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# New Mexico Register

The official publication for all official notices of rulemaking  
and filing of proposed, adopted and emergency rules.

**Volume XXXI - Issue 8 - April 21, 2020**

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## **The New Mexico Register**

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# New Mexico Register

Volume XXXI, Issue 8

April 21, 2020

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## Notices of Rulemaking and Proposed Rules

### RACING COMMISSION

#### POSTPONEMENT OF NOTICE OF PUBLIC RULE HEARING Due to Executive Order 2020-004 Issued by Governor Michelle Lujan Grisham

The New Mexico Racing Commission is postponing the public rule hearing that is set for April 16, 2020 in the New Mexico Gaming Commission's Boardroom ("Boardroom") at 4900 Alameda Blvd. NE, Albuquerque, NM. The Commission will hold a Public Meeting and Rule Hearing on May 28, 2020 during the Commission's regular business meeting with the public session beginning at 9:00 a.m. The Commission will re-convene a regular meeting to adopt the rules and conduct regular business. The Rule Hearing and Commission meeting will be held in the Boardroom located at the New Mexico Racing Commission, 4900 Alameda Blvd., NE, Albuquerque, NM.

The New Mexico Racing Commission ("Commission") hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules governing Horse Racing in New Mexico. The proposed amendments are to clarify rules regarding summary suspension and update the most current version of the ARCI Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule, modify multiple-medication violation penalties, correct typographical errors, modify penalties of Category C violations, remove Naproxen as a permissible medication and update the rule regarding non-steroidal anti-inflammatory drugs (NSAIDs).

**Statutory Authority:** Legal authority for this rulemaking can be found in the New Mexico Horse Racing Act, Sections 60-1A-1 through 60-1A-30 NMSA 1978 (2007, as amended

through 2017), which, among other provisions, specifically authorizes the Commission to promulgate rules and regulations and carry out the duties of the Act to regulate horse racing in the State.

15.2.1 NMAC - General Provisions  
15.2.6 NMAC – Medications and Prohibited Substances

No technical information served as the basis for the proposed rule.

#### **Purpose of proposed rules:**

#### **Subsection B of 15.2.1.9 NMAC:**

The purpose of the proposed amendment is to clarify the time limit for summary suspension for a Category A medication violation.

**15.2.6.9** To include Association of Racing Commissioners International's Uniform Classification Guidelines and Recommended Penalties January, 2020 version 14.1 and the Association of Racing Commissioners International's Controlled Therapeutic Medication Schedule for Horses, December, 2019, version 4.2.

#### **Subsection B of 15.2.6.9 NMAC:**

The purpose of the proposed amendment is to clarify and make the penalties for "Major" medication violations consistent with the Association of Racing Commissioners International's Model Rules guidelines.

#### **Subsection O of 15.2.6.9 NMAC:**

The purpose of the proposed amendment is to make point assigned for medication violations of Class A controlled therapeutic substances consistent with points assigned to non-controlled substances mandated by the Multiple Medication Violation Rule. Fixing a typographical error in subparagraph 8.

A copy of the proposed rule may be found on the Commission's website @ <http://nmrc.state.nm.us/rules-regulations.aspx>. You may also contact Denise Chavez at

505.222.0714 to request to receive a copy of the proposed rules by regular mail.

#### **Notice of Acceptance of written public comment:**

Interested persons may submit their written comments on the proposed rules to the Commission at the address below and/or may appear at the scheduled meeting and make a brief verbal presentation of their view. All written comments must be received by the Commission by 5:00 PM on May 21, 2020. Please submit comments to:

Denise Chavez, Paralegal  
New Mexico Racing Commission  
4900 Alameda Blvd. NE  
Albuquerque, NM 87113  
Telephone: 505.222.0714  
Fax: 505.222.0713  
Email: DeniseM.Chavez@state.nm.us

The **final** agenda for the Commission meeting will be available one hundred twenty (120) hours prior to the meeting. A copy of the **final** agenda may be obtained from Denise Chavez or from the Commission's website.

Anyone who requires special accommodations is requested to notify the Commission of such needs at least five days prior to the meeting.

