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Notices of Rulemaking and Proposed Rules

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

NOTICE OF RULEMAKING

The Human Services Department (the Department), Medical Assistance Division (MAD), is amending the following rule that is part of the New Mexico Administrative Code (NMAC): 8.200.410, General Recipient Rules - General Recipient Requirements.

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: May 14, 2019
Hearing Date: June 14, 2019
Adoption Date: Proposed as August 01, 2019
Technical Citations: HB371 and State Buy-In Agreement

The Department is updating eligibility rules as mandated by state legislation contained in House Bill (HB) 371. HB371 states, "The Department shall provide for the automatic enrollment into Medicare Part B coverage individuals whom it deems eligible for participating in the Qualified Medicare Beneficiary (QMB) program and who are not enrolled in Medicare Part B coverage. The Department shall promulgate rules to provide for informing in writing, applicants for and recipients of QMB coverage that if they are enrolled in the QMB program and, at the time of enrollment they are not enrolled in Medicare Part B, they are eligible for automatic enrollment in Medicare Part B coverage, regardless of whether general or open enrollment of Medicare Part B beneficiaries is allowed under federal law at the time a QMB recipient enrolls in the QMB program."
The Department through this rule promulgation is implementing the automatic enrollment into Medicare Part B provision in HB371. However, rather than limit automatic enrollment to QMB, the Department will automatically enroll into Medicare Part B individuals on most Medicaid categories of eligibility with the exception of categories that we do not currently enroll into Part B as listed in the rule.

The Department is proposing to amend the rule as follows:

8.200.410 NMAC
A new section 18 is added to 8.200.410 NMAC that states that HSD will automatically enroll into Medicare Part B most full Medicaid coverage or Medicare Savings Program (MSP) categories of eligibility with some exceptions. To be eligible for automatic Part B enrollment in addition to active Medicaid eligibility an individual must be receiving Medicare Part A and eligible for and not enrolled in Part B. HSD informs applicants and recipients in writing who may be eligible for automatic enrollment into Medicare Part B.

The register for these proposed amendments to this rule will be available May 10, 2019 on the HSD website at http://www.hsd.state.nm.us/LookingForInformation/registers.aspx or at http://www.hsd.state.nm.us/2017-comment-period-open.aspx. If you do not have Internet access, a copy of the register and proposed rule may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement these rules effective August 1, 2019. A public hearing to receive testimony on this rule will be held in Hearing Room 2, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico, 87505 on Friday, June 14, 2019 at 11:00 a.m., Mountain Daylight Time (MDT).

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATTN: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at *(505) 827-1337*. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MDT on June 14, 2019. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. 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.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

REGULATION AND LICENSING DEPARTMENT
CHIROPRACTIC BOARD

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Chiropractic Board will hold a rule hearing on Friday, June 21, 2019, at 10:00 a.m.

Following the rule hearing, the Board will convene a board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the New Mexico Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, NM, in the Rio Grande Room.

The purpose of the rule hearing is to consider a repeal and replacement of rules for the Board which appear at 16.4.1 NMAC through 16.4.23 NMAC. The proposed rules and repeal and replacement updates the Board's existing rules including:

(1) correcting grammatical and typographical errors and reformatting to improve organization and provide uniformity for the application of the rules; **(2)** updating the Board's name so that it comports with the name in the Chiropractic Physician Practices Act; **(3)** amending provisions applicable to all types of licensees; **(4)** updating the requirements for who can provide continuing education certification for licensees, clarification of definitions; and **(5)** amending and providing clarification for the reinstatement of lapsed licenses. The amendments, revisions and clarification were made to the following rules:

16.4.1 - NMAC General Provisions
16.4.2 - NMAC Temporary Licensure
16.4.3 - NMAC Requirements for Licensure
16.4.4 - NMAC Licensure Without Examination
16.4.5 - NMAC Criteria for Determination of Equivalency to Council of Chiropractic Education C.C.E.
16.4.6 - NMAC Examinations
16.4.7 - NMAC Impaired Practitioner Programs
16.4.8 - NMAC Disciplinary Proceedings
16.4.9 - NMAC License Renewal Procedures
16.4.10 - NMAC Continuing Education
16.4.11 - NMAC Forfeiture of License
16.4.12 - NMAC Classification of Chiropractic Licensure
16.4.13 - NMAC Reinstatement of Chiropractic Licensure
16.4.14 - NMAC Management of Medical Records
16.4.15 - NMAC Chiropractic Advanced Practice Certification Registry
16.4.16 - NMAC Parental Responsibility Act Compliance
16.4.17 - NMAC Supervision of Interns
16.4.18 - NMAC Practice Procedures
16.4.19 - NMAC Chiropractic Assistants
16.4.20 - NMAC Advertising
16.4.22 - NMAC Fees
16.4.23 - NMAC Licensure for Military Veterans, Spouses, And Veterans

To obtain and review copies of the proposed changes and public comments you may go to the Board's website at: http://www.rld.state.nm.us/boards/Chiropractic_Examiners_Rules_and_Laws.aspx or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Nicolas Alderete, Board Administrator, via electronic mail at: Chiropractic.board@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than June 20, 2019. Persons will also be given the opportunity to present their comments at the rule hearing. All public comment received prior to the meeting will be posted on the board's website.

