.

(6) a copy of the agency's written competency test for approval to MAD or its designee; an agency may elect to purchase a competency test or it may develop its own test; the test must address at least the following:

(a) communication skills;

(b) patient/client rights, including respect for cultural diversity;

(c) recording or information for patient/client records;

(d) nutrition and meal preparation;

(e) housekeeping skills;

(f) care of the ill and disabled, including the special needs populations including bathing, showering, skin care, turning and body positioning, transfers and related equipment, grooming, nail care, proper lifting techniques, non-medical catheter care, oral hygiene, and assisting with self-administered medications (verbal cueing/prompting);

(g) emergency response (including CPR and first aid);

(h) universal precautions and basic infection control;

(i) home safety including oxygen and fire safety;

(j) incident management and reporting; and

(k) confidentiality.

(7) a copy of a current and valid home health license, issued by the department of health, division of health improvement, licensing and certification (pursuant to 7.NMAC 28.2) may be submitted in lieu of requirements 3, 5 and 6 of this section; after certification, a copy of a current and valid home health license must be submitted to medicaid or its designee annually along with proof of liability and workers' compensation insurance;

(8) after [~~MAD~~] medicaid or its designee has received and reviewed the packet, the PCO agency will be contacted to complete the rest of the certification process; this will require the PCO agency to:

(a) attend a mandatory [~~MAD~~] medicaid or its designee's provider training session prior to the delivery of PCO services; and

(b) possess a letter from [~~MAD~~] medicaid or its designee changing provider status from "pending" to "active".

(9) any professional authorized to complete the medical assessment form (MAD 075) under the PCO program cannot also become a personal care agency.

[~~C.~~] D. The consumer-delegated personal care attendant responsibilities and requirements include:

(1) being hired by the PCO agency;

(2) not being the spouse or minor child of the consumer pursuant to 42 CFR Section 440.167 and CMS state medicaid manual section 4480-D;

(3) providing the PCO agency with proof of and copies of current/valid [~~New Mexico~~] driver's license or current/valid photo ID and if the attendant will be transporting the consumer, current/valid driver's license and current motor vehicle insurance policy [~~if the attendant will be transporting the consumer~~];

(4) being 18 years of age or older;

(5) [~~ensuring that if the attendant is the consumer's legal guardian or attorney-in-fact and is the elected individual for hire, prior approval has been obtained from MAD or its designee; any personal care services provided by the consumer's legal guardian or attorney-in-fact *MUST* be justified, in writing, by the PCO agency and consumer and submitted for approval to MAD or its designee prior to employment; the justification must demonstrate and prove the lack of other qualified attendants in the applicable area; documentation of approval by MAD or its designee must be maintained in the consumer's file~~] submit appropriate documentation of time worked and services performed ensuring that he/she has signed his/her time sheet/log/check off list verifying the services provided to the consumer;

(6) successfully passing a nationwide criminal history screening, pursuant to 7.1.9 NMAC and in accord with NMSA 1978, Section 29-17-1 of the Caregivers Criminal History Screening Act, performed by an agency certified to conduct such checks; attendants are required to submit to a criminal history screening within the first 30 days of hire; an attendant may be conditionally [~~(temporarily)~~] hired by the [~~consumer~~] agency contingent upon the receipt of written notice of the nationwide criminal history screening; attendants who do not successfully pass a nationwide criminal history screening are not eligible for employment under the PCO program;

(7) ensuring while employed as an attendant he will not be under the influence of drugs [~~and/or~~] or alcohol while performing PCO services; the attendant must complete and sign an agreement with the agency in which the attendant acknowledges that if he is under the influence of drugs [~~and/or~~] or alcohol while providing PCO services he will be immediately terminated; [~~attendants who have been terminated for use of drugs and/or alcohol while providing PCO services are not eligible for further employment under the PCO program;~~]

(8) successfully passing a written personal care attendant competency test with [~~seventy-five percent (75%)~~] 80 percent or better within the first three [~~(3)~~] months of employment;

(9) completing 12 hours of training yearly; the attendant must obtain certification of CPR and first aid training within the first [~~(3)~~] three months of employment, and the attendant must maintain certification throughout the entire duration of providing PCO services; additional training will be based on the consumer's needs as listed in the [~~PCSP~~] IPoC; attendants are not required to be reimbursed for training time; and

[~~(10) being placed on DOH's PCO attendant registry and remaining in good standing with DOH on the PCO attendant registry; and~~]

[~~(11)~~] (10) [~~providing the agency with a current tuberculosis (TB) skin test or chest x-ray upon initial employment with the agency per the current standards of the department of health; the results of the TB test must be documented in the attendant's personnel file; if the results are positive for TB, the individual cannot be hired as an attendant, and must seek treatment; after treatment and the individual has been given medical clearance, the individual may be employed by the agency; there must be documentation from a medical professional of treatment, and the agency must place a copy of the treatment documentation in the attendant's personnel file~~] following current recommendations of the state department of health for preventing the transmission of tuberculosis (TB).
[8.315.4.11 NMAC - Rp 8 NMAC 4.MAD.738.2, 7/1/04; A, 8/13/04; A, 3/15/10]

8.315.4.12 ELIGIBLE POPULATION: Consumers receiving personal care services must meet all of the following criteria:

A. be on a full benefit medicaid category and not be receiving medicaid home and community-based waiver services (HCBS), except for CoLTS "c" waiver services, medicaid nursing facility (NF), intermediate care facility/mentally retarded (ICF/MR), PACE, [~~CYFD~~] or ALTSD APS attendant care program, [~~or medicaid hospice services~~] at the time PCO services are furnished; an individual residing in a NF or ICF/MR or receiving community-based services is eligible to apply for PCO services to facilitate NF discharge; all individuals must meet the financial/medical eligibility requirements under the PCO program to receive PCO services; the third-party assessor, [~~MAD,~~] medicaid or its alternative designee must conduct an assessment or evaluation to determine if the transfer is appropriate and if the PCO program would be able to meet the needs of that individual;

B. be age [~~twenty one (21)~~] 21 or older; be determined to have [~~meet~~] met the level of care required in a nursing facility [~~(high or low NF)~~] by the third-party assessor or [~~MAD's~~] medicaid's designee;

C. have an approved [~~PCSP~~] IPoC, developed by the consumer or personal representative, in conjunction with [~~the third party assessor~~] PCO agency or [~~MAD's~~] medicaid's designee; and

D. comply with all medicaid and program policies and procedures.

[8.315.4.12 NMAC - Rp 8 NMAC 4.MAD.738.3, 7/1/04; A, 3/15/10]

8.315.4.13 COVERAGE CRITERIA: [~~Services under the personal care option program~~] PCO services are defined as those tasks necessary to maintain a consumer's physical, social or cognitive functional ability[~~. The goal of personal care is~~] to avoid institutionalization, maintain or increase the consumer's functional level, and maintain or increase the consumer's independence. [T~~he personal care option program does not provide services 24 hours per day.~~] PCO services are allocated for a reasonable accommodation of tasks, but does not provide 24-hours per day services. Average time for an ALD or IADL will be based on industry average allocation of time for an individual at the same level of care and with similar conditions or primary diagnosis. Services are covered under the following criteria:

A. PCO services are usually furnished in the consumer's place of residence, except as otherwise indicated, and during the hours specified in the consumer's IPoC. If a consumer is a resident in an assisted living facility, shelter home, or room and board facility, the TPA or alternative medicaid designee, will perform an assessment and ensure that the PCO services do not duplicate the services that the facility is providing. The facility must be able to prove that activities of daily living are not part of the services the resident is paying for and provide a copy of the service contact or admission agreement signed by the consumer, before the need for PCO services can be assessed. Regulations for assisted living facilities may be found at 7.8.2 NMAC, *Requirements for Adult Residential Care Facilities*. Services may be furnished outside the [~~home,~~] residence only when appropriate and necessary and when not available through other existing benefits and programs, such as [~~hospice and~~] home health or other state plan or long-term care services.

