

**TITLE 8            SOCIAL SERVICES**  
**CHAPTER 300    MEDICAID GENERAL INFORMATION**  
**PART 11            CONFIDENTIALITY**

**8.300.11.1        ISSUING AGENCY:** New Mexico Human Services Department.  
[2/1/95; 8.300.11.1 NMAC - Rn, 8 NMAC 4.MAD.000.1, 7/1/03]

**8.300.11.2        SCOPE:** The rule applies to the general public.  
[2/1/95; 8.300.11.2 NMAC - Rn, 8 NMAC 4.MAD.000.2, 7/1/03]

**8.300.11.3        STATUTORY AUTHORITY:** The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended and by state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991).  
[8.300.2.3 NMAC – N, 7-1-03; A, 9-15-08]

**8.300.11.4        DURATION:** Permanent  
[2/1/95; 8.300.11.4 NMAC - Rn, 8 NMAC 4.MAD.000.4, 7/1/03]

**8.300.11.5        EFFECTIVE DATE:** February 1, 1995, unless a later date is cited at the end of a section.  
[2/1/95; 8.300.11.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 7/1/03; A, 9/15/08]

**8.300.11.6        OBJECTIVE:** The objective of these rules is to provide instructions for the service portion of the New Mexico medical assistance programs.  
[2/1/95; 8.300.11.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 7/1/03; A, 9/15/08]

**8.300.11.7        DEFINITIONS:** [RESERVED]

**8.300.11.8        MISSION STATEMENT:** The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of eligible recipients by furnishing payment for quality health services at levels comparable to private health plans.  
[2/1/95; 8.300.11.8 NMAC - Rn, 8 NMAC 4.MAD.002, 7/1/03; A, 9/15/08]

**8.300.11.9        CONFIDENTIALITY:** The following applicant and eligible recipient information is confidential and is safeguarded by the human services department (HSD), all state agencies, their contractors and other authorized agents and all providers of MAD services. See 42 CFR 431.305(b) and 45 CFR 164.530(c):

- A. name, address and social security number;
- B. medical services furnished to the applicant and eligible recipient;
- C. social and economic conditions or circumstances;
- D. agency evaluation of personal information;
- E. medical data, including diagnosis and past history of disease or disability;
- F. information received to verify income eligibility and the amount of medical payments, including information received from the social security administration and the internal revenue service;
- G. information received in connection with the identification of legally liable third parties;
- H. telephone numbers;
- I. fax numbers;
- J. electronic mail addresses;
- K. medical record numbers;
- L. health plan beneficiary numbers;
- M. account numbers; and
- N. certificate/license numbers.

[2/1/95; 4/30/97; 8.300.11.9 NMAC - Rn, 8 NMAC 4.MAD.030 & A, 7/1/03; A, 9/15/08]

**8.300.11.10        CONFIDENTIALITY OF APPLICANT/RECIPIENT INFORMATION:**

- A. Safeguarding of confidential applicant and eligible recipient information includes the methods of receiving, maintaining, and communicating individually identifiable health information. See 45 CFR Section 164.530(c).

B. **Confidentiality of medical information:** Confidential information regarding applicants or eligible recipients will be available to those identified in 8.300.11.9 NMAC for use only in connection with the administration of the New Mexico medical assistance programs and only on a need-to-know basis. See 42 CFR Section 431.300-307. Those using confidential information will only use the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. See 45 CFR Section 164.502(b).

C. **Use of confidential medical information:** The following individuals have access to medical information: employees of private firms, other divisions within HSD or other state agencies who are performing work or providing services for MAD under contract or business associate agreement or who are providing services, as required by federal law; employees or agents of the federal department of health and human services; and providers of health care services to eligible recipients.  
[2/1/95; 4/30/97; 8.300.11.10 NMAC - Rn, 8 NMAC 4.MAD.031 & A, 7/1/03; A, 9/15/08]

#### **8.300.11.11 CONFIDENTIALITY OF ELECTRONIC DATA:**

A. **Electronic transmission/reception of confidential information:** To ensure that the confidential medical information of eligible recipients and applicants is kept confidential, transmission and reception of this information is limited to those individuals allowed to have access to medical information as stated in the use of confidential medical information policy (Paragraph (1) of Subsection B of 8.300.11.10 NMAC) and safeguarding protected health information policy 8.300.2.22 NMAC).

B. **Provider participation:** Providers who choose to send or receive confidential medical information via fax must have a dedicated fax line or fax machine. Confidential medical information should not be received at a commercial fax center where employees or customers may have access to the information. Providers who choose to send or receive confidential medical information via fax or email must follow the minimum necessary standard. See 45 CFR Section 164.502.

C. **Responsibility for failure to follow rule:** Providers who fail to adhere to this rule are solely liable for any consequences resulting from the use of this method of transmitting confidential medical information, including any attorney fees, costs or damages. MAD shall mitigate any harmful effect from improper disclosure of individually identifiable health information in accordance with 45 CFR Section 164.530(f).  
[2/1/95; R 5/31/97; Re-pr, 3/1/99; 8.300.11.11 NMAC - Rn, 8 NMAC 4.MAD.034 & A, 7/1/03; A, 9/15/08]

#### **HISTORY OF 8.300.11 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center:

ISD 327.0000, Confidentiality of Information, filed 5/8/80.

SP-004.0300, Section 4, General Program Administration Safeguarding Information on Applicants and Recipients, filed 1/23/81.

#### **History of Repealed Material:**

8 NMAC 4.MAD.034.2, Electronic Data Transfer of Medical Records - Repealed 5/31/97.

8 NMAC 4.MAD.034.21, Notice Prior to Transmission - Repealed 5/31/97.

8 NMAC 4.MAD.034.22, Responsibility for Failure to Follow Policy - Repealed 5/31/97.