



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT

NEW MEXICO HUMAN SERVICES DEPARTMENT

II. SUBJECT

EMERGENCY SERVICES FOR UNDOCUMENTED ALIENS
(EMSA)

III. PROGRAM AFFECTED

(TITLE XIX) MEDICAID

IV. ACTION

PROPOSED RULES

V. BACKGROUND SUMMARY

The Human Services Department, Medical Assistance Division, is proposing a change to the Medicaid emergency services for undocumented aliens' benefits. The primary change is to remove the restriction on services rendered out of state. In addition, the entire rule, 8.325.10 NMAC, *Emergency Services for Undocumented Aliens (EMSA)*, was reviewed for clarity resulting in additional changes in the wording but not otherwise affecting the benefits of the program.

Other changes in the rule being proposed at this time include the following:

- Replacing outdated word usage, such as Medicaid with MAD, the Medical Assistance Division;
- Providing more instruction on the eligibility of providers and their responsibilities;
- Directing providers to enroll and follow a managed care or coordinated care contractor's instructions for billing and authorization of services;
- Supporting providers to encourage an undocumented or a noncitizen alien individual to apply for EMSA eligibility when the provider believes that the service may qualify as an EMSA emergency service;

- Directing providers to inform an undocumented alien recipient if the provider is unwilling to receive medicaid payment for the service when the service meets the EMSA emergency criteria for coverage;
- Removing language that may have limited an alien individual from receiving EMSA medically necessary services while out of state;
- Adding clarifying language on when an undocumented or a noncitizen alien individual may request a reconsideration of denied coverage of the service; and
- Adding the word “medical” and removing the word “undocumented” from the Part name of the rule to maintain consistency with 8.285.400 NMAC, *Medicaid Eligibility – Emergency Medical Services for Aliens-Category 085*.

VI. RULES

These proposed rule changes refer to 8.310.5 NMAC of the Medical Assistance Program Policy Manual. This register is available on the Medical Assistance Division web site at www.hsd.state.nm.us/mad/register/2010 . The proposed rule changes are attached to the register. If you do not have Internet access, a copy of the rules may be requested by contacting the Medical Assistance Division at 505-827-3156.

VII. EFFECTIVE DATE

The Department proposes to implement these rules effective November 15, 2010.

VIII. PUBLIC HEARING

A public hearing to receive testimony on these proposed rules will be held at 9:00 a.m. on Wednesday, September 29, 2010, in the South Park conference room, 2055 S. Pacheco St., Ste.500-590, Santa Fe, NM.

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 827-3156. The Department’s TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

IX. ADDRESS

Interested persons may address written or recorded comments to:

Kathryn Falls, Secretary
Human Services Department
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

These comments must be received no later than 5:00 p.m. on September 29, 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 rules approved by:

KATHRYN FALLS, SECRETARY
HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 325 SPECIALTY SERVICES
PART 10 EMERGENCY MEDICAL SERVICES FOR [UNDOCUMENTED] ALIENS

8.325.10.3 STATUTORY AUTHORITY: ~~[The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA, 1978 (Repl. Pamph. 1991.)~~ The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-2-12 et seq. [2/1/95; 8.325.10.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 12/1/03; A, 10/15/08; A, 11/15/10]

8.325.10.8 MISSION STATEMENT: ~~[The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of eligible recipients 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. [2/1/95; 8.325.10.8 NMAC - Rn, 8 NMAC 4.MAD.002, 12/1/03; A, 10/15/08; A, 11/15/10]

8.325.10.9 EMERGENCY MEDICAL SERVICES FOR [UNDOCUMENTED] ALIENS: The New Mexico MAD is required to pay for necessary emergency services furnished to individuals who are ~~[undocumented]~~ aliens, reside in New Mexico and meet the requirements for MAD eligibility [42 CFR 440.255(c)]. [2/1/95; 8.325.10.9 NMAC - Rn, 8 NMAC 4.MAD.769, 12/1/03; A, 10/15/08; A, 11/15/10]