### RETIREE HEALTH CARE AUTHORITY

#### NOTICE OF PROPOSED RULEMAKING AMENDMENT AND PUBLIC RULE HEARING

The New Mexico Retiree Health Care Authority (NMRHCA) is considering amending the effective date of existing rule 2.81.11 NMAC - ESTABLISHING SUBSIDY LEVELS ON THE BASIS OF AGE AND CREDITABLE SERVICE, amending sections 6 through 10 to July 31, 2021. The purpose of the

amendment of existing sections of the rule is to delay the effective date of the minimum age and years of service requirement to coincide with the school year. A summary of the full text of the proposed rule follows:

Section 6 of the existing rule 2.81.11 NMAC establishes subsidy levels commensurate with a retiree's year of credited service with a participating employer for employees who become eligible for enrollment into the NMRHCA health care program on or after July 1, 2001, and their dependents, and subject to a minimum retiree age for employees who become eligible for enrollment into the NMRHCA health care program on or after January 1, 2021. The amendment changes the effective date to July 31, 2021.

Section 7 of the existing rule 2.81.11 NMAC provides definitions of credited service, disabled retiree, member of an enhanced retirement plan, the authority, state retirement agency, and subsidy effective January 1, 2021. The amendment changes the effective date to July 31, 2021.

Section 8 of the existing rule 2.81.11 NMAC provides for the NMRHCA to pay a percentage of the subsidy to monthly premiums of eligible retirees, which percentage is dependent on the years of credited service of the retiree and is 100% at 20 years of credited service. The amendment changes the years at which 100% is paid to 25 and changes the percentages for fewer years of credited service for retirees who are not members of an enhanced retirement plan and become eligible for participation on or after January 1, 2021. The amendment changes the effective date to July 31, 2021.

Section 9 of the existing rule 2.81.11 NMAC established subsidies for duty disability and non-duty disability retirees effective January 1, 2021. The amendment changes the effective date to July 31, 2021.

Section 10 requires that eligible retirees who are not members of

an enhanced retirement plan and become eligible for participation on or after January 1, 2021 be 55 years of age to receive subsidies. Section 9 is amended to clarify that disabled retirees receive a 100% subsidy regardless of years of service or age. Section 6 is amended to clarify that the objective of the part includes that subsidies will have a minimum age requirement for those retiring on or after January 1, 2021. The amendment changes the effective date to July 31, 2021.

The NMRHCA is authorized to promulgate rules to implement the Retiree Health Care Act, NMSA 1978, Sections 10-7C-1 to - 16 (1990, as amended through 2009) ("Act") by NMSA 1978, Section 10-7C-7 (1998). By resolution dated May 8, 2018, the NMRHCA resolved to undertake the rulemaking in conformity with the Act, the State Rules Act, NMSA 1978, Sections 14-4-1 to -11 (1967, as amended through 2017), the Default Procedural Rule for Rulemaking, 1.24.25 NMAC (4/10/2018) and the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013).

The NMRHCA is amending the effective date of minimum years of service and age requirements to receive the maximum subsidy provided by the program to from January 1, 2021 to July 31, 2021 in order to coincide with the school year. A study of NMRHCA's long-term solvency projections, NMRHCA 2017 Long-Term Solvency Model, is available at its website, <http://www.nmrhca.org/rule-change-proposal.aspx>.

The full text of the proposed rule may be obtained by contacting Greg Archuleta, Director of Communication and Member Engagement, New Mexico Retiree Health Care Authority, 4308 Carlisle Blvd. NE, Suite 104, Albuquerque, New Mexico 87107; telephone 505-440-3366 or 505-222-6403, to request a copy of the rule. The full

text and this notice are also available on NMRHCA's website: <http://www.nmrhca.org/>.

A person may submit, by mail or electronic form, written comments on the proposed rule through the end of the public comment period, which ends May 22, 2020. Written comments should be submitted to Greg Archuleta, Director of Communication and Member Engagement, New Mexico Retiree Health Care Authority, 4308 Carlisle Blvd. NE, Suite 104, Albuquerque, New Mexico 87107. Written comments also will be accepted by email: [gregoryr.archuleta@state.nm.us](mailto:gregoryr.archuleta@state.nm.us) or by fax: (505) 884-8611. All written comments received by the agency will be posted on <http://www.nmrhca.org/> no more than 3 business days following receipt to allow for public review. Written comments will also be available for public inspection at New Mexico Retiree Health Care Authority, 4308 Carlisle Blvd. NE, Suite 104, Albuquerque, New Mexico 87107, as soon as restrictions on the current coronavirus (COVID-19) quarantine are lifted.

