



State of New Mexico
Health Care Authority
Human Services Register



HEALTH CARE
AUTHORITY

I. DEPARTMENT
NEW MEXICO HEALTH CARE AUTHORITY

II. SUBJECT
8.325.12 NMAC, SPECIALTY SERVICES, MEDICATION ASSISTED
TREATMENT SERVICES IN CORRECTIONAL SETTINGS

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
FINAL RULE

V. BACKGROUND SUMMARY

The New Mexico Health Care Authority Register Volume 47, Register 4, dated April 4, 2024, issued the proposed New Mexico Administrative Code (NMAC) rule 8.325.12, *Specialty Services, Medication Assisted Treatment Services in Correctional Settings*. The rule was created to provide guidance and requirements for delivery of substance use disorder treatment and reentry services for persons diagnosed with substance use disorder in correctional facilities.

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: April 9, 2024

Hearing Date: May 9, 2024

Adoption Date: September 1, 2024

Technical Citations: Pursuant to NMSA 1978, §24-1-5.11

A public hearing was held on May 9, 2024, to receive public comments and testimony on this proposed rule. Public comments were also directed to the Health Care Authority (the Department) in writing during the public comment period from April 9, 2024, to May 9, 2024. Below is a table detailing the public comments received by the Department during the public comment period as well as the Department's responses to the public comments. The final rule has been revised based upon recommendations from public comments that were accepted by the Department.

HCA Response to Public Comments on NMAC 8.325.12 MEDICATION ASSISTED TREATMENT SERVICES IN CORRECTIONAL SETTINGS

RULE SECTION	RULE LANGUAGE EXCERPT	COMMENTS SUMMARY	HCA RESPONSE
8.325.12.5 - EFFECTIVE DATE	EFFECTIVE DATE	7 Commenters requested moving up and/or clarifying the Effective Date.	The Effective Date on Rule will read: "Within 90 Days of Promulgation of the Rule"
8.325.12.7 - DEFINITIONS	Additional Definitions	1 Commenter requested adding definitions for the terms, "Incarceration" and "individualized treatment plan"	We respectfully decline the recommendation. The additional definitions are not necessary for the purpose of the rule.
	Definition of Clinical Assessment	1 Commenter suggested revision to the definition of Clinical Assessment appearing in the final rule.	We respectfully decline the recommendation. The revision of this definition language is not necessary for the purpose of the rule.
	Definition of Community Based Provider	1 Commenter suggested revision to the definition of Community Based Provider as follows: "An entity that provides substance use disorder (SUD) treatment services in the community in addition to a correctional facility."	We accept the recommendation on language revision and will revise the final rule.
	Definition of Correctional Facility	4 Commenters suggested revisions to the definition of Correctional Facility appearing in the final rule.	We respectfully decline the proposed revisions and will retain the definition of Correctional Facility as it appears in statute (NMSA 1978, 24-1-5.11)
	Definition of County Detention Facility	2 Commenters suggested revisions to the definition of County Detention Facility (One commenter proposed inclusion of juvenile facilities in the definition and another commenter proposed limiting the definition to those county detention facilities who receive funding from the "medication-assisted treatment for the incarcerated fund" cited in the Statute.	We respectfully decline the proposed revisions and will retain the definition of Correctional Facility as it appears in statute, inclusive of detention facilities (NMSA 1978, 24-1-5.11)
	Definition of Discharge Planning	1 Commenter suggested alignment of terms "Discharge Planning" and "Discharge Services" throughout the final rule.	We accept the recommendation on language revision and will revise the final rule.

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	Definition of Healthcare Practitioner	1 Commenter suggested revision to definition to assure most inclusive language.	We respectfully decline the recommendation. The language for this definition in the proposed rule is sufficiently inclusive.
	Definition of Medication Assisted Treatment	2 Commenters suggested that the definition of MAT in Rule be aligned with the definition that appears in Statute, (removing the language, "in combination with counseling and behavioral therapies"). The second commenter also suggested using a new acronym.	We accept the recommendation to align the MAT definition in the proposed rule with what appears in Statute ((NMSA 24-1-5.11) and we will revise the final rule accordingly. However, we will maintain the nationally accepted acronym, "Medication-Assisted Treatment"
	Definition of Opioid Use Disorder	1 Commenter suggested removing the final sentence, "OUD is a chronic condition."	We accept the recommendation on language revision and will revise the final rule.
	Definition of Substance Use Disorder Treatment	1 Commenter suggested revision to definition to assure most inclusive language.	We respectfully decline the recommendation. The language for this definition in the proposed rule is sufficiently inclusive.
	Definition of Tapering Guidelines	1 Commenter suggested revision to the definition of Tapering Guidelines, adding the words "Guidance for ..." to the beginning of the definition.	We accept the recommendation on language revision and will revise the final rule.
	Definition of Withdrawal Management	1 Commenter suggested removing the following from the definition in the rule: "... detoxing..."	We accept the recommendation on language revision and will revise the final rule.
8.325.12.9-Program Required Elements	General	2 Commenters suggest that the rule language should not be limited to MAT for Opioid Use Disorder (OUD) and should be expanded to include other substance use disorders, such as alcohol and stimulants.	We respectfully decline the recommendation. The language will remain as it appears in the proposed rule.
	A. Identification of the type of treatment	2 Commenters suggest adding language in the rule reflecting an option that is included in recently revised federal regulation, allowing	We respectfully decline the recommendation. The "hospital" exception would allow for correctional facility to

