

NEW MEXICO
 STATE RECORDS CENTER AND ARCHIVES

Transmittal Form

Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: New Amendment Repeal Emergency Renummer (ALD Use Only) Most recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment): Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes No Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes No Public domain

Concise Explanatory Statement For Rulemaking Adoption:

Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

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Findings required for rulemaking adoption:

continued

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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 (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.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Brent Earnest

Check if authority has been delegated

Title:

Secretary

Signature: (BLACK ink only)

Date signed:

10/12/18