

**NOTICE OF RULE MAKING**

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.314.3 NMAC, *Medically Fragile Home and Community-Based Services Waiver Services*.

The Department is seeking approval of an amendment to the Medically Fragile Waiver from the Centers for Medicare and Medicaid Services (CMS) to increase provider rates for nursing RN, nursing LPN, occupational therapy, physical therapy, speech language pathology, and case management services and to add the home accessibility adaptations service, known as Environmental Modifications (EMODs) as a service included in the waiver. Environmental Modifications (EMODs) help to ensure health, welfare, and safety of the eligible recipient or enable the eligible recipient to function with greater independence in the home. The rule is being amended to align services and definitions with the amendment and to allow additional funding if a recipient's Individualized Service Plan (ISP) budget exceeds the capped dollar amount due to provider rate increases.

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: January 29, 2019

Hearing Date: February 28, 2019

Adoption Date: Proposed as July 1, 2019

Technical Citations: 42 CFR 438 subparts A through J

**The Department proposes the following rule amendments:**

**8.314.3 NMAC**

**Section 10**

**Subsection L** - Language added to define the requirements for an environmental modification provider agency is added. An environmental modification provider agency must be bonded, licensed by the New Mexico Regulation and Licensing Department (RLD) and authorized by the Department of Health to complete the EMODs.

**Section 13**

**Subsection I** - Language added to define the scope of the EMODs service. EMODs include the purchase and installation of equipment or making physical adaptation to an eligible recipient's residence that are necessary to ensure the health, welfare, and safety of the eligible recipient or enhance his or her access to the home environment and increase his or her ability to act independently.

**Section 15**

**Subsection E** - Language added to allow additional Individualized Service Plan (ISP) budget funding to be considered if the eligible recipient's ISP budget exceeds the capped dollar amount due to provider rate increases.

The register and proposed rule for these proposed amendments will be available on January 29, 2019 on the HSD web site 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 rules may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement these rules effective July 1, 2019. A public hearing to receive testimony on this rule will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico, 87505 on Thursday, February 28, 2019 at 9:00 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. Mountain Standard Time (MST) on February 28, 2019. 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 505-827-1337. 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.