Michelle Lujan Grisham, Governor
David R. Scrase, M.D., Secretary
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March 9, 2021

Interested Parties:

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the following New Mexico Administrative Code (NMAC) rules: 8.308.6 NMAC, *Managed Care Program, Eligibility*, 8.308.7 NMAC, *Managed Care Program, Enrollment and Disenrollment*, 8.310.2 NMAC, *Health Care Professional Services, General Benefit Description*, and 8.321.2 NMAC, *Specialized Behavioral Health Services, Specialized Behavioral Health Provider Enrollment and Reimbursement*.

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: March 9, 2021
Hearing Date: April 8, 2021
Adoption Date: Proposed as July 1, 2021
Technical Citations: (42 CFR §438.12, 42 CFR §438.14, 42 CFR §438.214)

The Department is proposing to amend the rules as follows:

8.308.6 NMAC

Section 8
Amended to include the Department's current mission statement.

Section 9, Subsection B
Amended to add an additional managed care exclusion. Residents in an intermediate care facility for individuals with intellectual disabilities (ICF/IID) are excluded from managed care enrollment.

Section 10, Subsection C
A new Subsection C was added regarding discharge from an ICF/IID. When an ICF/IID resident is discharged, enrollment into managed care will begin 60 days after discharge.

8.308.7 NMAC

Section 8
Amended to include the Departments current mission statement.

Section 9, Subsection C
(**1,a**) New language added to clarify that an individual must be eligible for reenrollment into a

previous MCO prior to auto assignment into that MCO.

Section 9, Subsection F
(3) The notification period of the option to switch MCOs has been changed from 60 days to two months.

Section 9, Subsection I
(2) Language revised to clarify where switch requests may be submitted and to update name of the Human Services Department's customer service center.

(2,d) New addition; language added to clarify Continuity of Care switch request criteria: "Continuity of care (for example, a member's physician or specialist is no longer in the MCO's provider network or a member lives in a rural area and the closest physician that accepts their current MCO is too far away).

(2,e) New addition; language added to clarify Family Continuity switch request criteria: "Family Continuity (for example, a switch that is requested so that all family members are enrolled with the same MCO)."

(2,f) New addition; language added to clarify Administrative Error switch request criteria: "Administrative error (for example, a member chooses an MCO at initial enrollment or requests to change MCOs during an allowable switch period, but the request was not honored).

<u>8.310.2 NMAC</u>

Section 8
Amended to include the Department's current mission statement.

Section 12, Subsection A
(4,b) Removed language "essentially normal".
(4,c) Language added to provide gynecological or obstetrical ultrasounds without prior authorization.
(4,d) Language added to provide coverage of labor and delivery services at a NMDOH licensed birth center. Does not cover the full scope of midwifery services nor does it replace pediatric care that should occur at a primary care clinic.

Section 12, Subsection B
Language added to provide allowances for non-emergency transportation to pharmacy for justice involved individuals.

Section 12, Subsection C
Language 'an inpatient of nursing facilities or hospitals' replaced by 'of an inpatient nursing facility or hospital'.

Section 12, Subsection D
(1) Language 'consent to sterilization' replaced by 'sterilization consent', 'hysterectomy acknowledgement' replaced by 'hysterectomy acknowledgement/consent'.

(1,g) Language added that a Medical Assistance Program (MAP) eligible recipient's informed consent to the sterilization procedure must be attached to the claim.

(3) Language added to provide coverage of labor and delivery services at a New Mexico Department of Health (NMDOH) licensed birth center. Does not cover the full scope of midwifery services nor replace pediatric care that should occur at a primary care clinic.

Section 12, Subsection F
Consolidated Subsection N Transplantation Services. Replaced with **'**MAD covered transplantation services include hospital, a PCP, laboratory, outpatient surgical, and other MAD covered services necessary to perform the selected transplantation for the MAP eligible recipient and donor.'

(1) Language added 'Due to special Medicare coverage available for individuals with end-stage renal disease, Medicare eligibility must be pursued by the provider for coverage of a kidney transplant before requesting MAD reimbursement.

(2) Language added to include MAD covers the MAP eligible recipient's and donor's related medical, transportation, meals and lodging services for non-experimental transplantation.

(3) Language added to include that MAD does not cover any transplant procedures, treatments, use of a drug, a biological product, a product or a device which are considered unproven, experimental, investigational or not effective for the condition for which they are intended or used.

(4) Language added to include that a written prior authorization must be obtained for any transplant, with the exception of a cornea and a kidney. The prior authorization process must be started by the MAP eligible recipient's attending primary care physician (PCP) contacting the MAD utilization review (UR) contractor. Services for which prior approval was obtained remain subject to UR at any point in the payment.

Section 12, Subsection G
Language added to provide one fluoride varnish treatment every six months for members under the age of 21.

Section 12, Subsection L
Language added to provide allowances and define benefits for justice involved individual to receive non-emergency transportation to a pharmacy.

Section 12, Subsection M
Language added to provide allowances and define Telehealth benefits services.