B. PCO services are not furnished to an individual who is an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, mental health facility, correctional facility, [~~or~~] other institutional settings or an assisted living facility, shelter home or room and board facility that provides assistance with activities of daily living as determined in Subsection A of 8.315.4.13 NMAC.

C. PCO services are furnished as approved and limited by PCO service regulations and policy to consumers who are unable to perform some/all activities of daily living (ADLs) or independent activities of daily living (IADLs) because of a disability or a functional limitation(s) due to chronic, long-term condition only.

D. Consumers that share living space will be assessed and allocated services pursuant to Subsection L 8.315.4.14; NMAC to avoid unnecessary duplication of services.

E. Consumers, who do not live alone, and share a residence with other family members not receiving services under the program will be assessed for, among other factors, the natural supports in the household, to determine if they are eligible to receive services under the specified categories under section 8.315.4.14 NMAC.

F. All consumers, regardless of living arrangements, will be assessed for natural supports. PCO services are not intended to replace natural supports.

[8.315.4.13 NMAC - Rp 8 NMAC 4.MAD.738.7, 7/1/04; A, 3/15/10]

8.315.4.14 COVERED SERVICES: [~~Services covered~~] PCO services are [~~the following:~~] provided as described in Subsections A through K. Consumers will be assessed both individually and jointly, as appropriate (Subsection L, below), in each of the following listed service categories. Consumers who are not assessed as having a need in that service category will not be allocated hours for that service.

A. **Individualized bowel and bladder services:** [~~include but are not limited to: diaper changes, catheter care, bowel programs, bladder programs, and perineal care.~~] These services do not have to be performed by a nurse pursuant to NMSA 1978, Section 61-3-29(J) of the Nursing Practice Act. Bowel and bladder services may be "performed by a personal care provider in a non-institutional setting of bowel and bladder assistance for an individual whom a health care provider certifies is stable, not currently in need of medical care and able to communicate and assess his own needs." Services include:

(1) adult disposable brief changes used for incontinence episodes;

(2) bladder care – cueing consumer to empty bladder at timed intervals to prevent incontinence; elimination; catheter care, including the changing and cleaning of catheter bag; an individual requiring assistance with bladder care must be determined medically stable by his/her physician, and able to communicate his/her bladder care; a consumer who does not have a statement by his/her physician determining he/she is medically stable and able to communicate his/her bladder care needs is not eligible for hours in this category; insertion/extraction of a catheter is not a covered service;

(3) bowel care – evacuation and ostomy care, changing and cleaning of bag and ostomy site skin care; the requirements and limitations from (2) bladder care, regarding medically determined stability and ability to communicate, apply here ; digital stimulation is not a covered service;

(4) perineal care – cleansing of the perineal area and changing of sanitary napkins; and

(5) changing of wet or soiled clothing after incontinence episode or assisting with adjustment of clothing before and after toileting.

B. **Meal preparation and assistance:** [~~at~~] At the direction of the consumer or his/her personal representative, prepare meal(s) (includes cutting ingredients to be cooked, cooking of meals, and placing/presenting meal in front of consumer to eat, and cutting up food into bite-sized portions) for the consumer or assist the consumer pursuant to the [~~PCSP~~] IPoC. [~~This does not include assistance with eating.~~] This includes provision of snacks and fluids and may include cueing consumer to prepare meals. Services requiring assistance with eating are covered under eating in Subsection G of 8.315.4.14 NMAC below.

C. **Support services:** Provide additional assistance to the consumer in order to promote his/her independence and enhance his/her ability to live in the community [~~and remain in a clean and safe environment.~~], particularly a consumer living alone who may not have adequate support. These services include [~~, but are not limited to~~]:

(1) shopping [~~and/or~~] or completing errands for the consumer, with or without the consumer[~~;~~],

(2) transporting [~~and assisting with transfers in/out of vehicles~~] to non-medically necessary events; if the consumer's vehicle is used, the consumer must have a copy of his/her motor vehicle insurance policy; PCO agencies are not required to provide [~~escort or~~] transportation services; if the consumer requires transportation and the PCO agency cannot meet this need, the PCO agency must [~~refer the consumer to personal care agencies that can meet this need; the third-party assessor or MAD's designee will assess the consumer's formal and informal support systems and determine the availability of other transportation and/or other agencies such as a Medicaid enrolled transportation provider for transportation to medical services; the third-party assessor MAD's designee will approve transportation services primarily for non-medical transportation, unless the consumer resides in a rural area and does not have access to a Medicaid-enrolled transportation provider for medical-related transports;~~] complete the transfer process to another PCO agency as outlined in 8.315.4.19 NMAC. Medically necessary transportation services are not covered as personal care option services.

(3) [~~translating/interpreting through persons qualified to provide such services.~~] assistance with feeding and hydrating or cueing consumer to feed and hydrating an assistance animal; a consumer must have an assistance animal and be able to verify the animal is an assistance animal and not a pet; feeding and hydrating of pets is not an approved service.

D. **Hygiene/grooming**: The [~~PCSP~~] IPoC may include the following tasks to be performed by the attendant. These services include [~~but are not limited to~~]:

(1) bathing – giving a sponge bath/bed bath/tub bath/shower, including transfer in/out, turning bath/shower water off/on, and setting temperature of bath/shower water; bringing in water from outside or heating water for consumer;

(2) dressing – putting on, fastening, removing clothing, and shoes;

(3) grooming – combing or brushing hair, applying make-up, trimming beard or mustache, braiding hair, shaving underarms, legs or face;

(4) oral care with intact swallowing reflex – brushing teeth, cleaning dentures/partials (includes use of floss, swabs, or mouthwash);

(5) nail care – cleaning or filing to trim or do cuticle care except for consumers with a medical condition such as venous insufficiency, diabetes, peripheral neuropathy, or consumers that are documented as medically at risk, which then would be considered a skilled task and not a covered personal care option service;

(6) [~~perineal care;~~] applying lotion to intact skin for routine skin care; and

(7) [~~toileting;~~] cueing to ensure appropriate bathing, dressing, grooming, oral care, nail care and application of lotion for routine skin care.

