

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 302 MEDICAID GENERAL PROVIDER POLICIES**  
**PART 3 THIRD PARTY LIABILITY PROVIDER RESPONSIBILITIES**

**8.302.3.1 ISSUING AGENCY:** New Mexico Human Services Department (HSD).  
[8.302.3.1 NMAC - Rp, 8.302.3.1 NMAC, 5/1/2018]

**8.302.3.2 SCOPE:** The rule applies to the general public.  
[8.302.3.2 NMAC - Rp, 8.302.3.2 NMAC, 5/1/2018]

**8.302.3.3 STATUTORY AUTHORITY:** The New Mexico medicaid program and other health care programs are 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.  
[8.302.3.3 NMAC - Rp, 8.302.3.3 NMAC, 5/1/2018]

**8.302.3.4 DURATION:** Permanent.  
[8.302.3.4 NMAC - Rp, 8.302.3.4 NMAC, 5/1/2018]

**8.302.3.5 EFFECTIVE DATE:** May 1, 2018 unless a later date is cited at the end of a section.  
[8.302.3.5 NMAC - Rp, 8.302.3.5 NMAC, 5/1/2018]

**8.302.3.6 OBJECTIVE:** The objective of this rule is to provide instructions for the service portion of the New Mexico medicaid programs.  
[8.302.3.6 NMAC - Rp, 8.302.3.6 NMAC, 5/1/2018]

**8.302.3.7 DEFINITIONS:** [RESERVED]

**8.302.3.8 [RESERVED]**  
[8.302.3.8 NMAC - Rp, 8.302.3.8 NMAC, 5/1/2018]

**8.302.3.9 THIRD PARTY LIABILITY PROVIDER RESPONSIBILITIES:** The New Mexico medical assistance program (medicaid) is the payer of last resort. When resources are available from third parties, HSD administers a specific program to ensure that these resources are used to pay for the medical services furnished to eligible recipients. See 42 CFR Section 433 Subpart D - Third Party Liability and Subsection A of Section 27-2-23 NMSA 1978. This part provides an overview of this program, the collection process, and the responsibilities of providers, insurers, and the department. These provisions apply to the medical assistance program payments and to payments made on behalf of members by HSD contracted medicaid managed care organizations (MCOs).  
[8.302.3.9 NMAC - Rp, 8.302.3.9 NMAC, 5/1/2018]

**8.302.3.10 PAYMENT PROVISIONS:** For claims for recipients with medical coverage furnished by a third party, such as an insurer or other third party who may be liable for the medical bill, medicaid limits payment for the claim to the medicaid allowed amount less the third party payment amount, not to exceed the co-payment, co-insurance, deductible or other patient responsibility amount calculated by the third party when the reimbursement methodology is similar to the methodology used to calculate a medicaid payment, as determined by medical assistance division (MAD). If the third party payment amount exceeds the medicaid allowed amount, the medicaid program makes no further payment. The claim is considered paid in full. The provider may not collect any remaining portion of the unpaid co-payment, co-insurance, or deductible from the client. If a hospital is reimbursed under the diagnostic related group (DRG) reimbursement methodology and receives payments from third party insurers, medicaid pays the hospital the difference between the amount received from the third party and the lower of the hospital billed amount or the medicaid allowed DRG amount.

**A. Payment acceptance:** When providers furnish medical services to eligible recipients who have health coverage or coverage from liable third parties, providers must not seek payment from the recipient.

**B. Sanctions for seeking recipient payments:** Sanctions are imposed if providers seek payment for services from recipients after receiving payments for these services from the eligible recipient's health insurance

company or other third parties. An amount equal to three times the amount sought from eligible recipients is deducted from providers' next medicaid payment. See 42 CFR Section 447.21.

**C. Refunds to MAD after receipt of payment:** A provider must immediately refund the lower of the third party or medicaid payment, if he or she receives payment from insurance companies or health plans for services already paid for by medicaid.

**D. Provider discounts:** MAD does not pay the difference between the payment received from the third party, based on the discount agreement and the actual charges for services, when providers enter into agreements with third party payers to accept payment at less than actual charges.

