



Michelle Lujan Grisham, Governor
Kari Armijo, Acting Secretary
Lorelei Kellogg, Acting Medicaid Director

September 25, 2023

James G. Scott, Director
Division of Program Operations
Medicaid & CHIP Operations Group
Centers for Medicare and Medicaid Services
601 E. 12th St., Room 355
Kansas City, MO 64106

Dear Mr. Scott:

Enclosed please find documents related to New Mexico State Plan Amendment (SPA) 23-0013 Tribal 638 Nursing Facilities.

Effective August 18, 2023, New Mexico Medicaid is reimbursement for Tribal 638 Nursing Facilities at the Office of Management and Budget (OMB) rate as published and specified in the Federal Register. This rate will be adjusted annually based on the percentage increase to the approval rates published each year in the Federal Register by the U.S. Department of Health and Human Services' Indian Health Service, under the authority of Sections 321 (a) and 322 (b) of the Public Health Service Act (42 U.S.C. 248 and 249 (b)), Public Law 83-568 (42 U.S.C. 2001(a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

These changes are being made to the State Plan as Tribal Nursing Facilities receive a Tribal 638 authority designation to be reimbursed at the OMB published rate.

HSD followed a process that included public notification, tribal notification and web posting. Documentation of these activities is attached.

Please refer to the attachments for the transmittal form and notices.

We appreciate your consideration of this state plan amendment. Should you have any questions on this amendment, please contact Valeria Tapia at: Valerie.Tapia@hsd.nm.gov or (505) 257-8420.

Sincerely,

A handwritten signature in blue ink, appearing to be "Lorelei Kellogg".

Lorelei Kellogg
Acting Medicaid Director

cc: Nikki Lemmon, CMS

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER

2. STATE

3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL
SECURITY ACT

XIX

XXI

TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

5. FEDERAL STATUTE/REGULATION CITATION

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)

a. FFY _____ \$ _____

b. FFY _____ \$ _____

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT *(If Applicable)*

9. SUBJECT OF AMENDMENT

10. GOVERNOR'S REVIEW *(Check One)*

GOVERNOR'S OFFICE REPORTED NO COMMENT
COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

OTHER, AS SPECIFIED:

11. SIGNATURE OF STATE AGENCY OFFICIAL



12. TYPED NAME

13. TITLE

14. DATE SUBMITTED

15. RETURN TO

FOR CMS USE ONLY

16. DATE RECEIVED

17. DATE APPROVED

PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL

19. SIGNATURE OF APPROVING OFFICIAL

20. TYPED NAME OF APPROVING OFFICIAL

21. TITLE OF APPROVING OFFICIAL

22. REMARKS

COST RELATED REIMBURSEMENT OF NURSING FACILITIES

The New Mexico Title XIX Program make reimbursement for appropriately licensed and certified Nursing Facility (NF) services as outlined in this material.

I. GENERAL REIMBURSEMENT POLICY:

The Human Services Department will reimburse Nursing Facilities (effective October 1, 1990, the SNF/ICF distinction is eliminated; see section VIII) the lower of the following, effective July 1, 1984:

A. Billed Charges;

B. The prospective rate as constrained by the ceilings (Section V) established by the Department as described in this plan.

II. REIMBURSEMENT FOR TRIBAL 638 FACILITIES:

Effective August 18, 2023, the Human Services Department will reimburse Tribal 638 Nursing Facilities at the Office of Management and Budget (OMB) rate as published and specified in the Federal Register. This rate will be updated annually based on rates published each year in the Federal Register by the U.S. Department of Health and Human Services' Indian Health Service, under the authority of Sections 321 (a) and 322 (b) of the Public Health Service Act (42 U.S.C. 248 and 249 (b)), Public Law 83-568 (42 U.S.C. 2001 (a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

III. NURSING FACILITY RATE DETERMINATION FOR VENTILATOR DEPENDENT RESIDENTS

1. Effective for dates of service on and after March 14, 2022, the nursing facility per diem for a ventilator dependent resident will be \$305.66.
2. The per diem costs of providing services to the ventilator dependent residents shall be maintained separately (as a distinct part) of each facility's annual cost report beginning March 14, 2022.
3. Ventilator dependent per diem rates will cover all skilled nursing care services and will be all-inclusive.
4. No additional amount above the current nursing facility daily rate shall be allowed until the service is prior authorized by the Department's Medical Management Contractor.
5. The resident's clinical condition shall be reviewed every 90 days to determine if the resident's medical condition continues to warrant services at the ventilator dependent nursing facility rate. Prior authorization (PA) through the Department's Medical Management Contractor spans a 90-day maximum time period. The nursing facility is required to resubmit requests for continued stay prior to expiration of the current PA. If a resident no longer requires the use of a ventilator, the provider shall not receive additional reimbursement beyond the New Mexico Medicaid nursing home per diem rate determined for the facility.