E. **Minor maintenance of assistive device(s):** Battery replacement and minor, routine wheelchair and durable medical equipment (DME) maintenance or cleaning. A consumer must have an assistive device(s) that requires regular cleaning or maintenance that the consumer cannot clean and maintain to be eligible to receive services under this category.

F. **Mobility assistance:** Assistance [~~may include,~~] includes [~~but is not limited to~~]:

(1) ambulation – moving around inside or outside the residence or consumer's living area with or without assistive devise(s) such as walkers, canes and wheelchairs;

(2) transferring – moving to/from one location/position to another with or without assistive devices(s) including in and out of vehicles;

(3) toileting – transferring on/off toilet; and

(4) repositioning – turning or moving an individual to another position who is bed bound to prevent skin breakdown.

G. **Eating :** Feed or assist feeding consumer a prepared meal with a utensil or with specialized utensils. Eating is the ability to physically put food into mouth, chew and swallow food safely. The attendant shall assist the consumer as determined by the [~~PCSP~~] IPoC. This does not include preparation such as cutting up food in bite-sized portions or serving/presenting of food/meals. Eating assistance may include cueing a consumer to ensure appropriate nutritional intake and/or monitor for choking. Services requiring preparation of food/meals is covered under meal preparation and assistance in Subsection B of 8.315.4.14 NMAC. [~~If the consumer has special needs in this area, the attendant is required to receive specific training to meet that need.~~] Gastrostomy feeding and tube feeding are not covered services.

H. **Assisting with self-administered medication:** This service is limited to *prompting and reminding only*. The ability to self-administer is defined as the ability to identify and communicate medication name, dosage, frequency and reason for the medication. A consumer who does not meet this definition of ability to self-administer is not eligible for hours in this category. A consumer who needs assistance with taking self-administered medication as a reasonable accommodation under the Americans with Disabilities Act (ADA) due to a disability may receive assistance as per the [~~PCSP~~] IPoC, if the consumer can self-administer medications as defined above. This assistance does not include administration of injections, which is a skilled/nursing task. [~~Examples of assistance include, but are not limited to, the following:~~] Assistance includes:

(1) getting a glass of water or juice as requested by the consumer for the purpose of taking medications;

(2) at the direction of the consumer handing the consumer his/her daily medication box or medication bottle, or cutting/grinding pills; and

(3) at the direction of the consumer, helping a consumer with placement of oxygen tubes for consumers who can communicate to the caregiver the dosage/route of oxygen; filling of medication boxes is not a covered service.

I. **Skin care:** The consumer must have a skin disorder documented by a physician, physician assistant, nurse practitioner or a clinical nurse specialist to be eligible to receive hours in this category. This service is limited to the attendant's application of over-the-counter or prescription skin cream for a diagnosed chronic skin condition that is not related to burns, pressure sores or ulceration of skin as a reasonable accommodation under the ADA. [~~If documented by a physician, physician assistant, nurse practitioner or clinical nurse specialist, the attendant can perform skin care. Such assistance excludes wound care or application of prescription medications unless such assistance would be a reasonable accommodation under the ADA.~~] A consumer must meet the

definition of "ability to self-administer" defined in Subsection H of this section, to be eligible to receive time for application of a prescription medication as a reasonable accommodation under the ADA. Wound care/open sores and debriding/dressing open wounds are not covered services.

J. **Cognitive assistance:** Cognitive assistance is intended [~~to keep the consumer on task, and increase or maintain the consumer's safety~~] for consumer safety, and to increase or maintain independence, and quality of life (e.g prevent from wandering). This service is primarily for a consumer with a [~~traumatic~~] brain injury, alzheimer's disease, a mental illness, dementia, developmental delay or a consumer who has suffered a stroke/CVA; a consumer with medical documentation of moderate to severe cognitive deficits; a consumer who does not have one of these diagnoses is not eligible to receive time under this category; those individuals who require prompting and cueing to complete their ADLs and IADLs are allotted time within a specific service; supervision and companionship are not covered services.

K. **Household services:** This service assists the consumer in performing interior household activities as needed. Such activities are limited to the maintenance of the consumer's personal living area (i.e., kitchen, living room, bedroom, and bathroom). To maintain a clean and safe environment for the consumer [~~living~~], particularly a consumer living alone who may not have adequate support in his/her residence. [~~Examples of household~~] services include:

(1) sweeping, mopping or vacuuming the consumer's carpets, hardwood floors, tile or linoleum;
(2) dusting the consumer's furniture;
(3) changing the consumer's linens;
(4) washing the consumer's laundry;
(5) cleaning the consumer's bathroom (tub [~~and/or~~] or shower area, sink, and toilet);
(6) cleaning the consumer's kitchen and dining area (i.e., washing the consumer's dishes, putting the consumer's dishes away; cleaning counter tops, cleaning the area where the consumer eats, etc.); household services do not include cleaning up after other household members including dependents or pets.

L. **Shared households/living space**: Two or more consumers living in the same residence, (including assisted living facilities, shelter homes, and other similar living arrangements), who are receiving PCO services will be assessed both individually and jointly to determine services that are shared. Consumers sharing living space will be assessed as follows for services identified in Subsections B, C and K of 8.315.4.14 NMAC.

(1) individually to determine if the consumer requires unique assistance with the service; and
(2) jointly with other household members to determine shared living space and common needs of the household; services will be allocated based on common needs, not based on individual needs, unless it has been assessed by the TPA or medicaid alternative designee, there is an individual need for provision of the service(s). (Common needs may include meals that can be prepared for several individuals; shopping/errands that can be done at the same time; laundry that can be done for more than one individual at the same time; dusting and vacuuming of shared living spaces), PCO hours allocated under these categories are based on the assessment of combined needs in the household without replacing natural and unpaid supports identified during the assessment.

[8.315.4.14 NMAC - Rp 8 NMAC 4.MAD.738.8, 7/1/04; A, 3/15/10]

8.315.4.15 NON-COVERED SERVICES: The following services are not covered as New Mexico medicaid personal care option services:

A. [~~any task that must be provided by a person with professional or technical training as specified by state and federal law;~~] services that require professional or technical training;

B. services that, due to the consumer's specialized medical needs, must be provided by a person with professional or technical training to avoid placing the consumer at risk;

C. services that are duplicative of other PCO services, such as billing for the individual provision of services to consumers who share living space and are allocated service hours on a proportional basis or other resources, such as hospice, assisted living, shelter home, or room and board facility;

[~~B.~~] D. services not approved in the consumer's approved [~~PCSP~~] IPoC;[~~and~~]

[~~C.~~] E. childcare or personal care for other household members[~~.~~];

F. retroactive services;

G. short-term care, interim care, or care for rehabilitative purposes;

H. services provided to a consumer who does not have medicaid eligibility;

I. assistance with finances and budgeting;

J. scheduling of appointments for a consumer; and

K. range of motion exercises are not a covered service.

[8.315.4.15 NMAC - Rp 8 NMAC 4.MAD.738.9, 7/1/04; A, 3/15/10]

8.315.4.16 THIRD-PARTY ASSESSOR (TPA): The TPA [~~or MAD's designee~~] is responsible for making level of care (LOC) determinations based on criteria developed by [~~MAD~~] medicaid according to national standards (see Attachment II of 8.312.2-UR, *Long Term Care Services Utilization Review Instructions for Nursing Facilities,* available upon request from [~~MAD~~] medicaid. [~~developing personal care service plans (PCSP), issuing prior approvals, and making utilization reviews for all PCO consumers.~~] The TPA is responsible for making utilization reviews for all PCO consumers. The TPA (for FFS PCO) or medicaid's CoLTS MCO (for managed care) is responsible for issuing prior authorizations. Annually, the TPA or [~~MAD's designee~~] other medicaid designee will [~~explain, in detail, the two service delivery models, consumer-directed and consumer-delegated, annually; and is also required to provide the consumer with informational materials that explain both models and the PCO program in general~~] provide detailed explanation of the consumer-directed and consumer-delegated models of PCO services delivery. The TPA is not authorized to contract with any medicaid approved PCO agency to carry out TPA responsibilities. The TPA's responsibilities are as described below.

