



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT

NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

II. SUBJECT

8.308.15 NMAC, *Managed Care Program, Grievances and Appeals*

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
FINAL RULES

V. BACKGROUND SUMMARY

The Human Services Register Vol. 37 No. 28, dated March 31, 2014, issued the proposed repeal and replacement of 8.308.15 NMAC, *Managed Care Program, Grievances and Appeals*.

A public hearing was held on Wednesday, May 7, 2014, to receive public testimony on this proposed rule. This register summarizes public comment and testimony and the Human Services Department's (Department) response.

The Department received three written comments, no recorded comments or public testimony.

Summary of Comments:

• **8.308.15.7(C) Authorized representative:**

One commenter questioned the Department's use of "*guardian ad litem*" instead of "*guardian*."

Department Response: The Department agrees with the commenter and the wording has been amended to say "*guardian*."

One commenter requested clarification if a claimant's power of attorney must include a specified purpose and time frame in order for his or her authorized representative to have access the claimant's case information.

Department Response: The Department's intent is the power of attorney content must be sufficient to substantiate the authorized representative's right to receive the claimant's information. The language stands as proposed.

- **8.308.15.7.J Member:**

One commenter questioned the need to describe a member as a Medical Assistance Program (MAP) eligible recipient.

Department Response: The Department's intent is to clarify a HSD managed care organization (MCO) member is a MAP eligible recipient. The language stands as proposed.

- **8.308.15.7.K Notice of Action:**

One commenter questioned the requirement of a HSD MCO to provide a 10-calendar days notice prior to the date of the intended adverse action as cited in proposed 8.308.15.15.

Department Response: The Department agrees the 10-calendar day notice of action applies only to an adverse action against an individual in the form of a termination, suspension, change or reduction. The denial, reduction, or limited authorization of a request of a new service or item, including the type or level of care will not require a 10-calendar day notice of action from the MCO to the affected member. The language has been revised.

- **8.308.15.10 : General Information on a Contracted MCO Provider Appeal:**

- Two comments were received that the citation under this Section is in error.

Department Response: The Department agrees and has corrected the citation to 8.308.15.14.A.

- **8.308.1511, 12, 14 and 15:**

One commenter expressed concern at the length of time the HSD MCOs are taking to complete their internal appeal process. The commenter requests specific MCO appeal timelines and deadlines are incorporated into this rule.

Department Response: The Department will work with its contracted MCOs to ensure federal Code of Federal Regulations (CFR) requirements and HSD-MCO contractual requirements are implemented and followed. The language stands as proposed.

- **8.308.15.13.B(4) General Information on a Contracted MCO Provider Appeal:**

One commenter questioned if a MCO contracted provider has HSD administrative hearing rights.

Department Response: As stated in 8.308.15.13.B (5), "A MCO provider does not have the right to request a HSD administrative hearing following the MCO appeal decision." A HSD MCO provider does have the right to file a grievance or appeal with his or her contracted MCO and to follow that MCO's grievance or appeal process. The language stands as proposed.

- **8.308.15.14 General Information on a Member Appeal:**

Two separate comments questioned the Department's requirement of a claimant enrolled in a HSD MCO to first exhaust his or her MCO appeal process prior to requesting a HSD administrative hearing.

Department Response: The Department is allowed under CFR to require a member first work through his or her MCO internal appeal process. The language stands as proposed.

One commenter questioned the use of "an authorized service or item" in Subsection A paragraph (1). The commenter contends the use of "authorized" could lead to denials of legal rights to administrative hearings and the HSD administrative hearing process should determine if a service or item should be authorized.

Department Response: The Department's use of "authorized service or item" refers to the benefit package a HSD MCO must offer its members. If a service or item is not contained with 8.308.9 or 8.308.12 NMAC, a claimant cannot file an appeal with his or her MCO nor request a HSD administrative hearing as stated in 8.352.2 NMAC. The language stands as proposed.

One commenter questioned why the Department is shortening the time limit from 90-calendar days to 30-calendar days for a claimant to request a HSD administrative hearing after his or her MCO appeal final decision. The commenter referenced 8.100.970 NMAC.