A public rule hearing on the proposed rule will be held before Greg Archuleta, Director of Communication and Member Engagement, NMRHCA, on May 22, 2020 from 2:30-4:30 p.m. at the NMRHCA office's Alfredo R. Santistevan Board Room, located at 4308 Carlisle Blvd. NE, Suite 207 in Albuquerque, NM, 87107. Individuals may submit data, views or arguments orally or in writing to the proposed rule at the public rule hearing. Persons offering written comments at the hearing must have 2 copies for the hearing officer.

Any individual with a disability in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form may contact Greg Archuleta at 505-440-3366 or 505-222-6403 at least 10 days before the hearing.



**\*IN THE EVENT THAT THE CORONAVIRUS (COVID-19) QUARANTINE ORDER IS STILL IN PLACE, NMRHCA WILL HOLD CONDUCT THE PUBLIC HEARING VIA WEBINAR AND WILL POST THE DETAILS OF JOINING THE WEBINAR ON THE FRONT PAGE OF ITS WEBSITE, WWW.NMRHCA.ORG AS SOON AS THE GOVERNOR OFFICIALLY ANNOUNCES AN EXTENSION OF THE QUARANTINE BEYOND MAY 22, 2020.\***

## **SUPERINTENDENT OF INSURANCE, OFFICE OF**

### **NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the Superintendent of Insurance (Superintendent), pursuant to the Insurance Code, Section 59A-1-1 et seq. NMSA 1978 ("Insurance Code") and 13.1.4 NMAC, proposes to adopt a new rule 13.10.32 NMAC - COVERAGE FOR CONTRACEPTION

**PURPOSE AND SUMMARY OF THE PROPOSED NEW RULE** is to clarify coverage requirements for various contraceptive methods.

**STATUTORY AUTHORITY:** Sections 59A-22-42, 59A-23-7.14, 59A-46-44 and 59A-47-45.5 N.M.S.A 1978.

Copies of the Notice of Proposed Rulemaking and proposed rules are available by electronic download from the OSI website (<https://www.osi.state.nm.us/index.php/idms/>) or the New Mexico Sunshine portal.

OSI will hold a public video/ telephonic hearing on the proposed rules on May 22, 2020 at 10:00 a.m.

Join via Video:  
<https://zoom.us/j/780289108>

Join via telephone:  
+1-301-715-8592  
Meeting ID: 780 289 108

The Superintendent designates R. Alfred Walker to act as the hearing officer for this rulemaking. Oral comments will be accepted at the video/telephonic hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on the day of the public hearing, or the last day of the public hearing if the public hearing extends for more than one day. Responses to written comments or oral comments will be accepted through 4:00 pm on June 2, 2020. Comments may be submitted via email to [OSI-docketfiling@state.nm.us](mailto:OSI-docketfiling@state.nm.us) or may be filed by sending original copies to:

OSI Records and Docketing, NM  
Office of Superintendent of Insurance  
1120 Paseo de Peralta, P.O. Box 1689,  
Santa Fe, NM 87504-1689

**Docket No.: 20-00023-RULE-LH**  
IN THE MATTER OF ADOPTING  
A NEW PROPOSED RULE  
13.10.32 NMAC COVERAGE FOR  
CONTRACEPTION

Only signed statements, proposals or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic or facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. Any filings after 4:00 will be filed to the docket the next business day.

**SPECIAL NEEDS:** Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in

the hearing should contact Melissa Gutierrez at 505-476-0333 ten (10) business days prior to the hearing.

The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses.

DONE AND ORDERED this 21<sup>st</sup> day of April 2020  
/S/RUSSELL TOAL

## **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

This is an emergency amendment to 8.312.2 NMAC, Section 21, effective 4/10/2020.

#### 8.312.2.21 NURSE AIDE TRAINING:

[A NF must comply with nurse aide training requirements as a condition of MAD and MCO enrollment and participation; see 42 CFR Section 483-Subpart D.] Pursuant to the public health emergency declared by the governor of New Mexico in Executive Order 2020-004 on March 11, 2020, and any renewal and subsequent Executive Order, and the department of health and human services centers for medicaid and medicaid services COVID-19 Emergency Declaration Waiver of Subsection D of 42 C.F.R. 483.35, with the exception of Subparagraph (i) of Paragraph (1) of Subsection D of 42 C.F.R. 483.35, the New Mexico human services department does hereby waive enforcement of Paragraphs (1) and (2) of Subsection A of Section 8.312.2.21 NMSA 1978, along with Subsection A of Section 8.312.2.21 NMSA 1978. The NF will not be approved as a MAD or MCO provider if the NF has been out of compliance with federal requirement within the previous two calendar years.