Michelle Lujan Grisham, Governor
Kari Armijo, Acting Secretary
Lorelei Kellogg, Acting Medicaid Director

August 18, 2023

Interested Parties:

The New Mexico Human Services Department Medical Assistance Division is providing notice of a proposed reimbursement for Tribal 638 Nursing Facilities at the Office of Management and Budget (OMB) rate as published and specified in the Federal Register. This rate will be adjusted annually based on the percentage increase to the approval rates published each year in the Federal Register by the U.S. Department of Health and Human Services' Indian Health Service, under the authority of Sections 321 (a) and 322 (b) of the Public Health Service Act (42 U.S.C. 248 and 249 (b)), Public Law 83-568 (42 U.S.C. 2001(a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

These changes are being made to the State Plan as Tribal Nursing Facilities receive a Tribal 638 authority designation to be reimbursed at the OMB published rate.

The estimated financial impact is (in federal funds) for FFY 23 \$8,015,360.00 (in federal funds) for FFY 24 \$8,015,360.00 (in federal funds).

OPPORTUNITY TO VIEW DOCUMENTS AND MAKE COMMENTS

Medicaid providers, Medicaid recipients, and other interested parties are invited to make comments on this proposed SPA. The complete draft amendment may be found on the Department's website at: <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-open/>

A written copy of these proposed documents may be requested by contacting the HSD Medical Assistance Division (HSD/MAD) in Santa Fe at (505) 827-1337.

Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to HSD-madrules@state.nm.us. All comments must be received no later than **5:00 p.m. Mountain Time (MT) on September 17, 2023**. Written or e-mailed comments are preferred because they become part of the record associated with these changes.

Interested persons may address written comments to:

Human Services Department
Office of the Secretary
ATTN: Medical Assistance Division Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Copies of all comments will be made available by HSD/MAD upon request by providing copies directly to a requestor or by making them available on the HSD/MAD website or at a location within the county of the requestor.



Michelle Lujan Grisham, Governor
Kari Armijo, Acting Secretary
Lorelei Kellogg, Acting Medicaid Director

August 18, 2023

RE: Tribal Notification to Request Advice and Comments Letter 23-13: SPA Tribal 638 Nursing Facilities.

Dear Tribal Leadership, Indian Health Service, Tribal Health Providers, and Other Interested Parties:

Seeking advice and comments from New Mexico's Indian Nations, Tribes, Pueblos and their health care providers is an important component of the government-to-government relationship with the State of New Mexico. In accordance with the New Mexico Human Services Department's (HSD's) Tribal Notification to Request Advice and Comments process, this letter is to inform you that HSD, through the Medical Assistance Division (MAD), is accepting comments until **5:00 p.m. Mountain Time (MT) September 17, 2023**, regarding state plan amendment (SPA) 23-0013 SPA Tribal 638 Nursing Facilities.

The New Mexico Human Services Department Medical Assistance Division is providing notice of a proposed reimbursement for Tribal 638 Nursing Facilities at the Office of Management and Budget (OMB) rate as published and specified in the Federal Register. This rate will be adjusted annually based on the percentage increase to the approval rates published each year in the Federal Register by the U.S. Department of Health and Human Services' Indian Health Service, under the authority of Sections 321 (a) and 322 (b) of the Public Health Service Act (42 U.S.C. 248 and 249 (b)), Public Law 83-568 (42 U.S.C. 2001(a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

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Tribal Impact

HSD does anticipate a positive impact for New Mexico Tribes, Nations and Pueblos and eligible tribal nursing facilities.

Tribal Advice and Comments

Tribes and their healthcare providers may view the proposed changes, on the HSD webpage at: <https://www.hsd.state.nm.us/providers/written-tribal-consultations/> **Tribal Notification 23-13.**

Important Dates

Written comments must be submitted by 5:00 p.m. Mountain Time (MT) September 17, 2023. Please send your comments to the MAD Native American Liaison, **Theresa Belanger**, at **(505) 670-8067** or by email at: Theresa.Belanger@hsd.nm.gov. All written comments received will be posted on the HSD website at: <https://www.hsd.state.nm.us/providers/written-tribal-consultations/> along with this notification letter. The public posting will include the name and any contact information provided by the commenter.

Tribal Leadership may request a government-to-government consultation by September 17, 2023. This request may be made to: Theresa.Belanger@hsd.nm.gov or by calling (505) 670-8067.

Sincerely,



Lorelei Kellogg
Acting Medicaid Director

Newspaper Notice:
SPA 23-0013 Tribal
638 Nursing Facilities.