Section 12, Subsection N
Removed and consolidated with Subsection F, Transplant Services.

Section 12, Subsection O
Language added to include 'Prior to performing pregnancy termination services providers must complete and file in the MAP eligible recipient medical record, a consent for pregnancy termination that includes written certification of a provider that the procedure meets one of the following conditions'.

Section 12, Subsection P
Opening sentence language removed, 'Covered transplantation services include a hospital, a PCP, a laboratory, an outpatient surgical and other MAD-covered services necessary to perform the selected transplantation. Due to special medicare coverage available for individuals with end-stage renal disease, medicare eligibility must be pursued by the provider for coverage of a kidney transplant before requesting MAD reimbursement.

Section 12, Subsection Q
Title change from 'Smoking Cessation' to 'Smoking/Tobacco Cessation'

Language 'a pregnant MAP eligible recipient and for a MAP eligible recipient under the age of 21 years of age' replaced by 'all MAP eligible recipients.'

(3,c) Updated language from singular to plural.

(4) Language 'a pregnant or postpartum' replaced by 'all'

(6) Language 'A cessation counseling attempt includes up to four cessation counseling sessions (one attempt plus up to four sessions). Two cessation counseling attempts (or up to eight cessation counseling sessions) are allowed in any 12-month period' replaced by 'The services do not have any limits on the length of treatment or quit attempts per year. The program also allows participants to try multiple treatments and does not impose any requirement to enroll into counseling'.

Section 12, Subsection R
New language added: Screening, Brief Intervention and Referral to Treatment (SBIRT) is a community-based practice designed to identify, reduce and prevent problematic substance use or misuse and co-occurring mental health disorders as an early intervention. Through early identification in a medical setting, SBIRT services expand and enhance the continuum of care and reduce costly health care utilization. The primary objective is the integration of behavioral health with physical health care. SBIRT is delivered through a process consisting of universal screening, scoring the screening tool and a warm hand-off to a SBIRT trained professional who conducts a face-to-face brief intervention for positive screening results. If the need is identified for behavioral health treatment, the certified SBIRT staff, with the eligible recipient's approval, assists in securing behavioral health services. Only a physical health office, clinic, or facility that has been certified by a HSD approved SBIRT trainer and uses the approved healthy lifestyle questionnaire (HLQ) can complete the screen. The physical office, clinic or facility must be the billing provider, not the individual practitioner. All practitioners must be SBIRT certified and are employees or contractors of a SBIRT physical health office, clinic, or facility. See the SBIRT policy and billing manual for detailed description of the service and billing requirements.

Section 13, Subsection J
Language changed to clarify that MAD only covers a routine physical examination for a MAP eligible recipient residing in a NF or an ICF-IID facility or a MAP eligible recipient under 21 years of age through the tot to teen healthcheck screen, New Mexico's EPSDT screening program. Included in the coverage is the physical examinations, screenings and treatment.

Throughout 8.310.2 NMAC sections have been renumbered.

8.321.2 NMAC:

Section 9
Licensed professional art therapist (LPAT) licensed by RLD's counseling and therapy practice board and certified for independent practice by the Art Therapy Credentials Board (ATCB) has been added to the allowed independent providers.

A school-based health center with behavioral health supervisory certification has been added to the list of agencies that are eligible to be reimbursed for providing behavioral health professional services when all conditions are met.

Language was added to clarify that Behavioral Health service plans can be developed by individuals employed by the agency who have Health Insurance Portability and Accountability Act (HIPAA) training, are working within their scope of practice, and are working under the supervision of the rendering provider who must be an independently licensed clinician.

Language was added clarifying that behavioral health services should be delivered in the least restrictive setting.

Section 10
Throughout the section references were changed and updated from Accredited Residential Treatment Center (ARTC) to Adult Accredited Residential Treatment Center (AARTC).

Language added to clarify that the eligible facility must be certified through an application process with behavioral health services division which includes a supervisory certificate.

Language adding emergency medical technicians with documentation of three (3) hours of annual training in substance abuse disorder are able to assess and treat the recipient and obtain and interpret information regarding the recipient's needs.

Language added to clarify the length of stay is typically 3-5 days, after which transfer to another level of care is indicated for 3.2WM's.

Section 11
Language added to clarify that a determination must be made that the eligible recipient needs the level of care (LOC) for services furnished in an ARTC. This determination must have considered all environments which are least restrictive, meaning a supervised community placement, preferably a placement with the juvenile's parent, guardian or relative. A facility or conditions of treatment that is a residential or institutional placement should only be utilized as a last resort based on the best interest of the juvenile or for reasons of public safety.

Section 12
Language added to see Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements for eligible providers.

A New Mexico behavioral health credentialing board credentialed Certified Family Peer Support Worker under the supervision of an approved ABA supervisor has been added to additional provider types.

Section 13
Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Language added that any adaptations to the model require an approved variance from BHSD for Assertive Community Treatment Services.

