



Michelle Lujan Grisham, Governor
David R. Scrase, M.D., Secretary
Nicole Comeaux, J.D., M.P.H, Director

August 25, 2020

RE: Tribal Notification to Request Advice and Comments Letter 20-19: Proposed Repeal and Replace of 8.326.10 NMAC

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 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'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 **5:00 p.m. Mountain Time (MT) on September 28, 2020** regarding proposed amendments to the New Mexico Administrative Code (NMAC) rule 8.326.10, Brain Injury Services Fund Program. The Brain Injury Services Fund Program is a non-Medicaid program.

The rule is being amended to update the service definitions and requirement for the International Classification of Diseases (ICD) codes for the expanded population; replace the term Traumatic Brain Injury Crisis Interim Services (CIS) with Home and Community-Based Services (HCBS); change the crisis interim period from 90 days to six months; consolidate the requirements for service coordination and fiscal intermediary agency contractors; more clearly define the terms for continued enrollment and disenrollment from the program; replace the \$25,000 annual participant budgetary cap with the annual cap prescribed by HSD; remove Life Skills Coaching as a separately contracted service; add Professional Life Skills Coaching and Organizer services to the list of available BISF HCBS services to be provided by independent contractors, who have received training and certification in life coaching or life skills coaching; and define non-covered goods and services. Overall, the updated rule for the BISF program ensures that the services available to the public and expectations of service providers are communicated in a manner that is more clear, concise and accessible for public inspection.

The Department proposes the following rule amendments:

Part 10 Title

Title changed to align with the name of the fund in statute, Section 27-1-16 NMSA 1978 and the statute's expanded service definition of brain injury, which now includes other acquired brain injuries in addition to traumatic brain injury.

Section 1

Changes the issuing agency to the Human Services Department, as reflected in the above referenced statute.

Section 6

Replaces the section to reflect the updated brain injury service definition and clarify that the fund assists persons with brain injury on a short-term basis and who present with a crisis need, when no other funding is available.

Section 7

The Department proposes to add definitions for the following:

“Brain injury” in new **Subsection C**.

“Brain Injury Services Fund (BISF) program” in new **Subsection D**; replacing “TBI trust fund program” in **Section AA**.

“Home and Community-Based Services (HCBS)” in new **Subsection K**; replacing “TBI crisis interim services” definition with clearer language.

“Human Services Department (HSD)” in new **Subsection L**; replacing “Aging and long-term services as the administering agency.

The Department proposes to delete or rename definitions that are no longer applicable for the following:

Subsection C – “Aging and long-term services department”; replaced with “Human Services Department” in new Subsection L.

Subsection Q – delete “Limited service coordination” as this is no longer an offered service.

Subsection Y – “TBI crisis interim services”; replaced with “Home and Community-Based Services” in Subsection K, using clearer language.

Subsection Z – “TBI formulary”; replaced with “Formulary” in Subsection I, using clearer language.

Subsection AA – “TBI trust fund program”; replaced with “Brain Injury Services Fund (BISF) program” in Subsection C, using clearer language.

Subsection BB – delete “TBI uniqueness” as this is not a term used in the BISF program.

Subsection CC – delete “Unit price system (UPS)” as this is not a term used in the BISF program.

The Department proposes to amend definitions to include clearer language for the following:

Subsection A – “Acquired brain injury”. Amended definition aligns language with the updated service definition of the Brain Injury Services Fund statute and clarifies the impairments that can define these injuries.

Subsection B – “Activities of daily living (ADL)”. Amended definition correctly defines Activities of Daily Living versus Instrumental Activities of Daily Living.

Subsection D – “Crisis” moved to **Subsection E** with clearer definition.

Subsection E – “Crisis interim period” moved to **Subsection F** with clearer definition and change from a 90-day period to a six-month period.

Subsection F – “Education” moved to **Subsection G** with clearer definition.

Subsection G – “Fiscal intermediary agency” moved to **Subsection H** with clearer definition and expectations for this service.

Subsection I – “ICD 9 code” moved to **Subsection M** and replaced with “ICD code” to maintain requirements with later revisions of the International Classification of Disease codes; the definition includes the types of medical practitioners that may issue codes.

