HUMAN SERVICES
DEPARTMENT

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

October 4, 2017

RE: Tribal Notification Letter 17-09

8.308.2 NMAC, Managed Care Program, Provider Network
8.308.6 NMAC, Managed Care Program, Eligibility
8.308.7 NMAC, Managed Care Program, Enrollment and Disenrollment
8.308.8 NMAC, Managed Care Program, Member Education
8.308.9 NMAC, Managed Care Program, Benefit Package
8.308.10 NMAC, Managed Care Program, Care Coordination
8.308.11 NMAC, Managed Care Program, Transition of Care
8.308.13 NMAC, Managed Care Program, Member Rewards
8.308.15 NMAC, Managed Care Program, Grievances and Appeals
8.308.21 NMAC, Managed Care Program, Quality Management
8.302.3 NMAC, Medicaid General Provider Policies, Third Party Liability Provider Responsibilities

Dear Tribal Leadership, Indian Health Services, Tribal Health Providers and Other Interested Parties,

Seeking advice and comments from 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's) Tribal Notification to Request Advice and Comments process, this letter is to inform you that HSD, through the Medical Assistance Division (MAD), is accepting written comments through November 20, regarding proposed amendments to the several New Mexico Administrative Code (NMAC) managed care rules and 8.302.3 NMAC Medicaid General Provider Policies, Third Party Liability Provider Responsibilities, as listed above. HSD is providing this notice for the purpose of receiving comment on the proposed amendments.

The Centers for Medicare and Medicaid Services (CMS) published federal rules, effective July 5, 2016, that updated Medicaid managed care requirements which the Department must now implement. The federal rules align the requirements governing Medicaid managed care programs, where feasible, with those of other major sources of health care coverage, including Qualified Health Plans and Medicare Advantage plans. The citation for the federal rule is 42 CFR 438 subparts A through J.

MAD reviewed the current rules related to managed care to assure they will be in compliance with federal requirements. They were also reviewed for currency and clarity. Necessary changes are being proposed as amendments to the existing managed care organizations (MCO) rules listed above. Also, amendments are being proposed to 8.302.2 NMAC, Medicaid General Provider Policies, Third Party Liability Provider Responsibilities, because of its relationship to managed care organizations.

These amendments also update and standardize language and acronyms with other New Mexico Medicaid programs.

SUMMARY OF CHANGES AND TRIBAL IMPACT

8.308.2 NMAC MANAGED CARE PROGRAM – PROVIDER NETWORK
Significant proposed changes include: (1) clarifications and new responsibilities for provider enrollment to meet federal requirements; (2) adds MCO provider access standards; (3) adds a section regarding MCOs contracting with the Indian health service, tribally operated facilities, and urban Indian clinics; (4) adds standards for MCOs regarding credentialing providers. None of the changes limit services or eligibility or otherwise negatively impact managed care members.

Tribal Impact: ***HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with the amendments to this rule. It is anticipated that the responsibilities and standards stated in this section will improve the performance of a managed care organization with regard to serving all of its members.***

8.308.6 NMAC MANAGED CARE PROGRAM - ELIGIBILITY
Significant proposed changes include: (1) a correction to the list of Medicaid recipient categories that are not enrolled in managed care. This is a correction only and does not change who is actually enrolled in managed care; (2) replaces "12 months" with "13 months", pursuant to a federal rule that specifies a newborn is enrolled for 13 months starting with the month of birth.

Tribal Impact: ***HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with the amendments to this rule. These are technical corrections in the wording only and do not introduce any changes in the way that managed care organizations perform their functions.***

8.308.7 NMAC MANAGED CARE PROGRAM – ENROLLMENT AND DISENROLLMENT
Significant proposed changes include: (1) Changes the auto assignment eligibility period from two months to six months or less; (2) includes language clarifying the retroactive span of eligibility considered for enrollment in managed care "to not to exceed two years" and deleted references to time periods prior to January 1, 2014; (3) adds language clarifying member enrollment periods prior to changing MCO and the time period for issuance of a member identification card by an MCO is changed to 20 calendar days following notification of enrollment. This time period was previously 30 days.

Tribal Impact: ***HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with the amendments to this rule. It is anticipated that the responsibilities and standards stated in this section will improve the performance of a managed care organization with regard to serving all of its members.***

8.308.8 NMAC MANAGED CARE – MEMBER EDUCATION
Significant proposed changes include: (1) changing the title to read "Member Rights, Responsibilities, and Education; (2) language was added to assure that MCOs comply with federal requirements with regard to supplying informational and educational materials to members and for the civil rights and other rights that MCOs are required to provide to members of an MCO.

Tribal Impact: ***HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with the amendments to this rule. It is anticipated that the responsibilities***

and standards stated in this section will improve the performance of a managed care organization with regard to serving all of its members.

8.308.9 NMAC MANAGED CARE – BENEFIT PACKAGE

Significant proposed changes include: (1) language was added to assure MCOs follow federal requirements regarding providing benefits, citing applicable federal citations; (2) added language to require that MCOs meet all behavioral health parity requirements; (3) added the benefit of health home services; (4) wording was added to physical health benefits to include birth center benefits, licensed birthing center benefits and other covered delivery services; a change is being made stating that routine vision care is not a benefit for a member 21 years and older whose eligibility is as an Alternative Benefit Plan beneficiary. Previously the rule stated that one routine eye exam per member was allowed every 36 months. This change is consistent with the federal requirements regarding Alternative Benefit Plan coverage; (5) added additional information regarding the MCOs' responsibility to cover pharmacy services; (6) added the MCOs' responsibility to cover plan B and long acting reversible contraception items; (7) included crisis services and opioid treatment programs as behavioral health services that MCOs are to cover; (8) a new section incorporates wording from the federal rule on emergency services and stabilization to assure a member has adequate care during an emergency situation; and (9) a new section incorporates wording from the federal rule with regard medical necessity, authorization requirements, and comparability to fee-for-service Medicaid coverage which generally assures the MCO provides necessary services to members.

