

INDEX

8.325.7 PREGNANCY TERMINATION PROCEDURES

8.325.7.1 ISSUING AGENCY 1
8.325.7.2 SCOPE 1
8.325.7.3 STATUTORY AUTHORITY 1
8.325.7.4 DURATION 1
8.325.7.5 EFFECTIVE DATE 1
8.325.7.6 OBJECTIVE 1
8.325.7.7 DEFINITIONS 1
8.325.7.8 MISSION STATEMENT 1
8.325.7.9 PREGNANCY TERMINATION PROCEDURES 1
8.325.7.10 ELIGIBLE PROVIDERS 1
8.325.7.11 PROVIDER RESPONSIBILITIES: 1
8.325.7.12 COVERED SERVICES AND SERVICE LIMITATIONS 2
8.325.7.13 NONCOVERED SERVICES 2
8.325.7.14 PRIOR AUTHORIZATION AND UTILIZATION REVIEW 2
8.325.7.15 INFORMED CONSENT 3

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TITLE 8 SOCIAL SERVICES
CHAPTER 325 SPECIALTY SERVICES
PART 7 PREGNANCY TERMINATION PROCEDURES

8.325.7.1 ISSUING AGENCY: New Mexico Human Services Department.
 [2/1/95; 8.325.7.1 NMAC - Rn, 8 NMAC 4.MAD.000.1, 11/1/03]

8.325.7.2 SCOPE: The rule applies to the general public.
 [2/1/95; 8.325.7.2 NMAC - Rn, 8 NMAC 4.MAD.000.2, 11/1/03]

8.325.7.3 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).
 [2/1/95; 8.325.7.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 11/1/03]

8.325.7.4 DURATION: Permanent
 [2/1/95; 8.325.7.4 NMAC - Rn, 8 NMAC 4.MAD.000.4, 11/1/03]

8.325.7.5 EFFECTIVE DATE: May 1, 1995
 [5/1/95; 8.325.7.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 11/1/03]

8.325.7.6 OBJECTIVE: The objective of these regulations is to provide policies for the service portion of the New Mexico medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement.
 [2/1/95; 8.325.7.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 11/1/03]

8.325.7.7 DEFINITIONS: [RESERVED]

8.325.7.8 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.
 [2/1/95; 8.325.7.8 NMAC - Rn, 8 NMAC 4.MAD.002, 11/1/03]

8.325.7.9 PREGNANCY TERMINATION PROCEDURES: The New Mexico medical assistance program (medicaid) pays for services to terminate pregnancy only when certain conditions are met. This part describes the conditions, eligible providers, covered services, service limitations, and general reimbursement methodology.
 [5/1/95; 8.325.7.9 NMAC - Rn, 8 NMAC 4.MAD.766, 11/1/03]

8.325.7.10 ELIGIBLE PROVIDERS:

A. Upon approval of New Mexico medical assistance program provider participation agreements by the New Mexico medical assistance division (MAD), the following providers are eligible to be reimbursed for furnishing services to terminate pregnancy or counseling and mental health services.

B. Clinical providers:

(1) individuals licensed in New Mexico as physicians by the board of medical examiners or board of osteopathy;

(2) hospitals or clinics; and

(3) individuals licensed in New Mexico as physicians by the board of medical examiners or board of osteopathy and who are board certified in psychiatry, and/or the groups they form.

C. Once enrolled, approved providers receive a packet of information, including medicaid program policies, billing instructions, utilization review instructions and other pertinent material from MAD. Providers are responsible for ensuring that they receive and maintain these materials.

[5/1/95; 8.325.7.10 NMAC - Rn, 8 NMAC 4.MAD.766.1 & A, 11/1/03]

8.325.7.11 PROVIDER RESPONSIBILITIES:

A. Providers of pregnancy termination services must submit with their billing, the written certification of a physician that the procedure was necessary to save the life of the mother. In the case of rape or incest, the provider must submit with the billing, a certification by the treating physician and/or appropriate reporting agency as to the cause of the pregnancy, or a certification that the patient is not physically or emotionally able to report the incident.

B. Providers who furnish services to medicaid recipients must comply with all specified medicaid participation requirements. See 8.302.1 NMAC, *General Provider Policies*.

C. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance coverage.

