

May 29, 2018

The Human Services Department (the Department), Medical Assistance Division (MAD), is amending the following rule that is part of the New Mexico Administrative Code (NMAC): 8.314.6, Long Term Care Services – Waivers, Mi Via Home and Community Based Services 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: May 29, 2018

Hearing Date: June 28, 2018

Adoption Date: Proposed as September 1, 2018

Technical Citations: 42 CFR 438 subparts A through J

On April 11, 2017, the Department received approval from the Centers for Medicare and Medicaid Services (CMS) of an amendment to the Mi Via 1915 (c) Home and Community-Based (HCBS) waiver with an effective date of April 15, 2017. The rule is being amended to align services and definitions with the approved amendment and the CMS HCBS Settings Final Rule.

Throughout the rule

Language updated to clarify that a recipient may be his or her own Employer of Record (EOR) unless the recipient is a minor or has a plenary or limited guardianship or conservatorship over financial matters in place.

Section 8

This section is updated to align the program mission statement with the Human Services Department mission statement.

Section 11

Subsection A - Requirements for independent contractors are updated to clarify that an individual seeking to provide services as an independent contractor must submit the nature of services questionnaire and be determined by the Financial Management Agent (FMA) to be an independent contractor.

Subsection B - General Qualifications for employees are updated to include four additional required background screenings; clarification added that a Legally Responsible Individual (LRI) may not be paid to provide transportation services for a minor or individual directed goods and services; requirement of an EOR questionnaire is added; and clarifying language regarding EOR responsibilities is added.

Subsection E- Language added to clarify responsibilities and roles of in-home living supports providers.

Subsection H- Language added to identify vendors for individual directed goods and services.

Section 14

This section is updated to include EOR responsibility to submit Mi Via employee timesheets online, unless exempted by HSD.

Section 15

This section is updated to align with the CMS HCBS Settings Final Rule. Language has been added clarifying the recipient's right to privacy, dignity, and respect as well as freedom from coercion and restraint.

Subsection C – Conflict of interest is updated to align with Code of Federal Regulations (CFR) requirements.

Subsection E – Language added to clarify the setting in which living supports may be provided. Home health aide services covered under the waiver are clarified to differ in nature and scope from those in the State Plan.

Subsection H – Scope of transportation service and respite services is aligned with the approved Mi Via Waiver. The restriction disallowing transportation for minors is removed. Language added to clarify the scope of respite services. Related goods is renamed Individual Directed Goods and Services and the scope of this service is aligned with the approved Mi Via Waiver.

Section 16

Subsection G – Language is added to clarify goods and services considered recreational and diversional in nature.

Subsection T – Language is added to specify adaptive clothing or accessories.

Section 17

Subsection B – Language is added to clarify that waiver rates are defined in the Mi Via waiver and approved by CMS. Requirements for requesting an exception to the approved range of rates is added.

Subsection F – Language is clarified that additional funding is service specific.

Subsection G – Language updated that the FMA will issue payments to employees, vendor, and for individual directed goods and services.

Subsection H – Timeline for the Third Party Assessor review of Service and Support plan and annual budget submissions is updated.

The register for these proposed amendments to this rule will be available May 29, 2018 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD in Santa Fe at 505-827-6252.

The Department proposes to implement these rules effective September 1, 2018. A public hearing to receive testimony on this rule will be held in the Rio Grande Conference Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico, 87505 on June 28, 2018 from 10:30 a.m. to 11:30 a.m., Mountain Daylight Time (MDT).

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to madrules@state.nm.us. Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. MDT, June 28, 2018.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-6252. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.