Tribal Impact: ***HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with the amendments to this rule. It is anticipated that the responsibilities and standards stated in this section will improve the performance of a managed care organization with regard to serving all of its members.***

8.308.10 NMAC MANAGED CARE PROGRAM – CARE COORDINATION

A significant proposed change adds language to clarify the MCO requirement to employ or contract with a Native American care coordinator or contract with a community health representative to serve as a care coordinator.

Tribal Impact: ***HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with the amendments to this rule. It is anticipated that the responsibilities and standards stated in this section will improve the performance of a managed care organization with regard to serving all of its members.***

8.308.11 NMAC MANAGED CARE PROGRAM – TRANSITION OF CARE

A significant proposed change adds information clarifying the circumstances under which a member will be provided care coordination and information regarding MCO identification of members who transition from institutional care to the community.

Tribal Impact: ***HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with the amendments to this rule. It is anticipated that the responsibilities and standards stated in this section will improve the performance of a managed care organization with regard to serving all of its members.***

8.308.13 NMAC MANAGED CARE PROGRAM – MEMBER REWARDS

A significant proposed change adds clarifying language that a member may participate in a managed care member rewards program.

Tribal Impact: ***HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with the amendments to this rule. It is anticipated that the responsibilities and standards stated in this section will improve the performance of a managed care organization with regard to serving all of its members.***

8.308.15 NMAC MANAGED CARE PROGRAM – GRIEVANCES AND APPEALS

Significant proposed changes include: (1) changes to the rule to assure that the federal requirements regarding grievances and appeals relating to MCOs and their members will be followed in the New Mexico Medicaid program; (2) proposed wording to clarify who may file a grievance or appeal and who may request an administrative hearing, and expanding the extent to which an "authorized provider" may represent a member in the process; (3) proposed wording was added to clearly differentiate between provider appeals and grievances vs. member appeals and grievances and to differentiate between the requirements for expedited appeals vs. standard appeals; (4) language was added to assure an MCO provides sufficient information to a provider or member to better explain why an adverse action is being taken; that an MCO seeks additional information from a provider prior to making a final decision; and provides information explaining the adverse decision; (5) proposed wording states a provider or a member may file a grievance at any time rather than within 30 calendar days of the event triggering the grievance; (6) the rule clarifies a grievance cannot be filed regarding an adverse benefit determination or the MCOs final grievance decision which is a federal provision; (7) new language states an appeal must be filed within 60 calendar days of the notice of adverse action - previously the time frame was 90 days for a standard appeal and 30 days for an expedited appeal; (8) new language clarifies what constitutes a MCO adverse action against a member, incorporating the federal definition of Adverse Benefit Determination; (9) many other definitions are added or expanded for clarity including new wording to allow a member's treating provider to act as the member's authorized representative when the member is medically incapacitated or when the member's authorized representative cannot be located, and the member requires immediate medical care until such time as the member appoints an authorized representative or the member's current authorized representative is located; (10) the proposed rule also specifies that the MCO expedited member appeal process must be concluded and a final decision made by the MCO within 72 hours after a request is made with provisions for extending the time frame when necessary; (11) language specifies the MCO standard member appeal process must be concluded and a final decision made by the MCO within 30 calendar days of the request for the appeal with provisions for the extending the time frame when necessary.

Tribal Impact: ***HSD does not anticipate a negative service or financial impact to individuals, tribes or their healthcare providers with the amendments to this rule. While some time periods are lengthened and others are shortened, the amendment is consistent with federal requirements. It is anticipated that the responsibilities and standards stated in this section will improve the performance of a managed care organization with regard to serving all of its members.***

8.308.21 NMAC MANAGED CARE PROGRAM – QUALITY MANAGEMENT

A proposed change provides additional information and requirements regarding the quality management programs, including additional criteria for mandatory and optional External Quality Review Organization activities.

Tribal Impact: ***HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with the amendments to this rule. It is anticipated that the responsibilities and standards stated in this section will improve the performance of a managed care organization with regard to serving all of its members.***

8.302.3 NMAC THIRD PARTY LIABILITY PROVIDER RESPONSIBILITIES
Significant proposed changes include clarifying when claims must be denied due to the recipient having other insurance resources or third party liability and when claims cannot be denied; and specifying that MCOs must follow these requirements established by federal regulation.

Tribal Impact: ***HSD does not anticipate a service or financial impact to individuals, tribes or their healthcare providers with the amendments to this rule. It is anticipated that the responsibilities and standards stated in this section will improve the performance of a managed care organization with regard to serving all of its members.***

Tribal Consultation Comments -

Tribes and their healthcare providers may view the proposed amendments on the HSD webpage at http://www.hsd.state.nm.us/providers/written-tribal-consultation-letters.aspx. Letter 17-09

Important Dates

- **Written comments must be submitted by 5:00 p.m. Mountain Daylight Time (MDT) on November 20, 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 December 4, 2017.

- **A public hearing** to receive testimony on this proposed rule will be held in The Rio Grande Conference Room , Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM on November 20, from at 10:00 a.m. to 12 p.m. MST.

- The Department proposes to implement these rule effective February 1, 2018.)

Sincerely,

Nancy Smith-Leslie
Director, Medical Assistance Division

cc: Theresa Belanger, Native American Liaison, MAD
HSD/MAD/Centennial Care Contract Bureau
HSD/MAD/PPB-Program Management/Communications Unit