



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT
NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

II. SUBJECT

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
FINAL RULE

V. BACKGROUND SUMMARY

New Mexico Human Services Register Volume 41, Register 14, dated May 29, 2018, issued the proposed rules, 8.314.6 NMAC 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: November 1, 2018

Technical Citations: 42 CFR 438 subparts A through J

A public hearing was held on June 28, 2018 to receive public comments and testimony on this proposed rule. The Human Services Department (the Department) received ten (10) comments from four (4) commenters.

Summary of Comments:

8.314.6 NMAC

Throughout the Rule

Commenter requests that the Department not make a change to existing language from “participant” to “recipient” when referring to individuals receiving services through the Mi Via program.

Department Response: The term recipient is used to align with Medicaid rule throughout the NMAC. The language stands as proposed.

8.314.6.7 NMAC

Section G

Commenter requests the Department reduce restrictions regarding who may be his or her own Employer of Record (EOR). The commenter states that language prohibiting an individual from being her or her own EOR, if he or she has a plenary or limited guardianship or conservatorship over financial matters, is too broad and restricts individuals from fully participating in self-direction.

Department Response: EOR responsibilities involve entering into contractual obligations with employees and vendors. If a recipient has a plenary or limited guardianship or conservatorship over financial matters in place, the recipient has been determined, by a court of law, to lack the capacity to act on his or her own behalf with regard to financial and contractual matters. The language stands as proposed.

8.314.6.11 NMAC

Section B, Subsection (6)(g)

Commenter requests that the Department clarify language regarding authorized signer. The commenter states that existing language that states that the authorized signer may not be an employee, contractor, or subcontractor of that vendor agency for an eligible recipient, is too broad and could restrict a participant's access to service providers.

Department Response: This language aligns with Employer of Record (EOR) requirements in 8.314.6.11B(6)(f). The language stands as proposed.

Section H, Subsection (4)

Commenter requests that the Department not limit Individual Directed Goods and Services vendors to retail stores, community health centers, or medical supply stores as this may limit participant access to goods and services.

Department Response: This language brings the qualifications of Individual Directed Goods and Service vendors in line with the service specification as defined in the state's approved Mi Via Waiver. The language stands as proposed.

8.314.6.15 NMAC

Section C, Subsection (5)

Commenters request the Department clarify restrictions on affiliated agencies and remove restrictions on affiliated agencies stating the language conflicts with equal Protection Clause of the United States Constitution and the New Mexico State Constitution.

Department Response: This language brings the rule in line with 45 CFR 441.301(1)(vi) which states: providers of HCBS for the individual, or those who have an interest in or are employed by a provider for HCBS for the individual must not provide case management or develop the person-centered service plan. The Department has updated the language to include domestic partners.

Section H, Subsection (1)

Commenter commends the Department for removing restrictions to transportation services for minors.

Department Response: This comment has been noted by the Department. The language stands as proposed.

Section H, Subsection (3)

Commenter requests the Department remove language that restricts the respite service to a short term and intermittent support.

Department Response: This language brings respite services in line with the service descriptions as written in the: CMS Instructions, Technical Guide and Review Criteria; approved Mi Via waiver; and Mi Via Service Standards effective March 1, 2016. Respite services are not intended to replace living support services or for the provision of day care. The language stands as proposed.

8.314.6.16 NMAC

Section G

Commenters request the Department remove language that identified goods and services that are recreational and diversional in nature as non-covered services. Commenters state this language is too restrictive and these goods and services should be evaluated based on the individual's needs.

Department Response: This language brings Individual Directed Goods and Services in line with the service description as written in the Centers for Medicare and Medicaid Services (CMS) Instructions, Technical Guide and Review Criteria which specify that services that are recreational or diversional in nature fall outside the scope of section 1915(c) of the Social Security Act. The language stands as proposed.

VI. RULES

These amendments will be contained in 8.314.6 NMAC. The final register and rule languages are available on the HSD website at:

<http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and

<http://www.hsd.state.nm.us/providers/rules-nm-administrative-code.aspx>. If you do not have internet access, a copy of the final register and rules may be requested by (505) 827-6252.

VII. EFFECTIVE DATE

This rule will have an effective date of November 1, 2018.

VIII. PUBLICATION

Publication of these rules approved by:

A handwritten signature in black ink, appearing to read 'Brent Earnest', written over a horizontal line.

BRENT EARNEST, SECRETARY
HUMAN SERVICES DEPARTMENT