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State/Territory Name: New Mexico

State Plan Amendment (SPA) #: 12-04

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) Companion Letter
- 3) CMS 179 Form
- 4) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Dallas Regional Office  
1301 Young Street, Suite 833  
Dallas, Texas 75202



**DIVISION OF MEDICAID & CHILDREN'S HEALTH - REGION VI**

November 21, 2012

Our Reference: SPA-NM-12-04

Ms. Julie Weinberg, Director  
New Mexico Human Services Department  
Medical Assistance Division  
Post Office Box 2348  
Santa Fe, New Mexico 87504-2348

Dear Ms. Weinberg:

We have reviewed the proposed amendment to your Medicaid State Plan submitted under Transmittal Number 12-04. This state plan amendment updates the service description and limits of personal care services.

Transmittal Number 12-04 is approved with an effective date of June 1, 2012 as requested. A copy of the HCFA-179, Transmittal No. 12-04 dated March 16, 2012 is enclosed along with the approved plan pages.

If you have any questions, please contact Suzette Seng at (214) 767-6478.

Sincerely,

A black rectangular box redacting the signature of Bill Brooks.

Bill Brooks  
Associate Regional Administrator  
Division of Medicaid and Children's Health

Enclosure

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
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**DIVISION OF MEDICAID & CHILDREN'S HEALTH - REGION VI**

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Ms. Julie Weinberg, Division Director  
New Mexico Human Services Department  
Medical Assistance Division  
Post Office Box 2348  
Santa Fe, New Mexico 87504-2348

Dear Ms. Weinberg:

This letter is being sent as a companion to our approval of New Mexico SPA TN 12-04 which updates the service description and limits of personal care services.

CMS reviewed the corresponding reimbursement page for personal care services. Based on that review, we have determined that the reimbursement methodology, as currently described in the State plan, does not meet Medicaid statutory and regulatory requirements. At the State's request we are issuing a companion letter so that the State may address CMS' concerns.

Section 1902(a)(30)(A) of the Social Security Act (the Act) requires that States have methods and procedures in place to ensure payments are consistent with economy efficiency and quality of care. The overall requirement of section 1902(a) of the Act for a State plan and the specific requirement at section 1902(a)(30)(A) of the Act for methods and procedures related to payment are implemented in the Code of Federal Regulations (CFR) at 42 CFR 430.10 and 42 CFR 447.252(b). These regulations require that the State plan include a comprehensive description of the methods and standards used to set payment rates and provide a basis for Federal Financial Participation (FFP). To be comprehensive, payment methodologies should be understandable clear and unambiguous. In addition, because the plan is the basis for FFP, it is important that the plan language provide an auditable basis for determining whether payment is appropriate.

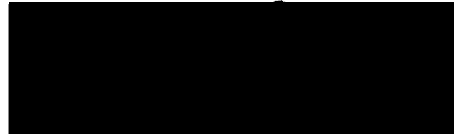
The reimbursement methodology for personal care services does not meet these requirements because the language describing the reimbursement methodology is not comprehensive. We understand that the State uses a fee schedule to reimburse for this service. However, the State plan neither includes the fee schedule itself nor identifies how providers and auditors can locate the applicable fee schedule and determine the period for which the fee schedule is in effect. Please amend Attachment 4.19B to include information that comprehensively describes payment rates

and the location and effective date of the fee schedule for personal care services. We suggest that the State insert into the reimbursement provisions for the above mentioned services language such as that provided below:

“Except as otherwise noted in the plan, State developed fee schedule rates are the same for both governmental and private providers of *(identify service)*. The agency fee schedule rate was set as of *(insert date)* and is effective for services provided on or after that date. All rates are published at *(provide agency website URL)*.”

The State has 90 days from the date of this letter, to address the issues described above. Within that period the State may submit SPAs to address the inconsistencies or submit a corrective action plan describing in detail how the State will resolve the issues identified above in a timely manner. Failure to respond will result in the initiation of a formal compliance process. During the 90 days, CMS will provide any required technical assistance. If you have any questions, please contact Suzette Seng at (214) 767-6478 or [suzette.seng@cms.hhs.gov](mailto:suzette.seng@cms.hhs.gov).

Sincerely,

A large black rectangular redaction box covering the signature of Bill Brooks.

Bill Brooks  
Associate Regional Administrator

Enclosures

<b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</b>		1. TRANSMITTAL NUMBER: 12-04	2. STATE New Mexico
<b>FOR: HEALTH CARE FINANCING ADMINISTRATION</b>		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE June 1, 2012	
5. TYPE OF PLAN MATERIAL (Check One):			
<input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT			
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)			
6. FEDERAL STATUTE/REGULATION CITATION: 42 CFR 440.167		7. FEDERAL BUDGET IMPACT: for FFY 2012: No Impact for FFY 2013: No Impact	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 3.1-A Page 9a (new) Attachment 3.1-A Page 10 Supplement A to Attachment 3.1-A Page 25 (new) Supplement A to Attachment 3.1-A Page 26 (new)		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): Attachment 3.1 A, page 9(a)(new) supersedes Attachment 3.1 A Page 10. (TN 00-08) Attachment 3.1 A, page 10 supersedes Attachment 3.1 A Page 9(c) (TN 04-01). Supplement to Attachment 3.1 A, Page 25 (new) supersedes none, new page. Supplement to Attachment 3.1 A, Page 26 (new) supersedes none, new page.	
10. SUBJECT OF AMENDMENT: Personal Care Option Services			
11. GOVERNOR'S REVIEW (Check One):		X OTHER, AS SPECIFIED: Authority Delegated to the Medicaid Director.	
<input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL:		16. RETURN TO:	
[Redacted Signature]		Julie B. Weinberg, Director Medical Assistance Division P.O. Box 2348 Santa Fe, NM 87504 - 2348	
13. TYPED NAME: Julie B. Weinberg			
14. TITLE: Director, Medical Assistance Division			
15. DATE SUBMITTED: March 16, 2012 Revised: August 27, 2012			
<b>FOR REGIONAL OFFICE USE ONLY</b>			
17. DATE RECEIVED: 22 March, 2012		18. DATE APPROVED: 21 November, 2012	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: 1 June, 2012		20. SIGNATURE: [Redacted Signature]	
21. TYPED NAME: Bill Brooks		22. TITLE: Associated Regional Administrator Division of Medicaid & Children's Health	
23. REMARKS:			