**A. Requirements for nurse aide training:** [A NF cannot employ individuals as nurse aides for more than four months unless they have completed a nurse aide training and competency evaluation program (NATCEP). The NATCEP program must have a minimum duration of 75 hours.] Waived.

(1) [A nurse aide who has not performed nursing or nursing-related services for monetary compensation for a

period of 24 consecutive months since completion of a NATCEP must take either a new NATCEP or a new competency evaluation program (CEP).] Waived.

(2) [A NF must not use temporary nurse aides who have not completed a NATCEP or a CEP.] Waived.

(3) A NF must ensure that students in the NATCEP programs do not perform any services for which they have not been trained and found proficient by instructors. A NF must ensure that all students in NATCEP programs are under the general supervision of licensed or registered nurses when they perform services for eligible recipient or member residents.

(4) A NF must furnish regular performance reviews and in-service education to ensure that individuals who serve as nurse aides are competent to perform nurse aide services.

**B. Other nurse aide requirements:** A NF must not employ individuals who have been convicted by the court of abuse or neglect of any NF residents or misappropriation of any NF residents' property.

**C. Nurse aide registry:** DOH maintains a registry of all nursing aides who have successfully completed, who have been considered to have completed a NATCEP or CEP program or who have had the NATCEP or CEP requirement waived by New Mexico. [8.312.2.21 NMAC-Rp. 8.312.2.21 NMAC, 8/1/2014; A/E, 4/10/2020]

### HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.285.400 NMAC, sections 8-10 and 12-14, effective 5/1/2020.

**8.285.400.8 MISSION:** [To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.] To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.285.400.8 NMAC - N, 1/1/2014; A, 5/1/2020]

**8.285.400.9 EMERGENCY MEDICAL SERVICES FOR ALIENS - CATEGORY 085:** Certain non-citizens who are undocumented or who do not meet the qualifying immigration criteria specified in 8.200.410 NMAC, but who meet all eligibility criteria for [other medical assistance program categories 030, 032, 035, 072, 100, 200, 300, 301, 400, 420 and or supplemental security income (SSI)] the following medical assistance categories of eligibility (COEs): other adults (COE 100), parent/caretaker (COE 200), pregnant women (COE 300), pregnancy-related services (COE 301), children under age 19 (COEs 400, 401, 402, 403, 420, and 421) or supplemental security income (COEs 001, 003, and 004) can receive coverage for emergency services. See 42 CFR Section 440.225. [8.285.400.9 NMAC - Rp, 8.285.400.9 NMAC, 1/1/2014; A, 5/1/2020]

**8.285.400.10 BASIS FOR DEFINING THE GROUP:** [The determination of emergency status is made by the medicaid utilization review contractor. For purposes of determining emergency status, the following definition applies: an emergency condition means a medical or behavioral health condition manifesting itself through acute symptoms of sufficient severity (including severe pain) such that a prudent layperson with average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in the health of the individual or with respect to a pregnant woman, the health of the woman or her unborn child to result in serious jeopardy; serious impairment to the individual's bodily functions; or serious dysfunction of any of his or her bodily organs or parts. With respect to a pregnant woman and her unborn child, emergency services includes all emergency labor and delivery services, such as inductions of labor and caesarean sections.] The definition of an emergency medical condition is found at 8.325.10.13 NMAC.

[8.285.400.10 NMAC - Rp, 8.285.400.10 NMAC, 1/1/2014; A, 5/1/2020]

**8.285.400.12 ENUMERATION:** [An alien] A non-citizen applicant is exempt from the requirement to provide a social security number (SSN). If the applicant is found eligible for coverage of emergency services, the claims are paid using [a dummy number. Issuance of the dummy number is done on the current eligibility system.] an eligibility system generated identification number.