A. **Level of care (LOC):** To be eligible for PCO services, a consumer must meet the level of care required in a nursing facility[~~, the medical eligibility criteria entails two distinct levels of care: a high nursing facility (HNF) or low nursing facility (LNF),~~]; the CoLTS MCO or other medicaid designee must contact the consumer within a minimum of 90 days, prior to the expiration of the approved LOC to begin the LOC determination process for PCO services, to ensure the consumer does not experience a break in PCO services, Attachment II of 8.312.2-UR, *Long Term Care Services Utilization Review Instructions for Nursing Facilities*. A level of care packet is developed and submitted to the TPA and approved by the TPA [~~or MAD's designee~~].

(1) The LOC packet must include:

(a) a current (within the last [~~12~~] 6 months) approved medical assessment form [~~MAD 075~~] signed by a physician, physician assistant, nurse practitioner or, clinical nurse specialist;

(b) any other information or medical justification documenting the consumer's [~~functions~~] functional abilities; and

(c) an assessment of the consumers functional needs, performed by either the TPA or CoLTS MCO designee.

(2) The TPA [~~or MAD's designee~~] will use the LOC packet to:

(a) make all LOC determinations for all consumers requesting [~~services under the~~] personal care option [~~program~~] services;

(b) approve the consumers LOC for a [~~minimum~~] maximum of one year (12 consecutive months); and a new LOC determination must be made annually to ensure the consumer continues to meet medical eligibility criteria for PCO services; each LOC determination must be based on the consumer's current medical condition and need of service(s) and may not be based on prior year LOC determinations;

(c) contact consumer within a minimum of [~~ninety (90)~~] 90 days, prior to the expiration of the approved LOC, to [~~being~~] begin [~~LOC determination process for PCO services, to ensure the consumer does not experience a break in PCO services~~] the re-assessment process for PCO services.

B. **In-Home Assessment:** The TPA or medicaid's CoLTS MCO designee must:

(1) perform an assessment of the consumer's functional needs, in the consumer's place of residence;

(2) explain both service delivery models, consumer-directed and consumer-delegated to the consumer or his/her personal representative and provide the consumer or his/her personal representative with informational material, allowing the consumer to make the best educated decision possible regarding which model he/she will elect. A copy of the consumer's or personal representative's responsibilities in Subsection A of 8.315.4.10 NMAC or Subsection A of 8.315.4.11 NMAC must be provided to each consumer or personal representative, at every annual assessment, based on the service delivery model he/she has elected; and

(3) jointly assess consumers that share living space for meal preparation, assistance services, support services and household services and allocate time based on the assessment of common needs of the household; documentation must be submitted and the individual assessment must support the medical or individual need for provision of these services; the TPA or medicaid's CoLTS MCO designee must take into consideration natural and unpaid supports for a consumer who resides with other family members and determine if he/she is eligible to receive services pursuant to identified categories under 8.315.4.14 NMAC.

[~~(3)~~] C. [~~An~~] A PCO agency that does not agree with the LOC determination made by the third-party assessor or MAD's designee [~~may~~]:

[~~(a)~~] (1) may request a re-review [~~and/or~~] or reconsideration pursuant to medicaid oversight policies, 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953]; and

[~~(b)~~] (2) is responsible for submitting the additional medical justification to the TPA or MAD's designee and adhering to the timelines as out lined in medicaid oversight policies, 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953].

[~~(4)~~] D. A consumer that does not agree with the LOC determination made by the TPA or MAD's designee may request a fair hearing pursuant to 8.352.2 NMAC, *Recipient Hearings*. Consumers enrolled in a CoLTS MCO who disagree with authorized number of hours may also utilize the CoLTS MCO grievance and appeal process.

[~~(5)~~] E. Agencies that have identified a consumer with a declining health condition or whose needs have changed and believe the consumer is in need of more or fewer services should [~~refer the consumer to~~] notify the TPA or MAD's designee in writing for an additional assessment or LOC determination.

[~~(6)~~] F. Agencies who are providing PCO services to a consumer who becomes eligible for [~~and would like to be placed onto the~~] a HCBS, except for the CoLTS 'c" waiver, must [~~submit a new LOC packet to MAD's utilization review contractor (UR) as outlined in UR policy for HCBS waivers~~] coordinate with the consumer's service coordinator to ensure that the consumer does not experience a break in services or that services do not overlap; coordination must include the effective date PCO services are to stop and HCBS waiver services are to begin.

[8.315.4.16 NMAC – Rp 8 NMAC 4.MAD.738.11 & 12, 7/1/04; A, 3/15/10]

[~~**B. Personal care service plan (PCSP)]**~~ **8.315.4.17 INDIVIDUAL PLAN OF CARE (IPoC):**

A. [~~The PCSP (MAD 058)~~] An individual plan of care (IPoC) is developed and personal care services are [~~allocated~~] identified, in conjunction with the independent in-home assessment (MAD 057, *The Personal Care Option Assessment Form)*[~~and the current medical assessment form (MAD 075) for all consumers requesting services or continued services under the PCO program.~~] or other approved assessment form . The PCO Agency develops an IPoC using authorization, task list, and natural support information provided by the TPA or medicaid's CoLTS MCO designee. The finalized IPoC contains approved daily tasks, for a period of seven days at a time, to be performed by the attendant based on the consumer's daily needs. Only those services identified as instrumental activities of daily living (IADLs) may be moved to another day within a seven-day IPoC. Any tasks not performed by the attendant for any reason cannot be banked or saved for a later date.

