

**NEW
MEXICO
REGISTER**

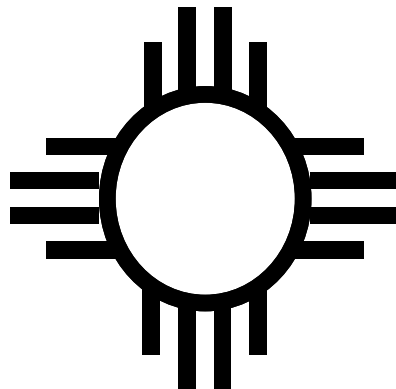


Volume XVIII
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New Mexico Register

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The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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New Mexico Register

Volume XVIII, Number 4

February 28, 2007

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Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

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Notices of Rulemaking and Proposed Rules

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC MEETING AND RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on May 7, 2007 at 1:00 p.m. at the Sunland Park City Council Chambers, 1000 McNutt, Sunland Park, New Mexico 88063. The purpose of the hearing is to consider the matter of EIB 06-17 (R), proposed revisions to Air Quality Control Regulations 20.2.99 New Mexico Administrative Code (NMAC) (Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects).

The proponent of this regulatory adoption and revision is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from the NMED regarding proposed revisions to 20.2.99 NMAC. These proposed revisions intend to incorporate required federal rulemaking to state regulations for transportation conformity programs for Particulate Matter 2.5 microns in size and less (PM_{2.5}) precursor emissions and new conformity determinations for PM_{2.5} nonattainment and maintenance areas. The NMED will host an informational open house on the proposed revisions to 20.2.99 NMAC at the Sunland Park City Council Chambers, 1000 McNutt, Sunland Park, New Mexico 88063, from 4:00p.m-8:00p.m on March 22, 2007.

The proposed revised regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 2044 Galisteo, Santa Fe, New Mexico. Full text of NMED's proposed revised regulations are available on NMED's web site at www.nmenv.state.nm.us, or by contacting Gail Cooke at (505) 955-8022 or gail.cooke@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures – Environmental Improvement Board), the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section, 74-2-6 NMSA 1978, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- (4) list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed new and revised regulations.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on April 20, 2007, and should reference the docket number, EIB 06-17 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Joyce Medina, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2150 / 2153
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-2836

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by April 20, 2007 at the NMED, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis

Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department ("Department") hereby gives notice that it will conduct public hearings as follows regarding the proposed rulemaking actions described below:

— Thursday, April 5, 2007, from 1:00 p.m. to 3 p.m. in the Board Room at Las Cruces Public School District Administrative Office, 505 South Main, Suite 249 Loretto Towne Centre, Las Cruces, New Mexico 88001.

— Monday, April 9, 2007, from 1p.m. to 5 p.m. in Mabry Hall at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501.

The proposed rulemaking actions are:

Rule Number	Rule Name	Proposed Action
6.11.2 NMAC	Rights and Responsibilities of the Public Schools and Public School Students	Extensive amendments to the discipline rules relating to students with disabilities in subsection G of 6.11.2.10 NMAC, in section 6.11.2.11 NMAC (disciplinary removals of students with disabilities) and in subsection B of 6.11.2.12 NMAC relating to students with disabilities. The proposed amendments will align these subsections of the state rules with changes made by Congress in the 2004 reauthorization of the federal Individuals with Disabilities Education Act (IDEA) and its implementing regulations.
6.31.2 NMAC	Special Education -Children with Disabilities/Gifted Children	Repeal of 6.31.2 NMAC and replace with new 6.31.2 NMAC which contains extensive amendments to the present sections of NMAC: 6.31.2.7 NMAC (Definitions), 6.31.2.8 NMAC (Right to a Free Appropriate Education), 6.31.2.9 NMAC (Public Agency Responsibilities), 6.31.2.10 NMAC (Identification, Evaluations and Eligibility Determinations), 6.31.2.11 NMAC (Educational Services for Children with Disabilities), 6.31.2.12 NMAC (Educational Services for Gifted Children), 6.31.2.13 NMAC (Additional Rights of Parents, Students and Public Agencies), and 6.31.2.14 NMAC (Rules of Construction). The replacement of 6.31.2 NMAC will align the present sections of the state rules with changes made by Congress in the 2004 reauthorization of IDEA and its implementing regulations.

Copies of the proposed amendments may be obtained on the Special Education Bureau page of the Department's website at <http://www.ped.state.nm.us/seo>, by e-mail from spedfeed-back@ped.state.nm.us or from the Special Education Bureau, Public Education Department, 120 South Federal Place, Room 206, Santa Fe, New Mexico 87501, phone 505-827-1457, fax 505-954-0001.

Interested individuals may testify at the public hearings or submit written comments by

mail, fax or e-mail to the Special Education Bureau at any of the addresses above. Written comments must be received no later than 5 p.m. on April 9, 2007. However, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact the Special Education Bureau as soon as possible. The Department requests at least ten (10) days advance notice of either public hearing to provide requested special accommodations.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to amend the following regulations:

Motor Vehicle Code

18.19.5.7 NMAC Section 66-5-54 NMSA 1978

(Definitions)

Technical Jobs Tax Credit Act

3.13.5.10 NMAC Section 7-9F-6 NMSA 1978

(Eligibility Requirements - Additional Credit - Estimates)

The New Mexico Taxation and Revenue Department proposes to adopt the following regulations:

Research and Development Small Business Tax Credit Act

3.13.6.8 NMAC Section 7-9H-3 NMSA 1978

(Equivalent of One Full-Time Employee)

Investment Credit Tax Act

3.13.2.15 NMAC Section 7-9A-7.1 NMSA 1978

(Reporting Number of Employees - Estimates)

3.13.2.16 NMAC Section 7-9A-5 NMSA 1978

(When Claim Barred)

Technical Jobs Tax Credit Act

3.13.5.11 NMAC Section 7-9F-6 NMSA 1978

(When Claim Barred)

The proposals were placed on file in the Office of the Secretary on February 15, 2007. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about April 30, 2007.

A public hearing will be held on the proposals on Thursday, April 5, 2007, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before April 5, 2007.

3.13.2.15 REPORTING NUMBER OF EMPLOYEES - ESTIMATES:

To meet the employment requirement, the credit claimant must report the number of full-time-equivalent employees employed on the day the credit is applied for. This number is to be compared with the number of full-time-equivalent employees on the same day in the prior year. Because complete employee data may not be available for the day on which the credit is applied for, a credit claimant may estimate the number of full-time-equivalent employees employed on the day the credit is applied for, provided that the claimant must provide the actual number of full-time-equivalent employees within forty-five days from the end of the calendar quarter in which the claim is applied for. The fact that an estimate is used in the claim must be clearly indicated. The department may withhold approval of the claim until the correct number is provided and will deny the claim if the correct number is not provided.

[3.13.2.15 NMCA - N, XXX]

3.13.2.16 WHEN CLAIM BARRED:

If a taxpayer claims any amount of research and development small business tax credit with respect to a reporting period, the taxpayer may not claim any amount of approved investment credit with respect to that same period. If for the same reporting period an amount of investment credit is claimed in addition to any amount of research and development small business tax credit, the amount of investment credit will be disallowed by the department, which may result in an underpayment of tax. The taxpayer is not barred from applying for

approval of new or additional investment credit with respect to qualified equipment purchased or introduced into New Mexico during that reporting period.
[3.13.2.16 NMCA - N; XXX]

18.19.5.7 [DEFINITIONS: ~~COMMERCIAL DRIVER'S LICENSE - DEFINITIONS:~~ As used in regulations under the provisions of the New Mexico Commercial Driver's License Act:

A. "commercial driver's license" means a license issued by a state or other jurisdiction which authorizes the holder to operate a commercial motor vehicle;

B. "commercial motor vehicle" means a motor vehicle of a type used in commerce:

(1) if the vehicle has a gross vehicle weight rating of 26,001 or more pounds;

(2) if the vehicle is designed to transport sixteen or more passengers, including the driver; or

(3) if the vehicle is transporting hazardous materials and is required to be placarded pursuant to applicable law;

C. "combination vehicle" means a power or tractor unit with one or more semi-trailers, trailers or semi-trailers converted to trailers by means of a converter gear;

D. "disqualified" means a driver who has had the qualification to drive a commercial motor vehicle removed and whose New Mexico commercial driver's license is canceled. For purposes of this definition and Section 66-5-68 NMSA 1978, "canceled" shall mean that the commercial driver's license is in "revocation" as that term is defined in Subsection B of Section 66-5-1 NMSA 1978, and the driver is not eligible to apply for a commercial driver's license until the period of time for which the driver was disqualified has elapsed; and

E. "resident" means a person who intends to reside in New Mexico evidenced by registration to vote or other action acceptable to the motor vehicle division.]

DEFINITIONS:

A. As used in regulations under the provisions of the New Mexico Commercial Driver's License Act:

(1) "commercial driver's license" means a license issued by a state or other jurisdiction which authorizes the holder to operate a commercial motor vehicle;

(2) "commercial motor vehicle" means a motor vehicle of a type used in commerce:

(a) if the vehicle has a gross vehicle weight rating of 26,001 or more pounds;

(b) if the vehicle is designed to transport sixteen or more passengers, including the driver; or

(c) if the vehicle is transporting hazardous materials and is required to be placarded pursuant to applicable law;

(3) "combination vehicle" means a power or tractor unit with one or more semi-trailers, trailers or semi-trailers converted to trailers by means of a converter gear;

(4) "disqualified" means a driver who has had the qualification to drive a commercial motor vehicle removed and whose New Mexico commercial driver's license is canceled; for purposes of this definition and Section 66-5-68 NMSA 1978, "canceled" shall mean that the commercial driver's license is no longer valid and the driver is not eligible to apply for a commercial driver's license until the period of time for which the driver was disqualified has elapsed.

B. As used in Subsection C of Section 66-5-6 NMSA 1978, "healing arts practitioner" means a person licensed to practice in this state medicine, osteopathic medicine, oriental medicine, chiropractic, or similar medical services for human beings. The term also includes a person licensed to practice in this state as a certified nurse practitioner, clinical nurse specialist, physician assistant or osteopathic physician assistant.

[2/28/90, 8/20/93, 10/31/96; 18.19.5.7 NMCA - Rn & A, 18 NMCA 19.5.7, 9/14/00; A, XXX]

3.13.5.10 ELIGIBILITY REQUIREMENTS - ADDITIONAL CREDIT - ESTIMATES:

A. A taxpayer claiming the additional credit must compute annual payroll expense for the period specified in the application and must compute base payroll expense as of a date one year prior to the annual payroll date.

B. Because complete payroll data to calculate "annual payroll expense" and "base payroll expense" may not be available on the day the credit is applied for, a credit claimant may estimate the number of these two amounts on the credit application, provided that the claimant must provide the actual "annual payroll expense" and "base payroll expense" amounts within forty-five days from the end of the calendar quarter in which the claim is applied for. The fact that an estimate is used in the claim must be clearly indicated. The department may withhold approval of the claim until the correct numbers are provided and will deny the claim if the correct numbers are not provided.

[3.13.5.10 NMCA - N, 10/31/05; A, XXX]

TITLE 3: TAXATION
CHAPTER 13: BUSINESS TAX CREDITS

PART 6: RESEARCH AND DEVELOPMENT SMALL BUSINESS TAX CREDIT

3.13.6.1 ISSUING AGENCY:
Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[3.13.6.1 NMAC - N, XXX]

3.13.6.2 SCOPE: This part applies to persons conducting qualified research at a qualified facility in New Mexico.
[3.13.6.2 NMAC - N, XXX]

3.13.6.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[3.13.6.3 NMAC - N, XXX]

3.13.6.4 DURATION :
Permanent.
[3.13.6.4 NMAC - N, XXX]

3.13.6.5 EFFECTIVE DATE:
XXX, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.13.6.5 NMAC - N, XXX]

3.13.6.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Research and Development Small Business Tax Credit Act.
[3.13.6.6 NMAC - N, XXX]

3.13.6.7 DEFINITIONS :
[Reserved.]

3.13.6.8 EQUIVALENT OF ONE FULL-TIME EMPLOYEE: To calculate the number of full-time-equivalent employees, add the average weekly hours worked or expected to be worked by all employees whose regular weekly work hours are or are expected to be less than forty hours. Divide the total by 40 and round down to the nearest whole number. The rounded number plus the number of employees who work or are expected to work an average of 40 or more hours per week is the number of full-time equivalent employees.
[3.13.6.8 NMAC - N, XXX]

3.13.5.11 WHEN CLAIM BARRED: If a taxpayer claims any amount of research and development small business tax credit with respect to a reporting period, the taxpayer may not claim any amount of technology jobs tax credit with respect to that same period. If for the same reporting period an amount of technology jobs tax basic credit is claimed in addition

to any amount of research and development small business tax credit, the amount of technology jobs tax credit will be disallowed by the department, which may result in an underpayment of tax. The taxpayer is not barred from applying for approval of new or additional technology jobs tax credit with respect to qualified expenditures in that reporting period.
[3.13.5.11 NMAC - N, XXX]

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 21.17.56 NMAC, Sections 5, 6, 11, 14 and 15, effective February 28, 2007. This rule was also reformatted and renumbered from 21 NMAC 17.56 to comply with current NMAC requirements.

21.17.56.5 EFFECTIVE DATE: December 1, 1996, unless a ~~different~~ later date is cited at the end of a section ~~[or paragraph]~~.
[12/1/96; 21.17.56.5 NMAC - Rn & A, 21 NMAC 17.56.5, 02/28/07]

21.17.56.6 OBJECTIVE: The objective of Part 56 of Chapter 17 is to establish the classification and restrictions for purchase and use of certain pesticides ~~[and prohibit the aerial application of certain herbicides in Roosevelt county]~~.
[3/19/84, 5/18/87, 2/19/88; 21.17.56.6 NMAC - Rn & A, 21 NMAC 17.56.6, 02/28/07]

21.17.56.11 STATE RESTRICTED-USE PESTICIDES: The board disclaims liability for any costs incident to inspection or compliance with the provisions of this rule.

A. State restricted-use insecticides: [REPEALED]

B. State restricted-use herbicides: In order to prevent unreasonable adverse effects on the environment, all formulations of the herbicides listed in this section shall be classified for restricted use in New Mexico, provided their labels or labeling contain directions primarily for use on agronomic crops, range or pasture lands, rights-of-way, forest, or non-croplands. Those products labeled primarily for use in ornamental, turf, or home garden plantings shall remain ~~[unclassified]~~ unrestricted.

(1) 2,4-D/2,4-Dichlorophenoxyacetic acid.

(2) 2,4-DB/4-(2,4-Dichlorophenoxy)butyric acid.

[11/21/79, 12/1/96; 21.17.56.11 NMAC - Rn & A, 21 NMAC 17.56.11, 02/28/07]

21.17.56.14 APPLICATION OF A RESTRICTED-USE, [HORMONE-TYPE] PHENOXY HERBICIDE IN REGULATED COUNTIES:

A. Between April 1 and October 30, no person shall apply a restricted-use, ~~[hormone type]~~ phenoxy herbicide in the counties of Curry or Roosevelt unless a permit has been obtained from the director

~~[for the acreage to be treated]~~ provided a permit is not required for spot applications made with equipment which is non-motorized or has a tank capacity of 15 gallons or less of diluted pesticide.

B. Permits shall be issued only to ~~[private]~~ pesticide applicators licensed and certified in New Mexico by the New Mexico department of agriculture.

C. A legal description of the land is required before the permit can be issued.

D. Permits for the application of ester formulations of restricted-use, ~~[hormone type]~~ phenoxy herbicides in Curry or Roosevelt counties shall not be issued ~~[:]~~ from April 15 through October 1,
~~(1) From April 15 through October 1 in Curry county north of New Mexico highway 288 extending due east to the Texas line.~~

~~(2) From May 1 through October 1 in Roosevelt county south of New Mexico highway 458 extending due west from Pep to Kenna and due east from the intersection of New Mexico highways 458 and 114 to the Texas state line;~~ provided the director may establish a different date dependent on weather and planting factors if ~~[petitioned by three or more landowners in Roosevelt county]~~ the landowner provides justification for ester formulation use outside of the established dates.

~~(3) From May 1 through October 1 in Roosevelt county north of U. S. highway 60/84.~~

~~(4) From April 1 through October 1 in the remaining portions of Curry and Roosevelt counties.~~

E. The application of restricted-use, ~~[hormone type]~~ phenoxy herbicides by aircraft shall be prohibited in Roosevelt county ~~[:]~~ from April 15 through October 1.