[8.285.400.12 NMAC - Rp, 8.285.400.12 NMAC, 1/1/2014; A, 5/1/2020]

**8.285.400.13 CITIZENSHIP:** An applicant must be a [noncitizen] non-citizen who is undocumented or who does not meet the qualifying immigration criteria specified in 8.200.410 NMAC. Per 42 CFR

440.255(c), effective January 1, 1987, non-citizens who are not lawfully admitted for permanent residence in the United States or permanently residing in the United States under the color of law must receive the services necessary to treat the condition defined at 8.325.10.13 NMAC. [8.285.400.13 NMAC - Rp, 8.285.400.13 NMAC, 1/1/2014; A, 5/1/2020]

**8.285.400.14 RESIDENCE:** [An applicant must provide proof of New Mexico residence. Undocumented aliens traveling through New Mexico, visiting in New Mexico, or touring New Mexico do not meet the residence requirements for eligibility.] An applicant must be a resident of the state of New Mexico in accordance with 8.200.410.14 and 8.291.410.15 NMAC.

[8.285.400.14 NMAC - Rp, 8.285.400.14 NMAC, 1/1/2014; A, 5/1/2020]

### HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

**This is an amendment to 8.285.600 NMAC, Sections 8, 10 and 11, effective 5/1/2020.**

**8.285.600.8 [RESERVED] MISSION STATEMENT:** To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.285.600.8 NMAC - A, 5/1/2020]

**8.285.600.10 BENEFIT DETERMINATION:**

**A.** Subsequent to the receipt of emergency services, an applicant must apply through the local county income support division (ISD) office. The application must be filed at the ISD office no later than the last day of the third month following

the month the presumed emergency services were received.

**B. Documentation requirements:** The applicant must bring a completed emergency medical services for aliens referral for eligibility determination form (MAD 308) to the ISD office for the financial eligibility determination. The emergency services provider must complete the referral form. **Financial documents:** The applicant must provide all necessary documentation to prove that he/she meets all financial and non-financial eligibility standards. Medical providers cannot submit eligibility applications on behalf of the applicant. [The applicant must apprise medical providers of the status of the application.] The applicant is financially responsible for any services not covered by medicaid. A completed and signed application form must be submitted for each request for emergency medical services for aliens.

[2/1/1995; 4/30/1998; 8.285.600.10 NMAC - Rn, 8 NMAC 4.ESA.620 & A, 12/1/2008; A, 5/1/2020]

**8.285.600.11 INITIAL BENEFITS:** Applications for medicaid must be acted on within 45 days of the date of application.

**A.** If an applicant is eligible for medicaid, the [HSD worker notifies the individual of approval using notification of approval of application for emergency medical services for aliens form (MAD-310):] individual is sent a notice of case action (NOCA) form. The approval of financial eligibility is not a guarantee that medicaid will pay for the services. The NOCA form also serves as notice of case closure, since medicaid covers only emergency services received during the specified term of the emergency. [The applicant must give the medical service provider a copy of the MAD-310 form:] The provider is sent the decision for emergency medical services for aliens (EMSA) application (MAD 778) form. The provider must use [the MAD-310] the MAD 778 form to submit claims to the medicaid utilization review contractor for emergency review.

**B.** If an applicant is ineligible for medicaid or a decision on the application is delayed beyond the 45 day time limit, the ~~[HSD worker sends a notification of denial or delay of action on]~~ individual is sent a NOCA form regarding the application for emergency medical services for aliens [form (MAD-309) to the undocumented alien]. The ~~[MAD-309]~~ NOCA form explains the reason for denial or delay and informs the applicant of his/her right to an administrative hearing. If the application is denied, the applicant must notify providers of the denial.

**C.** The applicant is responsible for payment for the medical services if he/she fails to apply promptly for coverage, verify eligibility for coverage, or notify the provider of the approval or denial of the application.  
[2/1/1995; 4/30/1998; 8.285.600.11 NMAC - Rn, 8 NMAC 4.ESA.623 & A, 12/1/2008; A, 5/1/2020]

## HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

**This is an amendment to 8.325.10 NMAC, Sections 8, 9 and 11-16, effective 5/1/2020.**

**8.325.10.8 MISSION STATEMENT:** ~~[To reduce the impact of poverty on people living in New Mexico and to assure low income and individuals with disabilities in New Mexico equal participation in the life of their communities.]~~ To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.  
[2/1/1995; 8.325.10.8 NMAC - Rn, 8 NMAC 4.MAD.002, 12/1/2003; A, 10/15/2008; A, 11/15/2010; A, 5/1/2020]

**8.325.10.9 EMERGENCY MEDICAL SERVICES FOR ALIENS (EMSA):** The New Mexico ~~[MAD]~~ medical assistance division (MAD) is required to pay for necessary emergency medical services furnished to individuals who are ~~[aliens;]~~ non-citizens, reside in New Mexico and meet the requirements for ~~[MAD]~~ medicaid eligibility 42 CFR 440.255(c).

