

## NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the following New Mexico Administrative Code (NMAC) rules: *8.281.400 NMAC, Medicaid Eligibility-Institutional Care (categories 081, 083, 084), Recipient Policies*, *8.290.400 NMAC, Medicaid Eligibility-Home and Community-Based Services Waiver (categories 090, 091, 092, 093, 094, 095 and 096), Recipient Policies*.

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: December 15, 2020

Hearing Date: January 21, 2021

Adoption Date: Proposed as May 1, 2021

Technical Citations: 42 CFR 435 subpart B and C

### **Background**

HSD is revising Institutional Care and Home and Community-Based Services Waiver (HCBSW) Medicaid rules to eliminate the requirement for an interview at initial application, add language regarding the requirement for a match letter for Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) applicants to confirm the applicant or recipient meets the definition of an individual with a developmental disability, and to add new language and delete outdated language to HCBSW rules on what constitutes an intellectual disability and related condition. HSD is revising the definitions to be a functional versus a categorical definition of developmental disability which is a national best practice.

### **The Department is proposing to amend the rules as follows:**

#### **8.281.400 NMAC**

Section 1 is amended to add the acronym HSD for the Human Services Department.

Section 8 is revised to include the Department's current mission statement.

Section 10 is revised to change "applicant/recipient" to "applicant or recipient." This change was implemented throughout this rule for consistency.

Section 11 is revised to remove the requirement for an interview for Institutional Care Medicaid. An interview may be requested by an applicant or recipient.

Section 15 is amended to add language that to be eligible for ICF/IID applicants or recipients must obtain a match letter from the Department of Health (DOH) to confirm that he or she meets the definition of an individual with a developmental disability as determined by the DOH/Developmental Disabilities Supports Division.

#### **8.290.400 NMAC**

Section 7 was revised to delete the word "specific."

Section 8 is revised to include the Department's current mission statement.

Section 10 pertaining to the Developmental Disabilities Waiver was revised to add language regarding what constitutes an "intellectual disability."

Specific language was added to intellectual disability to define general intellectual functioning as the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning. Significantly sub-average is defined as an intelligence quotient (IQ) of 70 or below. Adaptive behavior is defined as the effectiveness or degree with which individuals meet the

standards of personal independence and social responsibility expected for age and cultural group. The developmental period is defined as the period of time between birth and the 18<sup>th</sup> birthday.

Revisions were made to add language as to what constitutes a “related condition” and delete language that was no longer applicable.

Specific language was added to exclude mental illness as a related condition. Language was added to define related condition as attributable to a condition, other than mental illness, found to be closely related to an intellectual disability (ID) because this condition results in limitations in general intellectual functioning or adaptive behavior similar to that of persons with an intellectual disability and requires similar treatment or services.

A related condition is manifested before the person reaches age twenty-two (22) years; is likely to continue indefinitely and results in substantial functional limitations (Adaptive Behavior scores less than or equal to 70) in three or more of the following areas: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

Section 11 was amended to remove the interview requirement for home and community-based services waiver categories.

The register for these proposed amendments to this rule will be available December 15, 2021 on the HSD web site 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 proposed rules may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement these rules effective May 1, 2021. A public hearing to receive testimony on these proposed rule changes will be held via conference call on Thursday, January 21, 2021 at 10:00 a.m., Mountain Time (MT). **Conference Number: 1-800-747-5150. Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: 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](mailto:madrules@state.nm.us). Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on January 21, 2021. 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.