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TITLE 8 SOCIAL SERVICES
CHAPTER 307 COORDINATED LONG-TERM SERVICES
PART 5 ENROLLMENT

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

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

8.307.5.3 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.
[8.307.5.3 NMAC - N, 8-1-08]

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

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

8.307.5.6 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.
[8.307.5.6 NMAC - N, 8-1-08; A, 9-1-09]

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

8.307.5.8 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 communities.
[8.307.5.8 NMAC - N, 8-1-08; A, 9-1-09]

8.307.5.9 ENROLLMENT PROCESS:

A. **Enrollment requirements:** The coordination of long-term services managed care organization (CoLTS MCO) shall provide an open enrollment period by region during the implementation in which time it shall accept eligible individuals in the order in which they apply without restriction, unless authorized by the CMS regional administrator, up to any limits contained in the contract. The CoLTS MCO shall not discriminate on the basis of health status or a need for health care services. The CoLTS MCO shall not discriminate against individuals eligible to enroll on the basis of race, color, national origin, or sexual orientation, and will not use any policy or practice that has the effect of discriminating on the basis of race, color, national origin, or sexual orientation. Enrollment in the SE is mandatory for all members enrolled in managed care or medicaid fee-for-service.

B. **Selection period:** The member shall have at least 16 calendar days to select a CoLTS MCO upon notification by the state, or its designee, that eligibility for CoLTS has been established. If a selection is not made in 16 days, the member shall be assigned to a CoLTS MCO by the human services department (HSD) or its designee. Members mandated into managed care shall be automatically assigned to the SE.

C. **Enrollment methods when no selection made:**

(1) **Enrollment with previous CoLTS MCO:** The member is automatically enrolled with the previous CoLTS MCO unless the CoLTS MCO is no longer in good standing, is no longer contracting with HSD or has had enrollment suspended.

(2) **Enrollment based on case (family) continuity:** Enrollment based on case continuity is applied in the following manner:

(a) **Processing case continuity:** The member is enrolled with the CoLTS MCO to which a majority of the case (family) members is assigned, if applicable. If an equal number of case (family) members are

assigned to different CoLTS MCOs and a majority cannot be identified, the member is assigned to a CoLTS MCO to which other case (family) members are assigned.

(b) **Newborn enrollment:** A newborn whose mother is a CoLTS MCO member will not be enrolled in CoLTS. The newborn would be enrolled in a managed care program for children/families, in this case, a Salud! MCO. The newborn may have to be temporarily in FFS medicaid until enrollment in managed care is complete.

(3) **Percentage-based assignment (assignment algorithm):** As determined by HSD, members who are not enrolled using the previous methods may be enrolled in a CoLTS MCO using a percentage-based assignment process. The percentage-based assignments for each CoLTS MCO may be determined based upon consideration of the CoLTS MCO's performance in areas such as quality assurance standards, encounter data submissions, reporting requirements, third party liability collections, marketing plan, community relations, coordination of services, grievance resolution, claims payment, price and consumer input.

D. **Begin date of enrollment:** Enrollment begins the first day of the first full month following selection or assignment, except if the member entered a nursing facility while enrolled with the medicaid fee-for-service program and both the member's nursing facility level of care and medicaid eligibility precede the first full month following selection. Retroactive eligibility is limited to a maximum of six months.

E. **Transitioning members, newly eligible members and expedited service requests:** For members newly eligible for medicaid services and not transitioning from an existing home and community-based waiver, PCO, nursing facility or SALUD!, the CoLTS MCO shall perform an assessment of the member's acute service, long-term service, behavioral health, and social support needs within the first 30 calendar days of enrollment. Authorized covered services shall be initiated within 14 calendar days following the assessment. If it is determined that the member has an emergent need for covered services, the state or its designee shall coordinate with the CoLTS MCO to have an assessment performed within seven business days and services initiated within seven calendar days following the assessment.

F. **Member lock-in:** Member enrollment in a CoLTS MCO runs for a 12-month cycle. During the first 90 days after a member initially selects or is assigned to a CoLTS MCO, the member shall have the option to choose a different CoLTS MCO to provide services during the member's remaining period of enrollment.

(1) If the member does not choose a different CoLTS MCO, the member will continue to receive services from the CoLTS MCO that provided the member's services during the first 90 days.