[2/1/1995; 8.325.10.9 NMAC - Rn, 8 NMAC 4.MAD.769, 12/1/2003; A, 10/15/2008; A, 11/15/2010; A, 5/1/2020]

### **8.325.10.11 PROVIDER RESPONSIBILITIES:**

**A.** A provider who furnishes services to a medicaid or other health care program eligible recipient must comply with all federal and state laws, regulations, and executive orders relevant to the provision of services as specified in the MAD provider participation agreement. A provider also must conform to MAD program rules and instructions as specified in the provider rules manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or upcoding services. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for billing and for authorization of services.

**B.** ~~[A provider may encourage an individual to apply for emergency medical services for aliens (EMSA) eligibility at a county office when the provider believes the service may qualify as an EMSA emergency service.]~~ A provider may encourage a non-citizen to apply for EMSA eligibility through the local county income support division (ISD) office when the provider believes the service may qualify as an EMSA emergency service. A provider must inform the individual if the provider is unwilling to receive medicaid payment for the service when the

service meets the EMSA emergency criteria for coverage. A provider must determine if the recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to ~~[an alien]~~ a non-citizen recipient.

[2/1/1995; 8.325.10.11 NMAC - Rn, 8 NMAC 4.MAD.769.2 & A, 12/1/2003; A, 10/15/2008; A, 11/15/2010; A, 5/1/2020]

### **8.325.10.12 ELIGIBLE INDIVIDUALS:**

**A.** An applicant must be a noncitizen who is undocumented or who does not meet the qualifying immigration criteria specified in 8.200.410 NMAC, *General Recipient Requirements*, and in 8.285.400 NMAC, *Medicaid Eligibility-Emergency Medical Services for Aliens-Category 085*.

**B.** Eligibility determinations are made by local county income support division (ISD) offices after the receipt of emergency services. The individual is responsible for completing an application ~~[at]~~ through the local county ISD office and for providing all necessary documentation to prove that he or she meets the applicable eligibility criteria.

**(1)** An individual must apply for coverage ~~[at]~~ through the ISD office no later than the last day of the third month following the month in which the ~~[alleged]~~ presumed emergency services were received.

**(2)** ~~[An alien recipient is responsible for notifying providers of the approval or denial of an application.]~~ If eligibility is granted or denied, the medical provider will be notified with a decision for EMSA form, MAD 778 or its successor.

**(3)** If an application is denied or an application for coverage is not filed by the last day of the third month following the month in which the ~~[alleged]~~ presumed emergency services were received, the ~~[alien]~~ non-citizen recipient is responsible for payment of the provider bill.



(4)

If reimbursement for services is denied by MAD or its designee, the [individual] non-citizen is responsible for payment and can be billed directly for payment by the provider.

[2/1/1995; 8.325.10.12 NMAC - Rn, 8 NMAC 4.MAD.769.3 & A, 12/1/2003; A, 10/15/2008; A, 11/15/2010; A, 5/1/2020]

### 8.325.10.13 COVERAGE CRITERIA:

A. "Emergency" as defined for EMSA includes labor and delivery including inductions and cesarean sections, as well as any other medical condition, manifesting itself with acute symptoms of sufficient severity (including severe pain) such that the absence of immediate [emergency] medical attention could reasonably be expected to result in [one of the following]:

- (1) the alien recipient's death;
- (2) placement of the alien recipient's health in serious jeopardy;
- (3) serious impairment of bodily functions; or
- (4) serious dysfunction of any bodily organ or part.]

- (1) the recipient's death;
- (2) placing the recipient's health in serious jeopardy;
- (3) serious impairment to bodily functions; or
- (4) serious dysfunction of any bodily organ or part.

B. Services are covered only when necessary to treat or evaluate a condition meeting the definition of emergency and are covered only for the duration of that emergency.

C. Labor and delivery services provided by an out of state border hospital or emergency transfers from an in state acute care hospital to a border acute care hospital are covered. The out of state border provider must be enrolled with the New Mexico medicaid program.

[E.] D. After delivery, a

child can have legally documented or citizenship status because of its birth in the United States and, therefore, is not eligible for [emergency services for aliens] EMSA. The child may be eligible for another MAD category of eligibility on his or her own.