Subsection J – “Imminent” moved to **Subsection N** with clearer definition.

Subsection K – “Independence” moved to **Subsection O** with clearer definition.

Subsection L – “Individual” moved to **Subsection P** with reference to the program applicant or participant.

Subsection M – “Individual living plan” moved to **Subsection Q** and replaced with “Independent living plan” and specification of included elements.

Subsection N – “Interim” moved to **Subsection R** with clearer definition that specifies 6 months.

Subsection R – “Payor of last resort” changed to “Payer of last resort” and moved to **Subsection V** with clearer definition.

Subsection S – “Residency” moved to **Subsection W** with clearer definition.

Subsection T – “Risk” moved to **Subsection X** with clearer definition.

Subsection R – “Self-determination” moved to **Subsection Y** with clearer definition.

Subsection V – “Service coordination” moved to **Subsection Z** with clearer definition and expectations for this service.

Subsection W – “Short-term” moved to **Subsection AA** with clearer definition.

Subsection X – “Traumatic brain injury (TBI)” moved to **Subsection BB** with reorganization of sentences; addition of sleep as potential impairment.

Subsections whose definitions were not changed but were renumbered:

Subsection H – “Grievance”; in new **Subsection J**.

Subsection O – “Legal resident of New Mexico”; in new **Subsection S**.

Section 8

The original text in this section has been deleted and renamed. Deleted text in this section. Program Standards and Standard Operating Procedures for providers are issued separately from the New Mexico Administrative Code rule. This section has been renamed “Mission Statement” and the Department’s mission statement has been added.

Section 9

This section has been renamed as “BISF Eligibility Requirements”. The language has been amended, such that it meets current program requirements; clarifies enrollment into the BISF program; expands the definition to ABI and or TBI; includes direction for homeless individuals regarding “Residency”; updates programs that might pose service coordination duplication; deletes “Limited Service Coordination” and “non-TBI Service Coordination”; includes new language for re-enrollment into the BISF program for “Reactivation of Services” and for “Continuation of BISF Services Beyond One Consecutive Service Year”; and includes conditions for voluntary and involuntary disenrollment.

Section 10

This section has been renamed as “BISF Contracted Entities and Contractors”, including subsections for “Service coordination services” [Articles A(1)-(2)] and “Fiscal intermediary agent (FIA)” [Articles B(1)-(2)], each with sections that define the qualifications and scope of services using clearer language and

delineation of primary expectations. Requirements for these sections were derived from former sections 8.326.10.12 and 14A and B. Requirements for these sections were derived from 8.326.10.10A-D, 8.326.10.12A, and 8.326.10.14.A and B. Administrative requirements for service coordination previously included in Section 10C were moved to the new Section 10A; Administrative requirements for the fiscal intermediary agent were moved from Section 14A to Section 10B. Administrative requirements common to both services were included in Section 10C.

Section 11

This original text in this section has been deleted and renamed. Deleted “Life Skills Coaching Services Providers for Traumatic Brain Injury Trust Fund Program” in its entirety. New program requirements for the provision of Life Skills Coaching are described under the amended “Section 13E(10): BISF Home and Community-Based Services, Service Descriptions” as “Professional Life Skills Coaching and Organizer Services”.

Section 11 has been renamed “Conflict of Interest” and includes language which was found in various other sections of the original NMAC and consolidated here, as pertaining to the noted service providers.

Section 12

Deleted “Crisis Interim Services to Individuals with Traumatic Brain Injury Trust Fund Program” in entirety, with language moved to Sections 13A-C.

Added new section 12 to include “Independent Living Plan” requirements.

Section 13

Section 13 has been renamed “Brain Injury Services Fund Home and Community Based Services”.

