8.305.8.15 MEMBER BILL OF RIGHTS:   Under medicaid managed care, members have certain rights and responsibilities and the MCO/SE shall have policies and procedures governing member rights and responsibilities. The following subsections shall be known as the “Member Bill of Rights”.

A. Members’ rights:

(1) Members shall have the right to be treated equitably and with respect and recognition of their dignity and need for privacy.

(2) Members shall have the right to receive health care services in a non-discriminatory fashion.

(3) Members who have a disability shall have the right to receive any information in an alternative format in compliance with the Americans with Disabilities Act.

(4) Members or their legal guardians shall have the right to participate with their health care providers in decision making in all aspects of their health care, including the course of treatment development, acceptable treatments and the right to refuse treatment.

(5) Members or their legal guardians shall have the right to informed consent.

(6) Members or their legal guardians shall have the right to choose a surrogate decision-maker to be involved as appropriate, to assist with care decisions.

(7) Members or their legal guardians shall have the right to seek a second opinion from a qualified health care professional within the MCO/SE network, or the MCO/SE shall arrange for the member to obtain a second opinion outside the network, at no cost to the member. A second opinion may be requested, when the member or member’s legal guardian needs additional information regarding recommended treatment or believes the provider is not authorizing requested care.

(8) Members or their legal guardians shall have a right to voice grievances about the care provided by the MCO/SE and to make use of the MCO/SE’s grievance process and the HSD fair hearings process without fear of retaliation.

(9) Members or their legal guardians shall have the right to choose from among the available providers within the limits of the plan network and its referral and prior authorization requirements.

(10) Members or their legal guardians shall have the right to make their wishes known through advance directives regarding health care decisions (e.g., living wills, right to die directives, “do not resuscitate” orders, etc.) consistent with federal and state laws and regulations.

(11) Members or their legal guardians shall have the right to access the member’s medical records in accordance with the applicable federal and state laws and regulations.
(12) Members or their legal guardians shall have the right to receive information about: the MCO/SE, its health care services, how to access those services, and the MCO/SE network providers.

(13) Members or their legal guardians shall have the right to be free from harassment by the MCO/SE or its network providers in regard to contractual disputes between the MCO/SE and providers.

(14) Members have the right to be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation, as specified in federal or state of New Mexico regulations on the use of restraints and seclusion.

(15) (MCO only) Members or their legal guardians shall have the right to select an MCO and exercise switch enrollment rights without threats or harassment.

B. Members’ responsibilities: Members or their legal guardians shall have certain responsibilities that will facilitate the treatment process.

(1) Members or their legal guardians shall have the responsibility to provide, whenever possible, information that the MCO/SE and providers need in order to care for them, and to participate in developing mutually agreed upon treatment goals.

(3) Members or their legal guardians shall have the responsibility to follow the plans and instructions for care that they have agreed upon with their providers or to notify providers if changes are requested.

(4) Members or their legal guardians shall have the responsibility to keep, reschedule or cancel an appointment rather than to simply not show up.

C. MCO/SE responsibilities:

(1) The MCO/SE shall provide a member handbook to its members and to potential members who request the handbook. The MCO/SE shall publish in the member handbook the members’ rights and responsibilities from the member bill of rights. MCOs/SE shall honor the provisions set forth in the member bill of rights.

(2) The MCO/SE shall comply with the grievance resolutions process found in 8.305.12 NMAC, MCO Member Grievance System.

(3) The MCO/SE shall provide members or legal guardians with updated information within 30 days of a material change in the MCO/SE provider network, procedures for obtaining benefits, the amount, duration or scope of the benefits available under the contract in sufficient detail to ensure that enrollees understand the benefits to which they are entitled, and information on grievance, appeal and fair hearing procedures.

(4) The MCO/SE shall provide members and legal guardians with access to a toll-free hot line for the MCO/SE’s program for grievance management. The toll-free hot line for grievance management shall include the following features:

(a) requires no more than a two-minute wait except following mass enrollment periods;
(b) does not require a “touch-tone” telephone;
(c) allows communication with members whose primary language is not English or who are hearing impaired; and
(d) is in operation 24 hours per day, seven days per week.

(5) The MCO/SE shall provide active and participatory education of members or legal guardians that takes into account the cultural, ethnic and linguistic needs of members in order to assure understanding of the health care program, improve access and enhance the quality of service provided.

(6) The MCO/SE shall protect the confidentiality of member information and records.

(a) The MCO/SE shall adopt and implement written confidentiality policies and procedures that conform to federal and state laws and regulations.
(b) The MCO/SE’s contracts with providers shall explicitly state expectations about confidentiality of member information and records.
(c) The MCO/SE shall afford members or legal guardians the opportunity to approve or deny release by the MCO/SE of identifiable personal information to a person or agency outside the MCO/SE, except when release is required by law, state regulation, court order, HSD quality standards, or in the case of behavioral health, the collaborative.
(d) The MCO/SE shall notify members and legal guardians in a timely manner when information is released in response to a court order.
(e) The MCO/SE shall have written policies and procedures to maintain confidential information gathered or learned during the investigation or resolution of a complaint, including a member’s status as a complainant.
(f) The MCO/SE shall have written policies and procedures to maintain confidentiality of medical records used in quality review, measurement and improvement activities.

(7) When the MCO/SE delegates member service activity, the MCO/SE shall retain responsibility for documenting MCO/SE oversight of the delegated activity.

(8) Policies regarding consent for treatment shall be disseminated annually to providers within the MCO/SE network. The MCO/SE shall have written policies regarding the requirement for providers to abide by federal and state law and New Mexico medicaid policies regarding informed consent specific to:

(a) the treatment of minors;
(b) adults who are in the custody of the state;
(c) adults who are the subject of an active protective services case with CYFD;
(d) children and adolescents who fall under the jurisdiction of CYFD; and
(e) individuals who are unable to exercise rational judgment or give informed consent consistent with federal and state laws and New Mexico medicaid regulations.
(9) The MCO/SE shall have a process to detect, measure and eliminate operational bias or discrimination against members. The MCO/SE shall ensure that its providers and their facilities comply with the Americans with Disabilities Act.

(10) The MCO/SE shall provide a member handbook to its members or potential members who request the handbook, and it shall be accessible via the internet.

(11) The MCO/SE shall develop and implement policies and procedures to allow members to access behavioral health services without going through the PCP. These policies and procedures must afford timely access to behavioral health services.

(12) The MCO shall not restrict a member’s right to choose a provider of family planning services.

(13) The MCO/SE’s communication with members shall be responsive to the various populations by demonstrating cultural competence in the materials and services provided to members. The MCO/SE shall provide information to its network providers about culturally relevant services and may provide information about alternative treatment options, e.g., American Indian healing practices if available. Information and materials provided by the MCO/SE to medicaid members shall be written at a sixth-grade language level and shall be made available in the prevalent population language.

[8.305.8.15 NMAC - Rp 8 NMAC 4.MAD.606.7.6, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07]