



State of New Mexico  
Human Services Department  
Human Services Register



**I. DEPARTMENT**

NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

**II. SUBJECT**

**8.281.510 NMAC, Institutional Care-Trust Standards**  
**8.290.600 NMAC, Home and Community-Based Services Waiver-Benefit Description**

**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 changes to the following NMAC policy: **8.281.510 NMAC, Institutional Care-Trust Standards, 8.290.600 NMAC, Home and Community-Based Services Waiver-Benefit Description.**

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: November 14, 2017

Hearing Date: December 15, 2017

Adoption Date: Proposed as March 1, 2018

Technical Citations: 8.281.510 NMAC-Section 5007(a) of the Cures Act amended section 1917(d)(4)(A) of the Act. 8.290.600 NMAC-42 CFR 435.916(C)(iii) periodic renewal of Medicaid eligibility.

**The Department is proposing the following rule changes:**

**8.281.510.11(B) NMAC**

Section 5007(a) of the Cures Act amended section 1917(d)(4)(A) of the Act to add “the individual” (i.e., the trust beneficiary) to the list of people who may establish a special needs trust on the individual’s behalf. This means that a trust established on or after December 13,

2016 by an individual with a disability under age 65 for his or her own benefit can qualify as a special needs trust, conferring the same benefits as a special needs trust set up by a parent, grandparent, legal guardian or court. The prior requirement that a third party establish a special needs trust, which is not imposed on the other section 1917(d)(4) trusts, was identified as a barrier to maximizing the independence of people with disabilities. Section 5007(a) of the Cures Act addressed this for special needs trusts established on or after the date of the law's enactment on December 13, 2016. The Department is revising trust rules to add the individual to the list of people who may establish a special needs trust on or after December 13, 2016.

#### **8.290.600.10 NMAC**

The Department is updating outdated language by removing the reference to the MAD 381 form and adding the HSD 100 application. Additional outdated language was deleted regarding case managers completing the application or being a designated representative.

#### **8.290.600.12 NMAC**

The Department is extending the 90 day reconsideration period allowed at 42 CFR 435.916(C)(iii) to the Home and Community-Based Services Waiver Medicaid categories of eligibility. The new language allows the Department to reconsider in a timely manner the waiver eligibility of an individual who is terminated for failure to submit the renewal form or necessary information, if the individual subsequently submits the renewal form within 90 days after the date of termination without requiring a new application.

### **VI. REGULATIONS**

These proposed rules will be contained in 8.281.500 NMAC and 8.290.600 NMAC. The register and proposed rule language are available on the HSD website at: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at 505-827-6252.

### **VII. EFFECTIVE DATE**

The Department proposes to implement this rule effective March 1, 2018

### **VIII. PUBLIC HEARING**

A public hearing to receive testimony on this proposed rule will be held in Hearing Room 1, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico on December 15, 2017 from 10 a.m. to 11 a.m., Mountain Standard Time (MST).

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 505-827-6252. 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**

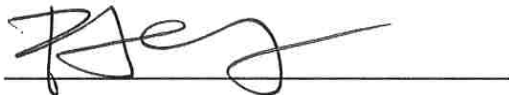
Interested persons may address written or recorded comments to:

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](mailto:madrules@state.nm.us). Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MST on December 15, 2017. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

## **X. PUBLICATIONS**

Publication of this rule approved by:

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

BRENT EARNEST, SECRETARY  
HUMAN SERVICES DEPARTMENT