An individual with a disability who is in need of the reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Nicolas Alderete, Board Administrator at (505)-476-4622.

Statutory Authority: NMSA 1978, Sections 61-4-1 to 61-4-17

Summary of Proposed Changes:

16.4.1 NMAC, 16.4.2.1 NMAC, 16.4.3.1 NMAC, 16.4.4.1 NMAC, 16.4.5.1 NMAC, 16.4.6.1 NMAC, 16.4.7.1 NMAC, 16.4.8.1 NMAC, 16.4.9.1 NMAC, 16.4.10.1 NMAC, 16.4.11.1 NMAC, 16.4.12.1 NMAC, 16.4.13.1 NMAC, 16.4.14.1 NMAC 16.4.15.1 NMAC, 16.4.16.1 NMAC, 16.4.17.1 NMAC, 16.4.18.1 NMAC, 16.4.19.1 NMAC, 16.4.20.1 NMAC, 16.4.22.1 NMAC, 16.4.23.1 NMAC

The changes for the above renames the Issuing Agency from New Mexico Board of Chiropractic Examiners to New Mexico Chiropractic Board which is consistent with the title used in the Chiropractic Physician Practices Act.

16.4.1 NMAC - General Provisions
No new rules. Changes name of board to comport with the statute and provides corrections to grammatical and typographical errors and enumeration of statute Sections

16.4.2 NMAC - Temporary Licensure
No new rules. Changes name of board to comport with the statute provides corrections to grammatical and typographical errors.

16.4.3 NMAC - Requirements for Licensure
Changes name of the board to comport with the statue, provides corrections to grammatical and typographical errors, and adds one new rule.

16.4.3.9 NMAC - New Licensee Presentment to the Board
Adds a provision to this rule that provides the Board the opportunity to meet the newly licensed doctors of chiropractic and to instruct the new doctors of chiropractic as to the role of the board and to impress upon the new doctors the importance of knowing the rules/regulations under which they must practice.

16.4.4 NMAC - Licensure Without Examination
No new rules. Changes the name of the Board to comport with the statute.

16.4.5 NMAC - Criteria for Determination of Equivalency to Council of Chiropractic Education C.C.E.
No new rules. Changes name of board to comport with statute.

16.4.6 NMAC - Chiropractic Practitioners Examination
No new rules. Changes name of board to comport with the statute and corrects grammatical and typographical errors.

16.4.7 NMAC - Impaired Practitioners Program
No new rules. Changes name of board to comport with the statute, corrects enumeration of statute Sections, and corrects grammatical and typographical errors.

16.4.8 NMAC - Disciplinary Proceedings
No new rules. Changes name of board to comport with the statute, corrects grammatical and typographical errors.

16.4.9 NMAC - License Renewal Procedures
No new rules. Changes name of board to comport with the statute, corrects grammatical and typographical errors.

16.4.10 NMAC - Continuing Education
16.4.10 Part 10 is repealed and replaced to provide updates and clarification regarding the calculation of continuing education credit hours, approval of continuing education courses, establishing continuing education requirements for new licensees, and correcting any typographical and grammatical errors.

16.4.11 NMAC - Forfeiture of License
No new rules. Changes name of the board to comport with the statute and corrects enumeration of a Subsection.

16.4.12 NMAC - Classification of Chiropractic License
No new rules. Changes name of the board to comport with the statute, corrects typographical and grammatical errors and corrects enumeration of Subsections.

16.4.13 NMAC - Reinstatement of Chiropractic License
No new rules. Changes name of board to comport with the statute, corrects typographical and grammatical errors and corrects enumeration of statute Section.

16.4.14 NMAC - Management of Medical Records
No new rules. Changes name of board to comport with the statute and corrects enumeration of a statute subsection.

16.4.15 NMAC - Chiropractic Advanced Practice Certification Registry
16.4.15 - Part 15 is repealed and replaced to provide updates to the board name to comport with statute, provide updates and clarification regarding advanced practice chiropractic certification requirements and reinstatement of licenses, adds a new rule regarding the carry-over of continuing education credits, provides for a consent form for any injections and corrects any typographical or grammatical errors.

16.4.16 NMAC - Parental Responsibility Act Compliance
No new rules. Changes name of the board to comport with the statute and corrects for enumeration of 40-5A-1 to 40-5A-13 NMSA.

16.4.17 NMAC - Supervising Interns
No new rules. Changes name of the board to comport with the Statute, corrects typographical and grammatical errors and enumeration of statute Sections.

16.4.18 NMAC - Practice Procedures
Changes name of the board to comport with the statute. Additions to the procedures and the addition of the phrase "and certified by programs approved by the board" X-ray was added to the list of procedures as a diagnostic procedure. NCV or needle EMG was added to clarify the different types of EMG that may be used and the additional wording about certified programs approved by the board is necessary to clarify the level of training required by the board.

