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TITLE 8 SOCIAL SERVICES
CHAPTER 307 COORDINATED LONG-TERM SERVICES
PART 3 CONTRACT MANAGEMENT

8.307.3.1 ISSUING AGENCY: Human Services Department
[8.307.3.1 NMAC - N, 8-1-08]

8.307.3.2 SCOPE: This rule applies to the general public.
[8.307.3.2 NMAC - N, 8-1-08]

8.307.3.3 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 NMSA 1978 Section 27-2-12 et. seq.
[8.307.3.3 NMAC - N, 8-1-08]

8.307.3.4 DURATION: Permanent
[8.307.3.4 NMAC - N, 8-1-08]

8.307.3.5 EFFECTIVE DATE: August 1, 2008, unless a later date is cited at the end of a section.
[8.307.3.5 NMAC - N, 8-1-08]

8.307.3.6 OBJECTIVE: The objective of these rules is to provide policies for the service portion of the New Mexico medicaid coordination of long-term services program.
[8.307.3.6 NMAC - N, 8-1-08; A, 9-1-09]

8.307.3.7 DEFINITIONS: See 8.307.1.7 NMAC.
[8.307.3.7 NMAC - N, 8-1-08]

8.307.3.8 MISSION STATEMENT: The mission of the medical assistance division is 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 community.
[8.307.3.8 NMAC - N, 8-1-08; A, 9-1-09]

8.307.3.9 ELIGIBLE COORDINATION OF LONG-TERM SERVICES MANAGED CARE ORGANIZATIONS (CoLTS MCOs): The human services department (HSD) shall award risk-based contracts to CoLTS MCOs with statutory authority to assume risk and enter into prepaid capitation agreements that meet applicable requirements and standards delineated under state and federal law, including Title IV of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities), the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, and the Americans with Disabilities Act.

A. **Procurement process:** HSD shall award risk-based contracts to CoLTS MCOs using a competitive procurement process that conforms to the terms of the New Mexico Procurement Code. Offerors must submit their responses to the request for proposals in conformity with the requirements specified in the request for proposals.

B. **Contract issuance:** The risk-based contracts shall be awarded for at least a two-year period. Contracts are issued to offerors meeting requirements specified under the terms of the coordination of long-term services contract.
[8.307.3.9 NMAC - N, 8-1-08; A, 9-1-09]

8.307.3.10 CONTRACT MANAGEMENT: HSD, or its designee, is responsible for managing the medicaid contracts issued to the CoLTS MCOs/SE. HSD, or its designee, shall provide the oversight and administrative functions to ensure CoLTS MCO compliance with the terms of the medicaid contract. The collaborative, or its designee, shall provide the oversight and administrative functions to ensure SE compliance with the terms of its contract. HSD, as a member of the collaborative shall provide oversight of the SE contract as it relates to medicaid behavioral health services, providers and members.

A. **General contract requirements:** The CoLTS MCO/SE shall meet all specified terms of the medicaid contract with HSD as it relates to medicaid members and services and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This includes, but is not limited to, ensuring confidentiality as it relates to medical records and any other health and enrollment information that identifies a particular member. The CoLTS MCO/SE shall be held harmless in conversion to HIPAA electronic transmission formats when delays are the result of implementation issues at HSD.

B. **Subcontracting requirements:** The CoLTS MCO/SE may subcontract to a qualified individual or organization the provision of services defined in the benefit package or other required CoLTS MCO/SE functions with HSD's approval. The CoLTS MCO may not assign, transfer or delegate key management functions such as utilization review, utilization management, or service coordination without the explicit written approval of the state. The CoLTS MCO/SE shall submit boilerplate contract language and sample contracts for various types of subcontracts for HSD's approval. Any substantive changes to contract templates shall be approved by HSD prior to issuance. The CoLTS MCO must oversee and be held accountable for any function or responsibility, including claims submission requirements, that it delegates to any subcontractor. The CoLTS MCO shall have policies and procedures to ensure that the subcontractor meets all standards of performance mandated by the state for the coordination of long-term services program, including the use of appropriately qualified staff, application of clinical practice guidelines and utilization management, reporting capability, and ensuring access to services for members. The SE may assign, transfer, or delegate to a subcontractor key management functions including, but not limited to, care coordination and universal credentialing with the explicit written approval of HSD.

