State of New Mexico
Human Services Department
Human Services Register

I. DEPARTMENT
NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

II. SUBJECT
MANAGED CARE PROGRAM RULE
8.308.15 NMAC, *Managed Care Program, Grievances and Appeals*

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
PROPOSED RULES

V. BACKGROUND SUMMARY

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to create new managed care organization (MCO) rules for the implementation of Centennial Care. The new MCO rules will govern the Department's contracted managed care organizations (MCO) and are contained in the new Chapter 308, *Managed Care Program*, in Title 8 of the New Mexico Administrative Code (NMAC).

The proposed rule is located in 8.308.15 NMAC, *Grievances and Appeals*, and will govern the grievance process for a MCO member and contracted provider and the appeal process for a MCO member. The proposed rule will require that MCO members exhaust the MCO grievance process prior to requesting an administrative hearing through HSD.

The new rules contained in Chapter 308, *Managed Care Program*, are replacing the previous rules for SALUD! and CoLTS, as the Department transitions to Centennial Care on January 1, 2104.

VI. RULES

These proposed rule will be contained in 8.308.15 NMAC. This register and the proposed rule is available on the MAD website at http://www.hsd.state.nm.us/mad/registers/2013. If you do not

have internet access, a copy of the proposed rule may be requested by contacting MAD at 505-827-3152.

VII. EFFECTIVE DATE

The Department proposes to implement this rule effective January 15, 2014.

VIII. PUBLIC HEARING

A public hearing to receive testimony on these proposed rules will be held at the South Park Conference Room, 2055 Pacheco, Santa Fe, NM on Monday, December 16, 2013 at 9 am.

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 MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe, call 827-3152. 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 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available on January 6, 2014 by MAD 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 p.m. on Monday, December 16, 2013. Written and recorded comments will be given the same consideration as testimony made at the public hearing. Interested persons may address comments via telephone to 505-827-3152 or via electronic mail to: Emily.Floyd@state.nm.us.

X. PUBLICATION

Publication of these rules approved by:

SIDONIE SQUIER, SECRETARY
HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 308 MANAGED CARE PROGRAM
PART 15 GRIEVANCES AND APPEALS

8.308.15.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.308.15.1 NMAC - N, 1-15-14]

8.308.15.2 SCOPE: This rule applies to the general public.
[8.308.15.2 NMAC - N, 1-15-14]

8.308.15.3 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 NMSA 1978, Section 27-1-12 et seq.
[8.308.15.3 NMAC - N, 1-15-14]

8.308.15.4 DURATION: Permanent.
[8.308.15.4 NMAC - N, 1-15-14]

8.308.15.5 EFFECTIVE DATE: January 15, 2014, unless a later date is cited at the end of a section.
[8.308.15.5 NMAC - N, 1-1-14]

8.308.15.6 OBJECTIVE: The objective of this rule is to provide instructions for the service portion of the New Mexico medical assistance division programs.
[8.308.15.6 NMAC - N, 1-15-14]

8.308.15.7 DEFINITIONS:

A. "***Adverse action*" or "*action***" means:

(1) a termination, modification, reduction, or suspension of a covered medical assistance division (MAD) service;

(2) the denial or limiting of an authorized service, including type or level of service (with the exception of a managed care value-added service), requests for a prior approval or a utilization review (UR) action following a reconsideration hearing decision. See 8.350.2 NMAC;

(3) the denial in whole or in part of a provider's claim which results in the claimant's becoming liable for the payment;

(4) the failure to approve a service in a timely manner;

(5) the failure of a contractor to act on grievance and appeals within the timeframes specified in 42 CFR 438.408 (b).

(6) The denial of a value added service will not be considered an action or adverse action; value added services are not included in the managed care medicaid benefit package. Value added services shall not be construed as Medicaid funded services, and therefore, there is no appeal or fair hearing rights for members regarding these services.

B. "***Appeal***" means a request by the member for review by the MCO of an MCO action or adverse action.

C. "***Authorized representative***" means an individual that has been legally appointed by the appropriate court to act on behalf of the claimant.

D. "***Denial***" means the decision not to authorize the member's requested service, prior approval, utilization review decision, or level of care (LOC).

E. "***Grievance***" means an expression of dissatisfaction about any matter or aspect of the MCO or its operation other than an MCO action.