[D:] E. Determination of coverage is made by MAD or its designee.

[2/1/1995; 8.325.10.13 NMAC - Rn, 8 NMAC 4.MAD.769.4 & A, 12/1/2003; A, 10/15/2008; A, 11/15/2010; A, 5/1/2020]

8.325.10.14 [SERVICE-LIMITATIONS: To meet the categorical eligibility requirements, a recipient who is an alien must be a resident of the state of New Mexico. Proof of residence must be furnished by the alien to the local county ISD office. An individual traveling through New Mexico, entering the United States through New Mexico en route to another destination, visiting in New Mexico or touring New Mexico with a tourist visa does not meet the residence requirement.]

RESIDENCE: To meet the categorical eligibility requirements, a recipient who is a non-citizen must be a resident of the state of New Mexico in accordance with 8.200.410.14 and 8.291.410.15 NMAC.

[2/1/1995; 8.325.10.14 NMAC - Rn, 8 NMAC 4.MAD.769.5, 12/1/2003; A, 10/15/2008; A, 11/15/2010; A, 5/1/2020]

### 8.325.10.15 NONCOVERED SERVICES:

MAD does not cover any medical service that is not necessary to treat or evaluate a condition for an individual who is [an alien] a non-citizen that does not meet the definition of EMSA emergency. Additionally, MAD does not cover the following specific services:

- A. long term care;
- B. organ transplants;
- C. rehabilitation services;
- D. elective surgical procedures;
- E. psychiatric or psychological services;
- F. durable medical equipment or supplies;

- G. eyeglasses;
- H. hearing aids;
- I. outpatient

prescriptions;

- J. podiatry services;
- K. prenatal and

postpartum care;

- L. well child care;
- M. routine dental care;
- N. routine dialysis

services;

O. any medical service furnished by an out-of-state provider;

P. non-emergency transportation; and

- Q. preventive care.

[2/1/1995; 8.325.10.15 NMAC - Rn, 8 NMAC 4.MAD.769.6 & A, 12/1/2003; A, 10/15/2008; A, 11/15/2010; A, 5/1/2020]

### 8.325.10.16 UTILIZATION REVIEW:

Claims for services furnished to a non-citizen recipient [who is an alien] are reviewed by MAD or its designee before payment to determine if the circumstances warrant coverage.

A. Eligibility determination: [An alien] A non-citizen recipient who requests MAD coverage for services must meet specific categorical eligibility requirements. Eligibility determinations by local county ISD offices must be made before the review for medical necessity.

B. Reconsideration: [A provider and the alien are given notice of the denial when the EMSA emergency criteria are not met. An alien recipient can request a re-review and reconsideration of denied coverage of the service. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953]. An alien recipient can also request a hearing. See 8.52.2 NMAC, *Recipient Hearings*.] A provider and the non-citizen recipient are given notice of the denial when the EMSA emergency criteria are not met. A provider who is dissatisfied with a medical necessity decision by MAD, its UR contractor or a MAD designee, can request a reconsideration. A non-citizen recipient who is dissatisfied with a medical necessity decision by

MAD, its UR contractor or a MAD designee, can request the provider to pursue reconsideration on his or her behalf. Requests for reconsiderations must be in writing and received by MAD, its UR contractor or a MAD designee within 30 calendar days after the date on the initial notice of action. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions. A non-citizen recipient can also request a hearing. See 8.352.2 NMAC, *Claimant Hearings.**  
[2/1/1995; 8.325.10.16 NMAC - Rn, 8 NMAC 4.MAD.769.7 & A, 12/1/2003; A, 10/15/2008; A, 11/15/2010; A, 5/1/2020]

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**End of Adopted Rules**

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**Other Material Related to Administrative Law**


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**GOVERNOR,  
OFFICE OF THE**
**EXECUTIVE ORDER 2020-022**
**RENEWING THE STATE OF  
PUBLIC HEALTH EMERGENCY  
DECLARED IN EXECUTIVE  
ORDER 2020-004, OTHER  
POWERS INVOKED IN THAT  
ORDER, AND ALL OTHER  
ORDERS AND DIRECTIVES  
CONTAINED IN EXECUTIVE  
ORDERS TIED TO THE PUBLIC  
HEALTH EMERGENCY**

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization (“WHO”). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to “COVID-19”.

By the time the first COVID-19 cases had been confirmed in new Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1000 cases in the United States, spread out over 39 states.

