



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

August 16, 2018

RE: Tribal Notification to Request Advice and Comments Letter 18-09: Proposed Amendments to NMAC rules 8.308.6, 8.308.7, 8.308.9, 8.308.10, and 8.308.12

Dear Tribal Leadership, Indian Health Service, 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 until **5:00pm Mountain Daylight Time (MDT) on September 28, 2018** regarding proposed amendments to following sections of the New Mexico Administrative Code (NMAC):

- 8.308.6 Managed Care Program – Eligibility;
- 8.308.7 Managed Care Program – Enrollment and Disenrollment;
- 8.308.9 Managed Care Program – Benefit Package;
- 8.308.10 Managed Care Program – Care Coordination; and
- 8.308.12 Managed Care Program – Community Benefit.

HSD is proposing to revise these rules to align with the Department's Centennial Care 1115 Demonstration Waiver renewal that will be effective on January 1, 2019. Below please find a summary of HSD's proposed rule revisions and the expected effect that these changes may have on Native American Medicaid recipients.

### **8.308.6 NMAC**

#### **Part Title**

The Department proposes amending the title to better describe the section and actions within the regulation.

#### **Section 10: Special Situations**

The Department proposes revisions that better describe the action of enrollment with a managed care organization (MCO) rather than eligibility for Medicaid. Proposed language was

added to clarify that an eligible mother and her newborn are enrolled with the same MCO for the month of the birth. The Department also proposes deleting current language and adding clarifying language related to MCO enrollment requirements for individuals who meet a Nursing Facility Level of Care (NF LOC).

Other proposed amendments within this section include updating the date of proposed changes, and minor edits for consistency and clarity.

**Tribal Impact**

All proposed changes will apply to Native American individuals who are enrolled in Centennial Care.

**8.308.7 NMAC**

**Section 9: Managed Care Enrollment**

The Department proposes new language outlining the conditions for enrollment and retroactive enrollment with a MCO. Proposed language was added to clarify enrollment provisions for inmates and individuals being released from incarceration and for individuals who miss their enrollment switch period due to incarceration, hospitalization or incapacitation. The Department proposes clarifying language defining the open enrollment period. Proposed language was also added to this section regarding Native American opt-in and opt-out enrollment provisions.

Other proposed amendments within this section include updating the date of proposed changes, and minor edits for consistency and clarity.

**Tribal Impact**

All proposed changes will apply to Native American individuals who are enrolled in Centennial Care.

**8.308.9 NMAC**

**Section 7: Definitions**

The Department proposes adding definitions for Early Childhood Home Visiting Program and Evidence-Based, Early Childhood Home Visiting Program in this section.

**Section 17: Preventive Physical Health Services**

The Department proposes adding language including referral to a home visiting pilot program for eligible pregnant women and children as a component of the prenatal care benefit under the managed care program.

**Section 23: Centennial Home Visiting (CHV) Pilot Program Services**

The Department proposes new language outlining the rules for a Centennial Home Visiting (CHV) pilot program that will be available under the managed care program starting January 1, 2019. The proposed language explains who will be served under the CHV pilot program and where such services will be available. The Department includes proposed language defining the CHV pilot program delivery models as the Nurse Family Partnership (NFP) model for first-



time parents; and the Parents as Teachers (PAT) model. Proposed language describing covered services under the CHV pilot program is also included in this section.

Remaining sections of the rule were renumbered.

**Tribal Impact**

The new CHV services will be available to Native American individuals who are enrolled in Centennial Care and who meet the criteria for accessing such services. CHV services may positively impact the health of Native American Centennial Care members.

**8.308.10 NMAC**

**Section 9: Care Coordination**

The Department proposes adding new language allowing the MCOs to delegate care coordination activities and requiring the MCOs to share information about release from incarceration with the member's providers for care coordination purposes. The Department also proposes moving language regarding Electronic Visit Verification to NMAC 8.308.12, Community Benefit, under relevant services.

Other amendments have been proposed within the rule for consistency and clarity.

**Tribal Impact**

The proposed rule allows the MCOs to delegate care coordination activities to entities such as Community Health Representatives (CHRs) and other tribal providers. This may positively impact Native American individuals who are enrolled in Centennial Care.

**8.308.12 NMAC**

**Section 7: Definitions**

The Department proposes to add a new definition for Electronic Visit Verification (EVV). The Department also proposes clarifying language on the role of the Employer of Record (EOR) when the member has a Power of Attorney (POA).