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	service delivery model(s) to be used by the correctional facility's treatment programs (9A)	correctional facilities to dispense methadone without having to become a federally approved OTP (using a 'hospital' exception to federal OTP regulation)	dispense methadone but only in cases where the opioid use disorder is secondary diagnosis to a primary medical diagnosis.
	B. Screening and Referral to Assessment (9B)	2 Commenters suggest placing specific minimum timeline within which screening and assessments will be completed.	We respectfully decline the recommendation. Timelines for screening and assessment are better addressed in facility-based policies and procedures.
Include language to ensure appropriately qualified medical personnel are responsible for key aspects of screening, assessment and referral		We respectfully decline the recommendation. The language in the proposed rule is sufficient.	
4 Commenters recommended adding the clarification of terms “evidence-based” to practice and tools cited in this rule section.		We accept the recommendation and will revise the final rule accordingly, replacing the clause, “follow best practice and accepted general SUD guidelines” with <i>“evidence-based practices consistent with current scientifically-based and validated tools, protocols, or guidance for SUD treatment and services.”</i>	
3 Commenters recommended additional descriptive language specifying “appropriately qualified medical personnel ...” providing screening, assessment and referral		We respectfully decline the recommendation. The language in the section will remain as it appears in the proposed rule.	
1 Commenter recommended removing the term “cessation” from 9B(2)(b)		We accept the recommendation and will revise the final rule removing the term, “cessation.”	
C. MAT/MOUD Medications		1 Commenter recommended adding language to final rule regarding the determination of	We respectfully decline the recommendation. That level of specificity of

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		medication dosage at initiation and/or maintenance.	program guidance is more effectively addressed in policies and procedures.
		1 Commenter suggested that the collapsing of the two terms, MAT and MOUD, in a single heading as appears in the final rule, will cause confusion.	We respectfully decline the suggestion to separate the terms in the sub-title of the final rule.
		5 Commenters expressed concerns regarding the final clause in line, 9C.(3), "... taking into consideration security, health and safety level, and community resource availability...", requesting that the clause be removed or revised.	After consideration, we have decided to proceed with the language as proposed as the language places the medical decision with the healthcare provider and participant.
		1 Commenter recommended replacing the word, "shall" with "may", with regard to the transfer from one medication to another, in line 9C.(3)a.	We accept the recommendation and will revise the final rule accordingly, replacing "shall" with "may."
		1 Commenter recommended revision to 9C.(3)(a)(i) and (ii), describing the process whereby a patient transfers from one medication to another: (C)(3)(a)(i) "the new medication is deemed medically necessary by a qualified healthcare practitioner and the program participant consents to the change" and (C)(3)(a)(ii) "the program participant elects to commence the new medication, the new medication is FDA-approved to treat the program participant's SUD, and a qualified healthcare practitioner does not identify any absolute contraindication to the change."	We accept the recommendation on language revision and will revise the final rule as described.
		1 Commenter recommended additional language defining minimum timeframes within which services will be provided to patients.	We respectfully decline the recommendation. That level of specificity of program guidance is more effectively addressed in policies and procedures.
		1 Commenter recommended that the language describing annual assessment of program	We accept the recommendation and will revise the final rule accordingly.