~~(1) From April 1 through October 1 except as provided in paragraphs 14.4 (2) and 14.4 (3).~~

~~(2) From May 1 through October 1 south of New Mexico highways 114 and 458 extending west from Pep to Kenna unless changed as provided in paragraph 14.4 (2).~~

F. It shall be unlawful for any commercial pesticide applicator to ~~[apply]~~ make a permitted application of a restricted-use, [hormone type] phenoxy herbicide unless the [private applicator] landowner or persons in control of the land or crops for which he is making the application has [a valid permit] been notified prior to the application of the date and time of application and the brand name and EPA registration number of the chemical to be applied.

G. All permits expire ~~[when the acreage and replications for which the permit was issued has been sprayed or at the end of seven (7) days]~~ 30 days after issuance provided the permit may be extended by the department.

~~[H.] It shall be the responsibility of the commercial pesticide applicator to verify and record the permit number issued to the private applicator.]~~

~~[I.]~~ H. No person shall apply restricted-use, ~~[hormone type]~~ phenoxy herbicides when the wind velocity exceeds ten (10) miles per hour or other weather conditions are favorable for drift or volatilization to susceptible crops.

~~[J.]~~ I. The application of restricted-use, ~~[hormone type]~~ phenoxy herbicides in dust form shall be prohibited.

~~[K.]~~ J. The application of restricted-use, ~~[hormone type]~~ phenoxy herbicides by mist blower or similar type of application equipment shall be prohibited, except where mist blowers are equipped with a control droplet applicator set to deliver spray droplet sizes of 200 microns or greater.

~~[L.]~~ K. Permits shall not be issued for restricted-use, ~~[hormone type]~~ phenoxy herbicides to be applied through sprinkler irrigation water during the period from April ~~[+]~~ 15 to October 1.

[1/21/79, 11/21/79, 3/27/80, 5/18/87, 2/19/88, 3/30/89, 12/1/96; 21.17.56.14 NMAC - Rn & A, 21 NMAC 17.56.14, 02/28/07]

21.17.56.15 [PRIVATE] APPLICATOR RECORDS: ~~[Any private applicator issued a restricted use, hormone type herbicide permit shall submit the following records to the department within seven (7) days after application]~~

A. ~~The name and address of the person or persons in control of the land or crops at the time of application.~~

B. ~~The name and address of the person and/or firm making the application of restricted use, hormone type herbicides.~~

C. ~~The legal description of the land treated.~~

D. ~~Date and time of day of application.~~

E. ~~Velocity and direction of the wind at the time of application.~~

F. ~~Quantity and concentration of the hormone type herbicide applied per acre.~~

G. ~~Total acreage treated.~~

H. ~~Type of crop treated.]~~

A. Any New Mexico licensed and certified pesticide applicator issued a restricted-use, phenoxy herbicide

permit shall maintain the following records for two years for all applicable permitted applications:

(1) all records as required under 21.17.50.10 NMAC;

(2) permit number under which the application is authorized;

(3) total acreage treated.

B. For permitted pesticide applications made by a commercial pesticide applicator, application information shall be exchanged in the timeframe and manner specified with any landowner who is an agricultural employer under 40 CFR Part 170, the federal worker protection standard.

[11/21/79, 3/27/80, 5/18/87; 21.17.56.15 NMAC - Rn & A, 21 NMAC 17.56.15, 02/28/07]

NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.5.2 NMAC, Sections 1, 2 and 5 through 10, effective February 28, 2007. This rule was also reformatted and renumbered from 5 NMAC 5.2 to comply with current NMAC requirements.

TITLE 5 POST-SECONDARY EDUCATION CHAPTER 5 POST-SECONDARY EDUCATIONAL PROGRAMS PART 2 APPROVAL OF NEW GRADUATE PROGRAMS

5.5.2.1 ISSUING AGENCY: ~~[New Mexico Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, NM 87501, Telephone: 505/827-7383]~~ New Mexico Higher Education Department (NMHED).

[3/16/51, 7/1/94; 5.5.2.1 NMAC - Rn & A, 5 NMAC 5.2.1, 02/28/07]

5.5.2.2 STATUTORY AUTHORITY: The ~~[commission on higher education]~~ NMHED has statutory responsibility to review new graduate programs proposed by state universities as part of its authority for statewide planning and oversight of post-secondary education. The Post-Secondary Educational Planning Act, specifically Section 21-2-5 NMSA 1978, authorizes the ~~[commission]~~ NMHED to conduct statewide planning, including analyses of state needs for post-secondary educational programs. Section 21-1-24 NMSA 1978 requires that any graduate program that is to benefit from state funding must first be approved by the ~~[commission]~~ NMHED and by the New Mexico state board of finance.
[4/5/71, 3/29/73; 5.5.2.2 NMAC - Rn & A, 5 NMAC 5.2.2, 02/28/07]

5.5.2.3 SCOPE: The provisions of 5.5.2 NMAC apply to any new graduate program proposed for implementation by any constitutional institution of higher education in New Mexico.

[2/26/85, 5/4/90, 9/30/97; 5.5.2.3 NMAC - Rn, 5 NMAC 5.2.3, 02/28/07]

5.5.2.4 DURATION: Permanent.

[9/30/97; 5.5.2.4 NMAC - Rn, 5 NMAC 5.2.4, 02/28/07]

5.5.2.5 EFFECTIVE DATE: September 30, 1997, unless a later date is cited at the end of a section.

[9/30/97; 5.5.2.5 NMAC - Rn & A, 5 NMAC 5.2.5, 02/28/07]

5.5.2.6 OBJECTIVE: The objective of 5.5.2 NMAC is to provide an orderly, objective basis for review and approval or disapproval of each new graduate program proposed for implementation. Although this regulation is intended primarily to guide decisions by the ~~[commission]~~ NMHED and its staff, it may also be used to guide review by the institutions and by statewide councils of graduate deans and chief academic officers. Decisions about new graduate program proposals shall be exercised so as to:

- A. fulfill societal requirements, employer needs and student demand;
- B. support high standards of academic quality;
- C. encourage cooperation among institutions, public and private;
- D. avoid unnecessary or inappropriate duplication; and
- E. maximize cost effectiveness for the state.

[2/26/85, 5/4/90, 9/30/97; 5.5.2.6 NMAC - Rn & A, 5 NMAC 5.2.6, 02/28/07]

5.5.2.7 DEFINITIONS:

A. "Graduate program" is defined as any sequence of courses, activities or experiences which leads to award of any degree ~~[or certificate of completion]~~ beyond the baccalaureate degree. Graduate programs subject to 5.5.2 NMAC include those leading to a master's degree, ~~[a post-baccalaureate certificate of specialization,]~~ a doctoral degree, or a professional degree in fields such as law, medicine or other professions.

B. "New" graduate program is defined as ~~[(a)]~~ one that differs from currently approved programs at the proposing institution, in terms of level of degree or area of study ~~[-or (b) one that has been dormant at a particular institution, i.e., one that has not admitted new students during a three-year period].~~

[2/26/85, 5/4/90, 9/30/97; 5.5.2.7 NMAC - Rn & A, 5 NMAC 5.2.7, 02/28/07]

5.5.2.8 GENERAL REQUIREMENT OF ~~[COMMISSION]~~ NMHED APPROVAL:

A. No graduate program established following the effective date of 5.5.2 NMAC, nor any student enrolled in that program, shall be eligible for inclusion in any of the ~~[commission's]~~ NMHED's funding recommendations unless the program has been approved by the ~~[commission]~~ NMHED and by the New Mexico state board of finance.

B. In the case of a question of applicability of 5.5.2 NMAC to a particular change in graduate programming, ~~[commission]~~ the NMHED staff will consult with the NMHED review board, council of graduate deans, and the New Mexico academic council and will consider the ~~[council's]~~ advice of all groups in rendering a decision about applicability. Staff decisions may be appealed to the ~~[commission]~~ NMHED's cabinet secretary whose decision will be final.

C. Changes that require approval by the NMHED.

(1) Addition of a doctoral degree in an area in which a master's degree is already awarded, or the converse, is subject to the provisions of 5.5.2 NMAC.

(2) ~~[Any substantial change in the curriculum or emphasis of an existing graduate degree program, which will be reflected as a change in the title of the degree awarded, is subject to the provisions of 5.5.2 NMAC. Among the tests of substantial change will be (a) whether or not the change will be reflected as a new program title in the institution's catalog and (b) whether or not the change will alter classification of the program in the commission's inventory of instructional programs.]~~ Any substantial change in an existing graduate degree program, which may or may not be reflected as a change in the title of the degree awarded, will be submitted to the NMHED for review and may be required to undergo the process for approval of new graduate programs (5.5.2.10). Among the tests of substantial change will be (i) change in a curriculum impacting at least one-third of the courses, (ii) change reflecting a new program title in the institution's catalog, (iii) change which adds a distinct and separate course of study at the institution and/or (iv) change that may later change the classification of the program in the institutions' inventory of instructional programs.

(a) Addition of a program option, concentration or specialization that will result in a new degree title being awarded ~~[is]~~ will be submitted to the NMHED for review and may be subject to the provisions of 5.5.2 NMAC, but addition of another option, concentration or specialization to an existing approved program that would not change the title of the degree awarded

~~[probably would be judged as not requiring] does not require approval of the [commission] NMHED.~~

~~(b) [Revisions of the curriculum of a program, option, concentration or specialization that do not alter how the program, enrollments and degrees awarded are reported to the commission are not subject to the provisions of 5.5.2 NMAC.] Proposed changes in the name of an existing program, option, concentration, emphasis, specialization, or number of credit hours, without other substantive change or questions of applicability of 5.5.2 NMAC should be referred to the NMHED for a staff determination of applicability and to assure that the NMHED's data base remains accurate.~~

~~D. Changes that do not require approval by the NMHED.~~

~~(1) Revisions of the curriculum of a program, option, concentration or specialization that do not alter how the program, enrollments and degrees awarded are reported to the NMHED are not subject to the provisions of 5.5.2 NMAC.~~

~~[(3)] (2) Deletion of a program option, concentration or specialization within an existing graduate program is not subject to the provisions of 5.5.2 NMAC.~~

~~[(4)] (3) Reconfiguration of an existing program in a manner that will retain the title of an existing program and that will not result in a net gain in the number of programs offered by an institution, such as consolidation of two or more programs into a single program, is not subject to the provisions of 5.5.2 NMAC.~~

~~[(5)] (4) Change in the department responsible for a graduate program, without a substantial change in the curriculum of the program and without a corresponding change in the title of the degree awarded, is not subject to the provisions of 5.5.2 NMAC.~~

~~[(6)] (5) A program, option, concentration or specialization that has been prepared to meet a request of a particular employer and that will be financially supported by that employer [and that will be offered to no more than two cohorts of students] is not subject to the provisions of 5.5.2 NMAC. [However, students enrolled in such programs shall remain ineligible for any state support until the program is approved pursuant to 5.5.2 NMAC.] However, such programs are considered restricted and do not receive state funding. Students enrolled in such programs are not eligible for any state support until the program is approved pursuant to 5.5.2 NMAC and the program becomes unrestricted.~~

~~[(7)] (6) [Proposed changes in the name of an existing program, option, concentration or specialization, with or without a substantive change in content of the program or other questions about the applica-~~

~~bility of 5.5.2 NMAC should be referred to the commission for a staff determination of applicability and to assure that the commission's data base remains accurate.] Dormant programs. Dormant programs are graduate degree programs that have not admitted new graduate students for a period of three consecutive years. The institution of higher education must inform the NMHED about dormant programs each year and indicate whether or not the program of study will be deleted by the institution or revised to attract new graduate students. Programs can be dormant for a period of six years. Plans to revise degree programs that require changes in the type of degree awarded require approval by the NMHED.~~

~~(7) Post-baccalaureate certificate of specialization.~~

~~E. Post-baccalaureate certificate programs do not require the same level of review and approval as post-baccalaureate degree programs. The NMHED will need to approve programs that demonstrate financial need and require additional resources in the form of new funding, additional faculty or additional facilities. Certificate programs that do not require new resources and can be implemented with existing faculty, existing courses, and existing facilities can be approved internally as indicated below. A certificate of specialization is a program of study that is designed to develop or enhance a focused area of expertise. The primary purpose of certificate programs is to provide specific skill training and to enhance employability and quickly meet manpower needs within the state of New Mexico. Certificate programs can be offered to currently enrolled degree seeking students and students that meet the admissions criteria but that enroll solely to obtain a certificate in a given area of expertise.~~

~~F. Concentrations or specializations differ from certificate programs in that they are designed to meet the needs of enrolled degree seeking students within the given institution of higher education.~~

~~G. Certificate programs offered by institutions of higher education within the state of New Mexico must include at least 12 credit hours of course work that is interrelated and designed to develop a focused skill or area of expertise. Certificate programs cannot exceed 18 credit hours. Courses that comprise the certificate must be regular approved courses that are already offered by the institution.~~

~~H. Certificate programs that do not require new resources and can be implemented with existing faculty, existing courses, and existing facilities can be approved internally by the appropriate mechanisms within the institution of higher education and the chief academic officer of~~

~~that institution. Approved certificate programs must be registered with the NMHED within three months of approval. The registration process includes submitting a copy of the proposal, a CIP code request, and a copy of the signature sheet documenting the approval process for the new certificate program.~~

~~I. The NMHED will serve as a clearinghouse for information regarding degree and certificate programs offered in the state of New Mexico. A web-based listing of certificate programs posted on the NMHED website will allow potential students to obtain a comprehensive picture of educational opportunities within New Mexico.~~

~~J. Internal proposals for new certificate programs should include information on the rationale for the certificate, evidence of need, statements on the ability to meet manpower needs within the state, enrollment projections, and an evaluation plan that indicates whether or not the needs of the state are being met.~~

~~K. Certificate proposals that require new resources must develop a proposal for external approval by the New Mexico council of graduate deans, the academic council, the NMHED, and the New Mexico state board of finance, following the process for new degree proposals.~~

~~L. Students enrolled in post-baccalaureate certificate programs must meet the same minimum admissions criteria as students admitted into graduate degree programs at the institution of higher education.~~

~~M. Institutions of higher education must notify the NMHED immediately if a certificate program is discontinued.~~

~~[2/26/85, 5/4/90, 9/30/97; 5.5.2.8 NMAC - Rn & A, 5 NMAC 5.2.7 & 8, 02/28/07]~~

5.5.2.9 REQUIREMENTS FOR APPROVED GRADUATE PROGRAMS:

The requirements and questions listed below will be used in reviewing proposals to establish new graduate programs. The ~~[commission] NMHED~~ reserves the right to weigh these factors differentially and to consider additional factors in reaching decisions that best meet the interests of the state of New Mexico. These requirements are constructed to reflect state-level interests in post-secondary education; reviews of new graduate programs within the proposing institution are expected to reflect a somewhat different balance of concerns, for example, devoting greater consideration to details of program quality.

A. Purpose of the program and mission of the proposing institution. The proposed program must have a clear purpose that is consistent with the mission

of the proposing institution.

(1) What is the primary purpose of the proposed program? What are its secondary purposes, if any?

(2) Is the proposed program consistent with the role and scope of the institution as set forth in its mission statement and interpreted by its governing board?

(3) What is the institution's priority for the proposed program, as indicated in its most recent plans, funding requests or other institutional documents?

(4) What is the curriculum for the proposed program? What types of courses and other degree requirements are needed for degree completion? What types of skills or competencies will students develop as a result of completing the degree program?

B. Justification for the program. The proposed program must meet one or more specified needs within the state or region; must not duplicate existing programs unnecessarily or inappropriately; and, to the extent feasible and appropriate, should benefit from cooperative arrangements with other institutions.

(1) Need. The proposed program must meet one or more specified needs within the state or region. Clear and convincing evidence must be provided of the reality and extent of such need.

(a) Why is the program needed? Will graduates of the program help meet some specified state or regional ~~[need for skilled personnel]~~ workforce need? Have specific potential employers requested ~~[]~~ or expressed interest in, the program? What, if any, internal institutional needs will also be met by the program?

(b) Evidence of need might include results of employer surveys, current labor market analyses and projections, or long-term need projections prepared by a relevant professional organization. Summaries of student interest also are appropriate but will not by themselves be considered sufficient evidence of need.

(c) Although academic and research interests of institutional faculty may be met through implementation of the proposed program, such interests by themselves are unlikely to persuade the ~~[commission]~~ NMHED of need for the program. However, institutions of higher education may build programs around their areas of excellence. A clear demonstration of such excellence is expected in the proposal.

(2) Duplication. The proposed program must not duplicate existing programs unnecessarily or inappropriately. A proposal for a program similar to one (or more) that already exists within the state must present clear and convincing evidence that need for the program cannot be met by the existing program(s).

(a) Is this program, or are similar programs, offered at any other public or pri-

ate institutions within New Mexico?