**Section 13: Covered Services in Agency Based Community Benefit (ABCB)**

In this section, the Department proposes language for inclusion of a security deposit for an assisted living facility placement of up to \$500. The Department also proposes the addition of nutritional counseling service in the Agency-Based Community Benefit (ABCB). New proposed language in this section also includes the 21<sup>st</sup> Century Cures Act federal requirement that all personal care services must be documented with the use of an EVV system. The Department also proposes an increase in the annual limit for respite service hours from 100 to 300.

**Section 18: Covered Services in Self-Directed Community Benefit (SDCB)**

The Department proposes implementing a cost limit for certain SDCB services effective January 1, 2019. There are currently no limits on these services, and members who are in the program prior to January 1, 2019 with amounts above the new proposed limits are

“grandfathered”. SDCB budgets will not be reduced for grandfathered individuals for these services. The new proposed limits include:

- Specialized therapies (such as acupuncture or massage) – proposed limit of \$2,000 annually.
- Related goods (such as gym membership or supplements) – proposed limit of \$2,000 annually.
- Non-medical transportation (such as to events in the community) – proposed limit of \$1,000 annually.

The Department proposes to change in name of the SDCB “homemaker” service to “self-directed personal care service (PCS)”. There is no change in the service definition.

The Department also proposes the addition of a new service in SDCB called start-up goods. This new service allows for the one-time purchase of items that a new SDCB member needs to self-direct, such as a computer, printer, and fax machine. There is a one-time limit of up to \$2,000 for start-up goods.

Other amendments are proposed within this section of the rule for consistency and clarity.

### **Tribal Impact**

In 2017, there were approximately 5,110 Native American members who received the Community Benefit. Of these, approximately 4,993 were served under the ABCB, and 117 were served under the SDCB. The proposed cost limits on specialized therapies, related goods, and transportation will not impact current Native American members, since they will be grandfathered, as described above. These changes may impact new Native American members who become eligible for the Centennial Care Community Benefit.

### **Estimated Total Financial Impact**

No financial impact is expected as a result of proposed NMAC rule changes to 8.308.6, 8.308.7, and 8.308.10.

For changes proposed to 8.308.9 NMAC, the estimated fiscal impact is approximately \$2.7 million annually (state and federal funds combined) in additional costs for the CHV pilot program.

For changes proposed to 8.308.12 NMAC, the estimated fiscal impact is:

1. Approximately \$1 million annually (state and federal funds combined) in additional costs for the increase in respite hours;
2. Approximately \$200,000 annually (state and federal funds combined) in additional costs for the addition of nutritional counseling service to the Agency-Based model; and
3. Approximately \$500,000 annually (state and federal funds combined) in additional costs for the addition of start-up goods.

HSD does not anticipate an immediate fiscal impact for limiting the costs of specialized therapies, related goods and transportation for future members, because this will only slow future cost growth.



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: August 28, 2018

Hearing Date: September 26, 2018

Adoption Date: Proposed as January 1, 2019

Technical Citations: Centennial Care 2.0 1115 Waiver, Federal Register/Vol. 81, No. 230, 42 CFR 435.119(b)(2)

### **Tribal Advice and Comments**

Tribes and tribal health care providers may view the proposed NMAC rules 8.308.6, 8.308.7, 8.308.9, 8.308.10, and 8.308.12 on the HSD webpage at: <http://www.hsd.state.nm.us/providers/written-tribal-consultations.aspx> *Notification Letter 18-09*.

A written copy of these documents may be requested by contacting the HSD Medical Assistance Division (HSD/MAD) in Santa Fe at (505) 827-6252.

### **Important Dates**

**A public hearing on this rule is scheduled be held in the Rio Grande Conference Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM on September 26, 2018, from 9 a.m. to 12 p.m. MDT.**

**Written advice and comments must be received no later than 5:00pm Mountain Daylight Time (MDT) on September 28, 2018.** Please send your advice, comments or questions to the MAD Native American Liaison, Theresa Belanger, at (505) 827-3122 or by email to [theresa.belanger@state.nm.us](mailto:theresa.belanger@state.nm.us).

All comments and responses will be compiled and made available after October 11, 2018.

Sincerely,



Nancy Smith-Leslie  
Director

cc: Kari Armijo, HSD/MAD Deputy Director  
Theresa Belanger, Native American Liaison, HSD/MAD  
HSD/MAD Centennial Care Bureau  
HSD/MAD Program Policy Bureau