(1) **Credentialing requirements:** The CoLTS MCO/SE shall maintain policies and procedures for verifying that the credentials of its service providers and subcontractors meet applicable standards. The CoLTS MCO/SE shall assure the prospective subcontractor's ability to perform the activities to be delegated.

(2) **Review requirements:** The CoLTS MCO/SE shall maintain a fully executed original of all subcontracts and make them accessible to HSD, or its designee, upon request.

(3) **Minimum requirements (CoLTS MCO/SE):**

(a) subcontracts shall be executed in accordance with applicable federal and state laws, regulations, policies and rules;

(b) subcontracts shall identify the parties of the subcontract and the parties' legal basis to operate in the state of New Mexico;

(c) subcontracts shall include the frequency of reporting (if applicable) to the CoLTS MCO/SE and the process by which the CoLTS MCO/SE evaluates the delegate;

(d) subcontracts shall identify the services to be performed by the subcontractor and the services to be performed under other subcontracts;

(e) subcontracts must describe how members access services provided under the subcontract;

(f) subcontracts shall include reimbursement rates and risk assumption, where applicable;

(g) subcontractors shall maintain records relating to services provided to members for 10 years;

(h) subcontracts shall require that member information be kept confidential, as defined by federal or state law, and be HIPAA compliant;

(i) subcontracts shall provide that authorized representatives of the state have reasonable access to facilities, personnel and records for financial and medical audit purposes;

(j) subcontracts shall include a provision for the subcontractor to release any information necessary to perform any of its obligations to the CoLTS MCO/SE, and that the CoLTS MCO shall monitor the subcontractor's performance on an ongoing basis and subject the subcontractor to formal review according to a periodic schedule;

(k) subcontractors shall accept payment from the CoLTS MCO/SE for any services included in the benefit package and cannot request payment from HSD for services performed under the subcontract;

(l) if subcontracts include primary care, long-term services, or home and community-based services, provisions for compliance with PCP requirements delineated in the CoLTS MCO contract with HSD apply;

(m) subcontractors shall comply with all applicable state and federal statutes, rules and regulations, including the prohibition against discrimination;

(n) subcontracts shall have procedures and criteria for terminating the subcontract, a provision for the imposition of sanctions for inadequate subcontractor performance, and terminating, rescinding, or canceling the contracts for violation of applicable HSD requirements;

(o) subcontracts shall not prohibit a service provider or other subcontractor from entering into a contractual relationship with another CoLTS MCO;

(p) subcontracts may not include incentives or disincentives that encourage a service provider

or other subcontractor not to enter into a contractual relationship with another CoLTS MCO;

(q) subcontracts shall not contain any gag order provisions nor sanctions against service providers who assist members in accessing the grievance process or otherwise protecting the interests of members;

(r) subcontracts shall specify the timeframe for submission of encounter data to the CoLTS MCO/SE;

(s) subcontractors shall be required to perform criminal background checks on all individuals providing services under the subcontract;

(t) subcontracts shall ensure that subcontractors agree to hold harmless the state and the CoLTS MCO's members in the event that the CoLTS MCO cannot or shall not pay for services performed by the subcontractor pursuant to the subcontract;

(u) subcontracts for pharmacy providers shall include a payment provision consistent with 1978 NMSA Section 59A-57-1 to 57-11, the Patient Protection Act;

(v) subcontracts to entities that receive annual medicaid payments of at least \$5,000,000.00 shall include detailed information regarding employee education of the New Mexico and federal False Claims Act;

(w) subcontracts shall include a provision for requiring providers to submit claims electronically; low volume or low dollar providers may have this requirement waived; and

(x) subcontracts shall include the HSD/SE contractual provisions of the state of New Mexico Executive Order 2007-049 concerning subcontractor health coverage requirements.

(4) **Excluded providers:** The CoLTS MCO/SE shall not contract with an individual provider or an entity with an individual who is an officer, director, agent, or manager who owns or has a controlling interest in the entity; has been convicted of crimes specified in Section 1128 of the Social Security Act; is excluded from participation in any other state's medicaid, medicare, or any other public or private health or health insurance program; has been assessed a civil penalty under the provision of Section 1128; or who has a contractual relationship with an entity convicted of a crime specified in Section 1128.

