State of New Mexico
Human Services Department
Human Services Register

I. DEPARTMENT
NEW MEXICO HUMAN SERVICES DEPARTMENT

II. SUBJECT
RECONSIDERATION OF UTILIZATION REVIEW DECISIONS

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
PROPOSED RULES

V. BACKGROUND SUMMARY

The Human Services Department, Medical Assistance Division (HSD/MAD) is proposing to clarify the reconsideration of utilization review process. Specific changes to this proposed rule are:

- Additional language to clarify the reconsideration process and reference other applicable MAD rules;
- Specifying time frames for actions;
- Removal of language regarding "re-reviews" from the rule to implement MAD's intent that the rule is specific for "reconsideration" of a utilization review decision; and
- Additional language clarifying eligible recipient's right to request a provider to pursue reconsideration on his or her behalf.

VI. RULE

This rule of the Medical Assistance Program Policy Manual is also being renumbered and reformatted from MAD 953 into 8.350.2 NMAC, *Reconsideration of Utilization Review Decision*, to comply with NMAC requirements. This register and the proposed changes are available on the Medical Assistance Division web site at www.hsd.state.nm.us/mad/registers/2011. The proposed rule changes are an attachment 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 December 1, 2011.

VIII. PUBLIC HEARING

A public hearing to receive testimony on these proposed rules will be held at 9:a.m. on Monday, October 17, 2011 in the South Park Conference Room, 2055 S. Pacheco, 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:

Sidonie Squier, 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 October 17, 2011. 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: barbara.watkins@state.nm.us.

X. PUBLICATION

Publication of these rules approved by:

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SIDONIE SQUIER, SECRETARY
HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 350 RECONSIDERATION OF UTILIZATION REVIEW
PART 2 RECONSIDERATION OF UTILIZATION REVIEW DECISIONS

8.350.2.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[2/1/95; 8.350.2.1 NMAC - Rn, 8 NMAC 4.MAD.000.1; A, 12/1/11]

8.350.2.2 SCOPE: The rule applies to the general public.
[2/1/95; 8.350.2.2 NMAC - Rn, 8 NMAC 4.MAD.000.2, 12/1/11]

8.350.2.3 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. Pamp. 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 title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[2/1/95; 8.350.2.3 NMAC - Rn, 8 NMAC 4.MAD.000.3; A, 12/1/11]

8.350.2.4 DURATION: Permanent
[2/1/95; 8.350.2.4 NMAC - Rn, 8 NMAC 4.MAD.000.4, 12/1/11]

8.350.2.5 EFFECTIVE DATE: November 1, 1996 unless a later date is cited at the end of a section.
[11/1/96; 8.350.2.5 NMAC - Rn, 8 NMAC 4.MAD.000.5; A, 12/1/11]

8.350.2.6 OBJECTIVE: The objective of [~~these regulations~~] this rule is to provide [~~policies~~] instructions for the service portion of the New Mexico medicaid [~~program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement~~] programs.
[2/1/95; 8.350.2.6 NMAC - Rn, 8 NMAC 4.MAD.000.6; A, 12/1/11]

8.350.2.7 DEFINITIONS: [RESERVED]

8.350.2.8 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 individuals with disabilities in New Mexico equal participation in the life of their communities.
[2/1/95; 8.350.2.8 NMAC - Rn, 8 NMAC 4.MAD.002; A, 12/1/11]

8.350.2.9 [~~RECONSIDERATION OF~~] UTILIZATION REVIEW DECISIONS: [~~Providers who are dissatisfied with a medical necessity decision made or utilization review action taken by the New Mexico medical assistance division (MAD), MAD utilization review contractor (UR contractor), or MAD designee can request a re-review and reconsideration. This part describes the re-review and reconsideration process for utilization review decisions.~~]

A. Utilization review decisions are those decisions that the medical assistance division (MAD), the MAD utilization review (UR) contractor or a MAD designee makes regarding the medical necessity of services or items that require authorization for medical necessity or a level of care (LOC) determination prior to reimbursement by MAD and its fee-for-service program. For applicable rules for services and items provided through a MAD managed care organization (MCO), refer to 8.305.12 NMAC, *MCO Member Grievance System*, 8.306.12 NMAC, *Member Grievance Resolution*, and 8.307.12 NMAC, *Member Grievance Resolution*. For applicable rules for services and items provided through coordinated service contractors, refer to 8.349.2 NMAC, *Appeals and Grievance Process*.