(b) If so, what is the remaining capacity of the program(s)? How many students could the existing program(s) accommodate without additional resources for faculty, equipment, facilities and other needs?

(c) In light of the above information, why should the proposed program also be approved? What programmatic, geographic or other factors warrant approval of the program as an addition to the existing educational resources in the state?

(d) Do New Mexico students have access to a comparable program in another state through either the WICHE professional student exchange or the WICHE regional graduate program?

(e) As evidence, the proposing institution must assemble and display data listing each similar program offered by regionally accredited public and private universities in New Mexico; the numbers of students admitted to each of those programs during each of three recent, consecutive years; the numbers of degrees/ certificates awarded during each of those years; and each university's estimated remaining capacity of its program(s).

(f) To the extent feasible and appropriate, statements from representatives of the existing programs should be attached to the proposal, articulating their positions with regard to the proposed program.

(g) The purpose of this requirement is twofold: (i) to assure that communication has taken place with existing programs, as an element in planning the proposed program, and (ii) to aid reviewers in assuring that there is need for the program that cannot be met through existing programs.

(3) Inter-institutional collaboration and cooperation. ~~[To the extent feasible and appropriate, the proposed program should establish]~~ The NMHED strongly encourages collaborative relationships with other programs within New Mexico, so that state investments can be shared and students can benefit from expanded opportunities across institutional boundaries.

(a) Are there programs at other institutions, and particularly programs already supported by the state, through which shared instruction, collaboration with faculty or other means of broadening student options and experiences can be arranged as part of the proposed program?

(b) If the proposed program is related to other programs operating at public institutions in the state, the proposal should document how collaboration will be achieved with those programs. For example, if it is feasible and productive to share faculty, instruction or other assets with an existing program at another institution, the

proposal should outline how that collaboration will take place. If other arrangements for expanding students' experiences can be made with other institutions, those arrangements should be summarized.

C. Clientele and projected enrollment. The proposal must clearly describe the population of students who will be recruited for the proposed program and must include a detailed projection of enrollment and credit hours anticipated during the first five years.

(1) Clientele.

(a) Who are the students to be served by the proposed program? Will the program concentrate its recruitment upon students representing some particular geographic area, students from some special employment sector or some other identified group?

(b) What academic or experiential qualifications will be set for admission?

(c) Will the proposed program be consistent with state goals for equitable representation of all ~~[clusters of]~~ students? How will the program assure equal access and success of students from ~~[clusters]~~ groups historically underrepresented in graduate education or in the fields of employment for which the program is intended to prepare its graduates?

(i) At a minimum, the proposal should include data illustrating the representation of diversity in ethnic and sex/gender ~~[clusters]~~ groups of (a) undergraduate students and (b) graduate students at the proposing institution and should articulate the methods that will be used to assure equity in access and success in the proposed program.

(ii) To the extent possible, the proposal also should include information about representation in the fields of employment for which the program is intended to prepare students and other information relevant to assessing the capacity of the program to help redress underrepresentation.

(2) Projected enrollment.

(a) The proposal must display, in clear tabular form, the projected enrollment in the proposed program during its first five years. This presentation must distinguish the number of new students (headcount) expected to enroll each year, ~~[and]~~ the number of returning students expected to re-enroll in each year, and the methodology used to arrive at those projects.

(b) The proposal should indicate the number of students expected to enroll full-time and the number expected to enroll on a part-time basis and must display the total number of student credit hours expected to be generated in each of the first five years.

D. Institutional readiness for the program. The institution should have

nearly all of the resources needed to initiate the program. The proposal should include a clear statement of the extent to which the institution is ready to initiate the program, citing the remaining needs and recognizing each of those needs in the cost analysis developed pursuant to Subsection E of 5.5.2.9 NMAC.

(1) Is the teaching faculty adequate in number and qualifications to initiate the program? If not, what additional faculty are needed? To what extent will the program rely upon graduate assistants to free faculty time for graduate instruction in the proposed program?

(2) Are the library and other academic support resources sufficient to initiate the program? If not, what additional resources are needed?

(3) Are the physical facilities of the institution adequate for the first five years of the program? Will additional space or modifications of existing space be required within the first five years of program operation?

(4) Are the institution's equipment and technological resources adequate for the first five years of the program? What, if any, additional equipment will be needed?

(5) Are other operating resources adequate to initiate the program? For example, will additional clerical or specialized personnel be needed?

(6) Are there existing external facilities that will be used? Have agreements been established to ensure use of those facilities? For example, if you are offering a nursing or allied health program have you established a partnership with local hospital(s) and other clinical settings?

E. Projected cost of the program. The proposal must include a clear analysis of the projected cost of the proposed program and the sources of funding that will support it.

(1) New costs for program start-up. The proposal should provide a clear indication of new costs that must be met in order to begin the program and to sustain it during its first five years. The analysis must address at least the following cost categories:

(a) Additional faculty needed for the program, full-time and part-time.

(b) Additional library resources needed for the program. The proposal should include a statement from the university librarian, indicating the cost of these new resources and the schedule on which the resources will be provided.

(c) Additional facilities, equipment and technological resources needed for the program.

(d) New graduate assistantships needed to support the program, including

the dollar value of the assistantships during each of the first five years of the program.

(2) State support. An analysis must be presented showing the approximate amount of state operational formula funding that will flow to the program for each of the first five years, based upon the projected student credit hours and current formula funding factors, and recognizing the delay and averaging characteristic of the formula.

(3) Other support. If the proposed program will benefit from other sources of operational support, the proposal should describe those. For example, if particular cost categories such as new equipment or additional graduate assistantships are expected to be supported by research grants, contracts or other sources, the proposal should clearly describe those sources and levels of support and should indicate the advantage to the state of receiving such support.

F. Quality of the program. The proposed program must be designed to meet high standards of academic quality, considering its instructional curriculum, faculty, student admission standards, opportunities for experiential learning and academic support, and provisions for continual review and improvement of the program.

(1) All programs supported by state funds are expected to comply with principles of academic quality delineated as part of the [commission's] NMHED's regulation on instructional funding: 5.3.12 NMAC.

(2) Among the questions that will be considered in evaluating proposals for new graduate programs are the following:

(a) Is the curriculum adequately structured to meet the stated purposes of the program?

(b) Is the faculty adequate in number, experience and availability to offer a high quality program?

(c) How do the proposed academic admission standards for students entering the program compare with standards for other programs at the institution and with admission standards for comparable programs at other institutions in New Mexico or other states?

(d) How will the proposed program utilize current technologies to support program quality and delivery?

(e) What opportunities will be available for assisting students to gain experiences relevant to work settings for which the program will prepare them?

(f) What academic support services are available to students, to assist them in succeeding in the program?

(g) What final integrating experiences or other features will be used to assure that graduates have acquired the knowledge and skills expected for the

degree or certificate awarded?

(h) Has the proposed program been evaluated by any external reviewers or is there other external evidence or opinion regarding the quality of the program?

(i) When will the new program be proposed for accreditation by the higher learning commission of the north central association?

[(+)] (j) Will specialized accreditation be sought for the program? If so, when?

G. Assessment of operations and impact. The proposal must include a plan by which the proposed program will be assessed for its operation and impact over at least a five-year period.

(1) At a minimum, the plan must indicate methods that will be used to monitor program operations, progress of students and program completion rates.

(2) The plan also must include methods for obtaining evaluations from students, graduates or other appropriate sources and feeding that information into future operation of the program.

H. Administrative responsibility for the program and institutional commitment. There must be clear indication in the proposal that the institution is committed to the success of the proposed program.

(1) The proposal should indicate where in the structure of the institution the program will be administered. For example, which department will have primary responsibility and which additional departments, if any, will contribute to operation of the program?

(2) The proposal should include a clear statement of administrative support for the program, sufficient to assure that resources will be provided during the first five years of the program. The proposal should also verify that all within-institution approvals needed for the program have been granted, including approval by the institution's governing board.

[2/26/85, 5/4/90, 9/30/97; 5.5.2.9 NMAC - Rn & A, 5 NMAC 5.2.9, 02/28/07]

5.5.2.10 PROCESS FOR APPROVAL OF NEW GRADUATE PROGRAMS:

A. Before submitting a proposal for review by the [commission] NMHED, an institution must have completed all internal institutional reviews required for new graduate programs. The proposal must be in a form that is fully supported by the institution.

B. Advance notice to [commission] the NMHED staff of the intent to submit a proposal for a new graduate program is [encouraged but is not required] required, as it will assist in plan-

ning and will create a more efficient review process. A proposal should be submitted to the [commission] NMHED and the council of graduate deans at least nine months prior to the anticipated date of implementation of the program, in order to allow sufficient time for review by the council of graduate deans, the academic council, the [commission] NMHED review board and the New Mexico state board of finance prior to implementation. Programs cannot be included in institutional catalogs until they have been approved.

C. The proposal may be submitted simultaneously to the [commission] NMHED and to the council of graduate deans. [Commission] The NMHED staff will begin an independent review of the proposal and [may participate in consideration of the proposal by the council of graduate deans] will follow the proposal through the review process with the council of graduate deans and the academic council. Members of the council may solicit input on the proposal from cognizant members of their faculty, for inclusion in the council's consideration. As it deems appropriate, the council may suggest modifications of the proposal or the proposed program.

D. If the council of graduate deans finds that the proposed program warrants further consideration, it will forward its written recommendation and comments to the academic council on higher education (the chief academic officers of the state universities) and to the [commission] NMHED. A proposal considered but not recommended by the council of graduate deans may be forwarded by the sponsoring institution directly to the academic council.

E. The academic council will conduct its review of the proposal and may suggest modifications of the proposal or the proposed program. [Commission staff may] The NMHED staff will participate in the review by the academic council.

F. When the academic council has completed its review of the proposed program, it will notify the [commission] NMHED that the proposal is ready for consideration by the [commission] NMHED. The council will forward to the [commission] NMHED its written comments regarding the proposed program.

G. Following notification by the academic council, the proposal will be subjected to independent review by the [commission] NMHED staff. [Commission] The NMHED staff may request additional information from the institution for use in its review. Based upon the outcome of its review, staff will submit a written recommendation to the [commission] NMHED review board indicating either (1) that the proposal satisfies the requirements set forth in this regulation and that the NMHED rec-

ommends approval of the program; or (2) that staff [have questions about the proposal and seek guidance from the commission; or (c) that staff] recommend denial of the proposal. Information supporting the decision to deny the proposal will be included.

H. Following completion of the staff review, the proposal and staff recommendation will be considered by the [commission using a two step process. First,] NMHED review board. The proposal and staff recommendation will be presented as an [information] approval item at [a regularly scheduled meeting of the commission. Second, the proposal and staff recommendation will be scheduled as an action item at the subsequent regularly scheduled meeting of the commission. If the proposal has a staff recommendation of approval, and no commissioner has requested otherwise prior to the second meeting, the proposal may be placed on the commission's consent calendar for action. At any point during this process, the commission] the next NMHED review board meeting. The NMHED may elect to return a proposal to the sponsoring institution, for modification, or to the council of graduate deans, the academic council, or both, for reconsideration. At any point during [this] the review process, the sponsoring institution may withdraw its proposal.

I. If the [commission] NMHED review board approves the proposed program, [commission] the NMHED staff will submit the proposal or an appropriate summary of the proposal, along with the [commission's recommendation] council of graduate deans, the academic council's, the NMHED review board's, and the NMHED's recommendations, to the New Mexico state board of finance. [Commission] The NMHED staff will notify the institution of the date when the New Mexico state board of finance has scheduled its consideration of the proposal.

J. The NMHED staff will present a summary of the proposed program along with the recommendation of the NMHED to the New Mexico state board of finance. Institution personnel will [have the primary responsibility for presentation and] be expected to be present to answer questions, present additional information or provide justification of the proposal to the New Mexico state board of finance. The role of [commission] the NMHED staff will be to present the recommendation of the [commission] NMHED to the board. [9/30/97; 5.5.2.10 NMAC - Rn & A, 5 NMAC 5.2.10, 02/28/07]

HISTORY OF 5.5.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

BEF Rule 210, Graduate Programs - Approval of New, 2/26/85.
CHE Rule 210, Graduate Programs - Approval of New, 5/4/90.

History of Repealed Material:
[RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.100 NMAC, Sections 7 and 8, effective 02/28/2007.

8.102.100.7 DEFINITIONS

A. Definitions A-L:

(1) **Application:** means a written request, on the appropriate ISD form, signed by or on behalf of an individual or family, for assistance.

(2) **Attendant:** means an individual needed in the home for medical, housekeeping, or child care reasons.

(3) **Authorized representative:** means an adult who is designated in writing by the applicant who is sufficiently knowledgeable about the applicant/ benefit group's circumstances to complete the application form correctly and represent the benefit group.

(4) **Basic needs:** include food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.

(5) **Beginning month:** means the first month for which a benefit group is certified after a lapse in certification of at least one calendar month in any project area. A benefit group is budgeted prospectively in a beginning month. A beginning month is also an initial month.

(6) **Benefit group:** means a pregnant woman or a group of people that includes a dependant child, all of that dependant child's full, half, step- or adopted siblings living with the dependant child's parent or relative within the fifth degree of relationship and the parent with whom the children live.

(7) **Benefit month:** means the month for which cash assistance benefits have been issued. This term is synonymous with issuance month defined below.

(8) **Budget month:** means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.

(9) **Capital gains:** means proceeds from the sale of capital goods or equipment.

(10) **Cash assistance:** means cash payments funded by the temporary

assistance for needy families (TANF) block grant pursuant to the federal act and by state funds; or state funded cash assistance in the general assistance program.

(11) Certification: means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.

(12) Certification period: means the time period assigned to a benefit group that is approved to receive cash assistance benefits. The certification period shall conform to calendar months.

(13) Collateral contact: means an individual or agency designated by the benefit group to provide information concerning eligibility.

(14) Conciliation process: means a 30-day process during which the department and the individual have the opportunity to address barriers to compliance or to correct whatever failure has generated the noncompliance determination. Prior to imposing the first sanction, if the department determines that a participant is not complying with the work participation requirement or child support requirements, the participant shall be required to enter into a conciliation process established by the department to address the noncompliance and to identify good cause for noncompliance or barriers to compliance. The conciliation process shall occur only once prior to the imposition of the sanction.

(15) Date of admission: means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

(16) Date of entry: means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

(17) Department: means the human services department.

(18) Dependent child: means a natural child, adopted child, stepchild or ward who is:

(a) seventeen years of age or younger; or

(b) eighteen years of age and is enrolled in high school; or

(c) between eighteen and twenty-two years of age and is receiving special education services regulated by the state board of education (SDE).

(19) Director: means the director of the income support division.

(20) Diversion payment: means a lump sum payment, which will enable the applicant to keep job or to accept a bona fide offer of employment.

(21) Documentation: means a written statement entered in the case record regarding the type of verifica-

tion used and a summary of the information obtained to determine eligibility.

(22) Earned income: means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.

(23) Education works program (EWP): provides state-funded cash assistance to a benefit group where at least one individual is enrolled in a post secondary institution. The applicant or recipient benefit group must be otherwise eligible for NMW cash assistance, but chooses to participate in the education works cash assistance program.

(24) Emancipated: means an individual under the age of 18 years who is legally recognized as no longer under parental control due to marriage or by a decision of a court.

(25) Encumbrance: means debt owed on property.

(26) Equity value: means the fair market value of property, less any encumbrances owed on the property.

(27) Expedited services: means the process by which benefit groups reporting little or no income or resources will be provided an opportunity to participate in the [FSP] food stamp program.

(28) Expungement: means the permanent deletion of cash benefits from an EBT account that is stale.

(29) Fair hearing: means an administrative proceeding which a claimant and/or his representative may request if:

(a) an application is not acted on within a reasonable time after the filing of the application;

(b) an application is denied in whole or in part; or

(c) the cash assistance or services are modified, terminated or not provided.

(30) Fair market value (FMV): means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or offer as a trade-in. It is not the amount the dealer would sell the vehicle for at retail.

(31) Federal act: means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.

(32) Federal fiscal year: October 1 through September 30 of the calendar year.

(33) Federal poverty guidelines: means the level of income defining poverty by family size published

annually in the federal register by the United States department of health and human services.

(34) Food Stamp Act: the Food Stamp Act of 1977 (P.L. 95-113), and subsequent amendments.

(35) General assistance (GA) benefit group: means a benefit group in which all members receive cash assistance financed by state or local funds.

(36) Government entity: includes any federal, state, tribal or local unit of government as well as any non-government entity which receives public funds for the purpose of meeting the housing needs of its clientele.

(37) Gross income: means the total amount of income that a benefit group is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group, but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-employment income, and income excluded by federal law.

(38) Gross income test (85 percent test): for the benefit group to be eligible, the gross earned income of the benefit group must be less than 85 percent of the federal poverty guidelines as determined in 8.102.500.8 NMAC.

