



State of New Mexico  
Human Services Department  
**Human Services Register**



**I. DEPARTMENT**

NEW MEXICO HUMAN SERVICES DEPARTMENT

**II. SUBJECT**

GENERAL NONCOVERED SERVICES

**III. PROGRAM AFFECTED**

(TITLE XIX) MEDICAID

**IV. ACTION**

PROPOSED RULES

**V. BACKGROUND SUMMARY**

The Human Services Department, Medical Assistance Division (HSD/MAD), is proposing a change to 8.301.3 NMAC, *General Noncovered Services*. Along with these proposed changes in benefits, the entire rule was reviewed for clarity, resulting in additional changes in the wording but not otherwise affecting the benefits of the program.

- A. If implemented as proposed, MAD will not reimburse for services to treat or to test for conditions for which more economical therapeutic alternatives are available, including allergy testing and/or immunotherapy for pollens, molds or foods for ages 21 and above; for bariatric or other weight loss and weight reduction surgeries or procedures; or for sleep studies.
- B. MAD also proposes not to reimburse for routine screening, tests or services which are not medically necessary due to the age of the eligible recipient, including papanicolaou tests (pap smears) for women under the age of 21 and prostate specific antigen (PSA) tests for men under age 40, unless prior history or risk factors make the tests medically warranted.
- C. MAD also proposes not to pay for pregnancy, complications encountered during pregnancy- related conditions, prenatal care and post partum care, or delivery for

services for a surrogate mother for which an agreement or contract between the surrogate mother and another party exists.

The reduction in payments for the above three changes in the Medicaid fee-for-service program is estimated to be \$720,000 annually

Though not included in the rule because payment levels are not placed in the actual rule but, rather, are published on the Medical Assistance Division website, the Department is also proposing to change the payment level of elective cesarean sections. The Department is proposing to pay elective cesarean section deliveries at the same rate as for vaginal deliveries.

<u>Code</u>	<u>Current Physician Rate</u>	<u>Proposed Rate</u>	<u>Reduction</u>
59510	\$2,164.73	\$1,909.67	13%
59514	\$1,142.71	\$ 968.26	18%
59515	\$1,286.17	\$1,080.18	19%

The lower rate will not apply when the cesarean section is not considered to be elective due to one of the following reasons:

- The mother has already had a cesarean section in a previous pregnancy.
- The mother has a serious medical condition that requires emergency treatment.
- The mother has an infection that may be transmitted to the baby, such as herpes or HIV (Human Immunodeficiency Virus).
- The mother is delivering twins, triplets, or more.
- The baby is in a breech or transverse position.
- The baby is showing signs of severe fetal distress requiring immediate delivery.

In order to distinguish between an elective and non-elective cesarean section when billing, one of the above three procedure codes, the primary and assistant surgeon, if an assistant is required, must use a modifier U1 when billing for non-elective cesarean sections. Non-elective cesarean sections will receive current reimbursement rates when billed with the "U1" modifier.

The following cesarean procedure codes do not require a modifier and will continue to receive current reimbursement rates because the description of the code itself indicates that the cesarean section was not an elective procedure because a vaginal delivery was initially attempted:

59620  
59622

The reduction in payments for this change in the Medicaid fee-for-service program is estimated to be \$656,000 annually.

Other changes in the rule being proposed at this time include replacing outdated word usage, such as Medicaid with MAD, the Medical Assistance Division.

At this time there is a serious shortfall in state revenues which has resulted in reductions in many state agency budgets. The New Mexico Medicaid program budget is no exception. Program costs are outpacing available revenues. Therefore, the Department has looked at program benefits to determine changes that can be made while still providing medically appropriate services. The Department believes these changes are consistent with the benefits typically available from other insurers.

#### **VI. RULES**

These proposed rule changes refer to 8.301.3 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](http://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 February 1, 2011.