B. For services for which payment has already been made for which MAD is recouping payment due to a post payment review of medical necessity or LOC, the applicable rule is 8.353.2 NMAC, *Provider Hearings.*

C. Decisions are based on information submitted by the provider in a format specified by MAD, the MAD coordinated services contractor (MAD UR contractor), or a MAD designee, and applicable state rules.

D. Prior to making a decision, the medical assistance division (MAD) may reduce the authorized services and items including frequency, intensity, duration, quantity, scope and LOC after considering the submitted documentation or MAD rules. The MAD UR contractor, or a MAD designee may issue a request for information (RFI) to the provider requesting clarification or additional information in order to have sufficient information to render an appropriate decision. The provider must submit the clarification or additional information within 14 calendar days of issue of issuance the request or a denial will be issued.
[11/1/96; 8.350.2.9 NMAC - Rn, 8 NMAC 4.MAD.953; A, 12/1/11]

~~**[8.350.2.10 RE-REVIEW:** Providers who disagree with review decisions must request a re-review of decisions before requesting a reconsideration.~~

~~A. **Re-review time limits:** The re-review must be requested within ten (10) calendar days after the date on the written notification of the utilization review decision or action. Requests for re-review must be submitted in writing directly to the UR contractor or review agency which performed the original review. The request for a re-review of denial for a prior authorization given by the UR contractor or review agency by phone must be requested within two (2) working days of the date of the denial.~~

~~B. **Re-review process:** The UR contractor or review agency has fifteen (15) calendar days from receipt of a written request for a re-review to complete and submit a written re-review decision to the provider. For telephone reviews, the UR contractor has four (4) working days from receipt of a request for re-review to complete and submit the re-review decision to the provider. The notice of the decision contains information on the reconsideration process and time frames for submission of requests for reconsideration.~~]
[11/1/96; 8.350.2.10 NMAC - Rn, 8 NMAC 4.MAD.953.1; A, 12/1/11]

~~[8.350.2.11~~] 8.350.2.10 RECONSIDERATION OF UTILIZATION REVIEW DECISIONS:
[~~Providers who disagree with a re-review determination may request a reconsideration.~~] A provider who is dissatisfied with a medical necessity or LOC decision by MAD, the UR contractor or a MAD designee, can request reconsideration. An eligible recipient who is dissatisfied with a medical necessity or LOC decision by MAD, the UR contractor or a MAD designee, can request the provider to pursue reconsideration on his or her behalf.

A. **Time constraints and submission requirements:** Requests for reconsideration must be in writing and received by the UR contractor or [~~review agency within thirty (30)~~] a MAD designee within 30 calendar days after the date on the [~~re-review~~] initial determination decision notice.

B. **Untimely filing of request for reconsideration:** The UR contractor or [~~review agency~~] a MAD designee will accept a request for reconsideration filed after the [~~thirty (30)~~] 14 calendar day receipt of notice of the [~~re-review~~] review decision if MAD finds that there was good cause for the provider's or the eligible recipient's failure to file [~~in~~] a timely request. The provider or the eligible recipient must furnish MAD with written documentation of good cause. Good cause includes serious illness that prevented the provider or the eligible recipient from filing the request, death or serious illness in the provider's or the eligible recipient's immediate family, destruction of important records, or other unusual or unavoidable circumstances.

C. **Information required in the request for reconsideration:** The request for a reconsideration must include the following:

(1) reference to the challenged decision or action;
(2) basis for the challenge;
(3) copies of any document(s) pertinent to the challenged decision or action;
(4) copies of claim form(s) if the challenge involves a claim for payment which is denied due to a utilization review decision; and
(5) statement that a reconsideration of the [~~re-review~~] decision is requested.

