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**From:** Don Priola <[dpriola@drnm.org](mailto:dpriola@drnm.org)>  
**Sent:** Thursday, September 17, 2020 2:43 PM  
**To:** Burmeister, Christopher, DOH <[Christopher.Burmeis@state.nm.us](mailto:Christopher.Burmeis@state.nm.us)>  
**Cc:** Jason Gordon <[jgordon@drnm.org](mailto:jgordon@drnm.org)>; Kaity Ellis <[kellis@drnm.org](mailto:kellis@drnm.org)>  
**Subject:** [EXT] Comments on proposed changes to Subsection A of NMAC

Dear Mr. Burmeister

Please find attached DRNM's comments on proposed changes to Subsection A of [7.28.2.33](#) NMAC.

Sincerely,

Donald Priola, Paralegal  
Disability Rights New Mexico  
3916 Juan Tabo NE  
Albuquerque, NM 87111  
(505) 256-3100  
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## DISABILITY RIGHTS NEW MEXICO

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Gary Housepian, Chief Executive Officer

*Promoting and Protecting the Rights of Persons with Disabilities*

September 17, 2020

Christopher Burmeister  
Division Director, Health Improvement  
New Mexico Department of Health  
2040 S. Pacheco,  
Santa Fe, NM 87505  
[Christopher.Burmeis@state.nm.us](mailto:Christopher.Burmeis@state.nm.us)

RE: Comments on proposed changes to Subsection A of 7.28.2.33 NMAC

Disability Rights New Mexico ("DRNM") is New Mexico's Protection & Advocacy System, a federally-authorized nonprofit organization that protects, promotes, and expands the legal rights of people with disabilities. The purpose of this letter is to comment on the proposed changes to Subsection A of 7.28.2.33 NMAC-Plan of Care. The proposed amendments would expand the list of providers who can write and review a plan of care for a patient or client of a home health agency, and who will be consulted to approve additions or modifications to the original plan. DRNM provides advocacy and legal services to many individuals with disabilities who receive home health care services, so our agency is in a unique position to comment on the proposed revisions to 7.28.2.33 NMAC.

Disability Rights New Mexico applauds the Department of Health and Human Services' decision to expand the list of providers who can write and review a plan of care. This could allow greater access to various providers and increased access to services. However, the lack of inclusion of the individual who uses home health services during the decision-making process is deeply concerning. It is laudable that 7.28.2.32 provides an outline of patient rights, including the right to participate in health care planning. However, 7.28.2.33 should also include specific language mandating that the individual receiving home health care services will be included in the development of his or her plan of care. It is vital that decisions about the provision of home health services are person-centered and specifically enable the individual to provide vital input on the decisions that impact his or her life and well-being.

DRNM asserts that the Department must substantially revise the proposed rule to include wording, specifically ensuring that the person with a disability is the crucial participant in decisions impacting their home health services and plan of care. If wording that mandates the

inclusion of people with disabilities in the decision-making process is omitted, the state would be infringing on that person's right to self-determination.

DRNM appreciates the open lines of communication that the Department of Health and Human Services has maintained with our agency, and your efforts to continue to deliver quality services for New Mexicans with disabilities.

Sincerely,

A handwritten signature in black ink that reads "Kaity Ellis". The signature is written in a cursive, slightly slanted style.

Kaity Ellis, AALS, BSW, MSW

Disability Rights New Mexico Advocate