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		<p>participants by healthcare providers (9C.(5)) be revised as follows: Replace the term “progress on” with “response to”, and replace “direct that” with “recommend that” to align with both clinical and patient-centered cared standards</p>	
	<p>D. Therapeutic Services</p>	<p>4 Commenters expressed concerns regarding language around the provision of behavioral health (counseling) services for MOUD patients (9D(2)), given that federal regulations no longer mandate that delivery of medication be contingent upon delivery of behavioral health services.</p>	<p>After consideration, we have decided to proceed with the language as proposed as the language does make it clear treatment services shall not be withheld if counseling services are not available.</p>
		<p>1 Commenter recommended revising language to assure that program participant’s engagement with peer support services (9D(3)) would be voluntary.</p>	<p>We accept the recommendation and will revise the final rule with the following language: “Service delivery <i>shall offer</i> engagement with peer support workers ...”</p>
	<p>E. Reentry Services</p>	<p>4 Commenters recommended revisions to the Reentry section of the final rule:</p> <ul style="list-style-type: none"> i. Increased specificity with regard to guidelines for initiation of reentry planning ii. Specific language related to entities employing or overseeing qualified peer support workers iii. Increased specificity on engagement of peer support workers; iv. Consider consolidation of 9E.(3) with 9E.(4), given that any individual who meets criteria to receive MAT should be referred to a community-based provider upon release, independently of whether they received MAT while incarcerated 	<p>We respectfully decline the recommendations on revision given that NMCD has existing policies in place to address these concerns.</p> <p>Further, as regards affiliation with MCOs, the 1115 waiver, if approved, will help address this issue. If 1115 waiver is not approved, the JUSTHealth Program within Medicaid allows for these needs to be addressed.</p>

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		<ul style="list-style-type: none"> v. Include specification of naloxone distribution upon release vi. Add Harm Reduction and Legal Services to list of referrals vii. Reference affiliation with MCOs 	
	F. Transitional Services	1 Commenter recommended inclusion of guidance in the rule regarding transmission of the participant’s medical record (timely, HIPAA compliant, etc).	We respectfully decline the recommendation. That level of specificity of program guidance is more effectively addressed in policies and procedures.
		3 Commenters recommended including specific language in the rule regarding provision of medication supply upon release	We respectfully decline the recommendation.
		1 Commenter recommended expanding 9F(2)(c) to include recently approved OPVEE (Nalmefane or equivalent) opioid reversal agents and also Vivitrol if regulation is intended to apply to AUD.	We respectfully decline the recommendation.
		1 Commenter recommended that the rule include language in the program required elements encompass- all current and future medication options for the treatment of substance use disorders and are not confined solely to MOUD.	We respectfully decline the recommendation.
		4 Commenters expressed concerns regarding the language describing participants’ transition back into community (9F.(4)), requesting revisions to and/or removal of the language altogether.	We accept the recommendation of replacing the word “shall” with “may”, and will revise the final rule as follows: <i>“Program participants who are transitioning to a community or region that does not have resources available to continue treatment may receive supervised clinical taper from MOUD ...”</i>
	G. Program participant safeguards	4 Commenters expressed concerns regarding the circumstances under which a participant may be denied MAT/MOUD services as a result of disciplinary action. The commenters specifically called for the removal of the final clause of	The language in the final rule will appear as follows: "MAT/MOUD services shall not be denied to any eligible program participant as a form of disciplinary action unless that action

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		9G.(5), "unless that action is related to program participation or program abuse ..."	is related to the abuse or misuse of the program's prescribed medication."
8.325.12.10- Policies and Procedures	B. Policy, Procedure and Guidelines Categories	1 Commenter recommended clarification on the meaning of "addressing consequential strategies for diversion"	We respectfully decline the recommendation. The language will remain as it appeared in the proposed rule.
		1 Commenter requested confirmation of reference in rule: NMSA1978 Subsection 31.3.11.	We have confirmed that the statutory reference in the proposed rule is correct.
		1 Commenter expressed concern regarding screening for needs around withdrawal management, recommending that language be amended to make clear that policies and procedures for withdrawal management must encompass withdrawal from substances other than opioids, as well regardless of whether it occurs in conjunction with withdrawal from opioids.	We respectfully decline the recommendation on language revision. NMCD may already have established protocol regarding withdrawal management.
8.325.12.11- STAFFING, ADMINISTRATION AND EDUCATION	C. Trainings and Technical Assistance	1 Commenter expressed concern regarding individual correctional facilities being directed to provide trainings and technical assistance	We respectfully decline the recommendation. NMCD will be managing training and technical assistance for the program on a Department level.
		1 Commenter recommended that the rule specifically state that the trainings will be directed to both correctional and clinical staff, as well as stating that the trainings will be offered annually as well as part of onboarding	We respectfully decline the recommendation. The language in the proposed rule is sufficient and NMCD will establish more prescriptive language in their policies and procedures.
8.325.12.12- PROGRAM REPORTING AND EVALUATION	A. Reporting to interim legislative health and human services committee	1 Commenter recommended that the annual report should be required to be in writing.	We respectfully decline the recommendation.
	B. Annual Reports from NMCD to HCA	1 Commenter recommended greater specificity regarding the provision of annual reports, given that the current language does not determine to whom the reports will be submitted and what	We respectfully decline the recommendation and will work directly with NMCD to determine the content and procedures regarding reporting.