16.4.19 NMAC - Chiropractic Assistants
No new rules. Changes name of the board to comport with the statute, adds board address, corrects enumeration of statute Sections, and corrects sentence in 16.4.19.6 to replace the word Physician with the word assistant and the word of with by.

16.4.20 NMAC - Advertising
No new rules. Changes name of the board to comport with the statute and corrects typographical and grammatical errors.

16.4.22 NMAC - Fees
No new rules. Changes name of the board to comport with the statue and changes Enumerations of statue Sections.

16.4.23 NMAC - Licensing for Military
No new rules. Changes name of the board to comport with the Statute.

REGULATION AND LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES DIVISION

NOTICE OF PUBLIC HEARING

The Construction Industries Commission (CIC) of the Construction Industries Division (CID) of the Regulation and Licensing Department will convene a public hearing on the following proposed changes to repeal its rule 14.9.5 NMAC – MEDICAL GAS INSTALLATION AND CERTIFICATION and to replace it with 14.9.5 NMAC – MEDICAL GAS AND VACUUM SYSTEM INSTALLATION

AND PROFESSIONAL QUALIFICATIONS STANDARDS. The hearing will be held before a hearing officer, at which time any interested person is invited to submit data, views or arguments on the proposed changes, either orally or in writing, and to examine witnesses testifying at the hearing.

The CIC proposes to repeal 14.9.5 NMAC – MEDICAL GAS INSTALLATION AND CERTIFICATION and to replace it with 14.9.5 NMAC – MEDICAL GAS AND VACUUM SYSTEM INSTALLATION AND PROFESSIONAL QUALIFICATIONS STANDARDS in order to update the rules regarding medical gas and vacuum systems and to clarify the rules regarding professional qualification standards.

Section 60-13-6, Subsections F and K of Section 60-13-9 and Subsections B and J of Section 60-13-44 of the Construction Industries Licensing Act, NMSA 1978 authorize the CIC and the CID to adopt rules to carry out the provisions for medical gas and vacuum systems.

The hearing is scheduled as follows:

CIC hearing – 9:00 a.m., June 18, 2019, at the New Mexico Regulation and Licensing Department, Toney Anaya Building – Hearing Room 2 on the 2nd Floor, located at 2550 Cerrillos Rd., Santa Fe, NM 87504.

Please Note: All persons wishing to participate in the public hearing remotely may do so telephonically dialing into:

Dial-in Number: (515) 739-1015

Meeting ID: 788-223-117

Interested persons may secure copies of the proposed changes by accessing the Construction Industries Division website (www.rld.state.nm.us/construction) or by requesting from the Santa Fe CID Office – Toney Anaya Building, 2550 Cerrillos Rd. Santa Fe, NM 87504. You may send written comments to: Construction Industries Division P.O. Box 25101, Santa Fe, NM 87504, Attention: Public Comments. Written comments may also be faxed to (505) 476-4702 to the attention of Mary James. All comments must be received no later than 5:00 p.m., on June 14, 2019. All public comments and documentation will be entered into the record during the public hearing. If you require special accommodations to attend the hearing, please notify CID by phone, email or fax, of such needs notifying us as soon as possible to ensure adequate accommodations. Telephone: (505) 476-4616, email: Mary.James2@state.nm.us; Fax No: (505) 476-4702.

REGULATION AND LICENSING DEPARTMENT
PHYSICAL THERAPY BOARD

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Physical Therapy Board will hold a rule hearing on Monday, June 17, 2019, at 12:00 p.m. Following the rule hearing, the Board will convene a board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the Regulation and Licensing Department, 5500 San Antonio Dr., NE, Albuquerque, NM.

The purpose of the rule hearing is to consider proposed amendments to the following rules:
16.20.2 NMAC - Examinations
16.20.3 NMAC - Issuance of Licenses
16.20.4 NMAC - Temporary License
16.20.6 NMAC - Physical Therapist Assistance
16.20.7 NMAC - Physical Therapist Supervision
16.20.13 NMAC - (New Part) Dry Needling Provision

To obtain and review copies of the proposed changes and public comments, you may go to the Board's website at: http://www.rld.state.nm.us/boards/Physical_Therapy_Rules_and_Laws.aspx or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to E. Wren Propp, Board Administrator, via electronic mail at: Physical.therapy@state.nm.us, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504 no later than Friday, June 14, 2019. Comments received prior to the rule hearing will be posted to the RLD website at: http://www.rld.state.nm.us/boards/Physical_Therapy_Rules_and_Laws.aspx. Persons will also be given the opportunity to present their comments at the rule hearing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact E. Wren Propp, Board Administrator (505) 476-4622.

Statutory Authority: Legal authority for this rulemaking can be found in the Physical Therapy Act, NMSA 1978 Sections 61-12D-1 through -12D-19 which, among other provisions, specifically authorizes the Board to "adopt rules necessary to implement the provisions of the Physical Therapy Act." Section 61-12D-5(3).