(2) If, during the member's first 90 days with a CoLTS MCO, the member chooses a different CoLTS MCO, the member will have a 90-day open enrollment period with the new CoLTS MCO.

(3) After exercising switching rights, and returning to a previously selected CoLTS MCO, the member shall remain with this CoLTS MCO until the 12-month lock-in period expires before being permitted to switch again.

(4) At the conclusion of the 12-month cycle, the member shall have the same choices offered at the time of initial enrollment. The member shall be notified of the expiration of the lock-in period and the deadline for choosing a new CoLTS MCO 60 days prior to the expiration date of the member's lock-in period.

(5) If a member loses medicaid eligibility for a period of six months or less, the member will be reenrolled automatically with the member's former CoLTS MCO, as long as a nursing facility level of care is in place or the member is a full benefit dual eligible. If the member misses the annual disenrollment opportunity during this six-month time period, the member may request to be assigned to another CoLTS MCO.

(6) Member disenrollment from CoLTS may occur to enroll in PACE.

G. **Member switch enrollment:** A member who is required to enroll in the coordination of long-term services program may request to be disenrolled from a CoLTS MCO and switch to another CoLTS MCO "for cause" at any time. The member or the member's representative shall make the request in writing to HSD. HSD shall review the request and furnish a written response to the member and the CoLTS MCO no later than the first day of the second month following the month in which the member or the member's representative files the request. If HSD fails to make a disenrollment determination so that the member may be disenrolled during this timeframe, the disenrollment is considered approved. A member who is denied disenrollment shall have access to HSD's fair hearing process. The following criteria shall be cause for disenrollment:

(1) continuity of service issues;

(2) family continuity;

(3) an administrative or data entry error in assigning a member to a CoLTS MCO;

(4) assignment of a member where travel for primary care exceeds community standards (90 percent of urban residents shall travel no further than 30 miles to see a primary care provider (PCP); 90 percent of rural residents shall travel no further than 45 miles to see a PCP; and 90 percent of frontier residents shall travel no further

than 60 miles to see a PCP); urban counties are: Bernalillo, Los Alamos, Santa Fe and Dona Ana; frontier counties are: Catron, Harding, DeBaca, Union, Guadalupe, Hidalgo, Socorro, Mora, Sierra, Lincoln, Torrance, Colfax, Quay, San Miguel and Cibola; rural counties are those which are not listed as urban or frontier;

(5) the member moves out of the CoLTS MCO service area;

(6) the CoLTS MCO does not, because of moral or religious objections, cover the service the member seeks;

(7) the member needs related services to be performed at the same time, but not all related services can be provided by the PCP and another service provider determines that receiving the services separately would subject the member to unnecessary risk; and

(8) other reasons, including but not limited to, poor quality of service, lack of access to services covered under the contract, or lack of access to service providers experienced in dealing with the member's health service needs.

H. **Exemption:** HSD shall grant exemptions to mandatory enrollment on a case-by-case basis. HSD shall grant exemptions to mandatory enrollment for medicaid managed care physical or behavioral health services for cause on a case-by-case basis. If the exemption is granted, the member shall receive their behavioral health services through the SE under the medicaid fee-for-service (FFS) program and his/her physical health services under the medicaid FFS program. A member or the member's representative shall request exemption in writing to HSD, describing the special circumstances that warrant an exemption. Alternatively, HSD may initiate an exemption on a case-by-case basis. Requests for exemption shall be evaluated by HSD clinical staff and forwarded to the medical assistance division medical director or designee for final determination. Members shall be notified of the disposition of exemption requests. A member requesting an exemption, who is not enrolled in the coordination of long-term services program at the time of the exemption request, shall remain exempt until a final determination is made. A member already enrolled in the coordination of long-term services program at the time of the exemption request shall remain in the program until a final determination is made. HSD shall review the request and furnish a written response to the member no later than the first day of the second month following the month in which the member files the request. If HSD fails to make a determination so that the member may become exempt within this timeframe, the exemption is considered approved. A member who is denied exemption shall have access to HSD's fair hearing process.