Clearer or amended requirements in the new Section 13, titled “Brain Injury Services Fund Home and Community-Based Services”, were outlined for the following:

- Section 13A: BISF HCBS Eligibility Requirements (derived from former Section 12A).
- Section 13B: Funding Limits Per Participant, includes the deletion of B(4) limiting individuals to a \$25,000/year maximum and replaces with language referring to an annual budgetary cap per participant as prescribed by HSD (derived from former Section 12B).
- Section 13C: Duration of Services is defined with clearer language; expands the crisis interim period from 90 days to six months; adds the ability to request exceptions from HSD to continue services beyond two consecutive interims; adds the ability to request funding above established funding limits on the basis of appropriate medical documentation; and outlines the mechanism for modifying annual budget limits (derived from former Section 12C).
- Section 13D: Includes new language on Freedom of Choice for service providers and vendors for services and goods.
- Section 13E: Service Descriptions is amended to include clearer descriptions and requirements in line with program expectations as well as alphabetical ordering of available services. It also defines those services that will continue to require Physician’s Orders. The new section removes previous requirements for Physician’s Orders for traditional and alternative therapies (Physical Therapy, Occupational Therapy, Speech Language Pathology Therapy, Outpatient Mental Health, acupuncture, massage, and chiropractic), medical alert devices and monitoring, and common DME under \$250. Newly added services include “Professional Life Skills Coaching and Organizer Services” with description of expectations for certification and provision of the service; adds “Health and Housing Advocate under “Other Use of BISF HCBS Funds”; deletes

“Health Insurance Deductibles”; consolidates language under “Other Uses of BISF HCBS Funds”; moves from this same section alternative therapies to “Therapies/Alternative Therapies”; and includes the provision that vendors may not charge program participants, unless the program has authorized direct reimbursement to the participant.

- Section 13F: Prohibits service providers from charging participants when the fiscal agent has a service agreement with the provider.
- Section 13G: Waiver of Requirements in the former Section 13Q were moved to this section.

Section 14

Section 14 content was moved to the new Section 10.B and C.

Section 14 is a new section titled “Non-Covered Services and Goods”.

Section 15

Section 15 has been moved and renumbered to Section 16.

New Section 15, “Service Authorization and Reimbursement”, defines the process and conditions for service authorization and reimbursement to vendors; provides more general language regarding reimbursement to service coordination agencies and the fiscal intermediary agent; and notes that funding for any and all service components is based upon trust fund revenues and legislative appropriation.

Section 16

Section 15 has been renumbered to Section 16 and renamed. “Grievance and Appeals Processes for the Brain Injury Services Fund Program”. New section includes clearer requirements and defines expectations for providers regarding written procedures for participants with complaints.

Section 16A: Proposed grievance requirements permit orderly resolution through BISF contracted agencies.

Section 16B summarizes the Appeal process for those who are not satisfied with the outcome of their grievance.

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 25, 2020

Hearing Date: September 28, 2020

Adoption Date: January 1, 2021

Technical Citations: CFR does not apply.

Estimated Total Financial Impact

The BISF is a trust fund that is funded through moving violation traffic tickets. Implementation of these rule changes is not expected to impact general funds. Adding language for annual budget caps is to ensure availability of funding for the maximum number of people who can be served statewide.

Tribal Impact

HSD anticipates a continued positive impact to service availability to tribes and their healthcare providers who serve people living with brain injury. Nine of the 60 individuals currently enrolled in the BISF are Native Americans, comprising 15% of the total population served.

Tribal Advice and Comments

Tribes and tribal healthcare providers may view the proposed NMAC rule 8.326.10 on the HSD webpage at: <http://www.hsd.state.nm.us/providers/written-tribal-consultations.aspx>. *Notification Letter 20-19*.

A written copy of these documents may be requested by contacting the HSD Medical Assistance Division (HSD/MAD) in Santa Fe at (505) 827-1337.

Important Dates

A public hearing on this rule is scheduled be held via conference call on Monday, September 28, 2020 at 1:00 p.m, MT. Conference Number: 1-800-747-5150. Access Code: 2284263.

Written advice and comments must be received no later than 5:00 p.m. MT on Friday, September 28, 2020. 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.

All comments and responses will be compiled and made available after October 9, 2020.

Sincerely,



Nicole Comeaux, J.D., M.P.H, Director
Medical Assistance Division