[~~(1) The TPA or MAD's designee will:~~

~~(a) conduct an in-home assessment (MAD 057) in the consumer's home;~~

~~(b) explain both service delivery models, consumer-directed and consumer-delegated to the consumer and/or his/her personal representative and provide the consumer and/or his/her personal representative with informational material, allowing the consumer to make the best educated decision possible regarding which model he/she will elect;~~

~~(c) determine and allocate personal care services using the LOC packet and the in-home assessment (MAD 057) for the duration of one year (12 consecutive months);~~

~~(d) develop a PCSP in conjunction with the consumer or his/her personal representative; participation in the development of a PCSP is not separately reimbursable for consumers or his/her personal representatives; the TPA or MAD's designee must ensure the consumer has participated in the development of the plan and that the PCSP is reviewed and signed by the consumer and/or the consumer's personal representative; a signature on the PCSP indicates that the consumer an/or personal representative agrees with the allocation of hours made by the TPA or MAD's designee and understands what services will be provided on a weekly basis and for the duration of one year; if a consumer is unable to sign the PCSP and the consumer does not have a personal representative, a thumbprint or personal mark (i.e., an "X") will suffice; if signed by a personal representative, the TPA or MAD's designee and the agency must have documentation in the consumer's file verifying the individual is the consumer's personal representative; the PCSP must include the following:~~

~~(i) description of the functional level of the consumer as evidenced by the primary care physician's clinical evaluation, including mental status, intellectual functioning and other supporting documentation;~~

~~(ii) statement of the nature of the specific limitations and the specific needs of the consumer for personal care services;~~

~~(iii) specific description of the attendant's responsibilities, including tasks to be performed by the attendant and any special instructions related to maintaining the health and safety of the consumer;~~

~~(iv) a description of intermediate and long range service goals, which includes the scope and duration of services, how goals will be attained and the projected timetable for their attainment.]~~

~~(v) a statement describing the most integrated setting necessary to achieve the goals identified in the plan; and~~

~~(vi) a prior authorization (PA) number issued to the agency of the consumer's choice, for on-going billing purposes; a billing code approved by the Medicaid designee must be tied to the PA based on the consumer's elected model of service delivery.~~]

(1) The TPA or medicaid CoLTS MCO designee will:

(a) provide authorized hours, task and natural support information for the PCO agency to develop an IPoC in conjunction with the consumer or his/her personal representative; participation in the development of a IPoCis not separately reimbursable for consumers or his/her personal representatives;

(b) jointly assess consumers that share living space for meal preparation, assistance services, support services and household services and allocate appropriate proportions to each consumer according to the common needs of the household and the number of consumers sharing the services.

(2) [~~Personal care agencies~~] The PCO agency must:

(a) develop the IPoC and include the following:

(i) a specific description of the attendant's responsibilities, including tasks to be performed by the attendant and any special instructions related to maintaining the health and safety of the consumer; and

(ii) a prior authorization (PA) number issued to the agency of the consumer's choice for on-going billing purposes; a HCPC code must be tied to the PA based on the consumer's elected model of service delivery.

(b) ensure the consumer has participated in the development of the plan and that the IPoC is reviewed and signed by the consumer or the consumer's personal representative; a signature on the IPoC indicates that the consumer or the consumer's personal representative [~~agrees with the allocation of hours made by the TPA or MAD's designee and~~] understands what services have been identified and that services will be provided on a weekly basis [~~and~~] for [~~the duration~~] a maximum of one year; if a consumer is unable to sign the [~~PCSP~~] IPoC and the consumer does not have a personal representative, a thumbprint or personal mark (i.e., an "X") will suffice; if signed by a personal representative, the [~~MAD's~~] medicaid's designee and the agency must have documentation in the consumer's file verifying the individual is the consumer's personal representative;

[~~(e) approve PCO services for the duration of one year (12 consecutive months);~~]

(c) maintain an approved IPoC for PCO services for a maximum of one year (12 consecutive months); a new IPoC must be developed at least annually, to ensure the consumer's current needs are being met; a. A consumer's previous year IPoC is not used or considered in developing a new IPoC and allocating services; a new IPoC must be developed independently at least every year based on the consumer's current medical condition and need of services; the tasks and number of hours in the IPoC must match the authorized tasks and number of hours on the authorization;

[~~(f)~~] (d) provide the consumer with a copy of their approved [~~PCSP~~] IPoC; and

[~~(g)~~] (e) contact consumer within a minimum of ninety (90) days, prior to the expiration of the approved PCSP, to begin the re-assessment process for PCO services, to ensure the consumer does not experience a break in PCO services.

(3) Personal care agencies must:

(a) obtain an approved task list/PA from [~~the consumer~~] the TPA or medicaid CoLTS MCO designee;

(b) refer consumers to the TPA or [~~MAD's~~] medicaid's CoLTS MCO designee who do not ensure the consumer has participated in the development of the plan and that the IPoC is reviewed and signed by the consumer or the consumer's personal representative; a signature on the IPoC indicates that the consumer or the consumer's personal representative [~~agrees with the allocation of hours made by the TPA or MAD's designee and~~] understands what services have been identified and that services will be provided on a weekly basis for a maximum of one year; if a consumer is unable to sign the IPoC and the consumer does not have a personal representative, a thumbprint or personal mark (i.e., an "X") will suffice; if signed by a personal representative, the medicaid's designee and the agency must have documentation in the consumer's file verifying the individual is the consumer's personal representative; utilize services or the full amount of allocated services on the IPoC for [~~90 consecutive days~~] review;[~~. Documentation~~] documentation must be in the consumer's file demonstrating that a consumer has not utilized the full amount of hours allocated on the IPoC; and

(c) submit a personal care transfer/closure form (MAD 062 or other approved transfer/closure form) to the TPA or [~~MAD's~~] medicaid's designee to close out a consumer's personal care services who has passed away or who has not received services for 90 consecutive days.

(4) Personal care services are to be delivered in the state of New Mexico only. Consumers who require personal care services out of the state, for medically necessary reasons only, must obtain ALTSD PCO program approval prior to leaving the state. The following must be submitted for consideration to the program when requesting medically necessary out-of-state services:

(a) a letter from the PCO agency requesting an out-of-state exception and reason for request; the letter must include:

(i) the consumer's name and social security number;

(ii) how time sheets/logs/check off list will be transmitted and payroll checks issued to the attendant;

(iii) date the consumer will be leaving the state, including the date of the medical procedure or other medical event, and anticipated date of return; and

(iv) where the consumer will be housed after the medical procedure.

(b) a letter or documentation from the physician or surgeon verifying the date of the medical procedure; and

(c) a copy of the consumer's approved (IPoC) and a proposed adjusted revision of services to be provided during the time the consumer is out-of-state; support services and household services will not be approved unless justified; if the consumer has been approved for services under self-administered medications, a statement from the doctor must be included indicating the consumer will continue to have the ability to self-administer for the duration he/she is out-of-state.