D. Providers must maintain records that are sufficient to fully disclose the extent and nature of the services provided to recipients. See 8.302.1 NMAC, *General Provider Policies*.
[5/1/95; 8.325.7.11 NMAC - Rn, 8 NMAC 4.MAD.766.2 & A, 11/1/03]

8.325.7.12 COVERED SERVICES AND SERVICE LIMITATIONS:

A. Medicaid covers services to terminate pregnancy when the treating physician certifies that in their best medical judgment:

(1) the procedure is necessary to save the life of the mother as certified in writing by a physician;
(2) the pregnancy is a result of rape or incest, as certified by the treating physician and/or the appropriate reporting agency, or if not reported, the patient is not physically or emotionally able to report the incident; or

(3) the procedure is necessary to terminate an ectopic pregnancy; or
(4) the procedure is necessary because the pregnancy aggravates a pre-existing condition, makes treatment of a condition impossible, interferes with or hampers a diagnosis, or has a profound negative impact upon the physical or mental health of an individual.

B. **Psychological services:** Medicaid covers mental health services for pregnant women and for any other medical condition that may complicate the pregnancy. For information about mental health professional services, see 8.310.8 NMAC [MAD-717], *Mental Health Professional Services*. For information about other mental health services, see 8.310.3 NMAC [MAD-712], *Rural Health Clinic Services*; 8.310.4 NMAC [MAD-713], *Federally Qualified Health Center Services*; 8.311.4 NMAC [MAD-722], *Outpatient Psychiatric Services and Partial Hospitalization*; 8.315.3 NMAC [MAD-737], *Psychosocial Rehabilitation Services*; 8.320.2 NMAC [MAD-740], *Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services*; 8.320.3 NMAC [MAD-741], *Tot to Teen Healthcheck*; 8.321 NMAC [MAD-742], *Enhanced EPSDT-Residential Services*; 8.322 NMAC [MAD-745], *Enhanced EPSDT-Community Mental Health Services*; and 8.320.6 NMAC [MAD-747], *School Based Services for Recipients Under Twenty-One Years of Age*.

C. **Oral medications:** Medicaid covers oral medications approved by the food and drug administration (FDA) that have been determined a benefit by MAD for pregnancy termination. Medicaid will cover oral medications when administered by a physician, or by another licensed health care professional acting within the scope of their practice under New Mexico law. Oral medications will be covered for individuals meeting the coverage for termination procedures as defined in this part.
[5/1/95; 8.325.7.12 NMAC - Rn, 8 NMAC 4.MAD.766.3 & A, 11/1/03]

8.325.7.13 **NONCOVERED SERVICES:** Services to terminate a pregnancy are subject to the limitations and coverage of services which exist for other medicaid services. See 8.301.3 NMAC [MAD-602], *General Noncovered Services*. Medicaid does not cover the performance of 'elective' termination procedures.
[5/1/95; 8.325.7.13 NMAC - Rn, 8 NMAC 4.MAD.766.4 & A, 11/1/03]

8.325.7.14 **PRIOR AUTHORIZATION AND UTILIZATION REVIEW:** All medicaid services are subject to utilization review for medical necessity and program compliance. Reviews may be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC [MAD-705], *Prior Approval and Utilization Review*. Once enrolled, providers receive instructions and documentation forms necessary for prior approval and claims processing.

A. **Prior authorization:** Services to terminate pregnancy do not require prior authorization from MAD or its designee.

B. **Eligibility determination:** Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance.

C. **Reconsideration:** Providers who disagree with review decisions can request a re-review and reconsideration. See 8.350.2 NMAC [MAD-953], *Reconsideration of Utilization Review Decisions*. [5/1/95; 8.325.7.14 NMAC - Rn, 8 NMAC 4.MAD.766.5 & A, 11/1/03]

8.325.7.15 INFORMED CONSENT:

A. The provider may not require any individual to undergo any medical service, diagnosis, or treatment or to accept any other health service provided under the plan if the individual objects, or in the case of a child, a parent or guardian objects, on religious grounds. Voluntary, informed consent by an adult or emancipated minor recipient must be given to the provider prior to the procedure to terminate pregnancy, except in the following circumstances:

(1) in instances where a medical emergency exists. A 'medical emergency' exists in situations where the attending physician certifies that, based on the facts of the case presented, in his/her best clinical judgment, the life or the health of the recipient is endangered by the pregnancy so as to require an immediate pregnancy termination procedure;

(2) in instances where the recipient is unconscious, incapacitated, or otherwise incapable of giving consent. In such circumstances, the consent shall be obtained as prescribed by New Mexico law; or

(3) in instances where pregnancy results from rape or incest or the continuation of the pregnancy endangers the life of the recipient;

(4) consent is valid for thirty (30) days from the date of signature, unless withdrawn by the recipient prior to the procedure.