(1) The provider acceptance of less than actual charges constitutes receipt of a full payment for services and neither medicaid nor eligible recipients have a further legal obligation for payment.

(2) Provider discount arrangements are often referred to as "preferred provider agreements" or "preferred patient care agreements".

[8.302.3.10 NMAC - Rp, 8.302.3.10 NMAC, 5/1/2018]

**8.302.3.11 SUBROGATION RIGHTS:** When MAD makes payments on behalf of eligible recipients, HSD is subrogated to the eligible recipient's right against a third party for recovery of medical expenses to the extent of the payment. See Subsection B of Section 27-2-23 NMSA 1978 (Repl. Pamp. 1991). If the eligible recipient is enrolled in the medicaid managed care program, the extent of the payment is the amount actually expended on the provision of care as documented by encounter data and not the capitation amount paid by MAD to the medicaid managed care contractor. All referrals indicating the existence of a third party medical resource are verified by MAD or its contractors. After verification, indicators are placed in the MAD claims processing contractor's eligibility file for use in claims processing.

[8.302.3.11 NMAC - Rp, 8.302.3.11 NMAC, 5/1/2018]

**8.302.3.12 PROCESS USED IF THIRD PARTY LIABILITY IDENTIFIED:**

**A. Pay and chase process:** When medicaid or a managed care organization (MCO) pays a claim before learning of the existence of health insurance coverage, or before liability has been established, MAD or its contractors seek reimbursement, up to the amount paid. See 42 CFR Section 433.139. This process is referred to as "pay and chase".

**B.** Prior to paying a claim, the probable liability for the claim to be paid or partially paid by a third party must be determined by MAD for the medicaid fee-for-service program or MCOs for members enrolled in managed care. Probable liability includes determining if the eligible recipient or member has other primary insurance, the type of insurance, and if that insurance resource would likely include the coverage of the specific item or service being billed by a provider. It also includes the potential for coverage from casualty or tort case settlements.

**C.** If MAD, or the MCO following the instructions from MAD, has established the probable existence of third party liability at the time the claim is filed, and the probability that the claim services will be covered by the primary insurance, the claim must be cost avoided, which means the claim must be rejected or otherwise denied and the provider informed of the probable coverage of the claim by another insurance resource and the identity of that other insurance resource, subject to the following conditions.

(1) The claim may not be denied by MAD or a MCO due to probable third party liability from an insurance resource or a potential casualty or tort claim settlement when any of the following conditions apply. Rather, the claim must be paid by MAD, or the MCO if the eligible recipient is a member of a MCO, at the full amount allowed for the claim. MAD or the MCO must then seek reimbursement directly from the liable third party as "pay and chase" or as a party to the settlement of a casualty or tort claim.

(a) When the claim is for labor and delivery or postpartum care. However, the claims for the inpatient hospital stay for labor and delivery and postpartum care must be cost-avoided.

(b) When the third party liability is derived from an absent parent whose obligation to pay support is being enforced by the state title IV-D agency.

(c) When the claim is for prenatal care for pregnant women, or preventive services for children including early and periodic screening, diagnosis and treatment services.

(d) When the third party liability is in the form of a potential or determined tort or casualty recovery and the extent of any liability is undetermined and not likely to be determined within 120 calendar days of the date of service on the claim.

(e) When the probable liability cannot be established or information on the benefits likely to be available under the third party resource are not available at the time claim is filed; or if third party

benefits information is not available to pay the eligible recipient or member's medical expenses at the time the claim is filed.

(2) The claim may not be denied by MAD or a MCO due to probable third party liability (including medicare coverage) when the item or service or services by the type of provider are generally not covered by the third party as determined by MAD.