(39) Head of household: means the payee who is the responsible case head for the benefit group. The payee may be the parent, guardian, sole adult member, specified relative, pregnant woman, a GA recipient, or caretaker.

(40) Immigrant: means alien as defined in the federal act.

(41) Immigration and naturalization service (INS): a division of the U.S. department of justice.

(42) Impairment: means a condition resulting from anatomical, physiological, or psychological abnormalities evidenced by medically acceptable clinical and laboratory diagnostic techniques. Impairment has to do only with the medical and/or psychiatric process. To evaluate physical and/or mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.

(43) Ineligible alien: means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

(44) Initial month: means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one

calendar month or longer.

[43] (45) Inquiry: means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application.

[44] (46) Institution of higher education: means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

[45] (47) Institution of post-secondary education: means an institution of post-secondary education, any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located, regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or a program of training to prepare students for gainful employment.

[46] (48) Irrevocable trust funds: means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

[47] (49) Issuance month: means the calendar month for which cash assistance is issued. In prospective budgeting, the budget and issuance months are the same.

B. Definitions M-Z:

(1) Medicaid: medical assistance under title XIX of the Social Security Act, as amended.

(2) Minor unmarried parent: means an unmarried parent under the age of 18 years or is age 18 and enrolled in high school.

(3) Month of approval: means the month the action to approve a benefit group for cash assistance is taken.

(4) Net income tests: means for the benefit group to be eligible, the benefit group's net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

(5) Net monthly income: means gross non-exempt income minus the allowable deductions. It is the income figure used to determine eligibility and cash assistance benefit amount.

(6) Non-benefit group members: means persons residing with a benefit group who are specifically excluded by regulation from being included in the benefit group certification.

(7) Notice of adverse action

(NOAA): means a written notice that includes a statement of the action the department has taken or intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for additional information, the availability of continued benefits, and liability of the benefit group for any overissuance received if the hearing decision is adverse to the benefit group. This notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. Participants have 13 days from the mailing date of the notice to request a fair hearing and to have benefits restored to their previous level.

(8) Overissuance: means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

(9) Parent: means natural parent, adoptive parent, stepparent or legal guardian.

(10) Participant: means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority.

(11) Payment standard: means the amount of the cash assistance payment, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's standard of need, and prior to reduction by sanction and/or recoupment.

(12) Permanent total disability: means an individual must have a physical or mental impairment, expected to last at least 12 months, that prevents gainful employment in any employment position within the individual's current employment capacity.

(13) Person: means an individual.

(14) Project area: means the geographic area designated to a county office that is responsible for the administration of the department's programs.

(15) Prospective budgeting: means the computation of a benefit group's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

(16) Quarterly reporting: means a reporting requirement that allows a 12-month certification period and requires a benefit group to ~~submit~~ submit a report form every third month during a certification period.

(17) Real property: means land, affixed improvements, and structures which include mobile homes. Grazing permits are also considered real property.

(18) Recertification: means a complete review of all conditions of eligibility which are subject to change and a

redetermination of the amount of assistance payment for an additional period of time.

(19) Recipient: means a person receiving cash assistance benefits (same as a participant).

(20) Refugee: means a lawfully admitted individual granted conditional entry into the United States.

(21) Regular reporting: means a reporting requirement that requires a participating household to report a change within ten days of the date a change becomes known to the household.

(a) A financial change becomes known to the household when the household receives the first payment attributed to an income or resource change, or when the first payment is made for a change in an allowable expense.

(b) A non-financial change including but not limited to, a change in household composition or a change in address, becomes known to the household on the date the change takes place.

(22) Resource standard: means the financial standard with respect to resources and property, \$2,000 for non-liquid resources and \$1500 for liquid resources.

(23) Retrospective budgeting: means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

(24) Resource planning session: means a planning session to ascertain the applicant's immediate needs and to assess the applicant's financial and non-financial options.

(25) Secretary: means the secretary of the department.

(26) Self-employed: means an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income.

(27) Semiannual reporting: means a reporting requirement that allows up to a 12-month certification period and requires a household to submit a report in the sixth month of a 12-month certification period or in the same month a food stamp semiannual report is due.

(28) Services: means child-care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment; education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to assist transition into employment.

(29) Shelter for battered women and children: means a public or private nonprofit residential facility that serves battered women and their children. If such a

facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(30) Single-parent benefit group: means any benefit group which does not include both parents of a child included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

(31) Sponsor: means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission to the United States as a permanent resident.

(32) Sponsored alien: means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a)(15) and 101(a)(2) of the Immigration and Nationality Act.

(33) Stale: means EBT accounts which have not been accessed, no withdrawal activity, by the household in the last 90 days from the most recent date of withdrawal.

(33) (34) Standard of need: means an amount which is based on the number of individuals included in the benefit group and allows for financial standard and basic needs.

(34) (35) State-funded alien eligible: means an alien who entered the United States on or after August 22, 1996, as one of the classes of aliens described in Subsection B of 8.102.410.10 NMAC, is eligible with respect to citizenship requirements for state-funded assistance under NMW and GA without regard to how long the alien has been residing in the United States.

(35) (36) Supplemental security income (SSI): means monthly cash payments made under the authority of:

(a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;

(b) Section 1616(a) of the Social Security Act; or

(c) Section 212(a) of P.L. 93-66.

(36) (37) Temporary total disability: means a physical or mental impairment, expected to last at least 30 days from date of determination, but less than one year from the date of application, that prevents gainful employment in any employment position within the individual's current employment capacity.

(37) (38) Two-parent benefit group: means a benefit group which is considered to exist when both parents of any child included in the benefit group live in the home with the child and are included in the benefit group.

(38) (39) Term limits: means NMW assistance (cash benefits and sup-

portive services) is not provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime.

(39) (40) Unearned income: means old age, survivors, and disability insurance payments (social security), railroad retirement benefits, veterans administration compensation or pension payments, military retirement and allotments, pensions, annuities and retirement benefits; lodge or fraternal benefits, any other public or private disability or retirement benefit or pension, shared shelter payments, Individual Indian Money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

(40) (41) Vehicle: means a conveyance used for the transportation of individuals to or from employment, for the activities of daily living or for the transportation of goods; vehicle does not mean boats, trailers or a mobile home used as the principal place of residence.

(41) (42) Verification: means the use of third-party information or documentation to establish the accuracy of statements on the application.

(42) (43) Wage subsidy program: means a subsidized employment opportunity through which a TANF cash assistance recipient is hired into full-time employment.

[8.102.100.7 NMAC - N, 07/01/2001; A, 02/14/2002, A, 05/15/2003; A, 1/1/2004; A, 02/28/2007]

8.102.100.8 ABBREVIATIONS AND ACRONYMS

A. Abbreviations and acronyms

(1) **AFDC:** aid to families with dependent children (replaced by TANF effective July 1, 1997)

(2) **ARSCH:** adult residential shelter care home

(3) **BG:** benefit group

(4) **BIA:** bureau of Indian affairs

(5) **BIA-GA:** bureau of Indian affairs-general assistance

(6) **CA:** cash assistance

(7) **CE:** categorical eligibility or categorically eligible

(8) **CFR:** code of federal regulations

(9) **CS:** child support

(10) **CSED:** (HSD) child support enforcement division

(11) **CYFD:** (New Mexico) children youth & families department

(12) **DOH:** (New Mexico)

department of health

(13) **DOL:** department of labor

(14) **DOT:** dictionary of occupational titles

(15) **E&T:** employment and training (food stamp work program)

(16) **EBT:** electronic benefit transfer

(17) **EI:** earned income

(18) **EW:** eligibility worker (now ~~FAA~~ caseworker)

(19) **EWP:** education works program

(20) **FAP:** financial assistance program

(21) **FAA:** family assistance analyst (formally ISS)

(22) **FFY:** federal fiscal year

(23) **FMV:** fair market value

(24) **FNS:** food and nutrition service (previously FCS)

(25) **FPL:** federal poverty level

(26) **FSP:** food stamp program

(27) **GA:** general assistance

(28) **GED:** general equivalency degree

(29) **HHS:** (U.S. ~~dept. of~~) health and human services

(30) **HSD:** (New Mexico) human services department

(31) **HUD:** (U.S. ~~dept. of~~) housing and urban development

(32) **IDA:** individual development account

(33) **INS:** (U.S.) immigration and naturalization service

(34) **IPV:** intentional program violation

(35) **IRP:** individual responsibility plan

(36) **IRU:** incapacity review unit

(37) **ISD:** (HSD) income support division

(38) **ISD2:** integrated services delivery for ISD

(39) **ISS:** income support specialist (now ~~FAA~~ caseworker)

(40) **JTPA:** Job Training Partnership Act (now WIA)

(41) **LIHEAP:** low income home energy assistance program

(42) **LITAP:** low income telephone assistance program

(43) **MAD:** (HSD) medical assistance division

(44) **MVD:** (New Mexico) motor vehicle division

(45) **NADA:** national automobile dealers association

(46) **NMAC:** New Mexico administrative code

(47) **NMW:** New Mexico works

(48) **NOAA:** notice of adverse action

(49) **POS:** point of sale

(50) **QC:** quality control

- (51) **QR:** quarterly reporting or quarterly reporters
- (52) **RR:** regular reporting or regular reporters
- (53) **RRP:** refugee resettlement program
- (54) **SAVE:** systematic alien verification for entitlements
- (55) **SE:** self employment
- (56) **SR:** semiannual reporting
- (57) **SSA:** social security administration
- (58) **SSI:** supplemental security income
- (59) **SSN:** social security number
- (60) **TANF:** temporary assistance to needy families (block grant program under Title IV-A of the Social Security Act)
- (61) **UCB:** unemployment compensation benefits
- (62) **UEI:** unearned income
- (63) **USDA:** United States department of agriculture
- (64) **VA:** veterans administration
- (65) **WIA:** Workforce Investment Act
- (66) **WID:** work incentive deduction
- (67) **WPA:** work participation agreement

B. [Reserved]

[8.102.100.8 NMAC - N, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 02/28/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.230 NMAC, Sections 8 and 9, effective 02/28/2007.

8.102.230.8 [WARRANTS

A. Replacements:

~~(1) The term "lost, stolen, or forged warrant" shall be applied to any cash assistance or supportive services warrant that was not received by the recipient or was lost after receipt but before endorsement by the payee. A lost or stolen warrant may be replaced if:~~

~~(a) It has not been endorsed by the payee; and~~

~~(b) Its loss or theft is reported within 45 days.~~

~~(2) The 45 day limit may be waived by ISD if the payee was unable to report the loss or theft within the required time limit because of circumstances beyond the payee's control. The determination shall be made by the office of the director.~~

B. Replacement procedures:

~~(1) Reporting warrants not received:~~

~~(a) If a client reports the non-receipt or loss of a warrant, the caseworker shall first ascertain, whether the warrant was issued from the central office. If the warrant was not issued, it shall be necessary to determine the reason why it was not, have the warrant issued, and notify the recipient.~~

~~(b) If the warrant was mailed but not received by the recipient, or was received but lost or stolen before the recipient could negotiate it, the recipient must complete a claim for lost, stolen, or forged welfare warrant, with the assistance of the caseworker.~~

~~(c) Upon receiving the lost warrant report, payment on the original warrant shall be stopped.~~

~~(d) As a part of the lost warrant form, it shall be explained to the recipient that the original warrant must be returned to the department if it is received after the report is filed, as the warrant will no longer be valid.~~

~~(2) Negotiated warrants: If the warrant has been negotiated, the office of inspector general investigates whether the warrant was forged or negotiated by the payee.~~

~~(a) If the warrant is found to have been negotiated by the payee, no replacement shall be issued and the county is so notified.~~

~~(b) If the warrant was forged, the warrant shall be returned to the bank as refused, and a replacement warrant shall be issued.~~

~~(3) Receipt of warrant reported as lost or stolen: If the recipient receives the original warrant after filing a lost warrant report, and notifies the caseworker as agreed on the claim form, the caseworker shall void the original warrant and return it to the accounting section for disposition.]~~

[Reserved]
[8.102.230.8 NMAC - Rp 8.102.230.8 NMAC, 07/01/2001; Repealed, 02/28/2007]

8.102.230.9 DEATH OF CLIENT

A. Payment: Payment may be made on behalf of a client who died before ~~[a warrant was endorsed, or cashed, or]~~ an EBT withdrawal was made, if the client was alive on the first day of the month for which cash assistance benefits were issued, and ~~[met]~~ all eligibility conditions were met at the time of death. The person authorized to use the deceased recipient's benefits is the surviving spouse, next of kin, or a person with responsibility for the deceased recipient's affairs.

B. [Cashing the warrant or] Withdrawing EBT benefits:

~~(1) Warrants: When the assistance warrant of a deceased client is presented at the county office, usually by the~~

~~person who is to receive payment, and a determination is made that the deceased client was eligible for the assistance payment, the county director shall endorse the warrant.~~

~~(a) The warrant must be endorsed with the name of the deceased client by the signature of the county director. The signature of the county director need not be notarized, but must indicate the county director's official title and the address of the county office. The warrant may then be cashed by the person who shall receive the money.~~

~~(b) If the benefit was authorized via EBT deposit, the county director shall authorize access to the account by another benefit group member or authorized representative.~~

~~(2) When payment is made in accordance with these procedures, the county office shall not restrict or dictate the use of the money paid.~~

[8.102.230.9 NMAC - Rp 8.102.120.10 NMAC, 07/01/2001; A, 02/28/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.610 NMAC, Sections 8 and 9, effective 02/28/2007.

8.102.610.8 CASH ASSISTANCE:

A. Method of payment:

Cash assistance benefits are paid by ~~[deposit of]~~ issuing funds into an EBT transfer account. ~~[In some circumstances benefits may be issued by warrant.]~~

B. Initial issuance: The

EBT card is issued to the payee or designated authorized representative during the application process prior to the application being approved. The applicant or recipient shall receive training on the use of the EBT card prior to activation of the EBT card.

C. Replacement card:

The caseworker, the HSD EBT help desk or the contractor customer service help desk shall have the card deactivated once reported by participant that the card is lost, stolen, or destroyed. The card will be deactivated immediately and a replacement card provided to the participant. Once the card is deactivated, it cannot be reactivated for any reason.

~~[B.]~~ **D. Authorizing payments:**

~~(1) [FA]~~ Cash assistance benefits are authorized, changed, and terminated through the automated benefit delivery system.

~~(2) Initial payments are issued on the first mailing day following authorization. In the case of EBT, the transfer of~~

funds takes place on the first working day after the day of authorization.

[C-] E. Initiation of payment:

(1) Payment is initiated and prorated from the date of authorization or from the 30th day after the day of application, whichever is earlier.

(2) If the case was eligible in a month prior to the month of approval, but is not eligible for payment in the month following the month of disposition, the benefit group is not eligible for payment in any of these months.

(3) **Payments effective in the current month:** ~~[Payments authorized during the month are written the night the information is entered into the computerized system and mailed the first business day following authorization. NMW cash assistance benefits are deposited into the EBT account the business day after payment is authorized.]~~ A payment that is issued during the month is deposited into the EBT account no later than the business day after payment is approved.

(4) **Payments effective in the [coming] ongoing month:**

(a) When authorized, the payment amount remains the same from month to month until changed. ~~[Ongoing payments are written or authorized in the regular "monthly check write" process. During the monthly check write, hard copy checks are written the night before the third to the last working day of the month. They are mailed so as to arrive on the first mail delivery day of the month.]~~

(b) EBT ~~[deposits]~~ issuances are transmitted to the fiscal agent so that the funds are available on the first working day of the month. Payments authorized after the monthly ~~[check write]~~ transmission to the fiscal agent are issued ~~[on the next nightly benefit write]~~ as part of the next nightly benefit batch.

[D-] E. Change in amount of payment:

(1) Following approval, there is a continuing responsibility on the part of both the recipient and the caseworker to make sure that eligibility and benefit amount are correctly determined. Failure on either side to recognize and carry out this responsibility can result in overpayment to the recipient. Overpayments ~~[for any reason]~~ are charged to the recipient regardless of fault.

(2) A recipient's assistance grant shall be increased or decreased after receipt of information indicating that changes in a recipient's circumstances may affect the amount of assistance to which the recipient is entitled.

(3) Changes in the payment amount shall be made in accordance with changes in program policy ~~[assistance standards, or adequacy with which need~~

~~may be met].~~

[E-] G. Regular changes: A change in the benefit group circumstance may change the amount for which the group is eligible.

[F-] H. Other changes: If a change occurs which cannot be processed before the benefits issuance run, an overpayment or underpayment may occur. If an underpayment occurs, it shall be corrected by issuing a supplemental payment. In case of an overpayment, an overpayment claim shall be filed and appropriate efforts shall be made to recover the overpayment.