8.325.10.10 ELIGIBLE PROVIDERS: ~~[Upon approval of a New Mexico MAD provider participation agreement by MAD or its designee, licensed practitioners of facilities that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. When enrolled, providers receive instruction on how to access these documents. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to request hard copies of any program policy manuals, billing and utilization review instructions and other pertinent material, and to obtain answers to questions found in the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD provider participation agreement and all applicable statutes, regulations, and executive orders.]~~ Health care to eligible recipients is furnished by a variety of providers and provider groups. The reimbursement and billing for these services is administered by MAD. Upon approval of a New Mexico MAD provider participation agreement by MAD or its designee, licensed practitioners, facilities and other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. When enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents obtain answers to questions related to the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD provider participation agreement and all applicable statutes, regulations, and executive orders. MAD or its selected claims processing contractor issues payments to a provider using electronic funds transfer (EFT) only. [2/1/95; 8.325.10.10 NMAC - Rn, 8 NMAC 4.MAD.769.1, 12/1/03; A, 10/15/08; A, 11/15/10]

8.325.10.11 PROVIDER RESPONSIBILITIES: ~~[A provider who furnishes services to medicaid and other health care eligible recipients must comply with all federal and state laws, regulations, and executive orders relevant to the provision of medical services as specified in the MAD provider participation agreement. A provider must adhere to the MAD program rules and instructions as specified in this manual and its appendices, and program~~

directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or up-coding services. See 8.302.1 NMAC, *General Provider Policies*.]

A. A provider who furnishes services to a medicaid or other health care program eligible recipient must comply with all federal and state laws, regulations, and executive orders relevant to the provision of services as specified in the MAD provider participation agreement. A provider also must conform to MAD program rules and instructions as specified in the provider rules manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or upcoding services. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for billing and for authorization of services.

B. A provider may encourage an individual to apply for EMSA eligibility at a county office when the provider believes the service may qualify as an EMSA emergency service. A provider must inform the individual if the provider is unwilling to receive medicaid payment for the service when the service meets the EMSA emergency criteria for coverage. A provider must determine if the a recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an alien recipient.

[2/1/95; 8.325.10.11 NMAC - Rn, 8 NMAC 4.MAD.769.2 & A, 12/1/03; A, 10/15/08; A, 11/15/10]

8.325.10.12 ELIGIBLE INDIVIDUALS:

A. ~~[Individuals who are undocumented, illegal, and non-immigrant aliens and who meet all the eligibility criteria for MAD pregnant women (category 030 or 035), or supplemental security income (SSI), except for citizenship or legal alien status, are eligible to receive emergency services.] An applicant must be a noncitizen who is undocumented or who does not meet the qualifying immigration criteria specified in 8.200.410 NMAC, *General Recipient Requirements*, and in 8.285.400 NMAC, *Medicaid Eligibility-Emergency Medical Services for Aliens-Category 085*.~~

B. Eligibility determinations are made by local county income support division (ISD) offices after the receipt of emergency services. The individual is responsible for completing an application at the local county ISD office and for providing all necessary documentation to prove that he or she meets the applicable eligibility criteria.

(1) ~~[Individuals]~~ An individual must apply for coverage at the ISD office no later than the last day of the third month following the month in which the alleged emergency services were received.

(2) ~~[Individuals are]~~ An alien recipient is responsible for notifying providers of the approval or denial of an application.

(3) If an application is denied or an application for coverage is not filed by the last day of the third month following the month in which the alleged emergency services were received, the ~~[individual]~~ alien recipient is responsible for payment of the provider bill.

(4) If reimbursement for services is denied by MAD, the individual is responsible for payment and can be billed directly for payment by the provider.

[2/1/95; 8.325.10.12 NMAC - Rn, 8 NMAC 4.MAD.769.3 & A, 12/1/03; A, 10/15/08; A, 11/15/10]

8.325.10.13 COVERAGE CRITERIA:

A. "Emergency" as defined for EMSA includes labor and delivery including inductions and cesarean sections, as well as any other medical condition, manifesting itself with acute symptoms of sufficient severity such that the absence of immediate emergency medical attention could reasonably be expected to result in one of the following:

- (1) the ~~[individual's]~~ alien recipient's death;
- (2) placement of the ~~[individual's]~~ alien recipient's health in serious jeopardy;
- (3) serious impairment of bodily functions; or
- (4) serious dysfunction of any bodily organ or part.

