

## NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rules 8.291.400 NMAC, *Medicaid Eligibility, Affordable Care*, 8.293.600 NMAC, *Pregnant Women, Benefit Description*, 8.294.600 NMAC, *Pregnancy-Related Services, Benefit Description*, 8.308.9 NMAC, *Managed Care Plan, Benefit Package*, 8.308.11 NMAC, *Managed Care Plan, Transition of Care*, 8.308.20 NMAC, *Managed Care Plan, Reimbursement*, 8.310.2 NMAC, *Health Care Professional Services, General Benefit Description*, and 8.326.3 NMAC, *Case Management Services, Case Management Services for Pregnant Women and their Infants*.

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: November 30, 2021

Hearing Date: December 30, 2021

Adoption Date: Proposed as April 1, 2022

Technical Citations: American Rescue Plan Section 2021 Section 9812; 42 Code of Federal Regulations 435.170

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

#### **Background**

Section 9812 of the American Rescue Plan 2021 provides a new Medicaid State Plan option that allows states to extend the current 60-day postpartum period for pregnant women to 12-months. Section 9812 allows states to do the following:

1. Extends the current 60-day postpartum period for pregnant women to 12-months; and
2. provides full Medicaid benefits during the pregnancy and the 12-month postpartum period; and
3. allows for an implementation date of April 1, 2022; and
4. limits the new State Plan option to five years unless extended.

The Department through this proposed register is implementing the new State Plan option allowed in Section 9812. The Department is also adding 42 Code of Federal Regulation (CFR) 435.170 language to these rules regarding continuous eligibility for pregnant women.

### **Implementation of a 12-month postpartum period for pregnant women is contingent upon legislative approval.**

Changes were made to Presumptive Eligibility (PE) rules to remove, revise, and add new language.

Changes were made to managed care rules to include that there are no age requirements to receive applied behavior analysis (ABA) services.

#### **8.291.400 NMAC**

Section 7 was updated to remove the word “alien” to be consistent with other rule changes. The term “alien” is being replaced with the term “non-citizen” throughout policy via a separate rule promulgation.

Section 13 regarding PE is updated to remove, revise, and add new language. New language is added that if an ongoing application is submitted at the time PE is granted or at any time during the approved PE period, the PE will remain open until the ongoing application is approved or denied.

A new Section 14 is added to include the continuous eligibility policy for pregnant women language found at 42 CFR 435.170 and the new 12-month postpartum provision. The new provision requires the provision of full Medicaid coverage for the duration of the pregnancy including the 12-month postpartum period. These new

provisions do not apply to presumptive eligibility periods. Continuous eligibility exceptions are due to client requested closure, the client moves out of state, or the client dies.

#### **8.293.600 NMAC**

Section 9 is updated to clarify that the pregnant women Medicaid category provides full Medicaid services during the pregnancy and the 12-month postpartum period.

Section 10 is updated to change the 60-day postpartum period to 12-months and reference the new continuous eligibility policy at 8.291.400.14 NMAC.

#### **8.294.600 NMAC**

Section 9 is updated to clarify that the pregnancy-related services Medicaid category provides full Medicaid services during the pregnancy and the 12-month postpartum period.

Section 10 is updated to change the 60-day postpartum period to 12-months and reference the new continuous eligibility policy at 8.291.400.14 NMAC.

#### **8.308.9 NMAC**

Section 19 is updated to include that there are no age requirements to receive ABA services.

Section 23

Paragraph (2) of Subsection C is updated to change the 60-day postpartum period to 12-months.

#### **8.308.11 NMAC**

Section 9

Paragraphs (1), (3) and (4) of Subsection D and Paragraph (2) of Subsection F are updated to change two-month postpartum period to 12-months.

#### **8.308.20 NMAC**

Section 9

Paragraph (4) of Subsection F is updated to change the two-month postpartum period to 12-months.

#### **8.310.2 NMAC**

Section 12

Paragraph (4) of Subsection A is updated to change the term “postnatal” to “postpartum” for rule consistency.

Section 13

Subsection N is revised to make postpartum one word.

#### **8.326.3 NMAC**

Sections 9 and 12 are updated to change 60 days postpartum to 12-months.

Changes have been made throughout all these rules to address formatting requirements.

The register for these proposed amendments to these rules will be available November 30, 2021 on the HSD web site at <https://www.hsd.state.nm.us/lookingforinformation/registers/> or at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notice-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>. If you do not have Internet access, a copy of the proposed rule may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement this rule effective April 1, 2022. A public hearing to receive testimony on these proposed rules will be held via conference call on **Thursday, December 30, 2021 at 10 a.m.**, Mountain Time (MT). **Conference phone 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 December 30, 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 <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notice-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/> 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.