I. **Disenrollment, CoLTS MCO/SE initiated:** The CoLTS MCO/SE may request that a particular member be disenrolled from the coordination of long-term services program. Member disenrollment from a CoLTS MCO/SE shall be considered in rare circumstances. Disenrollment requests shall be made in writing to HSD. The request and supporting documentation shall meet HSD conditions stated below in Subsection I of 8.307.5.9 NMAC, *enrollment process*. The CoLTS MCO/SE shall not request disenrollment because of an adverse change in the member's health status or because of the member's utilization of medical services, diminished mental capacity, or uncooperative or disruptive behavior resulting from the member's special needs, except when the member's continued enrollment with the CoLTS MCO/SE seriously impairs the CoLTS MCO's/SE's ability to furnish services to either this particular member or other members. The CoLTS MCO/SE shall notify the member in writing of the disenrollment request at the same time the request is submitted to HSD. The CoLTS MCO/SE shall submit a copy of the member's notification letter to HSD. If the disenrollment is granted, the CoLTS MCO/SE retains responsibility for the member's services until the member is enrolled with another CoLTS MCO or exempted from the coordination of long-term services program. In the case of the SE, the member would be exempt from the SE medicaid managed care and would receive behavioral health benefits under the medicaid fee-for-service (FFS) program. The CoLTS MCO/SE shall assist with transition of care.

J. **Conditions under which a CoLTS MCO may request member disenrollment:** Conditions under which a CoLTS MCO/SE may request disenrollment are:

(1) the CoLTS MCO/SE demonstrates that a good faith effort has been made to accommodate the member and address the member's problems, but those efforts have been unsuccessful;

(2) the conduct of the member does not allow the CoLTS MCO/SE to safely or prudently provide medical or behavioral health services subject to the terms of the contract;

(3) the CoLTS MCO/SE has offered the member the opportunity in writing to use the grievance procedures; and

(4) the CoLTS MCO has received threats or attempts of intimidation from the member to the CoLTS MCO's/SE's service providers or staff.

K. **Re-enrollment limitations:** If a request for disenrollment is approved, the member shall not be reenrolled with the requesting CoLTS MCO for a period of time to be determined by HSD. The member and the requesting CoLTS MCO shall be notified by HSD of the period of disenrollment. If a member has been disenrolled

by all contracted CoLTS MCOs, HSD shall evaluate the member for medical management. In the case of the SE, the member would be exempt from the SE medicaid managed care and would receive behavioral health benefits under the medicaid fee-for-service (FFS) program.

L. **Date of disenrollment:** CoLTS MCO/SE enrollment, upon approval, shall terminate at the end of a calendar month.

M. **Retroactive enrollment:** A member who is no longer enrolled with a CoLTS MCO, whether in error or otherwise, shall be retroactively enrolled with the CoLTS MCO when:

(1) the member continues to meet nursing facility level of care continues to be a full benefit dual eligible;

(2) the member has been in a nursing facility level of care setting during the period of disenrollment; and

(3) medicaid eligibility has been determined retroactively; retroactive enrollment is limited to six months.

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

8.307.5.10 ENROLLMENT ROSTERS: The CoLTS MCO/SE shall receive a monthly roster with the aggregate number of members, member names, member addresses, member social security numbers, member rate cells and member capitation amounts.

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

8.307.5.11 MEMBER IDENTIFICATION CARD: The CoLTS MCO shall issue each member a member identification card with its contact information and the SE contact information, within 30 days of enrollment. The card shall be substantially the same as the card issued to commercial members. The card shall not contain information that identifies the member as a medicaid recipient, other than designations commonly used by the CoLTS MCOs to identify member benefits, such as group or plan numbers, to service providers.

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

8.307.5.12 MASS TRANSFER PROCESS: The mass transfer process is initiated when HSD determines that the transfer of members from one CoLTS MCO to another is appropriate.

A. **Triggering mass transfer process:** The mass transfer process may be triggered by two situations:

(1) a maintenance change, such as changes in CoLTS MCO identification number or name; and

(2) a significant change in CoLTS MCO contracting status, including but not limited to, loss of licensure, substandard service, fiscal insolvency or significant loss in network providers.

B. **Effective date of mass transfer:** The change in enrollment initiated by the mass transfer process begins with the first day of the month following the identification of the need to transfer CoLTS MCO members.

C. **Member selection period:** Following a mass transfer, CoLTS MCO members are given an opportunity to select a different CoLTS MCO.