B. Services are covered only when necessary to treat or evaluate a condition meeting the definition of emergency and are covered only for the duration of that emergency.

C. After delivery, a child can have legally documented or citizenship status because of its birth in the United States and, therefore, is not eligible for emergency services for aliens. The child may be eligible for another MAD category of eligibility on his or her own.

D. Determination of coverage is made by MAD or its designee.

[2/1/95; 8.325.10.13 NMAC - Rn, 8 NMAC 4.MAD.769.4 & A, 12/1/03; A, 10/15/08; A, 11/15/10]

8.325.10.14 SERVICE LIMITATIONS: ~~[MAD covers only those emergency medical services furnished in the state of New Mexico. To meet the categorical eligibility requirements, recipients who are undocumented aliens must be residents of the state of New Mexico. Proof of residence must be furnished by the undocumented alien to the local county ISD office. Individuals traveling through New Mexico, entering the United States through New Mexico en route to another destination, visiting in New Mexico or touring New Mexico with a tourist visa do not meet the residence requirement.]~~ To meet the categorical eligibility requirements, a recipient who is an alien must be a resident of the state of New Mexico. Proof of residence must be furnished by the alien to the local county ISD office. An individual traveling through New Mexico, entering the United States through New Mexico en route to another destination, visiting in New Mexico or touring New Mexico with a tourist visa does not meet the residence requirement.

[2/1/95; 8.325.10.14 NMAC - Rn, 8 NMAC 4.MAD.769.5, 12/1/03; A, 10/15/08; A, 11/15/10]

8.325.10.15 NONCOVERED SERVICES: MAD does not cover any medical service that is not necessary to treat or evaluate a condition for an individual who is an ~~[undocumented]~~ alien that does not meet the definition of emergency. Additionally, MAD does not cover the following specific services:

- A. long term care;
- B. organ transplants;
- C. rehabilitation services;
- D. elective surgical procedures;
- E. psychiatric or psychological services;
- F. durable medical equipment or supplies;
- G. eyeglasses;
- H. hearing aids;
- I. outpatient prescriptions;
- J. podiatry services;
- K. prenatal and postpartum care;
- L. well child care;
- M. routine dental care;
- N. routine dialysis services,
- O. any medical service furnished by an out-of-state provider;
- P. non-emergency transportation; and
- Q. preventive care.

[2/1/95; 8.325.10.15 NMAC - Rn, 8 NMAC 4.MAD.769.6 & A, 12/1/03; A, 10/15/08; A, 11/15/10]

8.325.10.16 UTILIZATION REVIEW: ~~[All claims for services furnished to individuals who are undocumented aliens are reviewed by MAD or its designee before payment to determine if the circumstances warrant coverage. If the MAD medical director or another physician appointed by MAD to perform this specific task determined that the services were furnished in a non-emergency situation, a claim for services is denied and payment for services becomes the responsibility of the individual.]~~ Claims for services to a recipient who is an alien are reviewed by MAD or its designee before payment to determine if the circumstances warrant coverage.

A. **Eligibility determination:** ~~[Undocumented aliens who request]~~ An alien recipient who requests MAD coverage for services must meet specific categorical eligibility requirements. Eligibility determinations by local county ISD offices must be made before the review for medical necessity.

B. **Reconsideration:** ~~[Providers and undocumented aliens are given notice of the denial of MAD payment. Providers can request a re-review and reconsideration of denied medical claims. See 8.350.2 NMAC, Reconsideration of Utilization Review Decisions. Aliens can also request a hearing. See 8.352.2 NMAC, Recipient Hearings.]~~ A provider and the alien are given notice of the denial when the EMSA emergency criteria are not met. An alien recipient can request a re-review and reconsideration of denied coverage of the service. See 8.350.2 NMAC, Reconsideration of Utilization Review Decisions [MAD-953]. An alien recipient can also request a hearing. See 8.52.2 NMAC, Recipient Hearings.

[2/1/95; 8.325.10.16 NMAC - Rn, 8 NMAC 4.MAD.769.7 & A, 12/1/03; A, 10/15/08; A, 11/15/10]