

## 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) rules *8.291.400, Affordable Care, Eligibility Requirements, 8.200.400, General Recipient Rules, General Medicaid Eligibility, and 8.200.410, General Recipient Rules, General Recipient Requirements.*

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: September 12, 2023

Hearing Date: October 13, 2023

Adoption Date: Proposed as January 1, 2024

Technical Citations: 42 CFR 435.926 and 42 CFR 435.406

### **Background**

#### Continuous Medicaid eligibility for children under age six

The Department currently provides 12 months of continuous enrollment for children from birth until turning age 19. The Department's Turquoise Care (TC) 1115 Waiver renewal request proposes to provide continuous Medicaid enrollment for children for up to six years from the time of application approval or recent renewal until turning age six. Continuous Medicaid enrollment for young children will yield improvements in access to essential care while reducing unnecessary costs associated with enrollment lapses. Objectives, as outlined in the TC 1115 Waiver request for continuous Medicaid enrollment, are to minimize coverage gaps to help maintain consistent access to care, including early childhood screenings, primary and preventive services, and treatment, decreasing the need for higher-cost services associated with delaying care, easing the stress and burden on families and caregivers as they navigate Medicaid coverage, and reducing the Department's administrative costs associated with application reprocessing. The Department is proposing through these rules to implement continuous Medicaid enrollment for children from birth up to age six.

#### Deferred Action for Childhood Arrivals (DACA)

The federal Health and Human Services (HHS) Department recently issued proposed rules that modify the definition of "lawfully present" to remove an exception that excludes DACA recipients from the definition of "lawfully present" used to determine eligibility to enroll in Medicaid under the Children's Health Insurance Program Reauthorization Act of 2009 referred to as the CHIPRA 214 option.

The HHS proposed rule changes interpretation of "lawfully present" to treat DACA recipients the same as other deferred action recipients. DACA recipients would be considered "lawfully present" to the same extent as other deferred action recipients for purposes of the CHIPRA 214 option and can be determined eligible for Medicaid. Including DACA recipients in the definition of "lawfully present" is expected to lower the number of people who are uninsured and make affordable health care available to more people. The Department is proposing through these rules to implement the HHS required changes for CHIPRA 214 states that allow DACA recipients who reside in New Mexico to enroll in Medicaid if meeting financial and non-financial eligibility requirements.

The HHS proposed rules make additional changes to the definition of "lawfully present" that have been incorporated into the proposed rules.

### **The Department is proposing to amend the rule as follows:**

#### **8.291.400 NMAC**

Section 11 is modified to include continuous eligibility for up to six years for children from birth until turning age six. A child enrolled for less than 12 months before turning age six is eligible for 12 months of continuous eligibility. The continuous eligibility period begins on the effective date of the individual's eligibility or most recent redetermination or renewal of eligibility.

### **8.200.400 NMAC**

Section 12 is modified to include continuous eligibility for up to six years for children from birth until turning age six. A child enrolled for less than 12 months before turning age six is eligible for 12 months of continuous eligibility. The continuous eligibility period begins on the effective date of the individual's eligibility or most recent redetermination or renewal of eligibility.

### **8.200.410 NMAC**

#### Section 11

Subparagraph (m) of Paragraph (1) of Subsection B pertaining to COFA migrants has been moved to a newly created lawfully present section.

Paragraph (3) of Subsection B pertaining to children under age 21 and pregnant individuals has been moved to a newly created lawfully present Subsection C.

Subsection C has been created for lawfully present individuals. New Mexico covers lawfully present individuals who are lawfully residing in the United States. An individual is lawfully residing in the United States if they are lawfully present and otherwise meet the eligibility requirements in the state plan. Lawfully present includes the following three groups of individuals for Medicaid coverage: children under age 21 and pregnant individuals, COFA migrants, and DACA individuals.

Additional changes were made to lawfully present children under age 21 and pregnant individuals to correspond with the HHS proposed rules. The following changes were made:

- 1) (ii) of Subparagraph (d) of Paragraph (1) of Subsection C was revised to change "currently under" to "granted".
- 2) (iv) of Subparagraph (d) of Paragraph 1 of Subsection C was revised to add under family unity individuals who are granted benefits under section 1504 of the Legal Immigration and Family Equity (LIFE) Act Amendments of 2000.
- 3) (vi) of Subparagraph (d) of Paragraph 1 of Subsection C was revised to remove the exception for DACA individuals.
- 4) (vii) of Subparagraph (d) of Paragraph 1 of Subsection C was revised to add pending visa petitions rather than only approved visa petitions.
- 5) Subparagraph (e) of Paragraph (1) of Subsection C was revised to remove the 180-day application pending period for an applicant under age 14.
- 6) Subparagraph (f) of Paragraph (1) of Subsection C was removed as duplicative language to Subparagraph (e) of Paragraph (1) of Subsection C. Subsequent lettering was updated due to this removal.
- 7) Subparagraph (f) (formerly Subparagraph (g)) of Paragraph (1) of Subsection C was revised to include approved applications for special immigrant juvenile status.
- 8) Subparagraph (h) of Paragraph (1) of Subsection C was removed because it references individuals lawfully present in American Samoa and is not relevant to residing in New Mexico.
- 9) The term "non-citizen" is being updated per the HHS proposed rules to remove the hyphen and use the term "noncitizen" to align with terminology used by the Department of Homeland Security. This term has been updated throughout these rules.

Amendments were made throughout the rule to align with formatting requirements.

The register and the proposed rule are available on the HSD website at:

<https://www.hsd.state.nm.us/lookingforinformation/register/> 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 proposed register and rule may be requested by contacting MAD at (505) 827-1337.

The Department proposes to implement these rules effective January 1, 2024. A public hearing to receive testimony on this proposed rule will be held on October 13, 2023, at 8:30 a.m. The hearing will be held at the Administrative

Services Division (ASD), 1474 Rodeo Rd, Santa Fe, NM 87505 and **via conference call. Conference phone number: 1-800-747-5150. Access Code: 2284263.**

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 at (505) 827-1337. Interested persons may also address comments via electronic mail to: HSD-madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on October 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-notices-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.

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.