Summary of Proposed Changes:

16.20.2 NMAC - Physical Therapists
Add language to clarify how many times an applicant may sit for the NPTE in a 12-month period based on the requirements of the testing agency. Add new "Subsection 11" which will provide applicants with an alternate method to apply for the FSBPT national licensure exam. With this method, the applicant does not need to apply with the State of New Mexico until they have passed the national exam.

16.20.3 NMAC - Issuance of Licenses
Language change is to correct a grammatical error and add new subsections to section 8 which will be added to include criminal background checks per the requirements necessary to set up a Compact for licensure through the Federation of State Boards of Physical Therapy (FSBPT).

16.20.4 NMAC - Temporary Licenses
Correction of grammatical errors.

16.20.6 NMAC - Physical Therapist Assistants
Correction of grammatical errors.

16.20.7 NMAC Supervision
Clarify the use of both the physical therapist and physical therapist assistant, providing supervision of unlicensed aides.

16.20.13 NMAC – Dry Needling Provision (New Part)
This new part is added to clarify the practice of "dry needling" in the State of New Mexico. The procedure is allowed within the scope of practice for a physical therapist and is supported by the American Physical Therapy Association (APTA) and the Federation of State Boards for Physical Therapy (FSBPT). This new part will clarify the procedure to obtain certification required when providing dry needling services in the State of New Mexico.

End of Notices of Rulemaking and Proposed Rules

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Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.314.3 NMAC, Sections 10, 13 and 15, Effective 7/1/2019.

8.314.3.10 ELIGIBLE PROVIDERS:

A. Upon approval of New Mexico MAP provider participation agreements by MAD, providers who meet the following requirements are eligible to be reimbursed for furnishing waiver services to recipients:

(1) standards established by the HCBS waiver program; and

(2) provide services to recipients in the same scope, quality and manner as provided to the general public; see Section 8.302.1.14 NMAC.

B. Once enrolled, providers receive a packet of information, including medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from MAD and the New Mexico DOH. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.

C. Qualifications of case management agency providers: Agencies must meet the standards developed for this HCBS waiver program by the applicable division of the DOH. Case management agencies are required to have national accreditation. These accrediting organizations are the commission on accreditation of rehabilitation facilities (CARF), the joint commission or another nationally recognized accrediting authority. Case management assessment activities necessary to establish eligibility are considered administrative costs.

D. Qualifications of case managers: Case managers employed by case management agencies must have the skills and abilities necessary to perform case management services for recipients who are medically fragile, as defined by the DOH medically fragile waiver standards. Case managers must be registered nurses, as defined by the New Mexico state board of nursing and have a minimum of two years of supervised experience with the target population in one or more areas of pediatrics, critical care or public health.

E. Qualifications of home health aide service providers:

(1) Home health aide services must be provided by a licensed home health agency, a licensed rural health clinic or a licensed or certified federally qualified health center using only home health aides who have successfully completed a home health aide training program as described in 42 CFR 484.36(a) (1) and (2); or who have successfully completed a home health aide training program described in the New Mexico regulations governing home health agencies, Section 7.28.2.30 NMAC. Additionally, home health aides providing services must be deemed competent through a written examination and meet competency evaluation requirements specified in the 42 CFR 484.36(b) (1), (2) and (3); or meet the requirement for documentation of training or competency evaluation specified in the New Mexico regulations governing home health agencies, Section 7.28.2.30 NMAC.

(2) Supervision: Supervision must be performed by a registered nurse and shall be in accordance with the New Mexico Nursing Practice Act, Section 61-3-1, NMSA 1978. Supervision must occur at least once every 60 days in the recipient's home and be specific to the individual service plan (ISP). All supervisory visits must be documented in the recipient's file.

(3) The supervision of home health aides is an administrative expense to the provider and is not billable as a direct service.

F. Qualifications of private duty nursing providers:

(1) Private duty nursing services must be provided by a licensed home health agency, a licensed rural health clinic, or a licensed or certified federally qualified health center, using only registered nurses or licensed practical nurses holding a current New Mexico board of nursing license and having a minimum of one year of supervised nursing experience; nursing experience preferably with individuals with developmental disabilities or who are medically fragile.

(2) Supervision: Supervision must be performed by a registered nurse and shall be in accordance with the New Mexico Nursing Practice Act. Supervision must be specific to the ISP.

(3) The supervision of nurses is an administrative expense to the provider and not billable as a direct service.

G. Qualifications of skilled therapy providers: Skilled therapy services may be provided by a licensed group practice/home health agency that employs licensed occupational therapists, physical therapists, or speech therapists and certified occupational therapy assistants and certified physical therapy assistants in accordance

with the New Mexico regulation and licensing department. Physical therapy services must be provided by a physical therapist currently licensed by the state of New Mexico. Occupational therapy services must be provided by an occupational therapist currently licensed by the state of New Mexico, and registered with the American occupational therapy association or be a graduate of a program in occupational therapy approved by the council on medical education of the American occupational therapist association. Speech therapy services must be provided by a speech therapist currently licensed by the state of New Mexico and certified by the national association for speech and hearing. A physical therapy assistant working only under the direction and supervision of a licensed physical therapist, Section 16.20.6 NMAC, may provide physical therapy services. An occupational therapy assistant working only under the direction and supervision of a licensed occupational therapist, Section 16.15.3 NMAC, may provide occupational therapy services.