[8.315.4.16 NMAC - Rp 8 NMAC 4.MAD.738.11 & 12, 7/1/04; A, 8/13/04; 8.315.4.16 NMAC - Rn & A, 8.315.4.17 NMAC, 3/15/10]

~~[8.315.4.17]~~ 8.315.4.18 PRIOR APPROVAL AND UTILIZATION REVIEW: All [~~medicaid~~] personal care services are subject to utilization review for medical necessity and program compliance. [~~Reviews by MAD or its designee and/or the TPA may be performed before services are furnished, after services are furnished, before payment is made, or after payment is made.~~] See 8.302.5 NMAC, *Prior Approval And Utilization Review*. [~~Once enrolled, personal care providers receive instructions and documentation forms necessary for prior approval and claims processing.~~

~~A. The agency must obtain an approved PCSP with a prior authorization number from the consumer, issued by the TPA or MAD's designee to ensure the consumer has been approved to receive personal care services;~~

~~B. PCO services must be included in the consumer's PCSP and must be approved by the TPA. Services for which prior approval was obtained remain subject to utilization review at any point in the payment process. Agencies/consumers may be reviewed/audited by MAD, UR or MAD's designee at anytime to determine that need, delivery of service and quality of care are being met;~~

~~C. Prior approval of services does not guarantee that individuals are eligible for medicaid. Personal care agencies must verify that individuals are eligible for medicaid at the time services are furnished; and~~

~~D. An agency that does not agree with prior approval denials or other review decisions made by the TPA or MAD's designee may:~~

~~(a) request a re-review or reconsideration pursuant to medicaid oversight policies, 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953]; and,~~

~~(b) is responsible for submitting the additional information and medical justification to the third-party assessor or MAD's designee and adhering to the timelines as out lined in medicaid oversight policies, 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions*[MAD-953].~~

~~E. A consumer who does not agree with prior approval denials or other review decisions made by the TPA or MAD's designee may request a fair hearing pursuant to 8.352.2 NMAC, *Recipient Hearings*.~~] All personal care services require prior level of care approval by medicaid's designated TPA/UR contractor; therefore, retroactive services are not authorized. All personal care services provided through a medicaid CoLTS MCO designee shall then be authorized by the managed care organization in which the consumer is enrolled.

A. The medicaid designated TPA/UR contractor, will perform a utilization review for medical necessity. The TPA/UR contractor or the medicaid CoLTS MCO designee makes final authorization of personal care services using:

(1) the TPA-approved LOC determination; and

(2) an assessment conducted by the medicaid designated TPA/UR or medicaid CoLTS MCO designee

B. The PCO agency must obtain an approved task list and prior authorization number from the medicaid designated TPA/UR or medicaid CoLTS MCO designee to ensure the consumer has been approved to receive personal care services;

C. Services for which prior approval was obtained remain subject to utilization review at any point during the consumer's plan year.

D. Prior approval of services does not guarantee that an individual is eligible for medicaid. Personal care agencies must verify monthly all individuals' financial eligibility for medicaid prior to providing services; and

E. A PCO agency that does not agree with prior approval, denials or other review decisions made by any medicaid designee may:

[~~(a)~~](1) request a re-review or reconsideration pursuant to medicaid oversight policies, 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953]; and,

[~~(b)~~](2) is responsible for submitting the additional information and medical justification to the [~~third - party assessor or MAD's designee~~] medicaid's designated TPA/UR and adhering to the timelines outlined in medicaid oversight policies, (as cited above).

F. A consumer who does not agree with prior approval, denials or other review decisions made by the TPA or [~~MAD's~~] medicaid's designee may request a fair hearing pursuant to 8.352.2 NMAC, *Recipient Hearings*. Consumers enrolled in a CoLTS MCO who disagree with authorized number or type of services may also utilize the CoLTS MCO grievance and appeal process.

[8.315.4.17 NMAC - Rp 8 NMAC 4.MAD.738.13, 7/1/04; 8.315.4.17 NMAC - Rn & A, 8.315.4.18 NMAC, 3/15/10]

[~~8.315.4.18~~] 8.315.4.19 TRANSFER PROCESS FOR PCO SERVICES: A consumer wishing to transfer services to another medicaid approved personal care agency may request to do so[~~, for any reason, once within a plan year or when moving to another county without prior approval from MAD or its designee~~]. [~~All other transfers~~] Transfers within the plan year may be requested by the consumer, but must be approved by [~~MAD or its designee~~] medicaid TPA/UR contractor (for FFS PCO or medicaid CoLTS MCO designee prior to the agency providing PCO services to the consumer. All requests for change of service model from directed to delegated must be approved by medicaid TPA/UR contractor (for FFS PCO) or medicaid CoLTS MCO designee prior to the receiving agency providing services to the consumer. Transfers may only be initiated by the consumer and may not be requested by the attendant as a result of an employment issue. [~~The consumer must give the reason for the requested transfer. A consumer requesting more than one transfer which is not related to moving to another county within a plan year will be sent to MAD or its designee by the TPA for processing.~~] For consumers enrolled in a CoLTS MCO, the transfer process is determined by the MCO and should be initiated by the consumer through the consumer's assigned service coordinator. The consumer must give the reason for the requested transfer.

A. A transfer requested by a consumer may be denied by MAD or its designee for the following reasons:

(1) the consumer is requesting more hours;

(2) the consumer's attendant or family member is requesting the transfer;

(3) the consumer has requested [~~3~~] three or more transfers within a six-month period;

(4) the consumer wants their legal guardian, spouse or attorney-in-fact to be their attendant [~~who has previously been denied by MAD or its designee~~];

(5) the consumer wants an individual to be their attendant who has not successfully passed a nationwide criminal history screening;

(6) the consumer wants an attendant who has been terminated from another agency for fraudulent activities;

(7) the attendant does not want to complete the mandated trainings under the consumer-delegated model; [~~and~~]

(8) the consumer does not wish to comply with the medicaid or PCO program policies and procedures[~~.~~] ; and

(9) there is reason to believe that solicitation has occurred as defined in 8.315.4.22 NMAC, *pco reimbursement.*

B. [~~MAD~~] The TPA/UR contractor (for FFS PCO) or the medicaid CoLTS MCO [~~or its~~] designee will notify the consumer, the TPA and both the originating agency and the receiving agency of its decision and [~~MAD or its designee~~] has 15 working days after receiving the request from the TPA, to make a decision. The consumer must work with the medicaid TPA/UR contractor or medicaid CoLTS MCO designee to verify their request.

C. A consumer who does not agree with [~~MAD or its designee's~~] the decision may request a fair hearing pursuant to 8.352.2 NMAC, *Recipient Hearings*. The originating agency is responsible for the continuance of PCO services throughout the fair hearing process. Consumers enrolled in a CoLTS MCO who disagree with authorized number of hours may also utilize the CoLTS MCO grievance and appeal process.

D. The following is the process for submitting a transfer request:

(1) The consumer must inform their CoLTS MCO of the desire to transfer PCO agencies; the CoLTS MCO approves or denies requested transfer; if approved, CoLTS works with both the agency he/she is currently receiving services from (originating agency) and the agency he/she would like to transfer to (receiving agency) about the transfer request to effect the transfer; consumers in FFS PCO must request a PCO agency transfer through the TPA/UR contractor.

