



Susana Martinez, Governor
Brent Earnest, Secretary
Nancy Smith-Leslie, Director

**RE: Tribal Consultation Letter: 15-25, Proposed Amendments to:
8.314.5 NMAC Developmental Disabilities Waiver**

Dear Tribal Leadership, IHS, Tribal Facility or other interested parties,

Consultation with the New Mexico's Indian Nations, Tribes, Pueblos, and their healthcare 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) Tribal Consultation requirements, this letter is to inform you that HSD, through the Medical Assistance Division (MAD), is accepting written comments through January 4, 2016, regarding proposed amendments to the Developmental Disabilities Home and Community-Based Services Waiver rule (8.314.5) of the New Mexico Administrative Code (NMAC).

Background

The State has a Medicaid Home and Community Based Services Waiver to serve developmentally disabled individuals. This Developmental Disabilities Waiver (DDW) is approved through the Centers for Medicare and Medicaid Services (CMS).

Proposed Modifications to the Developmental Disabilities Home and Community Based Waiver Rule

The primary purpose for amending **8.314.5 NMAC** is to implement the provisions set forth by the court-approved settlement agreement in the Waldrop lawsuit against the State brought by the Disability Rights New Mexico and the ARC of New Mexico. Additional revisions are also incorporated throughout this rule to add clarity for the reader and update language throughout.

Section 7

- Subsection B - new definition for an adult to address waiver services for individuals 18 years of age and older.
- Subsection C - new definition for an authorized representative designated by the eligible recipient.
- Subsection D – new definition for child to address waiver services for individuals under 18 years of age.
- Subsection E – new definition for clinical documentation that demonstrates the request for DDW services.
- Subsection F – new definition for clinical justification that supports the need for services based on the eligible recipient's assessed need and DDW clinical criteria.
- Subsection G – new definition for DDW clinical criteria that is approved by the Department of Health (DOH) and applied by the outside reviewer to each DDW service.
- Subsection I – new definition for the outside reviewer who is an independent third party to conduct clinical review of DDW services.
- Subsection M – new definition for young adult for individuals between the ages of 18 through 20 years of age.

Section 9 – new language to clarify the waiver population, services, and applicable federal waiver statutes.

Section 10 – revise language throughout this section to add clarity for the reader, clarify required provider agreements, and update provider qualifications and provider licensure requirements.

Subsection H – insert language for intensive medical living supports provider agency from subsection W.

Subsection W – delete this section and move qualifications to subsection H under community living supports.

Section 11 – new language to clarify required agreements and rules.

Subsection C – delete this section which is not applicable to the DDW.

Section 12 – revise language to add clarity for the reader.

Section 13 – revise language throughout this section and add new language to clarify the Supports Intensity Scale and requirements; supplemental questions; and verification process.

Section 14 – new language to clarify waiver services for individuals under 18 years of age.

Section 15 – new language to clarify waiver services for individuals 18 years of age and older.

Subsection A – revise language to clarify the NM DDW groups and availability for an eligible recipient to request services through the outside reviewer when clinical criteria are met.

Subsection B – revise language to clarify H authorization.

Subsection D – new language to clarify that the interdisciplinary team (IDT) should consider the DDW group's suggested service package and proposed budget with the understanding that the focus must always be on the individual's support needs that can be clinically justified.

Subsection D(3) – revise language to add clarify for the reader.

Subsection D(4) – new language to address the availability of three (3) therapy disciplines.

Subsection D(5)(c) – insert language for intensive medical living supports from subsection D(20).

Subsection D(20) – delete this section for intensive medical living supports and move to subsection D(5)(c) under living supports.

Section 17 - new language throughout section 17 to define the roles and responsibilities of the ITD and clinical justification of requested services and supports.

Subsection A – new language to define the DDW planning packet.

Subsection B – new language to define the role and responsibilities of the IDT.

Subsection C and D - new language to clarify the budget evaluation process for eligible recipients.

Section 18

Subsection D - new language to define the outside review process, application of clinical criteria, and process for Individual Service Plan (ISP) and budget denials.

Section 20 - new language to address the recipient agency review conference and attendees.

Subsection A - new language to define an authorized representative.

Subsection B - new language to address the process for resolutions of denials that are reached through the agency review conference.

Subsections C, D, and E - new language to address the HSD Administrative Hearing process.

Section 21 - new language to address the automatic continuation of benefits with a recipient fair hearing request.

Tribal Impact: *HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with these amendments to 8.314.5 NMAC. The changes are primarily for clarity and consistency with the waiver as approved by CMS, not to reduce services.*

Tribal Consultation Comments -

Tribes and their healthcare providers may view the proposed rule, 8.314.5 NMAC, on the HSD webpage at <http://www.hsd.state.nm.us/providers/written-tribal-consultation-letters.aspx>, *Letter 15-25*.

Important Dates

- **Written comments must be submitted by 5:00 p.m. Mountain Standard Time (MST) on January 4, 2016.** Please send your comments and questions to the MAD Native American Liaison, **Theresa Belanger**, at (505) 827-3122 or by email at: Theresa.Belanger@state.nm.us.
- All comments and responses will be compiled and available *after January 18, 2016*.
- **A public hearing on this rule is scheduled be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM on January 4, 2016 from 10 a.m. to 12 p.m., MST.**

Sincerely,



Nancy Smith-Leslie, Director
Medical Assistance Division

cc: Theresa Belanger, Native American Liaison, MAD
HSD/MAD/Exempt Services and Programs Bureau
HSD/MAD/PPIB-Program Management/Communications Unit