H. Qualifications of behavior support consultation providers:

(1) Behavior support consultation providers must possess one of the following licenses approved by a New Mexico licensing board: psychiatrist; clinical psychologist; independent social worker (LISW); professional clinical mental health counselor (LPCC); professional art therapist (LPAT); marriage and family therapist (LMFT); mental health counselor (LMHC); master social worker (LMSW); psychiatric nurse, or psychologist associate (PA).

(2) Behavior support consultation may be provided through a corporation, partnership or sole proprietor.

(3) Providers of behavior support consultation must have a minimum of one year of experience working with individuals with developmental disabilities or who are medically fragile. All behavior support consultants must maintain current New Mexico licensure with their professional field licensing body.

I. Qualifications of respite care service providers:

(1) Respite may be provided in the following locations: participant's home or private place of residence, the private residence of a respite care provider, or specialized foster care home. The participant and or the participant's authorized representative has the option and gives final approval of location of the respite services being provided. A specialized foster care home must be certified by the New Mexico children, youth and families department.

(2) Respite services are provided by a licensed home health care agency, a licensed or certified federally qualified health center, or a licensed rural health clinic. The registered nurses (RNs) and licensed practical nurses (LPNs) who work for the home health agency and provide respite services must be licensed by the New Mexico state board of nursing as an RN or LPN. See the New Mexico Nursing Practice Act, Section 61-3-1, NMSA 1978, and Section 16.12.2 NMAC. The home health aides who work for the home health agency and provide respite services, must have successfully completed a home health aide training program, as described in 42 CFR 484.36(a)(1) and (2); or have successfully completed a home health aide training program described in the New Mexico regulations governing home health agencies, Section 7.28.2 NMAC.

J. Qualifications of nutritional counseling providers: Nutritional counseling must be furnished by a licensed dietitian registered by the commission on dietetic registration of the American dietetic association, Nutrition and Dietetics Practice Act, Section 61-7A-1, NMSA 1978.

K. Qualifications of specialized medical equipment and supplies providers: Specialized medical equipment and supplies providers must have a business license for the locale they are in, a tax identification (ID) number for state and federal government, proof of fiscal solvency, proof of use of approved accounting principles, meet bonding required by the department of health (DOH), and comply with timeliness standards for this service.

L. Qualifications of an environmental modification provider agency: An environmental modification contractor and his or her subcontractors and employees must be bonded, licensed by the New Mexico regulation and licensing department (RLD), and authorized by DOH to complete the specified project. All services shall be provided in accordance with applicable federal, state and local building codes.

[8.314.3.10 NMAC - Rp, 8 .314.3.10 NMAC, 3/1/2018; A, 7/1/2019]

8.314.3.13 COVERED WAIVER SERVICES: The services covered by the MFW program are intended to provide a home and community-based alternative to institutional care for an eligible recipient. In all services covered under the MFW the recipient has the right to privacy, dignity, and respect. The recipient further has the right to freedom from coercion and restraint. The MFW program covers the following services for a specified number of medically fragile recipients. The program is limited by the number of federally authorized unduplicated recipient (UDR) positions and program funding.

A. Case management services: Case management services assist recipients in gaining access to needed waiver and other state plan services, as well as medical, social, educational, and other services regardless of the funding source for the services. Case management services are offered in a manner that allows direct communication between the case manager, the recipient, and the family and appropriate service personnel. Case managers provide a link between recipients and care providers and coordinate the use of community resources needed for that

care. At least every other month, the case manager conducts a face-to-face contact with the recipient, and on a monthly basis conducts a telephonic or electronic contact with the recipient. The scope of the case manager's duties includes the following:

(1) identifying medical, social, educational, family and community support resources;

(2) scheduling and coordinating timely interdisciplinary team (IDT) meetings to develop and modify the ISP annually and as needed by any team member;

(3) documenting contacts with the recipient and providers responsible for delivery of services to the recipient;

(4) verifying eligibility on an annual basis;

(5) ensuring the medically fragile long-term care assessment abstract (LTCAA) is completed and signed by the physician, physician assistant or clinical nurse practitioner (CNP);

(6) submitting the LOC packet including the LTCAA to the third-party assessor (TPA) contractor for prior authorization on a timely basis;

(7) ensuring the waiver review form (MAD 046) is submitted timely, both annually and as needed;

(8) initiating an ongoing monitoring process that provides for evaluation of delivery, effectiveness, appropriateness of services and support provided to the recipient as identified in the ISP;

(9) performing an annual recipient satisfaction survey; and

(10) coordinating services provided though the MFW program and other sources (state plan, family infant toddler (FIT), commercial insurance, educational and community).

