



Michelle Lujan Grisham, Governor  
David R. Scrase, M.D., Secretary  
Nicole Comeaux, J.D., M.P.H, Director

June 17, 2022

RE: Tribal Notification to Request Advice and Comments Letter 22-20: Post Eligibility Treatment of Income (PETI) deductions for necessary medical or remedial care.

Dear Tribal Leadership, Indian Health Service, Tribal Health Providers, and Other Interested Parties:

Seeking advice and comments from New Mexico's Indian Nations, Tribes, Pueblos and their health care providers is an important component of the government-to-government relationship with the State of New Mexico. In accordance with the New Mexico Human Services Department's (HSD's) Tribal Notification to Request Advice and Comments process, this letter is to inform you that HSD, through the Medical Assistance Division (MAD), is accepting written comments until **5:00 p.m. on July 22, 2022** regarding proposed amendments to 8.280.500, 8.281.400, and 8.281.500 NMAC, effective December 1, 2022, which allows for PETI deductions for necessary medical or remedial care. The rule changes also allow for the provision of nursing facility services out-of-state that are medically necessary and not available in the state of New Mexico.

Federal policy at 42 Code of Federal Regulations (CFR) 435.725(c)(4)(ii) mandates that for the post-eligibility treatment of income (PETI) that 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 submitted a State Plan Amendment including 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 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.

## Estimated Total Financial Impact

The estimated fiscal impact is estimated to be \$346,605 (\$254,303 federal/\$92,302 state) for state fiscal year 2023 assuming an effective date of December 1, 2022. For state fiscal year 2024, the estimated fiscal impact is \$594,183 (\$435,952 federal/\$158,231 state).

## Tribal Impact

These changes impact Medicaid individuals by allowing PETI deductions from the Patient Pay amount for individuals covered on Institutional Care Medicaid for necessary medical or remedial care that were not allowed before. Additionally, Medicaid individuals can be approved for out-of-state long-term care facility coverage if medically necessary and not available in New Mexico.

## Tribal Advice and Comments

Tribes and tribal healthcare providers may view the proposed 8.280.500, 8.281.400, and 8.281.500 NMAC on the HSD webpage at: <https://www.hsd.state.nm.us/providers/written-tribal-consultations/>. *Notification Letter 22-20.*

A written copy of these documents may be requested by contacting the HSD Medical Assistance Division (HSD/MAD) in Santa Fe at (505) 827-1337.

## Important Dates

**A public hearing on this rule is scheduled be held via conference call on Friday, July 22, 2022 at 9 a.m. Mountain Time (MT). Conference phone number: 1-800-747-5150. Access Code: 2284263.**

**Written advice and comments must be received no later than 5:00 p.m. Mountain Time (MT) on July 22, 2022.** Please send your advice, comments or questions to the MAD Native American Liaison, Theresa Belanger, at (505) 827-3122 or by email to [theresa.belanger@state.nm.us](mailto:theresa.belanger@state.nm.us).

All comments and responses will be compiled and made available after August 5, 2022.

Sincerely,



Nicole Comeaux, J.D., M.P.H, Director  
Medical Assistance Division