

NOTICE OF RULEMAKING

New Mexico Human Services Department filed an emergency rule change on March 1, 2023, for 8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement to ensure the Department is not in conflict with Federal Medicaid law, 42 C.F.R. § 431.52(b), which requires the provision of and payment for, covered services out-of-state when they are unavailable in-state. The Department is re-promulgating this rule in full within six months of issuance of the emergency rule in accordance with the New Mexico State Rules Act.

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: March 14, 2023  
Public Hearing: April 13, 2023  
Adoption Date: July 1, 2023  
Technical Citations: 42 C.F.R. § 431.52(b)

**The Department has amended the rule as follows:**

**8.321.2.37 NMAC**

**Section A Eligible Agencies**

To ensure alignment with federal Medicaid requirements regarding payments for services furnished out-of-state, HSD is amending this section to allow Treatment Foster Care (TFC) to be provided by an out-of-state TFC agency when the agency has equivalent accreditation and is licensed in their own state as a TFC agency.

These amendments will be contained in 8.321.2 NMAC. The proposed register and rule languages are available on the HSD website at: <https://www.hsd.state.nm.us/lookingforinformation/registers/> and <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>. If you do not have internet access, a copy of the final register and rules may be requested by contacting the Medical Assistance Division at (505) 827-1337.

A public hearing to receive testimony on this rule change will be held via conference call on **Thursday, April 13, 2023, at 10:00 am, Mountain Time (MT). Conference phone number: 1-800-747-5150. Access Code: 2284263.**

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 the MAD in Santa Fe at (505) 827-1337. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by 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.

Interested persons may address written comments 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](mailto:madrules@state.nm.us). Written mail, electronic mail and recorded comments must be received no later than

5 p.m. MT on April 13, 2023. 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.