B. Home health aide: Home health aide services are covered under the state plan as expanded early and periodic screening, diagnosis and treatment EPSDT benefits for waiver participants under the age of 21. Home health aide services are provided in the eligible recipient's own home or in the community. Home health aide services provide total care or assist a recipient in all activities of daily living. Total care is defined as: the provision of bathing (bed, sponge, tub, or shower), shampooing (sink, tub, or bed), care of nails and skin, oral hygiene, toileting and elimination, safe transfer techniques and ambulation, normal range of motion and positioning, adequate oral nutrition and fluid intake. The home health aide services assist the recipient in a manner that promotes an improved quality of life and a safe environment for the recipient. Home health aide services can be provided outside the recipient's home. Home health aides perform simple procedures such as an extension of therapy services, bowel and bladder care, ostomy site care, personal care, ambulation and exercise, household services essential to health care at home, assistance with medications that are normally self-administered, reporting changes in patient conditions and needs, and completing appropriate records. Home health aides may provide basic non-invasive nursing assistant skills within the scope of their practice.

C. Private duty nursing: Private duty nursing services are covered under the state plan as expanded EPSDT benefits for waiver recipients under the age of 21. Private duty nursing services are provided in the eligible recipient's own home and in the community and include activities, procedures and treatment for a physical condition, physical illness, or chronic disability. Services may include medication management; administration and teaching; aspiration precautions; feeding management such as gastrostomy and jejunostomy; skin care; weight management; urinary catheter management; bowel and bladder care; wound care; health education; health screening; infection control; environmental management for safety; nutrition management; oxygen management; seizure management and precautions; anxiety reduction; staff supervision; and behavior and self-care assistance. DOH requires certain standards to be maintained by the private duty nursing care provider with which it contracts. In carrying out their role for DOH, private duty nursing care agencies must:

(1) employ only RNs and LPNs licensed in the state of New Mexico;

(2) assure that all nurses delivering services are culturally sensitive to the needs and preferences of the recipients and their families. Based upon the recipient's individual language needs or preferences, nurses may be requested to communicate in a language other than English;

(3) inform the case manager immediately of the agency's inability to staff according to the ISP;

(4) develop and implement an individual nursing plan in conjunction with the recipient's physician and case manager in a manner that identifies and fulfills the recipient's specific needs;

(5) document all assessments, observations, treatments and nursing interventions;

(6) document and report to the case manager any non-compliance with the ISP; and

(7) document any incidence of recipient harm, medication error, or other adverse event in accordance with the New Mexico Nursing Practice Act.

D. Skilled therapy services for adults: Skilled therapy services are covered under the state plan as expanded EPSDT benefits for waiver recipients under the age of 21. Adults access therapy services under the state plan for acute and temporary conditions that are expected to improve significantly in a reasonable and generally predictable period of time. Waiver services are provided when the limits of the state plan skilled therapy services are exhausted. The amount, duration,

and goals of skilled therapy services must be included in an ISP. A therapy treatment plan must be developed with the initiation of therapy services and updated at least every six months. The therapy treatment plan includes the following: developmental status of the recipient in areas relevant to the service provided; treatment provided, including the frequency and duration; and recommendation for continuing services and documentation of results. Skilled maintenance therapy services specifically include the following:

(1) Physical therapy: Physical therapy services promote gross/fine motor skills, facilitate independent functioning or prevent progressive disabilities. Specific services may include: professional assessment(s), evaluation(s) and monitoring for therapeutic purposes; physical therapy treatments and interventions; training regarding physical therapy activities, use of equipment and technologies or any other aspect of the individual's physical therapy services; designing, modifying or monitoring use of related environmental modifications; designing, modifying, and monitoring use of related activities supportive to the ISP goals and objectives; and consulting or collaborating with other service providers or family members, as directed by the recipient.

(2) Occupational therapy: Occupational therapy services promote fine motor skills, coordination, sensory integration, or facilitate the use of adaptive equipment or other assistive technology. Specific services may include: teaching of daily living skills; development of perceptual motor skills and sensory integrative functioning; design, fabrication, or modification of assistive technology or adaptive devices; provision of assistive technology services; design, fabrication, or applying selected orthotic or prosthetic devices or selecting adaptive equipment; use of specifically designed crafts and exercise to enhance function; training regarding occupational therapy activities; and consulting or collaborating with other service providers or family members, as directed by the recipient.

(3) Speech language therapy: Speech language therapy services preserve abilities for independent function in communication; facilitate oral motor and swallowing function; facilitate use of assistive technology, or prevent progressive disabilities. Specific services may include: identification of communicative or oropharyngeal disorders and delays in the development of communication skills; prevention of communicative or oropharyngeal disorders and delays in the development of communication skills; development of eating or swallowing plans and monitoring their effectiveness; use of specifically designed equipment, tools, and exercises to enhance function; design, fabrication, or modification of assistive technology or adaptive devices; provision of assistive technology services; adaptation of the recipient's environment to meet his/her needs; training regarding speech language therapy activities; and consulting or collaborating with other service providers or family members, as directed by the recipient.