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		<p>data elements or information are being reported. The proposed rule does not clearly define the procedures of reporting.</p>	
		<p>1 Commenter recommended that the rule should clearly enumerate required elements of the reporting for each level referenced: HSD to State Legislature, Corrections to HSD, and County Detention Centers (does not include to whom County Corrections will report) to include demographic information sufficient to identify any inequities in treatment access or outcomes within correctional facilities as well as data on treatment discontinuation to include the reasons behind the discontinuation.</p>	<p>We respectfully decline the recommendation to include this specificity in the rule. We will refer to the suggestions as we work directly with NMCD to better define program evaluation variables moving forward.</p>
	<p>C. County correctional facilities</p>	<p>1 Commenter recommended replacing the term, “correctional” with “detention.”</p>	<p>We accept the recommendation and will revise the final rule accordingly.</p>
	<p>D. Evaluation</p>	<p>1 Commentator recommended greater specificity and definition of measures of evaluation, such as rates of opioid overdose mortality on reentry before and after correctional MAT program implementation, behavior infractions, recidivism rates, HIV and Hep C treatment rates, and program participant demographics.</p>	<p>We respectfully decline the recommendation to include this specificity in the rule. We will refer to the suggestions as we work directly with NMCD to better define program evaluation variables moving forward.</p>
OTHER	OTHER	<p>1 Commenter recommended reinforcing the voluntariness of all program services: “correctional facilities SHALL offer medication-assisted treatment to all persons who are incarcerated ...” and eliminate the term “qualified.”</p>	<p>We respectfully decline the recommendation as the language in the rule is drawn directly from the statute, with service delivery to be directed to those, “in need of medication-assisted treatment.”</p>
		<p>2 Commenters stated that the rule as it applies to County Detention Centers is in violation of NM Constitution (Article X Section 8) by seeking to impose an unfunded mandate on counties.</p>	<p>We decline to make changes in response to these comments as the rule properly implements 24-1-5.11 NMSA 1978. We understand that funding may be required to</p>

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			effectuate MAT/MOUD programs at the county level.
		1 Commenter stated that the term “healthcare provider” is included in the rule but not defined.	We accept the recommendation and will assure language consistency throughout the final rule with the term, “healthcare practitioner.”
		2 Commenters stated that “Program Participant” is not used consistently throughout the rule	We accept the recommendation and will assure language consistency throughout the final rule with the term, “Program Participant.”
		1 Commenter stated that Legislature did not appropriate any money to the MAT for Incarcerated Persons Fund referenced in the statute, and Detention Centers have no other resource though HCA could reimburse counties for the cost of MAT programs.	There is no recommendation for rule revision in this comment. The decision to remove the allocation from the legislative bill (SB0425) took place prior to the bill being passed by state legislature and signed into law by the Governor
		1 Commenter stated that the proposed rule could deter counties from offering MAT programs by increasing the cost of doing so and reducing their flexibility in establishing programs that meet their budgetary and other constraints.	There is no recommendation for rule revision in this comment.
		1 Commenter recommended that the rule include language requiring that correctional facilities submit their standing operating procedures and policy documents for review and comment by HCA to ensure substantial compliance with the Rule. Lastly, the Department should outline in the Rule the consequences for non-compliance with its provisions.	We respectfully decline this recommendation. We will work collaboratively with NMCD to review and inform their development of operating procedures and policy documents to assure compliance with the final rule provisions.
		1 Commenter pointed out that the rule pages were labeled incorrectly (8.314.7 NMAC, rather than 8.325.12)	We will revise the rule footer to reflect the correct NMAC rule number.

VI. RULE

These amendments will be contained in 8.325.12 NMAC. The final register and rule language is available on the New Mexico Medicaid website at:

<https://www.hsd.state.nm.us/lookingforinformation/registers/> and

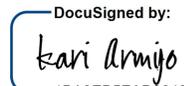
<https://www.hca.nm.gov/providers/rules-nm-administrative-code/>. If you do not have internet access, a copy of the final register and rules may be requested by contacting the Medical Assistance Division at (505) 827-1337.

VII. EFFECTIVE DATE

This rule will have an effective date of September 1, 2024

VIII. PUBLICATION

Publication of this rule is approved by:

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KARI ARMIJO, SECRETARY
HEALTH CARE AUTHORITY