Department Response: The Income Support Division's (ISD) 8.100.970.9B (1) NMAC rule provides for a HSD administrative hearing specific to MAP eligibility determinations. The Department added clarifying language to the rule, 8.352.2 that a claimant is to follow 8.100.970 NMAC when the adverse action is a MAP eligibility determination and to follow 8.352.2 NMAC for non-MAP eligibility adverse actions. The language stands as proposed.

The process of a MCO appeal affords the claimant the opportunity to: (1) within 90 calendar days after the MCO's Notice of Action to research and reach a determination whether to request a appeal of the MCO's adverse action; (2) prepare his or her evidence for review by the MCO, and (3) to review the documentation the MCO utilized in reaching its determination of the adverse action. A claimant under the Fee-for-Service plan has the comparable 90-calendar days to research and reach a determination whether to request a HSD administrative hearing. The Department has determined a claimant appealing his or her MCO appeal final decision has the documentation from the MCO appeal process to move forward to request a HSD administrative hearing. The language stands as proposed.

- **8.308.15.15.E(1-2)**

One commenter questioned if the rule as proposed and the existing 42 CFR 431.213 and 431.214 language are in conflict.

Department Response: The Department has amended language to clarify its intent to read: "E. (1) previously authorized services in *accordance with* 42 CFR Sections 431.213 and 431.214."

One commenter questioned if the member's MCO would be the correct entity making a claimant's Preadmission Screening or Annual Resident Review (PASRR) or nursing facility determination or if it would be the Medical Assistance Division's (MAD) utilization review (UR) contractor making this determination.

Department Response: The MAD UR contractor does not have a role in a member's appeal process. The Department will assure that the MCO notice of action instructs the member to whom the appeal must be directed. The language stands as proposed.

One commenter pointed out an inconsistency between 8.308.15.14A (1) as proposed and 8.352.2.11 as proposed that an adverse action by MAD or its UR contractor does not apply when a MCO makes the adverse action determination.

Department Response: The Department agrees and the language in 8.308.15 has been amended.

- **8.308.15.16 Expedited Member Appeal Process:**

One commenter requested a change in language that a MCO must give the member oral notice of the automatic appeal to allow for instances when it is not reasonably possible for the MCO to give oral notice, citing 42 CFR 438.410(c)(2).

Department Response: The Department reviewed the requirements under this CFR citation. The Department understands there are MCO members without telephones –landline or cellular, or whose place of residence is not quickly accessible. The language has been changed to read: “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, the MCO shall automatically file an appeal on behalf of the member, continue the benefit, *make reasonable efforts to give the member prompt oral notice of the automatic appeal, following up within two calendar days with a written notice.* The MCO will use its best effort to involve the member in the expedited appeal process.”

One commenter requested further clarification in the rule that a MCO is to start the internal appeal immediately upon request and that any dispute over whether it is “*expedited*” may not be used as a cause for a delay of the appeal result.

Department Response: The Department will work its contracted MCOs to ensure a claimant’s request for an expedited appeal meets federal CFR requirements and HSD MCO contractual requirements.

One commenter questioned if 8.100.970 NMAC language is in conflict with the proposed rule when a Fair Hearing Bureau’s (FHB) Administrative Law Judge (ALJ) denies a claimant’s request for a HSD expedited administrative hearing.

Department Response: ISD’s 8.100.970.9B (1) NMAC rule provides for a HSD administrative hearing specific to MAP eligibility determinations. 8.352.2 NMAC allows the MAD Director to designate an individual, in this case an ALJ, to reach a HSD administrative hearing final decision. The language stands as proposed.

VI. RULES

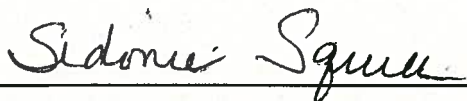
The rules referenced above will be contained in the Medicaid Program Rule Manual, available on the HSD website at <http://www.hsd.state.nm.us/providers/rules-nm-administrative-code-.aspx> This register and the final rule will be posted on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> . If you do not have internet access, a copy of the register and rules may be requested by contacting MAD at 505-827-3152.

EFFECTIVE DATE:

The Department will implement this rule effective June 15, 2014.

VIII. PUBLICATION

Publication of these rules approved by:



SIDONIE SQUIER, SECRETARY
HUMAN SERVICES DEPARTMENT