#### **VIII. PUBLIC HEARING**

A public hearing to receive testimony on these proposed rules will be held at 9 a.m. on Wednesday, December 15, 2010 in the ASD conference room, Plaza San Miguel, 729 St. Michael's Drive, Santa Fe..

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 December 15, 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](mailto:Magdalena.Romero@state.nm.us).

#### **X. PUBLICATION**

Publication of these rules approved by:

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KATHRYN FALLS, SECRETARY  
HUMAN SERVICES DEPARTMENT

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 301 MEDICAID GENERAL BENEFIT DESCRIPTION**  
**PART 6 GENERAL NONCOVERED SERVICES**

**8.301.3.3 STATUTORY AUTHORITY:** 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 Title XIX of the Social Security Act as amended or by state statute. [~~See Section 27-2-12 et seq. NMSA, 1978 (Repl. Pam. 1991).~~] See NMSA 1978, Sections 27-2-12 et seq. [1-1-95; 8.301.3.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 3-1-06; A, 5-14-10; A, 2-1-11]

**8.301.3.8 MISSION STATEMENT:** To reduce the impact of poverty on people living in New Mexico and to assure low income and [~~disabled individuals~~] individuals with disabilities in New Mexico equal participation in the [~~lives~~] life of their communities. [2-1-95; 8.301.3.8 NMAC - Rn, 8 NMAC 4.MAD.002, 3-1-06; A, 5-14-10; A, 2-1-11]

**8.301.3.9 GENERAL NONCOVERED SERVICES:** [~~MAD~~] The medical assistance division (MAD) does not cover certain procedures, services, or miscellaneous items. See specific provider or service sections for additional information on service coverage and limitations. A provider cannot turn an account over to collections or to any other factor intending to collect from the eligible recipient or their personal representative. See 8.302.2.11 NMAC, *billing and claims filing limitations*. A provider cannot bill an eligible recipient or their personal representative for the copying of the eligible recipient's records, but must provide copies of the records to other providers upon request. [2-1-95; 8.301.3.9 NMAC - Rn, 8 NMAC 4.MAD.602 & A, 3-1-06; A, 5-14-10; A, 2-1-11]

**8.301.3.31** [~~BARIATRIC SURGERY SERVICES: MAD does not reimburse for bariatric surgery services or procedures.~~] **SERVICES AND TESTS FOR WHICH ALTERNATIVE TREATMENTS ARE AVAILABLE:** MAD does not reimburse for services to treat or to test for conditions for which more economical therapeutic alternatives are available:  
A. allergy testing for pollens, molds, or foods for ages 21 and above;  
B. bariatric surgery or other weight loss and weight reduction surgeries or procedures; and  
C. sleep studies.

[2-1-95; 8.301.3.31 NMAC - Rn, 8 NMAC 4.MAD.602.22 & A, 3-1-06; Repealed, 5-14-10; 8.301.3.31 NMAC - N, 5-14-10; Repealed, 2-1-11; 8.301.3.31 NMAC - N, 2-1-11]

**8.301.3.32** **SERVICES AND TESTS WHICH ARE NOT ROUTINELY WARRANTED DUE TO THE ELIGIBLE RECIPIENT'S AGE:** MAD does not reimburse for routine screening, tests, or services which are not medically necessary due to the age of the eligible recipient:

A. papanicolaou test (pap smear) for women under age 21 unless prior history or risk factors make the test medically warranted; and  
B. prostate specific antigen (PSA) test for men under age 40 unless prior history or risk factors make the test medically warranted.

[8.301.3.32 NMAC - N, 2-1-11]

**8.301.3.33** **SERVICES FOR SURROGATE MOTHERS:** MAD does not pay for services for pregnancy, complications encountered during pregnancy related conditions, prenatal care and post partum care, or delivery for services to a surrogate mother for which an agreement or contract between the surrogate mother and another party exists.

[8.301.3.33 NMAC - N, 2-1-11]