C. **Provider incentive plans:** The CoLTS MCO/SE shall ensure that direct or indirect incentives offered in the subcontract shall not serve as an inducement to reduce or limit medically necessary services to members.

[8.307.3.10 NMAC - N, 8-1-08; A, 9-1-09]

8.307.3.11 ORGANIZATIONAL REQUIREMENTS:

A. **Organizational structure:** The CoLTS MCO/SE shall provide the following information to HSD, or its designee, and updates, modifications, or amendments to HSD, or its designee, within 30 days:

(1) current written charts of organization or other written plans identifying organizational lines of accountability;

(2) articles of incorporation, bylaws, partnership agreements, or similar documents that describe the CoLTS MCO's/SE's mission, organizational structure, board and committee composition, mechanisms to select officers and directors, and board and public meeting schedules; and

(3) documents describing the CoLTS MCO's/SE's relationship with parent affiliated and related business entities including, but not limited to, subsidiaries, joint ventures or sister corporations.

B. **Policies, procedures and job descriptions:** The CoLTS MCO/SE shall establish and maintain written policies, procedures and job descriptions as required by HSD. The CoLTS MCO/SE shall establish, maintain and implement guidelines for developing, reviewing and approving policies, procedures and job descriptions. The CoLTS MCO/SE shall provide its policies, procedures and job descriptions for key personnel, and guidelines for review to HSD, or its designee, upon request. The CoLTS MCO/SE shall notify HSD, or its designee, within 30 days when changes in key personnel occur.

(1) **Review of policies and procedures:** The CoLTS MCO/SE shall review its policies and procedures at least every two years, unless otherwise specified herein, to ensure that they reflect current best industry practices. Job descriptions shall be reviewed to ensure that current employee duties reflect written requirements. Modifications or amendments to current policies, procedures or job descriptions of key positions shall be made using the guidelines delineated during the procurement process. Substantive modification or amendment to key positions must be reviewed by HSD, or its designee.

(2) **Distribution of information:** The CoLTS MCO/SE shall distribute information to service providers necessary to ensure that providers meet all contract requirements.

(3) **Business requirements:** The CoLTS MCO/SE shall have the administrative, information and other systems in place necessary to fulfill the terms of the medicaid coordination of long-term services and behavioral health contracts. Any change in identified key CoLTS MCO/SE personnel shall conform to the

requirements of the coordination of long-term services and behavioral health contracts. The CoLTS MCO/SE shall retain financial records, supporting documents, statistical records, and all other records for a period of 10 years from the date of submission of the final expenditure report, except as specified by HSD, or its designee.

(4) **Financial requirements:** The CoLTS MCO/SE shall meet minimum requirements delineated by federal and state law with respect to solvency and performance guarantees for the duration of the contract. In addition, the CoLTS MCO/SE shall meet additional financial requirements specified in the contract.

(5) **Member services:** The CoLTS MCO/SE shall have a member services function that coordinates communication with members and acts as a member advocate. Member services shall include sufficient staff to assist members in resolving problems or making inquiries. The CoLTS MCO's/SE's policies and procedures shall be made available upon request to members or member representatives for review during normal business hours.

(6) **Consumer advisory board:** The CoLTS MCO/SE shall establish their respective consumer advisory board that includes regional representation of consumers, family members, advocates and service providers. The SE's behavioral health consumer advisory board shall also interact with the behavioral health planning council (BHPC) as directed by the collaborative. The CoLTS MCO and the SE consumer advisory boards shall interface and collaborate with one another as appropriate. The CoLTS MCO consumer advisory board shall consist of an equitable representation of the CoLTS MCO's members in terms of race, gender, special populations and geographic areas of the state.

(a) The consumer advisory board members shall serve to advise the CoLTS MCO and the SE respectively on issues concerning service delivery and quality of service; the member bill of rights and member responsibilities; resolution of member grievances; and the needs of groups represented by board members as they pertain to medicaid, including coordination of long-term services. The CoLTS MCO consumer advisory board shall hold quarterly centrally located meetings every year and keep a written or electronic record of all attempts to invite and include its members in its meetings. The attendance roster and minutes shall be made available to HSD, its designee, for SE meetings upon request. The CoLTS MCO/SE shall advise HSD, or its designee, 10 days in advance of meetings to be held. HSD shall attend and observe consumer advisory board meetings at its discretion.