F. "***Hearing***" or "***administrative hearing***" or "***fair hearing***" means an evidentiary hearing that is conducted so that evidence may be presented as it relates to the denial of an adverse action by MAD, its designee or contractor. This hearing is conducted by the HSD fair hearings bureau (FHB).

G. "***HSD***" or "***the Department***" means the New Mexico human services department.

H. "***Notice***" means a written statement from the member or provider's managed care organization (MCO) which states the intended action to be taken or an action has been taken, the reasons for the intended or

taken action, the specific MAD rule that requires this action, and an explanation of the member and provider's right to request an administrative hearing, along with an explanation of the circumstances under which the service or LOC may be continued if an administrative hearing is requested.
[8.308.15.7 NMAC - N, 1-15-14]

8.308.15.8 MISSION STATEMENT: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.308.15.8 NMAC - N, 1-15-14]

8.308.15.9 GENERAL REQUIREMENTS: The HSD managed care organization (MCO) shall have a grievance system in place for its members and providers to express dissatisfaction about any matter or aspect of the MCO operation. The MCO shall have an appeal system in place to dispute the MCO's planned or taken adverse action for its members and providers.
[8.308.15.9 NMAC - N, 1-15-14]

8.308.15.10 GENERAL INFORMATION ON PROVIDER GRIEVANCE AND APPEALS:

A. Upon a provider's enrollment, the MCO shall provide, at no cost, a written description of its grievance and appeal procedure and process to the provider. The MCO will update each of its providers with any changes to these procedures and processes. The description shall include:

(1) information on how the provider can file a MCO grievance or appeal and the resolution process;

(2) timeframes for each step of the grievance or appeal process through its final resolution; and

(3) a description of how MCO provider's grievances or appeals are resolved.

B. **Provider rights:**

(1) A provider shall have the right to file a grievance with his or her MCO to express dissatisfaction about any matter or aspect of the MCO operation. The provider may file the grievance either orally or in writing following his or her MCO's procedures and processes.

(2) A provider shall have the right to file an appeal with the MCO related to the provider's payment and the utilization review decisions on behalf of a member.

C. A MCO provider does not have the right to request a HSD administrative hearing.
[8.308.15.10 NMAC - N, 1-15-14]

8.308.15.11 GENERAL INFORMATION ON MEMBER GRIEVANCE AND APPEALS:

A. Upon the member's enrollment, the MCO shall provide, at no cost, a written description of its grievance and appeal procedure and process. The MCO will provide each member with any changes to these procedures and processes. The description shall include:

(1) information on how the member can file a MCO grievance or appeal and the resolution process;

(2) information of the member's right to file a request for a HSD administrative hearing if the member is appealing the MCO's final appeal decision letter;

(3) timeframes for each step of the grievance or appeal process through its final resolution; and

(4) a description of how MCO member grievances or appeals are resolved.

B. **Member rights:**

(1) A member shall have the right to file a grievance within 30 days of the date the dissatisfaction occurred with his or her MCO to express dissatisfaction about any matter or aspect of his or hers MCO operation. The member may file the grievance either orally or in writing following his or her MCO's procedures and processes.

(2) A member shall have the right to file an appeal with the MCO within 90 calendar days of receiving a notice of the action.

(3) The member's MCO will provide him or her with its decision on an appealed adverse action.

(4) A member shall have the right to request a HSD administrative hearing after the member has exhausted his or her MCO appeal process. See 8.352.2 NMAC for instructions on how a MCO member requests a HSD administrative hearing.

(5) A member must request a HSD administrative hearing within 30 calendar days of the date his or her MCO's final decision letter.

C. The following individuals may file a MCO grievance or appeal on behalf of a member to his or her MCO:

(1) the member's legal guardian;

(2) the member's authorized representative. An authorized representative is the individual that has been legally appointed by the appropriate court to act on behalf of the member. The member's authorized representative may attend the hearing with or without the member being present; or

(3) the member may appoint a personal representative or his or her provider to assist the member during the grievance and appeal process if a member has signed a written consent; provided that the administrative law judge determines the member fully understands the matters presented on grievance or appeal; the personal representative cannot make decisions on behalf of the member; and the member must attend the grievance and appeal hearings with his or her personal representative.

D. The MCO may continue the member's benefits while a MCO appeal or the HSD administrative hearing process is pending. A continuation of benefits may be provided to the member who requests a MCO appeal within 13 calendar days of the MCO's notice of an adverse action.

