



State of New Mexico  
Human Services Department  
Human Services Register



**I. DEPARTMENT**  
NEW MEXICO HUMAN SERVICES DEPARTMENT

**II. SUBJECT**  
8.314.7 NMAC, LONG TERM CARE SERVICES – WAIVERS,  
SUPPORTS WAIVER

**III. PROGRAM AFFECTED**  
(TITLE XIX) MEDICAID

**IV. ACTION**  
FINAL RULE

**V. BACKGROUND SUMMARY**

New Mexico Human Services Register Volume 43, Register 15, dated August 25, 2020, issued the proposed rule, 8.314.7 NMAC, *Long Term Care Services – Waivers, Supports Waiver*.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: August 25, 2020

Hearing Date: September 28, 2020

Adoption Date: April 1, 2021

Technical Citations: 42 CFR Chapter IV Subchapter C.

A public hearing was held on September 28, 2020 to receive public comments and testimony on this proposed rule. The Human Services Department (the Department) received no verbal comments and one set of written comments. This rule is being implemented as proposed.

**Summary of Comments**

**Comment:** Description of EOR

To accurately represent the scope of the EOR, it is recommended that the following is added to 8.314.7.7, subsection L, EOR definition : *An EOR must be the waiver participant or an* EOR must be a legal representative of the recipient.

**Department's Response:** HSD accepts this recommendation.

**Comment:** Scope of Legal Representative

To allow more flexibility if a court document does not speak to access, delete the last sentence in definition section, subsection Q: "The legal representative will have access to the eligible recipient's medical and financial information to the extent authorized in the official court document."

**Department's Response:** HSD accepts this recommendation.

**Comment:** Scope of Participant Directed

To provide detail regarding the employees and vendors in the Participant Directed Service Model, expand the description in definitions section, subsection S to say: "Supports waiver service delivery model wherein the eligible recipient identifies, accesses and manages *the employees and vendors of* services, among the state-determined waiver services and goods, that meet their assessed therapeutic, rehabilitative, habilitative, health or safety needs to support the eligible recipient to remain in their community."

**Department's Response:** HSD accepts this recommendation.

**Comment:** Participant Responsibilities

In order to align with the purpose of the limitation to address conflict of interest between DD, MI Via and Supports Waivers (Med Frag is not being considered here), remove and replace with the following clarifying language in Section 8.314.7.12, subsection D: "The CSC agency may not provide any direct support services through *any other type of 1915 (c) developmental disabilities waiver program.*"

**Department's Response:** HSD accepts this recommendation.

**Comment:** Relatives and legal guardians and limitations for the hire of approved relatives/legal guardians

In order to align the NMAC with the Supports Waiver application language, it is recommended that the following clarifying language be added to Section 8.314.7.13, subsection C (3): Qualified and approved relatives *and legal guardians* may be hired as employees and paid for the provision of supports waiver services except for CSC services, customized community supports group services, nonmedical transportation services for a minor, environmental modifications services, vehicle modifications services, behavior support consultation services, *assistive technology and employment supports.*

*Spouse may not provide transportation service for adult participants. A relative/legal guardian may not provide services that the legally responsible individual would ordinarily perform in the household for individuals of the same age who did not have a disability or chronic illness.*

**Department's Response:** HSD accepts this recommendation.

**Comment:** Monitoring in bedroom and bathrooms

In order to comply with CMS requirements, it is required that the following be added to Section 8.314.7.14, subsection B: *No remote monitoring is allowed to be placed in participant bedrooms or bathrooms.*

**Department's Response:** HSD accepts this recommendation; however, it is already included in this section.

**Comment:** Personal Care Training Requirements

In order to clarify training requirements, it is recommended that the following clarifying language should be added to Section 8.314.7.14, subsection I: The eligible recipient identifies the personal care direct support worker's training needs *through the ISP in addition to required training*, and, if the eligible recipient *or employer of record for the participant directed service model or agency* is unable to do the training for themselves, the eligible recipient *or employer of record for the participant directed service model or agency* arranges for the needed training.

**Department's Response:** HSD accepts this recommendation.

**Comment:** Scope of Respite Services

In order to align with the language in the approved Supports Waiver application, it is recommended that the following language be removed in Section 8.314.7.14, subsection L as it is not in the waiver application: "...or at a center in which other individuals are provided care."

**Department's Response:** HSD accepts this recommendation.

## VI. RULES

These amendments will be contained in 8.314.7 NMAC. The final register and rule languages are available on the HSD website at:

<https://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and <https://www.hsd.state.nm.us/LookingForInformation/medical-assistance-division-1.aspx>. If you do not have internet access, a copy of the final register and rules may be requested by contacting the Medical Assistance Division at (505) 827-1337.

## VII. EFFECTIVE DATE

This rule will have an effective date of April 1, 2021.

### VIII. PUBLICATION

Publication of this rule approved by:

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*David R. Scrase, M.D.*

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DAVID R. SCRASE, M.D., SECRETARY  
HUMAN SERVICES DEPARTMENT