[G-] L. Whereabouts unknown: Benefits shall be terminated if the whereabouts of the ~~[recipient]~~ benefit group are unknown to the department ~~[for 30 days or more]~~. A ~~[recipient's]~~ benefit group's whereabouts shall be considered to be unknown if:

(1) mail sent to the ~~[recipient's]~~ last known address is returned to the department indicating that the ~~[recipient]~~ benefit group no longer lives at that address and at least 30 days have passed since the caseworker sent the mail; or

~~(2) warrants for two consecutive months are returned to the accounting section; or~~

~~(3) (2) the recipient does not make any withdrawals from the recipient's EBT account for 60 days or more.~~

[8.102.610.8 NMAC - Rp 8.102.610.8 NMAC, 07/01/2001; A, 02/28/2007]

8.102.610.9 Stale benefits accounts: Stale benefit accounts are those cash assistance benefits accounts that have not been accessed for 90 days from the date of most recent withdrawal.

A. Offline accounts: EBT accounts which have not been accessed by the recipient in the last 90 days are considered a stale account. HSD may store stale benefits offline after notification to the household of this action.

(1) Notification: The department shall notify the household of this action before storing benefits in an offline account and provide necessary steps to reactivate the account.

(2) Reinstatement: The participant may contact the HSDEBT help desk, the contractor customer service help desk, or the caseworker and request reinstatement of their EBT account anytime within 180 days from the initial date of benefit activity. Initial date of benefit activity is the first deposit made to the account upon initial approval of the household's benefits. Requests from the participant to reinstate any benefit must be received prior to the date of expungement

B. Expungements: Cash assistance benefits which have had no activ-

ity for an excess of 180 days will be expunged. All benefits older than 180 days in the account will no longer be accessible to the household. The household loses all rights to all expunged benefits.

(1) The department shall attempt to notify the household no less than 45 days prior to the expungement of the cash assistance benefits.

(2) Payments of claims against the household. The contractor shall notify the department no less than five days prior to expungement of the cash assistance benefits and any cash assistance claims against the household shall be removed from the account and applied to the claims upon expungement.

[8.102.610.9 NMAC - Rp 8.102.610.9 NMAC, 07/01/2001; 8.102.610.9 NMAC - N, 02-28-2007]

~~[8.102.610.9]~~ **8.102.610.10 SUPPORTIVE SERVICES:**

A. The NMW work program provides supportive services on an ongoing basis, provided that the participant is eligible to receive the services during the month provided.

B. Participants must meet minimum participation requirements in order to receive supportive services reimbursements. Reimbursement for supportive services is made in the form of warrants issued in the name of either the:

(1) participant for travel, education and child care reimbursement (lasting 30 days or less); or

(2) provider (ongoing child care reimbursement).

[8.102.610.10 NMAC - Rp 8.102.610.10 NMAC, 07/01/2001; 8.102.610.10 NMAC - Rn, 8.102.610.9 NMAC, 02/28/2007]

~~[8.102.610.10]~~ **8.102.610.11 DIRECT PAYMENTS:** A direct payment may be made by direct warrant issued in the name of the participant or through EBT.

A. Child care:

(1) A participant who needs child care assistance for less than 30 days may request the child care reimbursement be issued to the participant. The participant must submit a bill or proof of child care costs to the caseworker before such reimbursement is authorized.

(2) Reimbursement for child care services expected to last more than 30 days must be issued to registered providers by the child care worker of the CYFD.

B. Transportation:

Reimbursements for travel expenses shall be issued in the name of the participant. The reimbursement warrant shall be mailed to the participant's home or mailing address.

C. Education: All reim-

bursament warrants for educational expenses shall be issued in the name of the participant. The reimbursement warrant shall be mailed to the participant. It is the responsibility of the participant to make sure that any money owed to the institution is paid.

[8.102.610.11 NMAC - Rp 8.102.610.11 NMAC, 07/01/2001; A, 07/01/2004; 8.102.610.11 NMAC - Rn, 8.102.610.10 NMAC, 02/28/2007]

[~~8.102.610.11~~] 8.102.610.12 D I V E R - S I O N P A Y M E N T S T O A N M W B E N E - F I T G R O U P:

A. The diversion payment is a lump sum payment, which will alleviate a specific need and enable the applicant to keep job or to accept a bona fide offer of employment.

(1) An applicant for NMW cash assistance who meets all NMW eligibility criteria may volunteer to accept a NMW diversion payment for a specific need in lieu of monthly cash assistance payments meant to meet basic needs.

(2) The caseworker shall explain the diversion program and screen the applicant for eligibility for a diversion payment.

(3) The caseworker must ensure that monthly cash assistance is not needed to meet the ongoing needs of the benefit group, either because there is a bona fide job offer or employment.

B. Limitations and amount of a diversion payment:

(1) An applicant may receive a diversion payment a maximum of two times during an individual's 60-month term limit.

(2) The 60-month term limit began on July 1, 1997 for any adult or minor head of the benefit group, or spouse of the minor, who received TANF-funded cash assistance on July 1, 1997, or began or will begin in any month after July 30, 1997. The acceptance of a diversion payment does not reduce the number of months in an individual's 60-month term limit; however, a diversion payment may be authorized only two times once the 60-month term limit begins.

(3) The amount of the diversion payment in all cases shall be \$1,000.00.

(4) The authorization and issuance of a diversion payment for a benefit group that has never received TANF cash assistance begins the 60-month term limit for purposes of the two-time maximum diversion payment allowance, not for purposes of counting months of eligibility against the TANF 60-month term limit.

C. Eligibility criteria:

(1) **Initial application:** Eligibility for a diversion payment shall be limited to an applicant making an initial application for cash assistance. Initial application shall not include a NMW cash assistance case which is within a six-month mandatory closure because of a third sanc-

tion. For the purposes of diversion payments, an initial applicant is one who has never received cash assistance, or one whose cash assistance case has been closed for one or more calendar months.

(2) **NMW eligibility is established:** Eligibility for a diversion payment shall be based on all eligibility criteria for the NMW cash assistance program.

(a) The applicant must be otherwise eligible for NMW cash assistance, except that the applicant demonstrates that monthly cash assistance to meet basic needs is not required by the benefit group because there is a means of financial support, and the applicant chooses to accept a diversion payment in lieu of cash assistance to meet ongoing needs.

(b) An applicant who cannot demonstrate that monthly cash assistance to meet basic needs is not needed shall not be eligible for a diversion payment.

(3) **Specific need:** The applicant must make an informed choice whether cash assistance is needed to meet a specific need or basic needs based on information provided by the caseworker. The applicant may demonstrate a need for a specific item or type of assistance which will allow the applicant to keep a job or accept a bona fide offer of employment. Such assistance includes, but is not limited to, cash, support services, housing, transportation, car repairs, and uniforms.

(4) **Eligibility for support services:** A recipient of a diversion payment shall remain eligible for support services such as child care and transportation. A referral to the NMW work program service provider and to CYFD shall be made after the applicant signs the agreement to accept a diversion payment and payment is authorized. The applicant shall remain eligible for support services until the end of the 12-month lockout period, until case closure is requested, or the applicant moves out of the state.

(5) Verification and documentation:

(a) The applicant shall be required to provide verification of the specific item or type of assistance which will allow the applicant to keep a job or accept a bona fide offer of employment.

(b) The caseworker shall be required to determine whether the verification provided of the need for a specific item or type of assistance will allow the applicant to keep a job or accept bona fide offer of employment, and must ensure that the amount of the required assistance does not exceed \$1,000.00.

(c) Documentation shall be required to establish that a diversion payment may be authorized in lieu of cash assistance to meet ongoing needs.

D. Cash assistance lock-

out period:

(1) **Acceptance of a diversion payment:** An applicant who accepts a diversion payment shall be prohibited from participating in the NMW cash assistance program for a period of 12 months beginning in the month the diversion payment is authorized.

(2) **Receipt of a diversion payment from another state:** An applicant who has accepted a diversion payment in any other state shall be prohibited from receiving NMW cash assistance or a diversion payment in New Mexico for a period of 12 months, beginning in the month the diversion payment in the other state was authorized, or for the length of the lockout period in the other state, whichever is shorter.

E. Terms and conditions for receipt of a diversion payment:

(1) An applicant may accept a diversion payment under the following conditions:

(a) does not need long-term cash assistance to meet basic needs, which can be shown by verification of a bona fide offer of employment or employment itself;

(b) demonstrates the need for and verifies a specific item or type of assistance;

(c) enters into a written agreement that defines the terms and expectations of the diversion grant; documents the reason why cash assistance to meet basic needs is not required; identifies the need for a specific type of short-term assistance; and describes the support services available to diversion recipients.

(2) An applicant shall agree not to apply for further cash assistance in New Mexico for a period of 12 months, beginning with the month in which the diversion payment is authorized, or for the length of the lockout period in another state, whichever is shorter.

(3) If the amount needed to meet the specific need is more than the diversion payment, a determination shall be made whether the diversion payment alone will alleviate the specific need. If not, then the diversion payment cannot be authorized, unless the applicant can provide documentation that demonstrates there is another financial source that, when combined with the diversion payment, will alleviate the specific need.

(4) A recipient of a diversion payment is not required to comply with work program or child support enforcement requirements.

(5) Receipt of a diversion payment does not count toward the TANF 60-month term limit for any adult included in the benefit group, unless the benefit group also receives monthly TANF cash assistance during the period covered by the diversion payment.

F. Applying for cash assistance during the lockout period:

(1) An applicant who determines that he is unable to adhere to the terms and conditions for receipt of a diversion payment may apply for cash assistance to meet ongoing basic needs.

(2) A pro rata share of the diversion payment is considered an overpayment. The diversion payment shall be divided over the lockout period and an overpayment calculated beginning from the date of approval of NMW cash assistance until the end of the lockout period.

(3) An overpayment shall not be calculated if it is determined that there is good cause for an application for cash assistance during the lockout period. Good cause includes, but is not limited to, loss of employment, but not a voluntary quit; catastrophic illness or accident of a family member which requires an employed individual to leave employment; a victim of domestic violence; or another situation or emergency that renders an employed family member unable to care for the basic needs of the family. The waiver of the overpayment shall be made on an individual basis and shall be verified and documented.

G. Effect of diversion on other programs:

(1) The receipt of a diversion payment shall be excluded from both income and resource considerations in the medicaid program.

(2) Categorical eligibility is extended to the food stamp benefit group for the lockout period, unless the benefit group requests closure or moves out of New Mexico.

(3) An applicant who accepts a diversion payment shall be eligible for TANF funded child care assistance for the lockout period, unless the benefit group requests closure or moves out of New Mexico.

[8.102.610.12 NMAC - Rp 8.102.610.12 NMAC, 07/01/2001; A, 12/15/2005; 8.102.610.12 NMAC - Rn, 8.102.610.11 NMAC, 02/28/2007]

8.102.610.13 [RESERVED]

[Now filed at 8.102.611 NMAC]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.106.100 NMAC, Sections 7 and 8, effective 2/28/2007.

8.106.100.7 DEFINITIONS:**A. Definitions A-L:****(1) Adult residential shelter**

care home: means a shelter care home for adults that is licensed pursuant to the regulations established by the department of health.

(2) **Application:** means a written request for assistance, on the appropriate ISD form, signed by or on behalf of an individual or family.

(3) **Attendant:** means an individual needed in the home for medical, housekeeping or child care reasons.

(4) **Authorized representative:** means an adult who is designated in writing by the applicant and is sufficiently knowledgeable about the applicant/benefit group's circumstances to complete the application form correctly and represent the benefit group.

(5) **Basic needs:** means food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.

(6) **Beginning month:** means the first month or the initial month for which a benefit group is certified after a lapse in certification of at least one calendar month in any project area; a benefit group is budgeted prospectively in a beginning month.

(7) **Benefit group:** means an individual or group of individuals authorized to receive cash assistance financed by state or local funds.

(8) **Benefit month:** means the month for which cash assistance benefits have been issued.

(9) **Budget month:** means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.

(10) **Capital gains:** means the proceeds from the sale of capital goods or equipment.

(11) **Cash assistance:** means state-funded cash assistance in the general assistance program, the adult residential home care shelter program, or the burial assistance program for the indigent.

(12) **Certification:** means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.

(13) **Certification period:** means the time period in calendar months that is assigned to a benefit group that is approved to receive cash assistance benefits.

(14) **Collateral contact:** means an individual or agency designated to provide information concerning eligibility.

(15) **Date of ~~entry~~/admission:** means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.

(16) **Date of entry:** means the

date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.

~~(16)~~ (17) **Department:** means the human services department.

~~(17)~~ (18) **Dependent child:** means an individual who is seventeen years of age or younger; eighteen years of age and enrolled in high school; or between eighteen and twenty-two years of age and is receiving special education services regulated by the state public education department.

~~(18)~~ (19) **Director:** means the director of the income support division.

~~(19)~~ (20) **Disability:** means the definitions of disability related to the general assistance program and the disability determination process found at 8.106.420.7 NMAC.

~~(20)~~ (21) **Documentation:** means a written statement entered in the case record regarding the type of verification submitted and a summary of the information obtained to determine eligibility.

~~(21)~~ (22) **Earned income:** means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.

(22) (23) **Emancipated:** means an individual under the age of 18 who is legally recognized as no longer under parental control due to the individual's marriage or by a decision of a court.

~~(23)~~ (24) **Encumbrance:** means debt owed on property.

~~(24)~~ (25) **Equity value:** means the fair market value of property, less any encumbrances owed on the property.

~~(25)~~ (26) **Expedited services:** means the process by which a household reporting little or no income or resources will be provided an opportunity to participate in the food stamp program by the seventh day after an application is filed.

(27) **Expungement:** means the permanent deletion of cash benefits from and EBT account that is stale.

~~(26)~~ (28) **Fair hearing:** means an administrative proceeding which a claimant and/or his representative may request if:

(a) an application is not acted on within a reasonable time after the filing of the application; or

(b) an application is denied in whole or in part; or

(c) cash assistance or services are modified, terminated or not provided.

~~(27)~~ (29) **Fair market value (FMV):** means the amount an item can be expected to sell for on the open market at

the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or as a trade-in, not the amount the dealer would sell the vehicle for at retail.

[28] (30) Federal act: means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.

[29] (31) Federal fiscal year: means the time period beginning on October 1 and ending on September 30 of the calendar year.

[30] (32) Federal poverty guidelines: means the level of income defining poverty by family size, published annually in the federal register by the United States department of health and human services.

[31] (33) Food Stamp Act: means the federal Food Stamp Act of 1977 (P.L. 95-113) and subsequent amendments enacting the food stamp program.

[32] (34) Government entity: means any federal, state, tribal or local unit of government as well as any non-government entity that receives public funds for the purpose of meeting the needs of its clientele.

[33] (35) Gross income: means the total amount of earned or unearned income before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-employment income and income excluded by federal law.

[34] (36) Gross income test: means the income test applied to the maximum income eligibility limit for participation in a particular cash assistance program based on the size of the household or benefit group.

[35] (37) Head of household: means an individual who is the responsible case head for the benefit group. The head of household may be the parent, guardian, sole adult member, specified relative, pregnant woman, a recipient of general assistance, or caretaker.

[36] (38) Initial month: means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one calendar month or longer.

[37] (39) Inquiry: means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application for that program.

[38] (40) Institution of higher education: means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

[39] (41) Institution of post-secondary education: means an institution of post-secondary education, any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located, regardless of the high school prerequisite, provided that the institution is legally authorized by the state to provide an educational program beyond secondary education or a training program to prepare students for gainful employment.

[40] (42) Irrevocable trust funds: means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

[41] (43) Issuance month: means the calendar month in which cash assistance is issued.

B. Definitions M-Z:

(1) Medicaid: means medical assistance under title XIX of the Social Security Act, as amended.

(2) Minor unmarried parent: Means an unmarried parent who is under the age of 18 years or is age 18 and enrolled in high school.

(3) Month of approval: means the month in which the action is taken to approve a benefit group for cash assistance.

(4) Net income test: means the income test applied to eligibility for a particular program after all allowable deductions are taken from the gross income for the household or benefit group. To be eligible, the benefit group's net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

(5) Net monthly income: means gross non-exempt income minus the allowable deductions. Net monthly income is the figure used to determine eligibility and cash assistance benefit amount.

(6) New Mexico works: means the federally funded temporary cash assistance program for needy families that carries a sixty-month term limit for adults in the state.

(7) Non-benefit group members: means persons residing with a benefit group but who are specifically excluded by regulation from being included in the benefit group certification.

