



Michelle Lujan Grisham, Governor
David R. Scrase, M.D., Secretary

January 29, 2019

RE: Tribal Notification to Request Advice and Comments Letter 19-01: Medically Fragile Home and Community-Based Services Waiver Services

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 **5:00pm Mountain Standard Time (MST) on February 28, 2019** regarding proposed amendments to the New Mexico Administrative Code (NMAC) rule 8.314.3, Medically Fragile Home and Community-Based Services Waiver Services.

The Department is seeking approval of an amendment to the Medically Fragile Waiver from the Centers for Medicare and Medicaid Services (CMS) to increase provider rates for nursing RN, nursing LPN, occupational therapy, physical therapy, speech language pathology, and case management services and to add the home accessibility adaptations service, known as Environmental Modifications (EMODs) as a service included in the waiver. Environmental Modifications (EMODs) help to ensure health, welfare, and safety of the eligible recipient or enable the eligible recipient to function with greater independence in the home. The rule is being amended to align services and definitions with the amendment and to allow additional funding if a recipient's Individualized Service Plan (ISP) budget exceeds the capped dollar amount due to provider rate increases.

8.314.3 NMAC

Section 10

Subsection L – Language added to define the requirements for an environmental modification provider agency is added. An environmental modification provider agency must be bonded, licensed by the New Mexico Regulation and Licensing Department (RLD) and authorized by the Department of Health to complete the EMODs.

Section 13

Subsection I – Language added to define the scope of the EMODs service. EMODs include the purchase and installation of equipment or making physical adaptation to an eligible recipient's residence that are necessary to ensure the health, welfare, and safety of the eligible recipient or enhance his or her access to the home environment and increase his or her ability to act independently.

Section 15

Subsection E – Language added to allow additional Individualized Service Plan (ISP) budget funding to be considered if the eligible recipient’s ISP budget exceeds the capped dollar amount due to provider rate increases.

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: January 29, 2019

Hearing Date: February 28, 2019

Adoption Date: July 1, 2019

Technical Citations: 42 CFR 438 subparts A through J

Tribal Impact

HSD anticipates a positive impact to service availability to tribes and their healthcare providers who provide MFW services.

Estimated Total Financial Impact

Implementation of these rule changes will result in an estimated fiscal impact of approximately \$621,500 (\$169,600 state general fund dollars) in additional costs to add Environmental Modifications (EMOD) as a service included in the Medically Fragile waiver. Adding language for additional ISP budget funding will have minimal fiscal impact to the waiver.

Tribal Advice and Comments

Tribes and tribal healthcare providers may view the proposed NMAC rule 8.314.3 on the HSD webpage at: <http://www.hsd.state.nm.us/providers/written-tribal-consultations.aspx>. **Notification Letter 19-01.**

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 in the Rio Grande Conference Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM on February 28, 2019 from 9 a.m. to 10 a.m. MST.

Written advice and comments must be received no later than 5:00pm Mountain Standard Time (MST) on February 28, 2019. 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 written comments received will be posted as they are received on the HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

All comments and responses will be compiled and made available after the public hearing.

Sincerely,

Angela Medrano
Deputy Director

cc: Kari Armijo, HSD/MAD Deputy Director
Theresa Belanger, Native American Liaison, HSD/MAD
HSD/MAD Exempt Services & Program Bureau
HSD/MAD Program Policy Bureau