



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT
HUMAN SERVICES DEPARTMENT

II. SUBJECT

8.280.500 NMAC, PACE, INCOME AND RESOURCE STANDARDS
8.281.400 NMAC, INSTITUTIONAL CARE, RECIPIENT POLICIES
8.281.500 NMAC, INSTITUTIONAL CARE, INCOME AND RESOURCE STANDARDS

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
PROPOSED RULES

V. BACKGROUND SUMMARY

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rules 8.280.500 NMAC, *PACE, Income and Resource Standards*, 8.281.400 NMAC, *Institutional Care, Recipient Policies*, and 8.281.500 NMAC, *Institutional Care, Income and Resource Standards*.

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: June 21, 2022

Hearing Date: July 22, 2022

Adoption Date: Proposed as December 1, 2022

Technical Citations: 42 CFR 435.725(c)(4)

The Department is proposing to amend the rules as follows:

Background:

Federal policy at 42 Code of Federal Regulations (CFR) 435.725(c)(4)(ii) mandates that for the post-eligibility treatment of income (PETI) deductions be allowed for “necessary medical or remedial care recognized under State law but not covered under the State’s Medicaid plan, subject to reasonable limits the agency may establish on amounts for these expenses.” The

Centers for Medicare and Medicaid Services (CMS) notified the Department that the Department's approved State Plan did not allow for the deduction of necessary medical or remedial care for the PETI calculation. The Department is submitting a State Plan Amendment that includes allowed PETI deductions for necessary medical or remedial care. Institutional Care Medicaid rules are being updated through these proposed rules to incorporate this mandated PETI deduction.

Institutional Care Medicaid also prohibits the coverage of long-term care facility services furnished to applicants or recipients in out-of-state facilities. The Department is revising the special recipient requirements section of Institutional Care Medicaid rules to allow for an exception to the out-of-state prohibition of long-term care facility services that are medically necessary and not available in the state of New Mexico referencing current covered out-of-state services rules found at 8.302.4.12(F) NMAC.

8.280.500 NMAC

Section 23 of the Program for All-Inclusive Care for the Elderly (PACE) rules are being updated to reference the correct medical care credit rules found in Institutional Care Medicaid policy at 8.281.500.22.

8.281.400 NMAC

Section 15 Institutional Care rules are being updated to add a reference to 8.302.4.12(F) NMAC to allow for the coverage of out-of-state NF services that are not available in the state of New Mexico. These services require prior authorization.

8.281.500 NMAC

Section 23 Institutional Care rules are being updated to incorporate language found at 42 CFR 435.725(c)(4) regarding expenses not subject to third party payment which includes Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care as PETI deductions.

A deduction for incurred medically necessary non-covered medical or remedial care expenses will be allowed when the bill is incurred during a period which is no more than three months prior to the month of the current application.

The rules clarify the meaning of "not covered under the State Plan". For PETI purposes as required by section 1902(r)(1) of the Social Security Act, expenses for services not covered under the State Plan are any services not paid for by Medicaid for that particular individual. These include services listed as covered services in the State Plan, as well as services the plan does not cover. They also include services the individual received prior to becoming eligible for Medicaid, as well as services received after becoming eligible.

Institutional long-term care medical expenses incurred within three months prior to the month of application may be allowed as a deduction.

Current language will remain that the deduction for medical and remedial care expenses that were incurred as the result of imposition of a transfer of assets penalty period is limited to zero.

Throughout the rule amendments have been made to comply with formatting requirements.

VI. RULE

These proposed rule changes will be contained in 8.280.500, 8.281.400, and 8.281.500 NMAC. This register and the proposed rules are available on the HSD website at: <https://www.hsd.state.nm.us/lookingforinformation/register/> and <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notice-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at (505) 827-1337.

VII. EFFECTIVE DATE

The Department proposes to implement these rules effective December 1, 2022.

VIII. PUBLIC HEARING

A public hearing to receive testimony on these proposed rules will be held **via conference call** on Friday, July 22, 2022, at 9:00 a.m. Mountain Time (MT). **Conference phone number: 1-800-747-5150. Access Code: 2284263.**

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 the MAD in Santa Fe at (505) 827-1337. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by 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.

IX. ADDRESS

Interested persons may address written comments to:

Human Services Department
Office of the Secretary
ATTN: 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 July 22, 2022. 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 <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/> along with the applicable register and rules. The public posting will include the name and any contact information provided by the commenter.

X. PUBLICATION

Publication of these rules approved by:

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