(8) Notice of adverse action

(NOAA): means a written notice sent 13 days in advance of an action to reduce, suspend or terminate benefits that includes a statement of the action the department intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for additional information, the availability of continued benefits, and liability of the benefit group for any overpayment received if the hearing decision is adverse to the benefit group.

(9) Overpayment/overissuance: means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

(10) Parent: means a natural parent, adoptive parent, stepparent or legal guardian.

(11) Payment: means the amount of the cash assistance benefit, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's standard of need, and before any reduction by sanction and/or recoupment.

(12) Person: means an individual.

(13) Project area: means the geographic area designated to a county office that is responsible for the administration of the department's programs.

(14) Prospective budgeting: means the computation of a benefit group's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

(15) Quarterly reporting: means a reporting requirement that allowed a 12-month certification period and required a benefit group to submit a report form every third month during the certification period.

(16) Real property: means land, affixed improvements and structures, which include mobile homes. Grazing permits are also considered real property.

(17) Recertification: means a complete review of all conditions of eligibility and a redetermination of the amount of the cash assistance benefits for an additional period of time.

(18) Recipient: means a person receiving cash assistance benefits.

(19) Regular reporting: means a reporting requirement in which a benefit group is not required to meet periodic reporting requirements, and must report changes within ten days of the date the change becomes known.

(20) Resource standard: means the financial standard with respect to an applicant's/recipient's resources and property, which is set at \$2,000 for non-liquid resources and \$1500 for liquid resources.

(21) Retrospective budgeting:

means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

(22) Secretary: means the secretary of the human services department.

(23) Self-employed: means an individual who engages in a self-managed enterprise for the purpose of providing support and income.

(24) Semiannual reporting: means a requirement for a benefit group to file a report of information in the sixth month of a 12-month certification period to determine if eligibility for benefits can continue.

(25) Shelter for battered women and children: means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(26) Single-parent benefit group: means a benefit group that does not include both parents of a child who is included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

(27) Stale: means EBT accounts which have not been accessed, no withdrawal activity, by the household in the last 90 days from the most recent date of withdrawal.

(27) (28) Standard of need: means a maximum cash benefit amount that is based on the number of individuals included in the benefit group and allows for a financial standard and basic needs.

(28) (29) Supplemental security income (SSI): means monthly cash payments made under the authority of:

(a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;

(b) Section 1616(a) of the Social Security Act; or

(c) Section 212(a) of P.L. 93-66.

(29) (30) Two-parent benefit group: means a benefit group in which both parents of a child included in the benefit group live in the home with the child and are included in the benefit group.

(30) (31) Term limit: means the 60-month lifetime limit under the TANF/NMW cash assistance program, which is applied to an adult or minor head of household and spouse of the minor head of household, for receipt of cash assistance benefits or support services funded by the TANF block grant.

(31) (32) Unearned income: Means old age, survivors and disability insurance payments (social security); railroad retirement benefits; veterans adminis-

tration compensation or pension payments; military retirement and allotments; pensions, annuities and retirement benefits; lodge or fraternal benefits; other public or private disability or retirement benefits or pension; shared shelter payments; individual Indian money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

(32) (33) Verification: means the use of third-party information or documentation to establish the accuracy of statements on the application.

(33) (34) Wage subsidy program: means a subsidized employment opportunity through which a TANF cash assistance recipient is hired into full-time employment.

[8.106.100.7 NMAC - N, 07/01/2004; A, 02/28/2007]

8.106.100.8 ABBREVIATIONS AND ACRONYMS:

A. Abbreviations and acronyms:

(1) **AFDC:** aid to families with dependent children (replaced by TANF effective July 1, 1997)

(2) **ARSCH:** adult residential shelter care home

(3) **BG:** benefit group

(4) **BIA:** bureau of Indian affairs

(5) **BIA-GA:** bureau of Indian affairs-general assistance

(6) **CA:** cash assistance

(7) **CE:** categorical eligibility or categorically eligible

(8) **CFR:** code of federal regulations

(9) **CS:** child support

(10) **CSED:** (HSD) child support enforcement division

(11) **CYFD:** (New Mexico) children, youth & families department

(12) **DOH:** (New Mexico) department of health

(13) **DOL:** department of labor

(14) **DOT:** dictionary of occupational titles

(15) **E&T:** employment and training (food stamp work program)

(16) **EBT:** electronic benefit transfer

(17) **EI:** earned income

(18) **EW:** eligibility worker (now [FAA] caseworker)

(19) **EWP:** education works program

(20) **FAP:** financial assistance program

(21) **FAA:** family assistance ana-

lyst (formerly ISS)

(22) **FFY:** federal fiscal year

(23) **FMV:** fair market value

(24) **FNS:** food and nutrition service (formerly FCS)

(25) **FPL:** federal poverty level

(26) **FSP:** food stamp program

(27) **GA:** general assistance

(28) **GED:** general equivalency degree

(29) **HHS:** (U.S. [~~dept. of~~]) health and human services

(30) **HSD:** (New Mexico) human services department

(31) **HUD:** (U.S. [~~dept. of~~]) housing and urban development

(32) **IDA:** individual development account

(33) **INS:** (U.S.) immigration and naturalization service

(34) **IPV:** intentional program violation

(35) **IRP:** individual responsibility plan

(36) **IRU:** incapacity review unit

(37) **ISD:** (HSD) income support division

(38) **ISD2:** integrated services delivery for income support division (ISD)

(39) **ISS:** income support specialist (now [FAA] caseworker)

(40) **JTPA:** Job Training Partnership Act (now WIA)

(41) **LIHEAP:** low income home energy assistance program

(42) **LITAP:** low income telephone assistance program

(43) **MAD:** (HSD) medical assistance division

(44) **MVD:** (New Mexico) motor vehicle division

(45) **NADA:** national automobile dealers association

(46) **NMAC:** New Mexico administrative code

(47) **NMW:** New Mexico works

(48) **NOAA:** notice of adverse action

(49) **POS:** point of sale

(50) **PED:** (New Mexico) public education department

(51) **QC:** quality control

(52) **QR:** quarterly reporting

(53) **RR:** regular reporting

(54) **RRP:** refugee resettlement program

(55) **SAVE:** systematic alien verification for entitlements

(56) **SE:** self employment

(57) **SR:** semiannual reporting

(58) **SSA:** social security administration

(59) **SSI:** supplemental security income

(60) **SSN:** social security number

(61) **TANF:** temporary assis-

tance to needy families (block grant program under title IV-A of the Social Security Act)

(62) **UCB:** unemployment compensation benefits

(63) **UEI:** unearned income

(64) **USDA:** United States department of agriculture

(65) **VA:** veterans administration

(66) **WIA:** Workforce Investment Act

(67) **WID:** work incentive deduction

(68) **WPA:** work participation agreement

B. Medical abbreviations and acronyms:

(1) **CNP:** certified nurse practitioner

(2) **MD:** medical doctor

(3) **NP:** nurse practitioner

(4) **PA:** physician assistant

(5) **PN:** practical nurse

[8.106.100.8 NMAC - N, 07/01/2004; A, 02/28/2007]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.106.610 NMAC, Sections 8 and 9, effective 02/28/2007.

8.106.610.8 CASH ASSISTANCE ISSUANCE:

A. Method of payment:

[GA] Cash assistance benefits are paid by deposit of funds into an electronic benefit transfer (EBT) account.

(1) The initial month's [GA] cash assistance payment is posted to the benefit group's EBT account on the first working day after the date of authorization.

(2) Cash assistance payments are [deposited] issued into the recipient's EBT account so that the funds are available to the benefit group on the first working day of the month.

B. Benefit issuance: EBT account cards shall be issued at time of application to the authorized payee or authorized representative.

C. Replacement card: The caseworker, the HSD help desk or the contractor customer service help desk shall have a card deactivated upon request of an adult participant in the benefit group or authorized payee. The card will be deactivated immediately and a replacement card provided to the participant. Once a card is deactivated it cannot be reactivated for any reason.

[B:] D. Authorizing payments:

(1) [GA] Cash benefit payments

are authorized, changed or terminated through the department's automated eligibility system.

(2) An initial month's cash assistance payment that is issued by warrant is sent by mail on the first working day after the date of authorization.

[C:] E. Initiation of payment:

(1) The initial month's GA cash assistance payment is prorated from the date of application.

(2) A benefit group may be eligible for payment in the application month, but is not eligible for the month following the month of application.

[D:] E. Ongoing monthly issuance: Ongoing cash assistance payments are authorized in the regular monthly issuance process.

(1) The payment amount remains the same from month to month in the certification period, unless changes are made that affect eligibility or benefit amount.

(2) **Warrants:** During the monthly issuance process, if necessary, hard copy checks are written the night before the third to the last working day of the month. They are mailed so as to arrive on or about the first mail delivery day of the month.

[E:] G. Change in amount of payment:

(1) After approval, there is a continuing responsibility on the part of both the benefit group and the caseworker to make sure that eligibility and benefit amount are correctly determined. Failure on either side to recognize and carry out this responsibility can result in overpayment to the benefit group. Overpayments for any reason are charged to the benefit group and must be repaid to the department.

(2) A benefit group's cash assistance payment shall be increased or decreased after receipt and verification of information indicating that changes in a benefit group's circumstances affect the amount of assistance to which the benefit group is entitled.

(3) Changes in the payment amount shall be made in accordance with changes in program [regulations and/or the standard of need] policy.

[F:] H. Affecting changes:

(1) A change in the benefit group's circumstances may change the cash assistance amount for which the group is eligible.

(2) The cash assistance payment reduction or termination of benefits shall be effective in the month following the month the notice of adverse action expires.

(3) The cash assistance payment will be reduced in the month following issuance of a notification of change in circumstances, when the benefit group reports a change in writing, an adult has signed the written report, and the caseworker has suffi-

cient information to effect the change in benefit amount.

(4) If a change in benefit amount occurs as a result of an untimely report by the benefit group, an overpayment or underpayment may occur. If an underpayment occurs, it shall be corrected by issuing a supplemental payment effective the month following the month the change is verified. In case of an overpayment, an overpayment claim shall be established for all appropriate months and efforts shall be made to recover the overpayment from the benefit group.

[G:] L. Whereabouts unknown: [Benefits] Eligibility shall be terminated if the whereabouts of the benefit group are unknown to the department. A benefit group's whereabouts shall be considered to be unknown if:

(1) mail sent to the last known address is returned to the department indicating that the benefit group no longer lives at that address and at least 30 days have passed since the caseworker sent the mail;

(2) warrants for two consecutive months are returned to the HSD accounting section of the administrative services division; or

(3) the benefit group does not make any withdrawals from the benefit group's EBT account for 60 days or more.

[8.106.610.8 NMAC - N, 07/01/2004; A, 02/28/2007]

8.106.610.9 STALE BENEFIT ACCOUNTS: Stale benefit accounts are those cash assistance benefit accounts that have not been accessed for 90 days from the most recent date of withdrawal.

A. Offline accounts: EBT accounts which have not been accessed by the recipient in the last 90 days are considered a stale account. HSD may store stale benefits offline after notification to the household of this action.

(1) Notification: The department shall notify the household of this action before storing the benefits in an offline account and provide the necessary steps to reactivate the account.

(2) Reinstatement: The participant may contact the department or the HSD EBT help desk, the contractor customer service help desk, or the caseworker and request reinstatement of their EBT account anytime within 180 days from the initial date of benefit activity. Requests from the participant to reinstate any benefit must be received prior to the date of expungement.

B. Expungement: Cash assistance benefits which have had no activity for an excess of 180 days will be expunged. All benefits older than 180 days in the account will no longer be accessible to the household. The household loses all rights to all expunged benefits.

(1) Notification: The department shall notify the household no less than 45 days prior to the expungement of the cash assistance benefits.

(2) Payment of claims against household. The contractor shall notify the department no less than five days prior to expungement of the cash assistance benefits and any cash assistance claims against the household shall be removed from the account and applied to the claims upon expungement.

[8.106.610.9 NMAC - N, 02/28/2007]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.139.100 NMAC, Sections 7, 8 and 10, effective 2/28/2007.

8.139.100.7 DEFINITIONS

A. Definitions A-L:

(1) Adequate notice: means a written notice that includes a statement of the action HSD has taken or intends to take, reason for the action, household right to a fair hearing, name of the individual to contact for additional information, the availability of continued benefits liability of the household for any overissuances received if hearing decision is adverse to the household. An adequate notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. In all cases, participants have 13 days from the mailing date of the notice to request ~~[a fair hearing and to have benefits restored to their previous level]~~ that benefits be restored to their previous level pending the outcome of an administrative hearing.

(2) Adjusted net income: means the household's gross monthly income less the standard deduction, earned income deduction, dependent care deduction and the shelter deduction. (Medical expenses are allowed for certain eligible members as a deduction from their gross income). ~~[Thirty]~~ 30 percent of this amount subtracted from the MFSA for the household's size is its benefit amount.

(3) Application: means a written request, on the appropriate ISD form, signed by or on behalf of an individual or family, for assistance.

(4) Attendant: means an individual needed in the home for medical, house-keeping, or child care reasons.

(5) Authorized representative: means an individual designated by a household or responsible member to act on its behalf in applying for food stamp benefits,

obtaining food stamp benefits, and/or using food stamp benefits to purchase food for the household. This can include a public or private, nonprofit organization or institution providing assistance, such as a treatment or rehabilitation center[?] or shelter[?] which acts on behalf of ~~[applicants, whom resides at the facility]~~ the resident applicant.

(6) Benefit month: means the month for which food stamp benefits have been issued. This term is synonymous with issuance month defined below.

(7) Beginning month: means the first month for which a household is certified after a lapse in certification of at least one calendar month in any project area. A household is budgeted prospectively in a beginning month. A beginning month is also an initial month.

(8) Boarder: means an individual to whom a household furnishes lodging and meals for reasonable compensation. Such a person is not considered a member of the household for determining the food stamp benefit amount.

(9) Boarding house: means a commercial establishment, which offers meals and lodging for compensation with the intention of making a profit. The number of boarders residing in a boarding house is not used to establish if a boarding house is a commercial enterprise.

(10) Budget month: means the calendar month for which income and other circumstances of the household are determined in order to calculate the food stamp benefit amount. During the beginning month of application, prospective budgeting shall be used and therefore, the budget month and the issuance month are the same.

(11) Capital gains: means proceeds from the sale of capital goods or equipment.

(12) Cash assistance (CA) households: (also referred to as financial assistance) means households composed entirely of persons who receive CA payments. Cash assistance (CA) means any of the following programs authorized by the Social Security Act of 1935, as amended: old age assistance; temporary assistance to needy families (TANF); aid to the blind; aid to the permanently and totally disabled; and aid to the aged, blind or disabled. It also means general assistance (GA), cash payments financed by state or local funds made to adults with no children who have been determined disabled, or to children who live with an adult who is not related. CA households composed entirely of TANF, GA and/or SSI recipients are categorically eligible for FS.

(13) Certification: means the authorization of eligibility of a household and issuance of food stamp benefits.

(14) Certification period:

means the period assigned for which a household is eligible to receive food stamp benefits. The certification period shall conform to calendar months.

(15) Collateral contact: means an individual or agency designated by the household to provide information concerning eligibility.

(16) Communal diner: means an individual sixty (60) years of age or over who is not a resident of an institution or a boarding house, who is living alone or with a spouse, and elects to use food stamp benefits to purchase meals prepared for the elderly at a communal dining facility which has been authorized by USDA/FNS to accept food stamp benefits.

(17) Communal dining facility: means a public or private nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for SSI recipients, and their spouses; a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate state or local agency to offer meals at concession prices to elderly persons or SSI recipients and their spouses[?]. Such establishments include a facility such as a senior citizen's center, an apartment building occupied primarily by elderly persons, or any public or private nonprofit school (tax exempt) which prepares and serves meals for elderly persons.

(18) Date of ~~entry~~ admission: means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.

(19) Date of entry: means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.

~~(19)~~ **(20) Disability:** means the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment.

~~(20)~~ **(21) Disabled member:** see elderly/disabled member.

~~(21)~~ **(22) Documentation:** means a written statement entered in the case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

~~(22)~~ **(23) Drug addiction or alcoholic treatment and rehabilitation program:** means any drug addiction treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center under part B of title

XIX of the Public Health Service Act (42 U.S.C. 3004 et seq.)

~~[(23)]~~ **(24) Elderly or disabled member:**

(a) Elderly: means ~~a person who is age~~ an individual 60 years or older.