On March 11, 2020, I issued Executive Order 2020-004, which declared a state of public health emergency under the Public Health Emergency Response Act and invoked powers provided by the All Hazards Emergency Management Act and the Emergency Licensing Act. That public health emergency was declared for a period of 30 days.

Now, less than four weeks later, the world is reeling from staggering increases in cases of COVID-19 and deaths related to COVID-19. The WHO reports more than 1.2 million worldwide infections and at least 67,5994 related deaths. According to the United States

Centers for Disease Control and Prevention (“CDC”), at least 330,891 people have been infected in the United States, including confirmed cases in every state, with at least 8,910 related deaths. The numbers of cases and deaths are continuing to increase exponentially throughout many parts of the world and in many parts of the United States. That is why the President of the United States declared a national state of emergency for COVID-19 on March 13, 2020.

The numbers have also risen dramatically in our State since I declared a public health emergency. As of April 5, 2020, the New Mexico Department of Health reported at least 624 confirmed cases of COVID-19 in New Mexico and at least 12 related deaths. There are confirmed cases of COVID-19 in 23 of New Mexico’s 33 counties. Despite proactive measures taken by the State and our citizens, these numbers are increasing at a dangerous rate and COVID-19 is expected to continue its spread in New Mexico.

Public health organization have implemented emergency measures intended to slow the spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO similar declared a Public health Emergency of International Concern shortly thereafter. Nearly all or our sister states have declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its potentially devastating effects. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State’s response to COVID-19, including the New Mexico Department of Health. All State agencies are undertaking efforts

in response to the pandemic.

Due to the continued spread of the COVID-19, it is necessary for all branches of State government to continue taking actions to minimize the spread of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and the laws of the State of New Mexico, hereby ORDER and DIRECT:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004 is renewed and extended through April 30, 2020.

2. All other powers invoked, directives, and orders contained in Executive Order 2020-004 remain in effect.

3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency shall continue with the same effect. This includes Executive Orders 2020-006, -007, -008, -009, -010, -011, -013, -014, -015, -016, -017, -018, -019, -020.

**DONE AT THE EXECUTIVE  
OFFICE THIS 6TH DAY OF  
APRIL 2020**

**ATTEST:  
/S/ MAGGIE TOULOUSE  
OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
NEW MEXICO**

**/S/ MICHELLE LUJAN  
GRISHAM  
GOVERNOR**

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**End of Other Material Related to  
Administrative Law**

# 2020 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXI, Issues 1-24

<b>Issue</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
<b>Issue 1</b>	<b>January 6</b>	<b>January 14</b>
<b>Issue 2</b>	<b>January 16</b>	<b>January 28</b>
<b>Issue 3</b>	<b>January 30</b>	<b>February 11</b>
<b>Issue 4</b>	<b>February 13</b>	<b>February 25</b>
<b>Issue 5</b>	<b>February 27</b>	<b>March 10</b>
<b>Issue 6</b>	<b>March 12</b>	<b>March 24</b>
<b>Issue 7</b>	<b>March 26</b>	<b>April 7</b>
<b>Issue 8</b>	<b>April 9</b>	<b>April 21</b>
<b>Issue 9</b>	<b>April 23</b>	<b>May 5</b>
<b>Issue 10</b>	<b>May 7</b>	<b>May 19</b>
<b>Issue 11</b>	<b>May 28</b>	<b>June 9</b>
<b>Issue 12</b>	<b>June 11</b>	<b>June 23</b>
<b>Issue 13</b>	<b>July 6</b>	<b>July 14</b>
<b>Issue 14</b>	<b>July 16</b>	<b>July 28</b>
<b>Issue 15</b>	<b>July 30</b>	<b>August 11</b>
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<b>Issue 17</b>	<b>August 27</b>	<b>September 15</b>
<b>Issue 18</b>	<b>September 17</b>	<b>September 29</b>
<b>Issue 19</b>	<b>October 1</b>	<b>October 13</b>
<b>Issue 20</b>	<b>October 15</b>	<b>October 27</b>
<b>Issue 21</b>	<b>October 29</b>	<b>November 10</b>
<b>Issue 22</b>	<b>November 13</b>	<b>November 24</b>
<b>Issue 23</b>	<b>December 3</b>	<b>December 15</b>
<b>Issue 24</b>	<b>December 17</b>	<b>December 29</b>

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