

November 21, 2017

RE: Tribal Notification Letter 17-12

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

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

Consultation with 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) tribal notification requirements, this letter is to inform you that HSD is proposing amendments to the New Mexico Administrative Code (NMAC) eligibility rules. HSD is providing this notice for the purpose of receiving comment on the proposed amendment.

Section 9-8-6 NMSA 1978, authorizes the HSD 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.

Through these rules, the Department is proposing to revise trust rules to add the trust beneficiary to the list of people who may establish a special needs trust on or after December 13, 2016, in accordance with federal rules. Additionally, the Department is revising Medicaid Home- and Community-Based Services (HCBS) Waiver rules to allow for a 90-day reconsideration period for individuals who provide all required documentation needed to approve eligibility within 90 days from the date of closure. Eligibility will be reestablished back to the closure date without requiring a new application for such individuals who complete the renewal process within 90 days of closure.

SUMMARY OF CHANGES AND TRIBAL IMPACT

8.281.510 NMAC, Institutional Care-Trust Standards

Section 11(B)-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.

Tribal Impact: *Adding the individual to the list of people who may establish a special needs trust is beneficial to Native Americans in that an individual may set up his or her own special needs trust. Prior to the rule change an individual could not set up his or her own special needs trust.*

8.290.600 NMAC, Home and Community-Based Services Waiver-Benefit Description

Section 10-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.

Tribal Impact: *There is no impact to Native Americans as outdated language was updated.*

8.290.600 NMAC, Home and Community based Services Waiver-Benefit Description

Section 12-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.

Tribal Impact: *Allowing a 90 day reconsideration period after closure at renewal is beneficial to Native Americans. A 90 day reconsideration period allows for up to 90 days for an individual to complete the renewal process after closure without submitting a new application.*

Tribal Consultation Comments:

Tribes and their health care providers may view the proposed 8.281.510 and 8.290.600 NMAC amendments on the HSD webpage at: <http://www.hsd.state.nm.us/providers/written-tribal-consultation-letters.aspx>, **Notification Letter 17-12.**

Important Dates:

- **A public hearing** on this rule is scheduled be held in Hearing Room 1, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM on **December 15, 2017** from **10 a.m. to 11 p.m. MST.**
- **Written comments must be submitted by 5:00 p.m. Mountain Standard Time (MST) on December 21, 2017.** 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 December 31, 2017.

Sincerely,



Nancy Smith-Leslie, Director
Medical Assistance Division

CC: Theresa Belanger
PPB