(b) Disabled: means a person who meets any of the following standards:

(i) receives supplemental security income (SSI) under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act;

(ii) receives federally or state administered supplemental benefits under section 1616a of the Social Security Act, provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act;

(iii) receives federally or state administered supplemental benefits under section 212(a) of Pub. L. 93-66;

(iv) receives disability retirement benefits from a government agency (e.g. civil service, ERA, and PERA) because of a disability considered permanent under section 221(i) of the Social Security Act;

(v) is a veteran with a service-connected or non-service connected disability rated by the veterans administration (VA) as total or paid as total by the VA under title 38 of the United States code;

(vi) is a veteran considered by the VA to be in need of regular aid and attendance or permanently homebound under title 38 of the United States code;

(vii) is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently homebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States code;

(viii) is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for service-connected death or pension benefits for a non-service-connected death under title 38 of the United States code and has a disability considered permanent under section 221(i) of the Social Security Act ("entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated, or have been approved for such payments, but are not yet receiving them); or

(ix) receives an annuity payment under section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive medicare by the railroad retirement board, or section 2(a)(i)(v) of the Railroad

Retirement Act of 1974 and is determined to be disabled based upon the criteria used under title XVI of the Social Security Act;

(x) is a recipient of interim assistance benefits pending the receipt of supplemental security income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or a recipient of disability-based state general assistance benefits provided that the eligibility to receive any of these benefits is based upon disability or blindness criteria established by the state agency which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).

~~[(24)]~~ **(25) Eligible foods:** means:

(a) any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot-food products prepared for immediate consumption;

(b) seeds and plants to grow foods for the personal consumption of eligible households;

(c) meals prepared and delivered by an authorized meal delivery service to households eligible to use food stamp benefits to purchase delivered meals, or meals served by an authorized communal dining facility for the elderly, for SSI households, or both, to households eligible to use food stamp benefits for communal dining;

(d) meals prepared and served by a drug addict or alcoholic treatment and rehabilitation center to eligible households;

(e) meals prepared and served by a group living arrangement facility to residents who are blind or disabled as found in the definition of "elderly or disabled member" contained in this section;

(f) meals prepared and served by a shelter for battered women and children to its eligible residents; and

(g) in the case of homeless food stamp households, meals prepared and served by an authorized public or private nonprofit establishment (e.g. soup kitchen, temporary shelter) approved by HSD that feeds homeless persons.

~~[(25)]~~ **(26) Encumbrance:** means debt owed on property.

~~[(26)]~~ **(27) Equity value:** means the fair market value of property, less any encumbrances owed on the property.

~~[(27)]~~ **(28) Excluded household members:** means individuals residing within a household who are excluded when determining household size, the food stamp benefit amount or the appropriate MFSA. These include ineligible aliens, individuals disqualified for failure to provide an SSN, or failure to comply with the work requirements, and those disqualified for intentional

program violation. The resources and income (counted in whole or in part) of these individuals shall be considered available to the remaining household members. (See non-household members).

~~[(28)]~~ **(29) Expedited services:** means the process by which households reporting little or no income or resources shall be provided an opportunity to participate in the FSP, no later than the seventh calendar day following the date the application was filed.

(30) Expungement: means the permanent deletion of food stamp benefits from an EBT account that is stale.

~~[(29)]~~ **(31) Fair hearing:** an administrative procedure during which a claimant and/or the claimant's representative may present a grievance to show why he/she believes an action or proposed action by HSD is incorrect or inaccurate.

~~[(30)]~~ **(32) Fair market value (FMV):** means the amount an item can be expected to sell for on the open market. The prevailing rate of return, such as square foot rental for similar usage of real property in an area.

~~[(31)]~~ **(33) Financial assistance (FA) households:** (also referred to as cash assistance) means households composed entirely of persons who receive FA payments. Financial assistance (FA) means any of the following programs authorized by the Social Security Act of 1935, as amended: old age assistance; temporary assistance to needy families (TANF); aid to the blind; aid to the permanently and totally disabled; and aid to the aged, blind or disabled. It also means general assistance (GA), cash payments financed by state or local funds, made to adults with no children who have been determined disabled, or to children who live with an adult who is not related. FA households composed entirely of TANF, GA and/or SSI recipients are categorically eligible for FS.

~~[(32)]~~ **(34) FNS:** means the food and nutrition service of the United States department of agriculture (USDA).

~~[(33)]~~ **(35) Food Stamp Act:** the Food Stamp Act of 1977 (P.L. 95-113), and subsequent amendments.

~~[(34)]~~ **(36) Fraud:** the elements of fraud are:

(a) intentionally taking anything of value;

(b) intentionally making a misrepresentation of, or failing to disclose, a material fact: with the knowledge that such a fact is material (necessary to determine initial/ongoing eligibility or benefit entitlement); and with the knowledge that the information is false; and with the intent that the information be acted upon (deceive/cheat); with reasonable reliance on the person who hears the information to accept it as the truth.

(c) In determining whether there is a "reasonable suspicion" of client fraud, particular attention shall be given to the client's intent in providing false information or withholding information. The law requires that the client acted intentionally in giving or withholding information, and with the further specific intent to deceive or cheat.

(d) The materiality of the information in question is determined by whether the information was necessary to determine eligibility or benefit amounts. However, the client must have knowledge that the information is material to the client's eligibility or benefit amount.

(e) In order to establish a "reasonable suspicion" of client fraud, there must be identifiable objective factors indicating that there is a possibility of fraud in the case. This means that there must be more than a "hunch". However, it is not necessary for the caseworker to make a determination that fraud has been actually committed.

~~(35)~~ **(37) Full time employment (FS):** working thirty (30) hours or more per week, or earning income equivalent to the minimum wage multiplied by 30 hours.

~~(36)~~ **(38) General assistance (GA) households:** means a household in which all members receive cash assistance financed by state or local funds.

~~(37)~~ **(39) Gross income:** the total amount of income that a household is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the household, but diverted by the provider. Gross income does not include specific income exclusions, such as, but not limited to, the cost of producing self-employment income, and income excluded by federal law.

~~(38)~~ **(40) Group living arrangements:** means a residential setting that serves no more than sixteen residents that is certified by DOH under regulations issued under section 1616(e) of the Social Security Act, or under standards determined by the secretary to be comparable to standards implemented by appropriate state agencies under section 1616(e) of the Social Security Act. To be eligible for food stamp benefits, a resident shall be living in a public or private non-profit group living arrangement and must be blind or disabled as defined in the definition of "elderly or disabled member" set forth at (i) through (x) of Subparagraph (b) of Paragraph ~~(23)~~ **(24)** of Subsection A of 8.139.100.7 NMAC.

~~(39)~~ **(41) Head of household:** the household is the basic assistance unit for

the food stamp program. The household has the right to select the head of household in accordance with the CFR 273.1 (d).

~~(40)~~ **(42) Homeless individual:** means an individual who lacks a fixed and regular nighttime residence, or an individual whose primary nighttime residence is:

(a) a supervised shelter providing temporary accommodations (such as a welfare hotel or congregate shelter);

(b) a halfway house or similar institution providing temporary residence for individuals intended to be institutionalized;

(c) a temporary accommodation for no more than 90 days in the residence of another individual, beginning on the date the individual moves into the temporary residence; or

(d) a place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).

~~(41)~~ **(43) Homeless meal provider:** means a public or private non-profit establishment, (e.g., soup kitchen, temporary shelter), approved by an appropriate state agency, that feeds homeless persons.

~~(42)~~ **(44) Immigrant:** means a lawfully admitted alien who entered the U.S. with the expressed intention of establishing permanent residence as defined in the federal act.

~~(43)~~ **(45) Immigration and naturalization service (INS):** a division of the U.S. department of justice.

~~(44)~~ **(46) Ineligible alien:** means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

~~(45)~~ **(47) Income:** means all monies received by the household from any source, excluding only the items specified by law or regulation. Income is also defined as any monetary gain or benefit to the household.

~~(46)~~ **(48) Income and eligibility verification system:** means a system of information acquisition and exchange for purposes of income and eligibility verification which meets the requirements of section 1137 of the Social Security Act, referred to as IEVS.

~~(47)~~ **(49) Initial month:** means the first month for which a first-time household is certified for participation in the food stamp program. An initial month is also a month in which a household is certified following a break in participation of one calendar month or longer. For migrant or seasonal farm worker households, an initial month shall only be considered if there has been an interruption in certification of at least one calendar month.

~~(48)~~ **(50) Inquiry:** means a

request for information about eligibility requirements for a cash, medical, or food assistance program that is not an application. (although the inquiry may be followed by an application).

~~(49)~~ **(51) Institution of higher education:** means any institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

~~(50)~~ **(52) Institution of post-secondary education:** means an institution of post-secondary education and any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or provides a program of training to prepare students for gainful employment.

~~(51)~~ **(53) Irrevocable trust funds:** means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

~~(52)~~ **(54) Issuance month:** means the calendar month for which food stamps are issued. In prospective budgeting, the budget and issuance months are the same. In retrospective budgeting, the issuance month follows the budget month.

~~(53)~~ **(55) Low-income household:** means a household whose annual income does not exceed 125~~[%]~~ percent of the office of management and budget poverty guideline.

B. Definitions M-Z:

(1) Maximum food stamp allotment (MFSA): the diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child ~~[6]~~ **[6]** six through ~~[8]~~ **[8]** eight, and a child ~~[9]~~ **[9]** nine through 11 years of age. The cost of such a diet shall be the basis for uniform food stamp benefit amounts for all households, regardless of their actual composition. In order to develop maximum food stamp benefit amounts, the USDA makes adjustments for household size taking into account the economies of scale and other adjustments as required by law. The MFSA is used to determine if a boarder is paying reasonable compensation for services. The maximum food stamp allotment (MFSA) was the thrifty good plan (TFP).

(2) Meal delivery service: means a political subdivision, a private non-profit organization, or a private establishment with which a state or local agency has contracted for the preparation and delivery

of meals at concession prices to elderly persons, and their spouses, and to the physically or mentally handicapped, and to persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

(3) Medicaid: medical assistance under title XIX of the Social Security Act, as amended.

(4) Migrant/migrant household: means an individual who travels away from home on a regular basis with a group of laborers to seek employment in an agriculturally related activity. A migrant household is a group that travels for this purpose.

(5) Mixed households: means those households in which some but not all of the members receive cash assistance benefits.

(6) Net monthly income: means gross nonexempt income minus the allowable deductions. It is the income figure used to determine eligibility and food stamp benefit amount.

(7) Non-cash assistance (NCA) households: means any household, which does not meet the definition of a cash assistance household, including households composed of both cash assistance and NCA members (mixed household). Same as non-financial households (NFA).

(8) Non-financial assistance (NFA) households: means any household, which does not meet the definition of a financial assistance household, including households composed of both cash assistance and NFA members (mixed household). Same as non-cash households (NCA).

(9) Nonhousehold members: persons residing with a household who are specifically excluded by regulation from being included in the household certification, and whose income and resources are excluded. Nonhousehold members include roomers, boarders, attendants, and ineligible students. Included in this classification are institutionalized household members such as children attending school away from home and members who are hospitalized or in a nursing home.

(10) Overissuance: means the amount by which food stamp benefits issued to a household exceed the amount the household was eligible to receive.

(11) Period of intended use: means the month in which the benefits are issued if issued before the 20th of the month. For benefits issued after the 20th of the month, the period of intended use is the rest of the month and the following month.

(12) Principal wage earner: means the household member with the greatest amount of earned income in the two months preceding a determination that a program rule has been violated. This applies only if the employment involves 20

hours or more a week or pays wages equivalent to the federal minimum wage multiplied by 20 hours. In making this evaluation, the entire household membership shall be considered, even those who are excluded or disqualified but whose income must be counted for eligibility and benefit amount determination. For purposes of determining noncompliance with the food stamp work requirements, including [E&T] employment and training components, voluntary quit, and work-fare, the head of household is the principal wage earner unless the household has selected an adult parent of children (of any age) or an adult with parental control over children (under age 18) as the designated head of household as agreed upon by all adult members of the household. A person of any age shall not be considered the principal wage earner if they are living with a parent or person fulfilling the role of parent, if the parent or parent-substitute is:

- (a) registered for employment;
- (b) exempt because of Title IV compliance;
- (c) in receipt of UCB or is registered as part of the UCB process; or
- (d) employed or self-employed a minimum of 30 hours a week or receiving income at the federal minimum hourly rate multiplied by 30 hours.

(13) Project area: means the county office or similar political subdivision designated as the unit for FSP operations.

(14) Prospective budgeting: means the computation of a household's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

(15) Quality control (QC): federally mandated as part of the performance reporting system whereby each state agency is required to review a sample of active cases for eligibility and benefit issuance, and to review a sample of negative cases for correct application of policy. The objectives are to determine a state's compliance with the Food Stamp Act and CFR regulations, and to establish the basis for a state's error rate, corrective action to avoid future errors, and liability for errors in excess of national standards, or eligibility for enhanced federal funding if the error rate is below national standards.

(16) Quarterly reporting: means a reporting requirement that allows a household to submit a report form every third month during the certification period. These households are required to report changes only at each quarterly report.

(17) Real property: means land, buildings, and whatever is built on or affixed to the land.

(18) Recipient: means a person

receiving food stamp benefits. (same as a participant.)

(19) Refugee: means a lawfully admitted individual granted conditional entry into the U.S.

(20) Reasonable compensation: means a boarder payment, in cash, equivalent to the MFSA for the number of boarders.

(21) Regular reporting: means a reporting requirement in which a household is not required to meet semiannual reporting requirements, and must report a change within ~~[40]~~ ten days of the date the change becomes known to the household.

(a) A financial change becomes known to the household when the household receives the first payment attributed to an income or resource change, or when the first payment is made for an allowable expense.

(b) A non-financial change, including but not limited to, a change in household composition or a change in address, becomes known to the household on the date the change takes place.

(22) Retail food store: means:

(a) an establishment or recognized department of an establishment, or a house-to-house trade route, whose eligible food sales volume, as determined by visual inspection, sales records, purchase records, or other inventory or accounting record keeping methods that are customary or reasonable in the retail food industry, is more than 50 percent staple food items for home preparation and consumption;

(b) public or private communal dining facilities and meal delivery services; private nonprofit drug addict or alcoholic treatment and rehabilitation programs; publicly operated community mental health centers which conduct residential programs for drug addicts and/or alcoholics;

(c) public or private nonprofit group living arrangements, or public or private nonprofit shelters for battered women and children, or public or private nonprofit establishments, approved by HSD, or a local agency, that feed homeless persons;

(d) any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; a farmer's market.

(23) Retrospective budgeting: means the computation of a household's benefits for an issuance month based on actual income and circumstances that existed in the previous month, the "budget" month.

(24) Self-employed: an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income. The individual is not eligible to draw UCB by virtue of their job efforts.

(25) Semiannual reporting: means a reporting requirement that allows a 12-month certification period and requires a household to submit a report in the sixth month of the certification period. During the certification period, a household on semiannual reporting is only required to report when the household's income reaches or exceeds 130[~~4~~] percent of the federal poverty guideline for the size of the household.

(26) Shelter for battered women and children: means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(27) Sponsor: means a person who executed an affidavit(s) of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission to the United States as a permanent resident.

(28) Sponsored alien: means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Subsection 101(a)(15) and Subsection 101(a)(2) of the Immigration and Nationality Act.

(29) Spouse: means either of two individuals who:

(a) would be defined as married to each other under applicable state law; or

(b) are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

(30) Stale: means EBT accounts which have not been accessed, no withdrawal activity, by the household in the last 90 days from the most recent date of withdrawal.

[(30)] (31) Standard utility allowance (SUA): means an average utility amount used year round that includes the actual expense of heating and cooling fuel, electricity (apart from heating or cooling), the basic service fee for one telephone, water, sewerage, and garbage and trash collection. This amount is adjusted annually to reflect changes in expenses. A cooling expense is a verifiable utility expense relating to the operation of air conditioning.

[(34)] (32) State wage information collection agency: the wage information collection agency for the state of New Mexico is the department of labor (DOL), employment security division (ESD) which administers the state employment compensation law and which provides a quarterly report of employment related income and eligibility data.

[(32)] (33) Striker: means anyone involved in a strike or concerted work stoppage by employees (including stoppage

due to the expiration of a collective bargaining agreement) and any concerted slow down or other concerted interruption of operations by employees.

[(33)] (34) Student: means an individual attending school at least half time, as defined by the institution; any kindergarten, preschool, grade school, high school, vocational school, technical school, training program, college, or university.

[(34)] (35) Supplemental security income (SSI): means monthly cash payments made under the authority of:

(a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled; or

(b) section 1616(a) of the Social Security Act; or

(c) section 212(a) of P.L. 93-66.

[(35)] (36) SSI household: means a household in which all members are applicants or recipients of SSI. An SSI household may also apply for food stamps through a social security office. The application must be forwarded to the appropriate food stamp (ISD) office for processing. SSI households are categorically eligible.