D. **Mass transfer based on maintenance:** The mass transfer maintenance function may be triggered when a status change of the CoLTS MCO is transparent to the member. For instance, a change in the CoLTS MCO's medicaid identification number is a system change that requires a mass transfer but is not relevant to the member and service continues with the CoLTS MCO. Upon initiation of the maintenance function by HSD, members are automatically transferred to the prior CoLTS MCO experiencing the maintenance change.

E. **Mass transfer based on significant change in contracting status:** The mass transfer function is triggered when the CoLTS MCO's contract status changes and the change may be of significance to the member. Upon initiation of the mass transfer function by HSD, CoLTS MCO members are transferred to the "transfer to" CoLTS MCO and notice is sent to members informing them of the transfer and their opportunity to select a different CoLTS MCO.

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

8.307.5.13 COORDINATION OF LONG-TERM SERVICES AND SINGLE STATEWIDE ENTITY MARKETING GUIDELINES: When marketing to medicaid members, the CoLTS MCOs/SE shall follow these marketing guidelines:

A. **Minimum marketing and outreach requirements:** Marketing is defined as the act or process of promoting a business or commodity. Marketing and outreach materials must meet the following minimum requirements:

(1) marketing and outreach materials must meet requirements for all communication with members, as delineated in the quality standards (8.307.8.15 NMAC, *member bill of rights*) and incorporated into the coordination of long-term services contract;

(2) all marketing and outreach materials produced by the CoLTS MCOs/SE under the medicaid coordination of long-term services and behavioral health contracts shall state that such services are funded in part under contract with the state of New Mexico;

(3) marketing and outreach information provided to members shall be accurate, not misleading, and non-threatening;

(4) if there is a prevalent population of five percent in the CoLTS MCO/SE membership that has limited English proficiency, as identified by the CoLTS MCO/SE or HSD, marketing materials must be available in the language of the prevalent population; and

(5) other requirements specified by the state.

B. **Scope of marketing guidelines:** Marketing materials are defined as brochures and leaflets; newspaper, magazine, radio, television, billboard, and yellow page advertisement, and web site and presentation materials used by a CoLTS MCO/SE, CoLTS MCO/SE representative or CoLTS MCO/SE subcontractor to attract or retain medicaid enrollment. HSD or its designee may request, review and approve or disapprove any communication to any medicaid member. The CoLTS MCOs/SE are not restricted by HSD in their general communications to the public. HSD or its designee shall approve advertisements mailed to, distributed to, or aimed at medicaid members, and marketing material that mentions medicaid, medical assistance, Title XIX or makes reference to medicaid behavioral health services. The CoLTS MCO/SE shall notify HSD of significant format changes to advertisements. Examples of medicaid-specific materials would be those that:

(1) are in any way targeted to medicaid populations, such as billboards or bus posters disproportionately located in low-income neighborhoods;

(2) mention the CoLTS MCO's/SE medicaid product name; or

(3) contain language or information designed to attract medicaid enrollment.

C. **Advertising and marketing material:** The dissemination of medicaid-specific advertising and marketing materials, including materials disseminated by a subcontractor and information disseminated via the internet, requires the approval of HSD or its designee. In reviewing this information, HSD shall apply a variety of criteria.

(1) **Accuracy:** The content of the material must be accurate. Information deemed inaccurate shall be disallowed.

(2) **Misleading references to a CoLTS MCO's/SE strengths:** Misleading information shall not be allowed, even if it is accurate. For example, a CoLTS MCO/SE may seek to advertise that its health care and home and community-based services are free to medicaid members. HSD would not allow the language because it could be construed by members as being a particular advantage of the CoLTS MCO/SE. In other words, members might believe that they would have to pay for medicaid health services if they chose another CoLTS MCO/SE.

(3) **Threatening messages:** A CoLTS MCO/SE shall not imply that another CoLTS MCO/SE is endangering members' health status, personal dignity or the opportunity to succeed in various aspects of their lives. A CoLTS MCO may differentiate itself by promoting its legitimate strengths and positive attributes, but not by creating threatening implications about the mandatory assignment process or other aspects of the program.