E. Behavior support consultation services: This medicaid waiver provides services to assist the medically fragile recipient, his or her parents, family members or primary care givers. Behavior support consultation includes assessment, treatment, evaluation and follow-up services to assist the recipient, parents, family members or primary care givers with the development of coping skills which promote or maintain the recipient in a home environment. Behavior support consultation:

(1) informs and guides the recipient's providers with the services and supports as they relate to the recipient's behavior and his/her medically fragile condition;

(2) identifies support strategies to ameliorate contributing factors with the intention of enhancing functional capacities, adding to the provider's competency to predict, prevent and respond to interfering behavior and potentially reducing interfering behavior(s);

(3) supports effective implementation based on a functional assessment;

(4) collaborates with medical and ancillary therapies to promote coherent and coordinated services addressing behavioral issues and to limit the need for psychotherapeutic medications; and

(5) monitors and adapts support strategies based on the response of the recipient and his/her service and support providers. Based on the recipient's ISP, services are delivered in an integrated/natural setting or in a clinical setting.

F. Respite care services: The IDT is responsible for determining the need for respite care. Respite services are provided to recipients unable to care for themselves that are furnished on a short-term basis to allow the primary caregiver a limited leave of absence in order to reduce stress, accommodate caregiver illness, or meet a sudden family crisis or emergency. Respite care is provided in the eligible recipient's own home, in a private residence of a respite care provider, or in a specialized foster care home. The recipient or the recipient's authorized representative has the option and gives final approval of where the respite services will be provided. Respite services include: medical and non-medical health care; personal care bathing; showering; skin care; grooming; oral hygiene; bowel and bladder care; catheter and supra-pubic catheter care; preparing or assisting in preparation of meals and eating; as appropriate, administering enteral feedings; providing home management skills; changing linens; making beds; washing dishes; shopping; errands; calls for maintenance; assisting with enhancing self-help skills; promoting use of appropriate interpersonal communication skills and language; working independently without constant supervision/observation; providing body positioning, ambulation and transfer skills;

arranging for transportation to medical or therapy services; assisting in arranging health care needs and follow-up as directed by the primary care giver, physician, and case manager; ensuring the health and safety of the recipient at all times. Respite services are limited to 14 days or 336 hours per budget year.

G. Nutritional counseling: Nutritional counseling is designed to meet the unique food and nutrition requirements of recipients with medical fragility and developmental disabilities. Examples of recipients who may require nutritional counseling are children or adults with specific illnesses such as failure to thrive, gastroesophageal reflux, dysmotility of the esophagus and stomach etc., or who require specialized formulas, or receive tube feedings or parenteral nutrition. This does not include oral-motor skill development such as that provided by a speech language pathologist. Nutritional counseling services include assessment of the recipient's nutritional needs, regimen development, or revisions of the recipient's nutritional plan, counseling and nutritional intervention and observation and technical assistance related to implementation of the nutritional plan. These services advise and help recipients obtain appropriate nutritional intake by integrating information from the nutritional assessment with information on food, other sources of nutrients, and meal preparation consistent with cultural backgrounds and socioeconomic status. These services can be delivered in the home.

H. Specialized medical equipment and supplies: This medicaid waiver provides specialized medical equipment and supplies which include:

(1) devices, controls or appliances specified in the plan of care that enable recipients to increase their ability to perform activities of daily living;

(2) devices, controls, or appliances that enable the recipient to perceive, control, or communicate with the environment in which they live;

(3) items necessary for life support or to address physical conditions along with ancillary supplies and equipment necessary to the proper functioning of such items;

(4) such other durable and non-durable medical equipment not available under the state plan that is necessary to address recipient functional limitations; and

(5) necessary medical supplies not available under the state plan. Items reimbursed with waiver funds are in addition to any medical equipment and supplies furnished under the state plan and exclude those items that are not of direct medical or remedial benefit to the recipient. The costs of maintenance and upkeep of equipment are included in the cost of equipment and supplies. All items must meet applicable standards of manufacture, design, and installation. Medical equipment and supplies that are furnished by the state plan are not covered under this service. This service does not include nutritional or dietary supplements, disposable diapers, bed pads, or disposable wipes.

I. Environmental Modifications: Environmental modifications include the purchasing and installing of equipment or making physical adaptions 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.

(1) Adaptations, installations and modifications include:

(a) heating and cooling adaptations;

(b) fire safety adaptations;

(c) turnaround space adaptations;

(d) specialized accessibility, safety adaptations or additions;

(e) installation of specialized electric and plumbing systems to accommodate medical equipment and supplies;

(f) installation of trapeze and mobility tracks for home ceilings;

(g) installation of ramps;

(h) widening of doorways or hallways;

(i) modification of bathroom facilities (roll-in showers, sink, bathtub and toilet modification, water faucet controls, floor urinals and bidet adaptations and plumbing);

(j) purchase or installation of air filtering devices;

(k) purchase or installation of lifts or elevators;

(l) purchase and installation of glass substitute for windows and doors;

(m) purchase and installation of modified switches, outlets or environmental controls for home devices; and

(n) purchase and installation of alarm and alert systems or signaling devices.

(2) Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the eligible recipient. Adaptations that add to the total square footage of the home are excluded from this benefit except when necessary to complete an adaptation (e.g., in order to improve entrance/egress to an eligible recipient's residence or to configure a bathroom to accommodate a wheelchair).

(3) Environmental modification services must be provided in accordance with applicable federal, state and local building codes.

