

## **Testimony for Legislative Committee**

### **Focus: Mandated Medicaid-Funded IOP in Exchange for Housing**

#### **Albuquerque — June 2026**

Honorable Members:

This testimony addresses a practice that warrants immediate legislative and administrative scrutiny: conditioning access to recovery housing or shelter on participation in a specific Medicaid-funded Intensive Outpatient Program (IOP). That model raises serious concerns under CMS policy, New Mexico Medicaid rules, and basic principles of person-centered behavioral health care.

#### **The coercive linkage**

In some arrangements, residents told that stable housing depends on attendance in a designated outpatient treatment program. For individuals with substance use disorder, serious mental illness, homelessness, or court supervision, that pressure can be decisive. Housing insecurity becomes the mechanism that drives treatment compliance, even where the person may not meet independent clinical criteria for IOP or may prefer another provider or level of care.

#### **CMS and Medicaid boundaries**

CMS distinguishes between housing-related services that Medicaid may cover and room-and-board costs that Medicaid generally may not cover in community settings. CMS's 2015 guidance allows certain transition and tenancy-support activities, such as housing search assistance, landlord coordination, and crisis supports related to maintaining tenancy, but states that Medicaid does not provide federal financial participation for room and board in home and community-based settings. That means Medicaid can support services around housing; it cannot be used to turn housing itself into leverage for treatment billing.

#### **New Mexico's rule is explicit**

New Mexico's behavioral health regulations contain unusually direct anti-coercion language. NMAC 8.321.2.9(N) requires delivery in the least restrictive setting with maximum feasible individual choice and provides that access to or receipt of one service may not be contingent on obtaining another service; specifically, "a housing service may not require a treatment component, nor may an outpatient treatment service require participation in housing." If housing is conditioned on IOP attendance, that practice appears to conflict with the plain language of the rule.

#### **Medical necessity still governs IOP**

New Mexico Medicaid does reimburse IOP, but only as a covered behavioral health service meeting defined criteria. N.M. Admin. Code § 8.321.2.27 describes IOP as a time-limited, multi-faceted treatment approach for eligible recipients who require that level of support. NMAC 8.321.2 also excludes non-medically necessary services and subjects behavioral health services to utilization review for medical necessity and program compliance. A person should be in IOP because a clinical assessment supports IOP—not because declining it risks homelessness.

### **Why this resembles the Florida model**

This structure resembles the infamous Florida model not because every New Mexico provider is committing fraud, but because the incentive pattern is similar. In Florida, grand jury and task force findings described a system in which some recovery residences, outpatient programs, and marketers operated through patient brokering, deceptive marketing, reduced-rent or free-rent inducements, and repeated cycling of vulnerable people through treatment to maximize revenue. Florida's 2017 House staff analysis reported that some treatment providers paid weekly fees or kickbacks linked to recovery residences so patients could stay there for free or at reduced rent while attending the provider's outpatient program, and that these practices created incentives for ongoing relapse and billing.

The federal government later prosecuted major addiction-treatment fraud in South Florida. In a 2021 Justice Department case, operators of South Florida facilities were convicted in a scheme involving approximately \$112 million in fraudulent billing for services that were never provided or were medically unnecessary, illegal kickbacks to patient recruiters, excessive urinalysis, and repeated cycling of patients through detox and outpatient care to maximize revenue. That is why New Mexico should treat housing-conditioned IOP arrangements as a program-integrity warning sign, even before a criminal case appears.

### **Requested action**

- Audit affiliated housing-and-treatment arrangements for compliance with NMAC's anti-contingency rule and Medicaid billing requirements.
- Verify independent medical necessity for every IOP admission and continued stay.
- Require written separation of housing decisions, treatment consent, and provider choice.
- Support low-barrier housing, tenancy-sustaining services, and voluntary treatment pathways consistent with CMS guidance.

New Mexico can support recovery without repeating the incentive failures seen elsewhere. Housing should be a stabilizing platform for recovery—not a coercive tool used to generate treatment volume.