D. **Marketing and outreach activities not permitted:** The following marketing and outreach activities are not permitted, regardless of the method of communication (oral, written or other) or whether the activity is performed by the CoLTS MCO/SE directly, its network providers, its subcontractors, or any other party affiliated with the CoLTS MCO/SE:

(1) asserting or implying that a member will lose medicaid benefits if he does not enroll with the CoLTS MCO or creating other scenarios that do not accurately depict the consequences of choosing a different CoLTS MCO;

(2) designing a marketing or outreach plan that discourages or encourages CoLTS MCO selection based on health status or risk;

(3) initiating an enrollment request on behalf of a member;

(4) making inaccurate, misleading or exaggerated statements;

(5) asserting or implying that the CoLTS MCO offers unique covered services where another CoLTS MCO provides the same or similar services;

(6) the use of more than nominal gifts to entice medicaid members to join a specific health plan;

(7) telemarketing or face-to-face marketing with potential members;

(8) conducting any other marketing activity prohibited by HSD or its designee;

(9) explicit direct marketing to members enrolled with other CoLTS MCOs unless the member requests the information;

(10) distributing any marketing materials without first obtaining the approval of HSD or its designee;

(11) seeking to influence enrollment in conjunction with the sale or offering of any private insurance; and

(12) engaging in door-to-door, telephone or other cold call marketing activities, directly or indirectly.

E. **Marketing in current service sites:** Promotional materials may be made available to members and potential CoLTS MCO/SE members at service delivery sites, including patient waiting areas, if HSD has prior approved the content. Face-to-face meetings at service delivery sites for the purpose of marketing to potential CoLTS MCO/SE members by CoLTS MCO/SE staff shall not be permitted.

F. **Provider communications with medicaid members about CoLTS MCO/SE options:** HSD marketing restrictions shall apply to CoLTS MCO/SE subcontractors and service providers, as well as to the CoLTS MCO/SE. The CoLTS MCO/SE is required to notify participating service providers of the HSD marketing restrictions, including providing a copy of these regulations. HSD shall not review yellow page ads of individual providers, unless specifically requested to do so.

G. **Member-initiated meetings with CoLTS MCO/SE staff prior to enrollment:** Face-to-face meetings requested by members are permitted. These meetings may occur at a mutually agreed upon site. All verbal interaction with members must be in compliance with the guidelines identified in these regulations.

H. **Mailings by the CoLTS MCO/SE:** CoLTS MCO/SE mailings shall be permitted in response to a member's oral or written request for information. The content of marketing or promotional mailings shall be prior approved by HSD or its designee. The CoLTS MCOs/SE may, with HSD approval, provide potential members with information regarding the CoLTS MCO/SE medicaid benefit package. The CoLTS MCOs/SE shall not send gifts, however nominal in value, in these mailings. The CoLTS MCOs/SE may send solicited and unsolicited mailings to members and potential members. Unsolicited mailings are defined as: newsletters; notices of outreach events and member services meetings; educational materials; and literature related to preventive medicine initiatives. HSD shall approve the content of mailings, except health education materials. The target audience of the mailings shall be prior approved by HSD or its designee.

I. **Group meetings:** The CoLTS MCO/SE may hold public meetings. HSD shall be furnished with notice of the meetings and shall prior approve any marketing materials to be presented. HSD, or its designee, shall approve the methodology used by the CoLTS MCO/SE to solicit attendance for public meetings. HSD or its designee may attend public meetings.

J. **Light refreshments for members at meetings:** The CoLTS MCO/SE may offer light refreshments at approved group meetings. The availability of food and beverages shall not be mentioned in advertisements for the meetings. Alcoholic beverages shall not be offered at meetings.

K. **Gifts, cash incentives or rebates to members:** The CoLTS MCO/SE and its service providers, with HSD approval, may disseminate marketing materials, including nominal gifts such as pens, keychains and magnets to potential members.

L. **Gifts to members at health milestones unrelated to enrollment:** Members may be given "rewards" for accessing services. Items that reinforce a member's healthy behavior, or that advertise the member services hotline or the member's PCP office telephone number are examples of "rewards". HSD shall approve gifts with a retail value of over $25.00. Health education videos may be provided.

M. **Marketing time frames:** The CoLTS MCOs/SE may initiate marketing and outreach activities at any time.

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

HISTORY OF 8.307.5 NMAC: [RESERVED]