D. **Individuals conducting reconsideration review:** [~~Individuals employed by the UR contractor or review agency who were not participants in the initial utilization review decision or the re-review determination conduct the reconsideration review.~~] Individuals employed by MAD, the UR contractor or a MAD designee who were not participants in the initial utilization review decision conduct the reconsideration review.

E. **Information used in reconsideration process:** The UR contractor or [~~review agency~~] a MAD designee reviews the information and findings upon which the initial determination decision [~~and re-review determination~~] was based and any additional information submitted to, or otherwise obtained by, the UR contractor or [~~review agency~~] a MAD designee. The information can include the following:

(1) [~~case records and other applicable documents submitted to the UR contractor or review agency when the provider initially proposed to furnish services~~] case records and other applicable documents submitted to the UR contractor or a MAD designee by the provider when the request for services was initially submitted;

(2) findings of the reviewer resulting in the initial decision;
(3) complete record of the service(s) provided, including hospital or medical records; and
(4) [~~additional documents submitted by the provider in his/her request for reconsideration review.~~] additional documents submitted by the provider to support a reconsideration review.

F. **Decision deadline:** The UR contractor or [~~review agency~~] a MAD designee performs the reconsideration and furnishes the reconsideration decision within [~~thirty (30)~~] 10 business days of receipt of the reconsideration request.

G. **Notification of reconsideration decision:** The UR contractor or [~~review agency~~] a MAD designee gives the provider and the eligible recipient written notice of the reconsideration determination. If the decision is adverse to the [~~provider~~] eligible recipient, the notice also includes a statement advising [~~a provider~~] an eligible recipient that he/she can request an administrative hearing.
[11/1/96; 8.350.2.11 NMAC - Rn, 8 NMAC 4.MAD.953.2 - Rn, 8.350.2.10; A, 12/1/11]

~~**[8.350.2.12 PROVIDER HEARINGS:** Providers who disagree with the reconsideration determination made by the UR contractor or review agency can request an administrative hearing. Providers can submit written requests for a hearing to the MAD office or the human services department hearing bureau. Requests for a hearing must be received within thirty (30) calendar days of the final UR reconsideration decision or within the time frame indicated on the notice of action. See Section MAD 980, Provider Hearings [8.353.2 NMAC, Provider Hearings.]~~

8.350.2.11 RECIPIENT HEARINGS: When a reconsideration results in the termination, modification, suspension, reduction or denial of the services or LOC requested for the eligible recipient, the right to be notified and the right to an administrative hearing falls to the eligible recipient, who may request an administrative hearing. The eligible recipient can submit a written request for an administrative hearing to the MAD office or HSD fair hearings bureau. With the permission of the eligible recipient, the provider may assist the eligible recipient or act on behalf of the eligible recipient in the administrative hearing process. A request for an administrative hearing must be received within 30 calendar days of the final UR reconsideration decision or within the time frame indicated on the notice of action. See 8.352.2 NMAC, *Recipient Hearings.*

A. **Record preservation:** To preserve a record for review, MAD, the UR contractor or [~~review agency~~] a MAD designee documents and retains a record of the [~~re-review and the reconsideration determinations~~] reconsideration determination.

B. **Documentation requirements:** The record preserved by MAD, the UR contractor or [~~review agency~~] a MAD designee includes all documentation of the initial utilization review decision, copies of any documents relevant to the initial decision, any additional evidence presented during the [~~re-review and reconsideration and copies of the re-review and reconsideration determinations~~] reconsideration, and a copy of the reconsideration determination.
[11/1/96; 8.350.2.12 NMAC - Rn, 8 NMAC 4.MAD.953.3 - Rn, 8.350.2.11; A, 12/1/11]

HISTORY OF 8.350.2 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
ISD 306.1000, Reconsideration Procedures for Ambulatory Care, filed 1/7/80.
ISD 306.1000, Reconsideration Procedures for Ambulatory Care, filed 7/8/82.
ISD 306.2000, Reconsideration Procedures for Delegated Hospitals, filed 1/7/80.
ISD 306.3000, Reconsideration Procedures for Non-Delegated and Non-Designated Hospitals, filed 1/7/80.

History of Repealed Material: [RESERVED]