(2) [~~The receiving agency must contact the originating agency to discuss and agree on a transfer date in which the receiving agency will begin services and the originating agency will end services. Agencies should factor in, at a minimum, 10 workings days for the TPA to process the paperwork~~] Originating agencies are [~~not~~] responsible for [~~submitting paperwork to the TPA or MAD's designee to close services when transferring a consumer to another agency.~~] continuing service provision until the transfer is complete;

(3) [~~The receiving agency is responsible for completing the personal care transfer/closure form (MAD 062) and ensuring the consumer/personal representative has signed and dated the form.~~] Both the originating and receiving PCO agencies are responsible for following approved transfer procedures (either CoLTS MCO or TPA/UR transfer procedures);

[~~(4) The receiving agency should send the signed MAD 062 to the originating agency for signature. All three original signatures must be present for the TPA or MAD's designee to process the transfer.~~]

[~~(5)~~] (4) [~~The receiving agency should mail the signed MAD 062 to the originating agency for signature. All three original signatures must be present for the TPA or MAD's designee to process the transfer.~~] After CoLTS MCO verification of consumer's request, medicaid's CoLTS MCO designee will process the transfer request within 15 working days of receiving the transfer request. For FFS PCO transfer requests, TPA/UR contractor will verify and process; and

[~~(6)~~] (5) [~~The originating agency must sign and mail the MAD 062, along with a copy of the consumers current PCSP (MAD 058), to the receiving agency within 48 hours of receiving the form. If the originating agency is disputing the transfer request for any reason, the agency should mark "disputing transfer" on the agency signature line and mail the MAD 062 to the receiving agency.~~] Medicaid's CoLTS MCO designee or TPA/UR contractor will issue a new prior authorization number to the receiving agency and make the transfer date effective 10 business days from the date of processing the transfer request with new dates of service and units remaining for the remainder of the IPoC year; medicaid's CoLTS MCO designee or TPA/UR contractor will notify the consumer and the originating and receiving PCO agencies.

[~~(6) The receiving agency must mail the MAD 062 to the TPA or MAD's designee for processing;~~

~~(7) The TPA or MAD's designee will issue a new prior authorization number to the receiving agency with new dates of service and units remaining for the remainder of the PCSP year. The TPA or MAD's designee will notify the consumer, by giving the consumer a revised PCSP to give to the receiving agency.~~

~~(8) The consumer is responsible for providing the receiving agency with the revised PCSP.~~

~~(9) The TPA or MAD's designee is responsible for tracking the number of transfer requests submitted by a consumer. If the TPA or MAD's designee determines that the consumer has exceeded the allowable number of transfers, or has received a transfer request marked "disputing transfer" the TPA or MAD's designee will mail the transfer request to MAD or its designee for approval or denial.~~]

[8.315.4.18 NMAC - N, 7/1/04; 8.315.4.18 NMAC - Rn & A, 8.315.4.19 NMAC, 3/15/10]

[~~8.315.4.19~~] 8.315.4.20 CONSUMER DISCHARGE PROCESS BY PCO AGENCY: The PCO agency may discharge a consumer for a justifiable reason. Prior to initiating discharge, the PCO agency must send a notice to medicaid or its designee for approval. Once approved by medicaid or its designee, the PCO agency may initiate the discharge process by means of a [~~thirteen (13)~~] 30-day written notice to the consumer [~~and MAD or its designee~~]. The notice must include the consumer's right to [~~a~~] request a fair hearing and must include the justifiable reason for the agency's decision to discharge. [~~The agency must send the notice to MAD or its designee for approval prior to sending the notice to the consumer.~~]

A. A PCO agency may discharge a consumer for a justifiable reason. A justifiable reason for discharge may include:

(1) staffing problems (i.e., excessive request for change in attendants (three [~~(3)~~] or more in a 30-day period);

(2) a consumer demonstrates a pattern of verbal/physical abuse of attendants or agency personnel, includes use of vulgar/explicit language, verbal or physical sexual harassment, excessive use of force, verbal or physical intimidating threats); the agency or attendant must have documentation demonstrating the pattern of abuse; the agency may also discharge a consumer if the life of an attendant or agency's staff member is believed to be in immediate danger;

(3) a consumer [~~and/or~~] or family member demonstrates a pattern of uncooperative behavior including not complying with agency or medicaid policy; not allowing the PCO agency to enter the home to provide services; and continued requests to provide services not approved on the PCSP;[~~the agency or attendant must have documentation demonstrating a pattern of uncooperative behavior;~~]

(4) illegal use of narcotics[~~-or alcohol abuse; and~~]

(5) fraudulent submission of timesheets[~~.~~] ; or

(6) living conditions or environment that may pose a health or safety risk or cause harm to the personal care attendant, employee of an agency, TPA, or other medicaid designee.

B. The PCO agency must provide the consumer with a current list of medicaid-approved personal care agencies that service the county in which the consumer resides. The PCO agency must assist the consumer in the transfer process and must continue services throughout the transfer process. If the consumer does not [~~elect~~] select another PCO agency, in the 13-day time frame, the current PCO agency must [~~continue services until [MAD or its designee can arrange for the consumer's services to continue through another agency accepts the consumer~~] inform the consumer that a break in services will occur until the consumer selects an agency. The discharging agency may not ask the [~~TPA or MAD's~~] medicaid's designee to [~~close~~] terminate the consumer's PCO services.

C. A consumer has a right to appeal the agency's decision to suspend services as outlined in 8.352.2 NMAC, *Recipient Hearing Policies*. A recipient has 90 days from the date of the suspension notice to request a fair hearing.

[8.315.4.19 NMAC - N, 7/1/04; 8.315.4.19 NMAC - Rn & A, 8.315.4.20 NMAC, 3/15/10]

8.315.4.21 CONSUMER DISCHARGE PROCESS BY STATE: Medicaid or its designee reserves the right to exercise its authority to discontinue the consumer's receipt of PCO services due to the consumer's non-compliance with medicaid program requirements. The consumer's discontinuation of PCO program services does not affect his/her medicaid eligibility. The consumer may be discharged for a justifiable reason by means of a 13-day written notice to the consumer. The notice will include duration of discharge, which may be permanent, the consumer's right to request a fair hearing, and the justifiable reason for the decision to discharge. A justifiable reason for discharge may include:

(1) staffing problems (i.e., excessive request for change in attendants (three or more in a 30-day period, excessive requests for transfers to other agencies or excessive agency discharges);

(2) a consumer who demonstrates a pattern of verbal/physical abuse of attendants, agency personnel, or state staff, including use of vulgar/explicit language, verbal or physical sexual harassment, excessive use of force, verbal or physical intimidating threats;

(3) a consumer or family member who demonstrates a pattern of uncooperative behavior including, not complying with agency, medicaid program requirements and/or policies or procedures;

(4) illegal use of narcotics;

(5) fraudulent submission of timesheets; or

(6) unsafe or unhealthy living conditions or environment.

[8.315.4.21 NMAC - N, 3/15/10]

[~~8.315.4.20~~] 8.315.4.22 REIMBURSEMENT: A medicaid-approved personal care agency will process billings in accordance with the following:

A. Agencies must submit claims for reimbursement on the HCFA-1500 claim form or its successor. See 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, agencies receive instructions on documentation, billing, and claims processing. Claims must be filed per the billing instructions in the medicaid manual. Personal care agencies must use ICD-9 diagnosis codes when billing for medicaid services.

B. Reimbursement for personal care services is made at the lesser of the following:

(1) the provider's billed charge;

(2) the MAD fee schedule for the specific service or procedure; or

(3) the agency's billed charge must be its usual and customary charge for services.