D. The establishment of third party liability takes place when MAD or the MCO receives confirmation from the provider or a third party resource indicating the extent of the third party liability. [8.302.3.12 NMAC - Rp, 8.302.3.12 NMAC, 5/1/2018]

**8.302.3.13 INSURANCE COVERAGE AND HEALTH MAINTENANCE ORGANIZATIONS AND OTHER INSURANCE PLANS:** Providers must not refuse to furnish services to eligible recipients solely because an insurance company or third party may be liable for payment. See 42 CFR Section 447.20(b). When providers are aware of the existence of health insurance or health plan coverage for eligible recipients, the providers must seek payment from the insurance carrier before seeking payment from medicaid. Providers who do not participate in a specific health maintenance organization (HMO) or managed care plan (plan) are not required to furnish services to an eligible recipient who has primary coverage with such HMO or plan. The provider should refer the eligible recipient to a provider who participates in the eligible recipient's HMO or plan.

A. **Eligible recipients with insurance coverage through a HMO or other insurance plan:** When a medicaid eligible recipient belongs to a HMO or other insurance plan, the medicaid program limits the medicaid allowed amount less the third party payment amount, not to exceed the co-payment, deductible, co-insurance, and other patient responsibility amounts calculated by the HMO or other insurance plan. If the third party payment amount exceeds the medicaid allowed amount, the medicaid program makes no further payment and the claim is considered paid in full. The provider may not collect any portion of the unpaid co-payment, co-insurance, or deductible, or other patient responsibility from the eligible recipient. All other HMO requirements, including servicing provider restrictions, apply to the provision of services.

B. Eligible recipients covered by a HMO or other insurance plan are responsible for payment for medical services obtained outside the other plan without complying with the rules or policies of the HMO or other insurance plan. [8.302.3.13 NMAC - Rp, 8.302.3.13 NMAC, 5/1/2018]

**8.302.3.14 PROVIDER LIENS ON PERSONAL INJURY AWARDS:**

A. **Hospital liens:** Hospitals are prohibited from imposing liens on potential lawsuit recoveries for the difference between the MAD payment and hospital billed amounts. MAD payment amounts are payment in full.

(1) Hospitals furnishing services to eligible recipients who have been injured in accidents may choose to file claims with MAD or forego medicaid reimbursement and file hospital liens against any potential lawsuit recoveries.

(2) If hospitals choose to bill medicaid, they must file claims within 120 calendar days of the date of discharge.

(3) If hospitals choose to impose a lien, they cannot bill eligible recipients or medicaid for any unpaid balance remaining after future settlement or lack of settlement.

(4) If hospitals file claims with MAD, the amounts received are payment in full.

B. **Non-hospital providers:** For non-hospital providers, medicaid payments are payment in full for medical services furnished to eligible recipients injured in accidents caused by other parties. Providers may not seek additional payment for these services from eligible recipients, even if eligible recipients later receive monetary awards or settlements from liable parties.

[8.302.3.14 NMAC - Rp, 8.302.3.14 NMAC, 5/1/2018]

**8.302.3.15 NOTIFICATION REQUIREMENTS:** Providers must notify MAD or its appropriate contractor any time they are contacted by an attorney or another interested party who requests information relating to services furnished to eligible recipients, including information on amounts billed or paid, procedures performed or medical records. If an inquiry is received, providers must report to MAD or its appropriate contractor the name and address of the party requesting the information; the name and identification number of the eligible recipient and dates on which services were furnished.

[8.302.3.15 NMAC - Rp, 8.302.3.15 NMAC, 5/1/2018]

**8.302.3.16 CANCELLATION OF INSURANCE:** Providers must not advise or recommend that eligible recipients cancel their health coverage. Failure to comply with this provision is grounds for termination of the provider agreement.

[8.302.3.16 NMAC - Rp, 8.302.3.16 NMAC, 5/1/2018]

**8.302.3.17 MAD RESPONSIBILITIES:**

**A.** MAD has the following responsibilities in administering the TPL program:

(1) determining the legal liability of third parties, including health insurers, in paying for the medical services furnished to eligible recipients 42 CFR 433.138(a);

(2) pursuing claims and recovery against third parties when the amount of the third party payment that HSD can reasonably expect to recover exceeds the cost of the recovery; and

(3) pays to the extent that the medicaid allowed amount exceeds the TPL amount after the amount of third party liability is established not to exceed any patient responsibility determined by another payer.