(4) Environmental modification services are limited to $5,000 every five years. An eligible recipient transferring into the medically fragile program, from another HCBS waiver, will carry his or her history for the previous

five years of HCBS reimbursed environmental modifications.
[8.314.3.13 NMAC - Rp, 8.314.3.13 NMAC, 3/1/2018 A, 7/1/2019]

8.314.3.15 INDIVIDUALIZED SERVICE PLAN: The CMS requires a person-centered individualized service plan (ISP) for each individual receiving services through a HCBS waiver program. The ISP is developed annually through an ongoing person-centered planning process.

A. The case manager assists the recipient in identifying his/her dreams, goals, preferences and outcomes for service. The case manager obtains information about the recipient's strengths, capacities, needs, preferences, desired outcomes, health status, and risk factors. This information is gained through a review of the LOC assessment; interviews between the case manager and recipient; and the person-centered planning process that takes place between the case manager and recipient to develop the ISP.

B. The ISP addresses: activities of daily living assistance needs, health care needs, equipment needs, relationships in the home and community, personal safety and provider responsibilities.

C. During the pre-planning process, the case manager provides the recipient with information about the MFW program. The case manager provides information about the range and scope of service choices and options, as well as the rights, risks, and responsibilities associated with the MFW program. The case manager is responsible for completing the CIA and obtaining other medical assessments needed for the ISP; completing the annual LOC redetermination process; and referring the recipient to the New Mexico human services department (HSD) income support division (ISD) for financial eligibility determination annually and as needed.

D. The case manager works with the recipient to identify service providers to participate in the IDT meeting. State approved providers are selected from a list provided by the case manager. The recipient sets the date and time of the IDT meeting. The case manager works with the recipient to plan the IDT meeting and encourages him/her to lead the IDT meeting to the extent possible.

E. The case manager assists the recipient in ensuring that the ISP addresses the recipient's goals, health, safety and risks along with addressing the information or concerns identified through the assessment process. The case manager writes up the ISP as identified in the IDT meeting. Each provider develops care activities and strategies for each outcome, goal, and objective identified at the IDT meeting. The case manager assures the ISP budget is within the capped dollar amount (CDA). To ensure continuity of care, additional funding is available for an eligible recipient's ISP budget that exceeds the CDA due to the impact of provider rate increases. Requests for additional funding are submitted by the case manager to the TPA contractor for review. Implementation of the ISP begins when provider service plans have been received by the case manager and recipient, and the plan and budget have been approved by the TPA contractor.

F. The case manager ensures for each recipient that:

(1) the plan addresses the recipient's needs and personal goals in medical supports needed at home for health and wellness;

(2) services selected address the recipient's needs as identified during the assessment process; needs not addressed in the ISP are addressed through resources outside the MF waiver program;

(3) the outcomes of the assessment process for assuring health and safety are considered in the plan;

(4) services do not duplicate or supplant those available to the recipient through the medicaid state plan or other public programs;

(5) services are not duplicated in more than one service code;

(6) the parties responsible for implementing the plan are identified and listed within the document;

(7) the back-up plans are complete; and

(8) the ISP is submitted to and reviewed by the TPA contractor in compliance with the MF waiver service standards.

G. The ISP is updated if personal goals, needs or life circumstances change that may or may not result in a change of the LOC. Revisions may be requested by the recipient. Each member of the IDT may request an IDT meeting to address changes or challenges. The case manager contacts the recipient to initiate revisions to the budget. The case manager initiates the scheduling of IDT meetings and assures the IDT meeting is in compliance with the MF waiver service standards.

H. The case manager is responsible for monitoring the ISP pre-planning and development process. The case management agency conducts internal quality improvement monitoring of service plans. The ISP is monitored monthly via phone, electronically, and face-to-face by the case manager.

I. After the initial ISP, the IDT reviews the ISP at least annually or more often as needed, in order to assess progress toward goal achievement and determine any needed revisions in care.
[8.314.3.15 NMAC - Rp, 8 .314.3.15 NMAC, 3/1/2018; A, 7/1/2019]

End of Adopted Rules

Other Material Related to Administrative Law

PUBLIC REGULATION COMMISSION

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The Public Regulation Commission gives Notice of a Minor, Nonsubstantive Corrections.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar, and format have been made to all published and electronic copies of the following rule:

For 10.25.3.11 NMAC, extraneous brackets surrounding the citation for 10.25.3.10 NMAC within the text of section were removed;

For 10.25.3.12 NMAC, extraneous brackets surrounding the citation for 10.25.3.11 NMAC within the text of section were removed.

A copy of this Notification will be filed with the official version of the above rule.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The Office of Superintendent of Insurance gives Notice of a Minor, Nonsubstantive Correction.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all published and electronic copies of the following rule:

For 13.21.3.12 NMAC, the erroneous subsection numbers D through H were corrected and renumbered to C through G;

For 13.21.3.13 NMAC, the erroneous subsection number F was corrected and renumbered to E.

A copy of this Notification will be filed with the official version of the above rule.

End of Other Material Related to Administrative Law

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