

## 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) rule *8.201.400 NMAC - Medicaid Eligibility-Medicaid Extension Categories*, *8.215.400 NMAC - SSI Methodology-Recipient Policies*, and *8.281.400 NMAC - Institutional Care-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: October 16, 2018

Hearing Date: November 14, 2018

Adoption Date: Proposed as January 1, 2019

Technical Citations: SMD Letter, POMS, 42 CFR 435.1010

### Summary of Revisions:

As part of the rule promulgation 8.201.400, 8.215.400, and 8.281.400 NMAC are being repealed and replaced to comply with formatting requirements.

#### **8.201.400 NMAC – Medicaid Eligibility – Medicaid Extension**

The Department proposes to amend Section 9 to clarify that the Supplemental Security Income (SSI) extension categories are 001, 003, and 004.

The Department proposes to amend Section 10 to delete redundant language and to replace the outdated reference to the “disability determination services (DDS)” with the “disability determination unit (DDU)” throughout these rules. The outdated term “Income Support Specialist (ISS)” was replaced with “Income Support Division worker” throughout these rules.

The Department proposes to amend Paragraph (1) of Subsection G of Section 8.201.400.10 NMAC to allow certain recipients of SSI who become ineligible for SSI cash benefits to be automatically extended Medicaid benefits for an additional two months following the month in which SSI closes, as opposed to the current one-month policy. Current language at Paragraph (2) of Subsection G of Section 8.201.400.10 NMAC allows for extended Medicaid for five SSI closure codes. The Department proposes to amend this language to allow for two months of extended Medicaid for 31 SSI closure codes.

The Department proposes to delete language at Subparagraph (a) and (b) of Paragraph (1) of Subsection G of Section 8.201.400.10 NMAC regarding requiring an application for a second one-month extension of Medicaid, since these individuals will automatically receive two months of extended Medicaid under the new rule. Additionally, the Department proposes to add new language implementing an ex-parte process to systematically evaluate two-month extended SSI clients for other Medicaid categories during their extension period.

The Department proposes to delete language at Subsection H of Section 8.201.400.10 NMAC regarding children terminated from SSI solely due to disability criteria implemented by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) because all of these individuals have aged out of the category. This regulatory language is no longer relevant.

The Department proposes to amend Section 12 enumeration language to refer to 8.200.410.10 NMAC, which is the correct citation.

#### **8.215.400 NMAC – Medicaid Eligibility – Supplemental Security Income**

The Department proposes to add a new section at 8.215.400.10 NMAC regarding coverage of Section 1619(b) recipients. The new proposed language clarifies that the Department has a 1634 Agreement with the Social Security

Administration (SSA) under which the SSA makes Medicaid eligibility determinations for both SSI and 1619(b) recipients. These individuals automatically have Medicaid eligibility unless they fail to meet the assignment of rights or third party liability requirements; or unless the Department has determined ineligibility under the Medicaid trust provision.

#### **8.281.400 NMAC – Medicaid Eligibility – Institutional Care**

Current language at Section 10 requires that an applicant/recipient be in a “Medicaid qualifying” bed in a New Mexico Medicaid approved institution for Institutional Care (IC) Medicaid. A proposed revision was added to include hospitals administered by the US Department of Veteran’s Affairs (VA) as Medicaid approved institutions. This proposed change will allow VA hospital patients who are preparing to transition out of the acute care hospital into an IC setting of care to have their IC Medicaid applications evaluated for eligibility sooner. This will reduce delays in application processing for VA hospital patients transitioning to IC settings.

The Department proposes to amend language at Section 11 to replace “ISD caseworker” with “Income Support Division worker” throughout these rules.

The Department proposes to amend Section 12 enumeration language to refer to the general recipient provisions found at 8.200.410.10 NMAC.

The Department proposes to amend Section 17 to replace the outdated reference to the “disability determination services (DDS)” with the “disability determination unit (DDU)” throughout these rules.

The register for these proposed amendments to the rule will be available September 11, 2018 on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have Internet access, a copy of the proposed rule may be requested by contacting MAD in Santa Fe at 505-827-6252.

The Department proposes to implement these rules effective January 1, 2019. A public hearing to receive testimony on these rules will be held in Hearing Room 2, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico, 87505 on November 14, 2018 from 10 a.m. to 11 a.m., Mountain Standard Time (MST).

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 by calling (505) 827-1337. Electronic comments may be submitted to [madrules@state.nm.us](mailto:madrules@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. MDT, November 15, 2018. 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 505-827-6252. 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.