Section 14
Language added to clarify that therapy includes planning, managing and providing a program of psychological services to the eligible recipient meeting a current DSM, or ICD, DC:0-5 behavioral health diagnosis and may include therapy with her or his family or parent/caretaker, and consultation with his or her family and other professional staff.

Section 15
Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Section 17
Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Section 18
Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Language clarifying minimum staff qualifications for certified family peer support workers (CFPSW).

Language added to clarify that minimum staff qualifications for the community support worker include: must have lived-experience of being actively involved in raising a child who experienced emotional, behavioral, mental health, or mental health with co-occurring substance use or developmental disability challenges prior to the age of 18 years; must have personal experience navigating child serving systems on behalf of their own child; must have an understanding of how these systems operate in New Mexico; and, must have received certification as a CFPSW.

Minimum staff qualifications for certified youth peer support workers (CYPSW) include: must be 18 years of age or older; have a high school diploma or equivalent; have personal experience navigating any of the child/family-serving systems prior to the age of 18 years; have an understanding of how these systems operate in New Mexico; and must have received certification as a CYPSW.

Language added to clarify Comprehensive Community Support Services (CCSS) must be identified in the service plan for an individual.

Language added for adult accredited residential treatment center (AARTC) in the coverage criteria.

Section 19
Language changed to clarify eligible practitioners.

Language changed to clarify crisis stabilization services.

Section 20
Language added for clarification for eligible provider agencies licensed through the Department of Health.

Language changed to clarify a provider agency licensed through the Department of Health as a crisis triage center.

Language added to clarify the exception of services provided by the physician and the licensed independent mental health practitioner.

Language added that additional staff may include an emergency medical technician (EMT) with documentation of three (3) hours of annual training in suicide risk assessment.

Section 22
Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Language added to clarify non-covered services.

Section 23
Language changed to clarify coverage of stays in a freestanding psychiatric hospital that is considered an Institution of Mental Disease (IMD) is covered only for eligible recipients up to age 21 and over age 64.

Section 24
Language changed to clarify based upon a New Mexico state plan amendment and 1115 waiver MAD covers inpatient hospitalization in an IMD for substance use disorder (SUD) diagnoses only with criteria for medical necessity and based on American Society of Addiction Medicine (ASAM) admission criteria and MCO covered stays.

Section 25
Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Section 26
Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Language changed to clarify services may only be delivered through an agency approved by the Human Services Department (HSD) and Children, Youth and Families Department (CYFD) after demonstrating that the agency meets all the requirements of Intensive Outpatient Program (IOP) services and supervision.

Section 27
Language changed to state that MAD pays for coverage for medication assisted treatment (MAT) for opioid use disorder to an eligible recipient as defined in the Drug Addiction Treatment Act of 2000 (DATA 2000), the Comprehensive Addiction and Recovery Act of 2016 (CARA), and the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act of 2018 (SUPPORT Act).

Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Section 29
Language added to Non-Accredited Residential Treatment Center (RTC) and Group Homes to clarify that this determination must have considered all environments which are least restrictive, meaning a supervised community placement, preferably a placement with the juvenile's parent, guardian or relative. A facility or conditions of treatment that is a residential or institutional placement should only be utilized as a last resort based on the best interest of the juvenile or for reasons of public safety.

Section 30
Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Language added under staffing requirements that programs may also be staffed by: licensed substance abuse associate (LSAA); a certified peer support worker (CPSW); and emergency medical technicians (EMT) with documentation of three (3) hours of annual training in substance use disorder.

References to prescription drug monitoring program (PDMP) were changed to prescription monitoring program (PMP).

Language added for other services performed by the agency as listed are reimbursed separately and are required by (42 CFR Part 8.12 (f)), or its successor. Behavioral health prevention and education services to affect knowledge, attitude, or behavior can be rendered by a licensed substance abuse associate or certified peer support worker in addition to independently licensed practitioners.

Section 32
Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Language changed to clarify that no prior authorization is required. To determine retrospectively if the medical necessity for the service has been met additional factors listed are considered.

Section 33
Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Reference to therapeutic foster care was corrected to treatment foster care (TFC) under non-covered services.

Section 34
Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Added nursing facilities to eligible providers and practitioners.

Sections 29, 30 and 34
Language has been added to the sections to include IHS and a tribal 638 facility and any other Indian Health Care Provider (IHCP) defined in 42 CFR §438.14(a).

Changes throughout the rules have also been made for spelling corrections and clarity.

The register for these proposed amendments to these rules will be available March 9, 2021 on the HSD web site at http://www.hsd.state.nm.us/LookingForInformation/registers.aspx or at http://www.hsd.state.nm.us/2017-comment-period-open.aspx. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement these rules effective July 1, 2021. A public hearing to receive testimony on this proposed rule will be held **via conference call** on April 8, 2021 at 10:00 a.m., Mountain Time (MT). **Conference phone number: 1-800-747-5150. Access Code: 2284263.**

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 at *(505) 827-1337*. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on April 8, 2021. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at http://www.hsd.state.nm.us/2017-comment-period-open.aspx along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

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 505-827-1337. 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.