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

Wayne Barnard, the undersigned, authorized Representative of the Albuquerque Journal, on oath states that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, that payment therefore has been made of assessed as court cost; and that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

08/17/2023

The New Mexico Human Services Department Medical Assistance Division is providing this notice of opportunity to comment on proposed State Plan Amendment (SPA) 23-0013 Tribal 638 Nursing Facilities. Effective August 18, 2023, New Mexico Medicaid is proposing reimbursement for Tribal 638 Nursing Facilities at the Office of Management and Budget (OMB) rate as published and specified in the Federal Register. This rate will be adjusted annually based on the percentage increase to the approval rates published each year in the Federal Register by the U.S. Department of Health and Human Services Indian Health Service, under the authority of Sections 321 (a) and 322 (b) of the Public Health Service Act (42 U.S.C. 248 and 249 (b)), Public Law 83-568 (42 U.S.C. 2001 (a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

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The estimated financial impact is (in federal funds) for FFY 23 \$ 8,015,360.00 (in federal funds) and for FFY 24 \$ 8,015,360.00 (in federal funds).

OPPORTUNITY TO VIEW DOCUMENTS AND MAKE COMMENTS

Medicaid providers, Medicaid recipients, and other interested parties are invited to make comments on this proposed SPA. The complete draft amendment may be found on the Department's website at: <https://www.hsd.state.nm.us/public-information-and-communication/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/>

A written copy of these proposed documents may be requested by contacting the HSD Medical Assistance Division (HSD/MAD) in Santa Fe at (505) 827-1337.

Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to HSD-madrules@state.nm.us. All comments must be received no later than 5:00 p.m. Mountain Time (MT) on September 17, 2023. Written or e-mailed comments are preferred because they become part of the record associated with these changes.

Interested persons may address written comments to: Human Services Department Office of the Secretary ATTN: Medical Assistance Division Public Comments P.O. Box 2348 Santa Fe, New Mexico 87504-2348

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this

17 day of August of 2023

PRICE \$136.17

Statement to come at the end of month.

ACCOUNT NUMBER 1009565

CHRISTINA MARIE WHITE
Notary Public - State of New Mexico
Commission # 1122050
My Comm. Expires Jul 26, 2026

Christina Marie White

Copies of all comments will be made available by HSD/MAD upon request by providing copies directly to a requestor or by making them available on the HSD/MAD website or at a location within the county of the requestor.

Journal: August 17, 2023

Redo

Las Cruces Sun News.

PART OF THE USA TODAY NETWORK

Affidavit of Publication

Ad # 0005800252

This is not an invoice

HUMAN SVCS DEPT - ME D ASSIST DIV
PO BOX 2348

SANTA FE, NM 87504-2348

I, a legal clerk of the **Las Cruces Sun News**, a newspaper published daily at the county of Dona Ana, state of New Mexico and of general paid circulation in said county; that the same is a duly qualified newspaper under the laws of the State wherein legal notices and advertisements may be published; that the printed notice attached hereto was published in the regular and entire edition of said newspaper and not in supplement thereof in editions dated as follows:

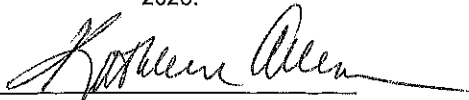
08/17/2023

Despondent further states this newspaper is duly qualified to publish legal notice or advertisements within the meaning of Sec. Chapter 167, Laws of 1937.

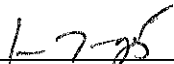


Legal Clerk

Subscribed and sworn before me this August 17,
2023:



State of WI, County of Brown
NOTARY PUBLIC


My commission expires

Ad # 0005800252
PO #: 38111
of Affidavits 1

This is not an invoice

KATHLEEN ALLEN
Notary Public
State of Wisconsin

**Newspaper Notice:
SPA 23-0013 Tribal 638
Nursing Facilities.**

The New Mexico Human Services Department Medical Assistance Division is providing this notice of opportunity to comment on proposed State Plan Amendment (SPA) 23-0013 Tribal 638 Nursing Facilities. Effective August 18, 2023, New Mexico Medicaid is proposing reimbursement for Tribal 638 Nursing Facilities at the Office of Management and Budget (OMB) rate as published and specified in the Federal Register. This rate will be adjusted annually based on the percentage increase to the approval rates published each year in the Federal Register by the U.S. Department of Health and Human Services' Indian Health Service, under the authority of Sections 321 (a) and 322 (b) of the Public Health Service Act (42 U.S.C. 248 and 249 (b)), Public Law 83-568 (42 U.S.C. 2001 (a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

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Interested persons may ad-

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Copies of all comments will
be made available by
HSD/MAD upon request by
providing copies directly to
a requestor or by making
them available on the
HSD/MAD website or at a lo-
cation within the county of
the requestor.
#5800252, Sun New, Aug
17, 2023