(4) The child support enforcement division (CSED) provides information to MAD or its contractors on cases identified by CSED as having health insurance. Unless the custodial parent and child have satisfactory insurance, absent parents can be ordered by the court to provide coverage for the child. See 45 CFR 303.31(b)(1). MAD transmits information on absent parents who are not providing health coverage, as required by court order, or who have health insurance available through an employer but have not obtained it for their dependents to CSED.

(5) The New Mexico IV-D agency establishes paternity and obtains support orders for medical payments. MAD notifies this agency of lapses and changes of coverage information when it is identified by MAD. See 45 CFR 303.31(b)(8). This notification takes place when MAD learns that claims for a dependent child are rejected by the health insurance companies of the absent parent because his or her policy have been canceled, revised or no longer cover the child receiving IV-D services.

**B. Trauma diagnosis claims processing:** To help identify liable third parties with respect to injuries received by eligible recipients, MAD or its contractors have implemented a process which recognizes all claims with a trauma diagnosis. See 42 CFR 433.138(4).

(1) Trauma inquiry letters are mailed to identified eligible recipients. The letters ask eligible recipients for information about possible accidents, causes of accidents and whether legal counsel has been obtained.

(2) Failure to respond to these inquiries is considered a failure to cooperate and results in termination of the eligible recipient's medicaid benefits.

[8.302.3.17 NMAC - Rp, 8.302.3.17 NMAC, 5/1/2018]

**8.302.3.18 INSURER RESPONSIBILITIES:** Individual, blanket, group accident or health policies or certificates of insurance, including employee retirement income security Act (ERISA) plans, delivered, issued or renewed in the state of New Mexico must not contain exclusions or clauses which deny or limit insurance benefits to eligible recipients because of their eligibility for medicaid benefits. See Subsection D of Section 59-18-31 NMSA 1978 (Repl. Pamp. 1992).

**A. Direct payments to HSD:** All individual, blanket, or group accident or health policies or certificate of insurance, including ERISA plans, delivered, issued or renewed in the state of New Mexico must require insurers to reimburse HSD for benefits paid on behalf of eligible recipients in the following situations:

(1) HSD has paid or is paying benefits;

(2) HSD pays medicaid providers for the services in question; and

(3) insurers are notified that insured individuals receive medicaid benefits and that the benefits must be paid directly to HSD. HSD certifies to insurers at the time it files claims for reimbursement that these individuals are eligible for medicaid; and

(4) when the claim was paid by a MCO, payment may be made directly to the MCO. If the MCO fails to initiate recovery within 12 months following the original payment date, the payment must be made to HSD.

**B. Direct provider payments:** Medicaid providers may be paid directly by insurers for furnishing medical services to eligible recipients. Providers must inform insurers that the recipients are eligible for medicaid benefits by providing medicaid eligibility information on the recipient. See Subsection C of Section 59A-18-31 NMSA 1978 (Repl. Pamp. 1992).

**C. Level of insurance required:** The minimum standards of acceptable coverage, deductibles, coinsurance, lifetime benefits, out-of-pocket expenses, co-payments, and plan requirements are the minimum

standards of health insurance policies and managed care plans established for small businesses in New Mexico. See the New Mexico Insurance Code. [8.302.3.18 NMAC - Rp, 8.302.3.18 NMAC, 5/1/2018]

**HISTORY OF 8.302.3 NMAC:**

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

ISD 303.1000, Covered Services, filed 1/7/1980.

ISD 303.1000, Covered Services, filed 4/2/1982.

MAD Rule 303, Benefits, filed 11/8/1989.

MAD Rule 303, Benefits, filed 4/17/1992.

MAD Rule 303, Benefits, filed 3/10/1994.

SP-004.2200, Section 4, General Program Administration Third Party Liability, filed 3/5/1981.

**History of Repealed Material:**

MAD Rule 303, Benefits, filed 3/10/1994 - Repealed effective 2/1/1995.

8.302.3 NMAC - Medicaid General Provider Policies, Third Party Liability Provider Responsibilities, filed 4/16/2004 Repealed effective 5/1/2018.