(1) If the MCO reverses the appealed adverse action and the disputed service which was not furnished while the appeal was pending, the MCO shall authorize or provide the disputed service promptly and as expeditiously as the member's health condition requires.

(2) If the MAD director reverses the MCO's appealed adverse action and the member received the disputed services while the appeal was pending, the MCO shall pay for these services.

(3) If the MAD director upholds the MCO's action, the MCO may recover from the member the cost of the services furnished while the appeal was pending. See 8.352.2 NMAC considering the MCO recovery process.

[8.308.15.11 NMAC - N, 1-15-14]

8.308.15.12 MCO GRIEVANCE PROCESS:

A. The MCO shall provide reasonable member or provider assistance in completing forms and procedural steps, including but not limited to:

(1) providing interpreter services; and

(2) providing toll-free numbers that have adequate TTY/TTD and interpreter capability.

B. The MCO shall designate a specific employee or subcontractor as its member or provider grievance coordinator with the authority to:

(1) administer the policies and procedures for resolution of a grievance; and

(2) review patterns and trends in grievances and initiate corrective action.

C. The MCO shall ensure that the individuals who make decisions on grievances are not involved in any previous level of review or decision-making.

D. The MCO shall provide the member or provider with written notice:

(1) when a grievance request has been received;

(2) of the expected date of resolution; and

(3) of the final resolution of the grievance.

E. The MCO shall ensure that punitive or retaliatory action is not taken against a member or a provider that files a grievance, or the provider that supports a member's grievance.

[8.308.15.12 NMAC - N, 1-15-14]

8.308.15.13 MCO APPEAL PROCESS:

A. The MCO shall provide reasonable member or provider assistance in completing forms and procedural steps, including but not limited to:

(1) providing interpreter services; and

(2) providing toll-free numbers that have adequate TTY/TTD and interpreter capability.

B. The MCO shall designate a specific employee or subcontractor as its member or provider appeal coordinator with the authority to:

(1) administer the policies and procedures for resolution of an appeal; and

(2) review patterns and trends in appeals and initiate corrective action.

C. The MCO shall ensure that the individuals who make decisions on grievances or appeals are not involved in any previous level of review or decision-making.

D. The MCO shall provide the member or provider with written notice:

(1) when an appeal request has been received;

(2) of the expected date of resolution; and

(3) of the final resolution of the appeal.

E. The MCO shall provide the member or provider with a notice of action for decisions related to:

(1) previously authorized services as permitted under 42 CFR 431.213 and 431.214;
(2) newly requested services; and
(3) denials of claims that may result in the member's financial liability.

F. The MCO may continue the member's benefits while MCO appeal or the HSD administrative hearing process is open. A continuation of benefits may be provided to the member who requests a MCO appeal within 13 calendar days of the MCO's notice of an adverse action.

(1) If the MCO reverses the appealed adverse action and the disputed service which was not furnished while the appeal was open, the MCO shall authorize or provide the disputed service promptly and as expeditiously as the member's health condition requires.

(2) If the MAD director reverses the MCO's appealed adverse action and the member received the disputed services while the appeal was pending, the MCO shall pay for these services.

(3) If the MAD director upholds the MCO's action, the MCO may recover from the member the cost of the services furnished while the appeal was pending. See 8.352.2 NMAC regarding the MCO recovery process.

G. The MCO shall ensure that health care professionals with appropriate clinical expertise make decisions for the following:

(1) an appeal that involves clinical issues;
(2) an appeal of a MCO denial that is based on lack of medical necessity; and
(3) the MCO's denial that is upheld in an expedited resolution.

H. The MCO shall establish and maintain an expedited review process for appeals when the MCO determines that allowing the time for a standard resolution could seriously jeopardize the member's life, health; or his or her ability to attain, maintain, or regain maximum function.

(1) In the case of expedited service authorization decisions that deny or limit services, the MCO shall automatically file an appeal on behalf of the member, and use its best effort to give the member oral notice of the decision on the automatic appeal and to resolve the appeal.

(2) The MCO shall ensure that punitive or retaliatory action is not taken against a member or a provider that files an appeal, or a provider that supports a member's appeal.

[8.308.15.12 NMAC - N, 1-15-14]

HISTORY OF 8.308.15 NMAC: [RESERVED]