B. **Required acknowledgements:** In signing the consent, the recipient must acknowledge that she has received, at least, the following information:

(1) alternatives to pregnancy termination;

(2) medical procedure(s) to be used;

(3) possibility of physical and/or mental side effects from the performance of the procedure;

(4) right to receive abortion counseling services from an independent medicaid provider; and

(5) right to withdraw consent up until the time the procedure is going to be performed.

C. **Record retention:** A dated and signed copy of the consent, with counseling referral information, if requested, must be given to the recipient. The provider must keep the original signed consent with the recipient's medical records.

D. **Consent for minors in instances not involving life endangerment, rape or incest:** Informed written consent for an un-emancipated minor to terminate a pregnancy must be obtained, dated and signed by a parent, legal guardian, or other acting 'in loco parentis' to the minor. An exception is when the minor objects to parental involvement for personal reasons or the parent, guardian or adult acting 'in loco parentis' is not available. The treating physician shall note the minor's objections or the unavailability of the parent in the minor's chart, and:

(1) certify in his/her best clinical judgment, the minor is mature enough and well enough informed to make the decision about the procedure: or, in the circumstance where sufficient maturity and information are not present or apparent, that the procedure is in the minor's best interests on the information provided to the treating physician by the minor; or,

(2) refer the minor to an independent medicaid counselor in circumstances where the treating physician believes counseling is necessary before a clinical judgment can be rendered on the criteria established in Paragraph (1) above. Referrals shall be made on the same day of the visit between the minor and the treating physician where consent is discussed. The independent medicaid counselor shall meet with the minor and confirm in writing to the treating physician whether or not the minor is mature enough and sufficiently informed to make the decision about the procedure. Or, in the circumstance where sufficient maturity and information are not present or apparent, that the procedure is in the minor's best interests based on the information provided to the counselor by the minor. The counselor's written report is due to the treating physician within 72 hours of initial referral.

(3) a minor shall not be required to obtain the counseling referenced in Paragraph (2) above. However, if the treating physician is unable or unwilling to independently certify the requirements established in Paragraph (1) above, the minor must be informed by the treating physician that written consent must be obtained by the parent, legal guardian or parent 'in loco parentis' prior to performing the procedure; or, that the minor must obtain a court order allowing the procedure without parental consent.

E. **Reimbursement:** Medical providers must submit claims for reimbursement on the HCFA 1500 or UB92 claim forms or their successors, based on provider type. See 8.302.2 NMAC [MAD-702], *Billing for Medicaid Services*. A copy of the certification, and any other required documentation, must be retained by the provider in the recipient's medical record. Instructions on documentation, billing, and claims processing are sent to

approved medicaid providers. Reimbursement for the performance of services to terminate pregnancy is made at the lesser of the following:

- (1) the provider's billed charge; or
- (2) the MAD fee schedule for the specific service or procedure.
 - (a) The provider's billed charge must be the usual and customary charge for services.
 - (b) "Usual and customary charge" refers to the amount which an individual provider charges

the general public in the majority of cases for a specific procedure or service.

[5/1/95; 8.325.7.15 NMAC - Rn, 8 NMAC 4.MAD.766.6 & A, 11/1/03]

HISTORY OF 8.325.7 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

ISD 310.0100, Physician Services, filed 1/9/80.

ISD 310.0100, Physician Services, filed 6/16/80.

ISD 310.0100, Physician Services, filed 4/2/82.

ISD-Rule 310.0100, Physician Services, filed 9/2/83.

ISD Rule-310.0100, Physician Services, filed 3/30/84.

ISD Rule-310.0100, Physician Services, filed 4/26/84.

ISD Rule-310.0100, Physician Services, filed 2/25/86.

MAD Rule 310.01, Physician Services, filed 12/15/87.

MAD Rule 310.01, Physician Services, filed 4/27/88.

MAD Rule 310.01, Physician Services, filed 4/20/92.

MAD Rule 310.01, Physician Services, filed 3/10/94.

MAD Rule 766, Pregnancy Termination Procedures, filed 11/30/94.

History of Repealed Material:

MAD Rule 310.01, Physician Services, filed 3/10/94 - Repealed effective 2/1/95 and 5/1/95.