(b) The CoLTS MCO/SE shall attend at least two statewide consumer driven or hosted meetings per year, of the CoLTS MCO's/SE's choosing, that focus on consumer issues and needs, to ensure that members' concerns are heard and addressed.

(7) **Requirements for Native American membership:** The MCO shall identify a tribal liaison to assist the MCO with issues related to Native Americans and report such tribal liaison to HSD for approval. The MCO shall hold semi-annual meetings with Native American leadership and the minutes of such meetings shall be submitted to HSD within 30 days of such meetings.

(8) **Contract enforcement:** HSD, or its designee, shall enforce contractual and state and federal regulatory requirements specified in the scope of work of the contract. HSD, or its designee, may use the following types of sanctions for less than satisfactory performance or nonperformance of contract provisions:

- (a) require plans of correction;
- (b) impose directed plans of correction; and
- (c) impose monetary penalties or sanctions to the extent authorized by federal or state law:
 - (i) HSD retains the right to apply progressively stricter sanctions against the CoLTS

MCO/SE, including an assessment of monetary penalties against the CoLTS MCO/SE, for failure to perform in any contract area;

(ii) unless otherwise required by law, the level of sanctions shall be based on the frequency or pattern of conduct, the severity or degree of harm posed to or incurred by members, or the integrity of the medicaid program;

(iii) penalty assessments shall range up to five percent of the CoLTS MCO's/SE's medicaid capitation payment for the month in which the penalty is assessed;

(iv) any withholding of capitation payments in the form of a penalty assessment does not constitute just cause for the CoLTS MCO/SE to interrupt services provided to members; and

(v) all administrative, contractual or legal remedies available to HSD shall be employed in the event that the CoLTS MCO/SE violates or breaches the terms of the contract;

(d) impose other civil or administrative monetary penalties and fines under the following guidelines:

(i) a maximum of \$25,000.00 for each of the following determinations: failure to provide service; misrepresentation or false statements to members, potential members, or health service providers; failure to comply with physician incentive plan requirements; and marketing violations;

(ii) a maximum of \$100,000.00 for each of the following determinations: discrimination or misrepresentation or false statements to HSD or CMS;

(iii) a maximum of \$15,000.00 for each member HSD, or its designee, determines was not enrolled, or reenrolled, or whose enrollment was terminated because of a discriminatory practice; this is subject to an overall limit of \$100,000.00 under (ii) above;

(iv) a maximum of \$25,000.00 or double the amount of the excess charges, whichever is greater, for premiums or charges in excess of the amount permitted under the medicaid program; the state must deduct from the penalty the amount of overcharge and return it to the affected members;

(e) adjust automatic assignment formula;

(f) rescind marketing consent;

(g) suspend new enrollment, including default enrollment after the effective date of the

sanction;

(h) appoint a state monitor, the cost of which shall be borne by the CoLTS MCO/SE;

(i) deny payment;

(j) assess actual damages;

(k) assess liquidated damages;

(l) remove members with third party coverage from enrollment with the CoLTS MCO/SE;

(m) allow members to terminate enrollment;

(n) suspend agreement;

(o) terminate the CoLTS MCO/SE contract;

(p) apply other sanctions and remedies specified by HSD, or its designee; and

(q) impose temporary management only if it finds, through on-site survey, member complaints,

or any other means that:

(i) there is continued egregious behavior by the CoLTS MCO/SE, including but not limited to behavior that is described in Subparagraph (d) above, or that is contrary to any requirements of 42 USC Sections 1396b(m) or 1396u-2; or

(ii) there is substantial risk to the health and safety of the CoLTS MCO's/SE's members;

or

(iii) the sanction is necessary to ensure the health and safety of the CoLTS MCO's/SE's members while improvement is made to remedy violations made under Subparagraph (d) above, or until there is orderly termination or reorganization of the CoLTS MCO/SE.

C. HSD shall not delay the imposition of temporary management to provide a hearing before imposing this sanction. HSD shall not terminate temporary management until it determines that the CoLTS MCO/SE can ensure that the sanctioned behavior will not reoccur. Refer to state and federal regulations for due process procedures.

[8.307.3.11 NMAC - N, 8-1-08; A, 9-1-09]

HISTORY OF 8.307.3 NMAC: [RESERVED]