(4) "usual and customary charge" refers to the amount an individual provider charges the general public in the majority of cases for a specific service and level of service.

[8.315.4.20 NMAC - Rp 8 NMAC 4.MAD.738.14, 7/1/04; 8.315.4.20 NMAC -Rn, 8.315.4.22, 3/15/10]

8.315.4.23 PCO PROVIDER VOLUNTARY DISENROLLMENT: A medicaid approved personal care agency may choose to discontinue provision of services. Once approved by medicaid or its designee, the PCO agency may initiate the disenrollment process to assist consumers to transfer to another medicaid approved PCO agency. The PCO agency must continue to provide services until consumers have completed the transfer process and the agency has received approval from medicaid or its designee to discontinue services. Prior to disenrollment, the PCO agency must send a notice to medicaid or its designee for approval. The notice must include:

(1) consumer notification letter;

(2) list of all the medicaid approved personal care agencies serving the county in which the consumer resides; and

(3) list of all consumers currently being served by the agency and the MCO in which they are enrolled.

[8.315.4.23 NMAC - N, 3/15/10]

8.315.4.24 SOLICITATION/ADVERTISING: For the purposes of this section, solicitation shall be defined as any communication regarding PCO services from an agency's employees, affiliated providers, agents or contractors to a medicaid recipient who is not a current client that can reasonably be interpreted as intended to influence the recipient to become a client of that entity. Individualized personal solicitation of existing or potential consumers by an agency for their business is strictly prohibited. Prohibited solicitation includes but is not limited to:

A. Prohibitions under this category include:

(1) contacting a consumer who is receiving services through another PCO program or any another medicaid program;

(2) contacting a potential consumer to discuss the benefits of its agency, including door to door, telephone and email solicitation;

(3) offering a consumer/attendant finder fee, kick back, or bribe consisting of anything of value to the consumer to obtain transfers to its agency; see 8.351.2 NMAC, *Sanctions and Remedies*.

(4) directly or indirectly engaging in door-to-door, telephone, or other cold-call marketing activities by entity's employees, affiliated providers, agents or contractors;

(5) making false promises;

(6) intentional misinterpretion of medicaid policies/procedures/eligibility;

(7) misrepresenting self as having affiliation with another entity;

(8) offering a consumer/attendant a finder fee, kick back, or bribe consisting of anything of value to the consumer to obtain transfers to its agency; see 8.351.2 NMAC, *Sanctions and Remedies*;

(9) distributing PCO related marketing materials.

B. Penalties for engaging in solicitation prohibitions: Agencies suspected of solicitation will be put on moratorium during the investigation or review period. Agencies found to be conducting such activity will be subject to monetary penalty or termination of its provider participation agreement (MAD 335).

C. An agency wishing to advertise or conduct any type of community outreach for PCO service provision, or its agency must first get prior approval from medicaid or its designee before conducting any such activity. Advertising and community outreach materials means materials that are produced in any medium, on behalf of a PCO agency and can reasonably be interpreted as advertising to potential clients. Advertising or community outreach materials must not ;

(1) misrepresent the agency as having affiliation with another entity;

(2) use proprietary titles, such as "medicaid personal care option program"; and

(3) Any PCO agency conducting any such activity without prior approval from medicaid or its designee may be subject to moratorium, a civil monetary penalty or have its medicaid provider participation agreement (MAD 335) terminated for conducting such activity without prior approval. During a moratorium an agency shall not acquire any new consumers but may continue to provide services to its existing consumers.

[8.315.4.24 NMAC - N, 3/15/10]

[~~8.315.4.21~~] 8.315.4.25 OTHER:

A. An attendant may not act as the consumer's personal representative, in matters regarding medical treatment, financial or budgetary decision making, unless the attendant is the consumer's legal guardian, agent under a power of attorney, conservator, or representative payee [~~and has received authorization to be the consumer's attendant pursuant to Paragraph (7) of Subsection A of 8.315.4.10 NMAC, Paragraph (10) of Subsection B of~~

~~8.315.4.10 NMAC, Paragraph (5) of Subsection D of 8.315.4.10 NMAC, Paragraph (20) of Subsection A of 8.315.4.11 NMAC, and Paragraph (5) of Subsection C of 8.315.4.11 NMAC~~]. If the agency questions whether the consumer is able to direct his/her own care, an agency must make a referral to an appropriate social service or legal agency(s) for assistance.

[~~B. A consumer who does not comply with the requirements for receiving personal care services may be denied such a service or have those services suspended. A consumer has the right to appeal this decision as outlined in the medicaid oversight policy, 8.352.2 NMAC, *Recipient Hearings*.~~]

~~C. An agency wishing to advertise or conduct any type of community outreach for the PCO program or its agency must first get prior approval from MAD or its designee before conducting any such activity. An agency conducting any such activity without prior approval from MAD or its designee may be subject to moratorium, a civil monetary penalty and/or have its medicaid provider participation agreement (MAD 335) terminated for conducting such activity without prior approval. During a moratorium an agency shall not acquire any new consumers but may continue to provide services for its existing consumers.~~

~~D. An agency may not deceive or misrepresent information to a potential personal care consumer. An agency conducting any such activity may be subject to moratorium, a civil monetary penalty and/or termination of its provider participation agreement (MAD 335). Agencies who are suspected of and/or being investigated or reviewed by MAD or its designee for any of the below activities may be put on moratorium by MAD or its designee during the period of investigation or review. This includes:~~

~~(1) contacting consumers who are receiving services through another medicaid program, including personal care option services;~~

~~(2) door-to-door any kind of solicitation, including door to door, of potential consumers;~~]

~~(3) making false promises;~~

~~(4) misinterpreting medicaid policies/procedures/eligibility; and~~

~~(5) representing itself as an entity to which it has no affiliation.~~

~~E. Individualized personal solicitation of existing or potential consumers by an agency for their business is strictly prohibited. Agencies suspected of solicitation will be put on moratorium during the investigation or review period. Agencies found to be conducting such activity will be subject to monetary penalty and/or termination of its provider participation agreement (MAD 335). Prohibited solicitation includes but is not limited to:~~

~~(1) contacting a consumer who is receiving services through the PCO program or any another medicaid program;~~

~~(2) contacting a potential consumer to discuss the benefits of its agency, including door to door, telephone and email solicitation;~~

~~(3) offering a consumer/attendant finder fee, kick back, or bribe consisting of anything of value to the consumer to obtain transfers to its agency; see 8.351.2 NMAC, Sanctions and Remedies.~~

~~F~~] B. An agency who is non-compliant with provider requirements or medicaid or program policies or procedures may be placed on moratorium by medicaid or its designee until the PCO agency has demonstrated, to the satisfaction of medicaid or its designee, full compliance with all requirements or policies and procedures.

[8.315.4.21 NMAC - Rp 8 NMAC 4.MAD.738.15, 7/1/04; A, 8/13/04; 8.315.4.21 NMAC – Rn & A, 8.315.4.25 NMAC, 3/15/10]