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: NEW MEXICO

AMOUNT, DURATION, AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY

ATTACHMENT 3.1-A

Page 9a

25. Home and Community Care for Functionally Disabled Elderly Individuals, as defined, described and limited in Supplement 2 to Attachment 3.1-A, and Appendices A-G to Supplement 2 to Attachment 3.1-A

           provided   X   not provided

26. Personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are (A) authorized for the individual by a physician in accordance with a plan of treatment, (B) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, and (C) furnished in a home.

  X   Provided:

  X   State Approved (Not Physician) Service Plan Allowed

  X   Services Outside the Home Also Allowed

           Limitations Described on Attachment

           Not Provided

STATE <u>New Mexico</u>	A
DATE REC'D <u>3-22-12</u>	
DATE APPV'D <u>11-21-12</u>	
DATE EFF <u>6-1-12</u>	
NOFA 179 <u>12-04</u>	

TN No. 12-04

Approval Date 11-21-12

Supersedes TN No. SUPERSEDES: NONE - NEW PAGE

Effective Date 6-1-12

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: NEW MEXICO

AMOUNT, DURATION, AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY

ATTACHMENT 3.1-A

Page 10

PACE State Plan Amendment Pre-Print

AMOUNT, DURATION, AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY

27. Program of All-Inclusive Care for the Elderly (PACE) services, as described in Supplement 3 to Attachment 3.1-A

X Election of PACE: By virtue of this submittal, the State elects PACE as an optional State Plan service.

       No election of PACE: By virtue of this submittal, the State elects to not add PACE as an option State Plan service.

STATE <u>New Mexico</u>	A
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HCFA 179 <u>12-04</u>	

TN No. 12-04

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SUPERSEDES: TN- 00-08

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory: NEW MEXICO

State Supplement A to Attachment 3.1 A  
Page 25

**Item 26 Personal Care Services**

Individuals eligible for Personal Care Option (PCO) services have the option of choosing the consumer-delegated (traditional PCA service delivery model) or the consumer-directed personal care model. Under the consumer-delegated model, the consumer chooses the PCO agency to perform all employer-related tasks and the agency is responsible for ensuring all service delivery to the consumer. The consumer-directed model allows the consumer to oversee his/her own service care delivery, and requires the consumer to work with a PCO agency that acts as a fiscal intermediary agency to process all financial paperwork.

Personal care services are provided in accordance with 42 CFR 440.167.

**Description of PCO services:**

1. Individualized bowel and bladder services;
2. Meal preparation and assistance;
3. Feeding or assisting the consumer with eating;
4. Household support services;
5. Hygiene/grooming;
6. Supportive mobility assistance.

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HCFA 179	<u>12-04</u>

A

**PCO Agencies:**

PCO agencies must be certified by the Human Services Department or its designee.

**Personal Care Attendants:**

Personal care attendants providing PCO Services to consumers electing either consumer-directed or consumer delegated :

- A. Be hired by the consumer (consumer-directed model) or the PCO agency (consumer-delegated model);
- B. Cannot be anyone who meets the definition of a legally responsible relative pursuant to 42 CFR Section 440.167 and CMS state medicaid manual section 4480-D;

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
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State Supplement A to Attachment 3.1 A  
Page 26

- C. Cannot be the recipient's legal representative unless approved by the Department due to the lack of availability of other options. If the legal representative is also a legally responsible relative, as described in B above, the legal representative cannot provide services;
- D. Cannot be the consumer's personal representative, unless he/she is also the legal representative;
- E. Be 18 years of age or older;
- F. Successfully pass a nationwide caregiver criminal history screening, pursuant to 7.1.9 NMAC and in accordance with NMSA 1978, Section 29-17-2 et seq., of the Caregivers Criminal History Screening Act, performed by an agency certified to conduct such checks; attendants are required to submit to a criminal history screening within the first 20-days of hire; an attendant may be conditionally hired by the agency contingent upon the receipt of written notice from the certified agency of the results of the nationwide criminal history screening; attendants who do not successfully pass a nationwide criminal history screening are not eligible for further PCO service employment;
- G. If the attendant is a member of the consumer's family, he/she may not be paid for services that would have otherwise been provided to the consumer; if the attendant is a member of the consumer's household, he/she may not be paid for household services, support services (shopping and errands), or meal preparation that are routinely provided as part of the household division of chores, unless those services are specific to the consumer (i.e., cleaning consumer's room, linens, clothing, and special diets);
- H. For consumer-delegated models: complete 12-hours of training yearly and must maintain certification throughout the entire duration of providing PCO services.

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NSFA 179 <u>12-04</u>	

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Supersedes TN. No. SUPERSEDES: NONE - NEW PAGE

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