[(36)] (37) Supplementary unemployment benefits (SUB): part of the guaranteed annual wage provisions in the auto industry whereby the company supplements state UCB to insure that laid off workers receive a guaranteed amount of income during the layoff period.

[(37)] (38) Thrifty food plan (TFP): see maximum food stamp allotment.

[(38)] (39) Transitional housing: housing is transitional if its purpose is to facilitate the movement of homeless individuals and families to permanent housing within 24 months, or such longer period as is determined necessary. All types of housing meant to be transitional should be considered as such for the purpose of determining exclusion. The definition does not exclude specific types of housing and does not require the presence of cooking facilities in a dwelling.

[(39)] (40) Vehicles: means a mode of transportation for the conveyance of passengers to or from employment, daily living, or for the transportation of goods. For purposes of the food stamp program boats, trailers, and mobile homes shall not be considered as vehicles.

[(40)] (41) Verification: means the use of third-party information or documentation to establish the accuracy of statements on the application.

[8.139.100.7 NMAC - Rn, 8.139.650.7 NMAC & A, 02/14/2002; A, 01/01/2004; A, 02/28/2007]

8.139.100.8 ABBREVIATIONS & ACRONYMS:

A. Abbreviations and

acronyms:

(1) **ABAWD:** able bodied adults without dependents

(2) **AFDC:** aid to families with dependent children (replaced by TANF effective July 1, 1997)

(3) **BIA-GA:** bureau of Indian affairs-general assistance

(4) **CA:** cash assistance (same as financial assistance)

(5) **CE:** categorical eligibility or categorically eligible

(6) **CFR:** code of federal regulations

(7) **CPI-U:** consumer price index for urban consumers

(8) **CS:** child support

(9) **CSED:** (HSD) child support enforcement division

(10) **CYFD:** (New Mexico) children youth & families department

(11) **DOH:** (New Mexico) department of health

(12) **DOJ:** (United States) department of justice

(13) **DOL:** (New Mexico) department of labor [(formerly ESD)]

(14) **DOT:** dictionary of occupational titles

(15) **DRIPS:** disqualified recipient information processing system

(16) **E&T:** employment and training

(17) **EBT:** electronic benefit transfer

(18) **EC:** employment counselor

(19) **EI:** earned income

(20) **EW:** eligibility worker (now FAA or caseworker)

(21) **FA:** financial assistance (same as cash assistance)

(22) **FAA:** family assistance analyst (caseworker)

(23) **FCS:** food and consumer services of the USDA, now FNS

(24) **FFY:** federal fiscal year

(25) **FMV:** fair market value

(26) **FNS:** food and nutrition service

(27) **FSP:** food stamp program

(28) **GA:** general assistance

(29) **GED:** general equivalency degree

(30) **HHS:** (U.S. [dept. of]) health and human services

(31) **HSD:** (New Mexico) human services department

(32) **HUD:** (U.S. [dept. of]) housing and urban development

(33) **IEVS:** income and eligibility verification system

(34) **INS:** (U.S.) immigration and naturalization service

(35) **IPV:** intentional program violation

(36) **ISD:** (HSD) income support division

(37) **ISD2:** integrated services delivery for ISD

(38) **ISS:** income support specialist (now FAA or caseworker)

(39) **JOBS:** jobs opportunities and basic skills (a work program under AFDC)

(40) **JTPA:** Job Training Partnership Act (now WIA)

(41) **LIHEAP:** low income home energy assistance program

(42) **LITAP:** low income telephone assistance program

(43) **MFSA:** maximum food stamp allotment (benefit amount)

(44) **MRRB:** monthly reporting and retrospective budgeting

(45) **MVD:** (New Mexico) motor vehicle division

(46) **NADA:** national automobile dealers association

(47) **NFA:** nonfinancial assistance (same as non-cash assistance (NCA))

(48) **NMW:** New Mexico works

(49) **QC:** quality control

(50) **QR:** quarterly reporting or quarterly reporters

(51) **RR:** regular reporting or regular reporters

(52) **RSVP:** retired seniors volunteer program

(53) **SAVE:** systematic alien verification for entitlements

(54) **SR:** semiannual reporting

(55) **SSA:** social security administration

(56) **SSI:** supplemental security income

(57) **SSN:** social security number

(58) **SUA:** standard utility allowance

(59) **SWICA:** state wage information collection agency

(60) **TANF:** temporary assistance to needy families (block grant program under Title IV-A of the Social Security Act)

(61) **TAPP:** tribal assistance project program (Navajo)

(62) **TFP:** thrifty food plan (now the maximum food stamp allotment)

(63) **UCB:** unemployment compensation benefits

(64) **USDA:** U. S. department of agriculture

(65) **VA:** veterans administration

(66) **WIA:** Workforce Investment Act (formally JTPA)

B. [Reserved]

[8.139.100.8 NMAC - Rn, 8.139.650.8 NMAC & A, 02/14/2002; A, 01/01/2004; A, 02/28/2007]

8.139.100.10 PROGRAM OVERVIEW

A. **Establishment of the food stamp program:** Sec. 4 [2013] (a) of

the act provides that subject to availability of funds appropriated under section 18, the secretary is authorized to formulate and administer a food stamp program under which eligible households within a state be provided an opportunity to obtain a more nutritious diet through the issuance to the household of an allotment.

B. State participation: A state is prohibited from participating in the food stamp program if it is determined that state or local sales taxes are collected on purchases of food made with coupons issued under the act.

C. Retail stores: [Coupons] Food stamp benefits used by households shall be used only to purchase food from retail food stores which have been approved for participation in the food stamp program. [Coupons] Benefits issued and used as provided in the act shall be redeemable at face value by the secretary through the facilities of the treasury of the United States.

[2/01/95; 8.139.100.10 NMAC - Rn, 8.139.100.9 NMAC, 02/14/2002; A, 02/28/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.139.610 NMAC, Sections 8, 9, 10, 12, 14 and 15, effective 02/28/2007.

8.139.610.8 [ALTERNATE ISSUANCE SYSTEMS]

A. Alternate issuance is a method, other than mail delivery or electronic benefit transfer (EBT), for a household to receive its food stamp benefits.

(1) The income support specialist (ISS) will offer to place a household in an alternate issuance system after the first report of nonreceipt of food stamp benefits.

(2) When circumstances indicate that the household will not receive the food stamp benefits through normal mail issuance, the household will be placed on an alternate issuance system.

(3) The ISS will keep the household on an alternate issuance system for the length of time the ISS determines necessary.

(4) The ISS may return the household to the regular mail issuance system if it is determined that circumstances leading to the loss have changed and the risk of loss is reduced.

(5) The placement of a household on an alternate issuance system and the length of time a household is on this system is not subject to the fair hearing process.

B. Optional use of alternate system: The human services department (HSD) uses alternate issuance systems in specific situations as described below.

~~Local offices and individual households will be notified when alternate issuance systems are used.~~

~~(1) Food stamp benefits will be sent by certified mail, rather than regular mail, for households living in specified high risk areas with a history of repeated non-receipt of benefits.~~

~~(2) A household has the option of requesting that its food stamp benefits be mailed to the local ISD office if mail theft is likely.~~

~~(3) All food stamp benefit amounts of more than \$325 are sent by certified mail. In counties where mail theft is excessive, food stamp benefits of lower dollar amounts will be sent by certified mail.~~

~~**C. Mandatory use of alternate system:** After two reports of non-delivery and requests for replacement of food stamp benefits because of nonreceipt, a household will automatically be switched to alternate issuance. Reports of nondelivery can include either full or partial food stamp benefit amounts. A household's food stamp benefits will be sent either to the local ISD field office or by certified mail. All replacements will be sent using alternate issuance.~~

~~**D. Electronic benefit transfer (EBT):** Effective September 1990, certain county offices began participating in the EBT program. In those project areas, food stamp benefits are deposited directly into a household's special EBT food stamp account. The household may then access the account for food purchases at retailers authorized by FNS to accept food stamp benefits. The household will be able to access the account by means of a debit card issued by the local ISD field office. The card is used at a point of sale (POS) terminal at the checkout counter. A household will have access to its food stamp benefit balance. The issuance date for a household will be determined by using the last two digits of the social security number of the individual to whom the food stamps benefits are issued.] **BENEFIT ISSUANCE SYSTEM**~~

~~**A. Benefit issuance:** Food stamp benefits are issued through a direct deposit into a household's electronic benefit transfer (EBT) food stamp account.~~

~~(1) The benefits are maintained in a central database and accessed by the household through an individual debit card issued to the household.~~

~~(2) The issuance date of monthly benefits is determined by the last two digits of the social security number of the payee for the eligible household receiving food stamp benefits. The issuance date for the initial month benefits are issued no later than the following workday after the application is approved.~~

~~**B. Initial issuance of**~~

EBT card: The EBT card is issued to the designated payee of the eligible household or to the designated authorized representative.

(1) The EBT card is issued to the payee or designated authorized representative during the application process prior to the application being approved. The applicant or recipient shall receive training on the use of the EBT card prior to activation of the EBT card.

(2) The EBT card shall be issued to the payee for an eligible household through the most effective means identified by HSD which may include issuance at the county office or by mail.

(3) The applicant or recipient must verify his or her identity.

(4) The payee for the eligible household may select the four-digit personal identification number that will allow access to the household's food stamp benefits..

C. Replacement of the EBT card: The recipient or designated authorized representative shall be instructed on the procedure for replacement of an EBT card that has been lost, stolen or destroyed.

(1) The recipient or designated authorized representative may report a lost, stolen or destroyed EBT card through the HSD EBT contractor customer service help desk, HSD EBT customer service help desk or the their caseworker.

(2) The lost, stolen, or destroyed EBT card shall be deactivated prior to a replacement card being issued to the household.

(3) HSD shall issue a replacement EBT card within two work-days following the notice by the household to HSD.

D. Inactive EBT accounts: EBT accounts which have not been accessed by the recipient in the last 90 days are considered a stale account. HSD may store stale benefits offline after notification to the household of this action.

(1) The notification to the household shall include the reason for the proposed action and the necessary steps required by the recipient to reactive the account.

(2) The recipient may request reinstatement of their EBT account anytime within 364 days after the date of the last benefit account activity.

E. EBT benefit expungement: HSD may expunge benefits that have not been accessed by the household after a period of 365 days. HSD must attempt to notify the household prior to expungement. Expunged benefits are no longer available to the household. Requests for reactivation must be received prior to expungement and a determination shall be made by the director or designee of the income support division.

[02/01/95; 8.139.610.8 NMAC - Rn, 8 NMAC 3.FSP.610, 05/15/2001; A, 02/28/2007]

8.139.610.9 IDENTIFICATION CARDS:

A. The ~~[ISS will]~~ caseworker shall provide a food stamp ID card to each certified household as proof of program eligibility.

(1) The ID card is issued in the name of the household member to whom the food stamp benefits are issued.

(2) The ID card contains a space for the name and signature of the household member to whom the food stamp benefits are issued, and for any authorized representative designated by the household.

(3) Any individual listed on the ID card must sign the ID card before ~~[he/she can use it]~~ that individual can use it.

(4) If a household does not designate an authorized representative, the ~~[ISS will]~~ caseworker shall void that section on the ID card to prevent names and signatures from being entered at a later date.

B. The ~~[ISS will]~~ caseworker shall issue an ID card to the household at initial certification, recertification, and when the ID card has been lost, ~~[mutilated]~~ stolen, or destroyed.

C. A replacement ID card will be issued when there is a change in the household member to whom the food stamp benefits are issued, or when the ~~[ISS]~~ caseworker determines that a new ID card is needed.

D. Whenever possible, the ~~[ISS will]~~ caseworker shall collect the ID card being replaced.

[02/01/95; 8.139.610.9 NMAC - Rn, 8 NMAC 3.FSP.611, 05/15/2001; A, 02/28/2007]

8.139.610.10 ISSUANCE DATE:

A. HSD is responsible for timely and accurate benefit issuance to certified eligible households. A participating household has a definite issuance date so that food stamp benefits are received on or about the same time each month. The issuance date is based on the last two digits of the social security number of the individual to whom the food stamps are issued. A household must have the opportunity to participate before the end of each issuance month.

B. Opportunity to participate: Opportunity to participate means a household is provided with food stamp benefits no later than 30 calendar days after the date an application is filed.

(1) **Newly certified household:** All newly certified households must be given an opportunity to participate no later than ~~[thirty (30)]~~ 30 calendar days following the date the application was filed. ~~[H~~

~~mail issuance situations, a household has not been given the opportunity to participate within 30 days if benefits are mailed on the 29th or 30th day. Neither has an opportunity to participate been given if benefits are mailed on the 28th day but are not available on the 30th day.]~~ In EBT issuance situations, benefits must be authorized by the 29th day to be available to the household on the 30th day.

(a) Normal timeframe: An applicant household will receive benefits for the initial month if:

(i) the application and interview process is completed prior to the end of the initial month; and

(ii) all verification is provided prior to the end of the initial month; and

(iii) the household is determined to be eligible to receive benefits for the initial month;

(iv) if the household is eligible for the second month, the benefits will be issued based on the household's designated issuance date.

(b) A household will receive two month's benefits at the same time if:

(i) the application and interview process is completed in the initial month or following month; and

(ii) all verification is provided in the month following the initial month and within 30 days of the date of application; and

(iii) the household is determined to be eligible to receive benefits for the initial month and the following month;

(iv) if the household is eligible for the third month, benefits for the third month will be issued based on the household's designated issuance date.

(c) Expedited households:

Households eligible for expedited service will receive food stamp benefits in the initial month within the expedited time limit. Benefits for the following month will be received on the household's designated issuance date if all postponed verification is provided before the end of the initial month. ~~[For example: expedited benefits are issued on June 4th. Verification of rent, utilities, and bank balance is postponed. The household provides the documents on June 20th. The household will receive July benefits on its designated issuance date. If verification is received in the month following the initial month and within 30 days of the application date, food stamp benefits must be authorized within five working days of the date verification is received.]~~

[02/01/95, 01/01/97, 07/01/98; 8.139.610.10 NMAC - Rn, 8 NMAC 3.FSP.612, 05/15/2001; A, 02/28/2007]

8.139.610.12 GENERAL (BENE-

FIT AMOUNT)

A. The food stamp benefit amount to be issued depends on the number of eligible members in the household and the net monthly income used to determine eligibility.

(1) HSD uses a 30-day calendar month to determine a household's food stamp benefit amount. A household applying on the 31st of the month will be treated as if it applied on the 30th.

(2) When a household is determined eligible, the food stamp benefit amount is calculated, issuance authorization is processed that night, and food stamp benefits are issued the following work day.

B. Maximum food stamp benefit amount:

(1) The maximum food stamp allotment (MFSA or maximum food stamp benefit amount) "means the diet required to feed a family of four persons consisting of a man and a woman 20 through 30 years of age, a child [6] six through [8] eight years of age, and a child [9] nine through 11 years of age determined in accordance with USDA calculations". The cost of such a diet is the basis for determining uniform food stamp benefit amounts for all households regardless of their actual composition. To develop maximum food stamp benefit amounts, USDA makes adjustments in the MFSA taking into account economies of scale and other adjustments required by law.

(2) Except when food stamp benefits are prorated and when reductions are made at the national level, a household's monthly food stamp benefit amount is equal to the MFSA for the household's size reduced by thirty percent (30%) of its net monthly income. The basis of issuance tables (supplement 400-B) contain the maximum food stamp benefit amounts by household size and income.

(3) If the tables (supplement 400-B) are not used, the maximum food stamp benefit amount can be calculated by multiplying a household's net income by thirty percent [30%], rounding the result up to the next whole dollar, and subtracting that amount from the MFSA for the appropriate household size (Subsection E of 8.139.500.8 NMAC).

C. Initial month: A household's food stamp benefit amount for the initial month of certification will be based on the day of the month the household applies for food stamp benefits. The household receives food stamp benefits from the date of application to the end of the month, unless the applicant household consists of residents of a public institution.

(1) **Applying from institutions:** For households applying for SSI and food stamp benefits before release from an institution, the food stamp benefit amount for the initial month of certification will be

based on the date of the month the household is released from the institution. The household will receive food stamp benefits from the date of the household's release from the institution to the end of the month.

(2) **Benefits less than \$10:** If the initial month's calculations yield a food stamp benefit amount of less than \$10, then no issuance will be made for the initial month. For households entitled to no food stamp benefits in the initial month, but eligible in subsequent months, the [ISS will] caseworker shall certify a household beginning with the month of application.

(3) **Combined issuance:** A household will receive benefits for the month of application and the following month, and without regard to the household's designated issuance date in the second month, when the household has completed the application and interview process; provided all required verification; has been determined eligible for food stamp benefits in the initial month and the following month; and approval occurs in the month following the month of application.

(4) **Not entitled to combined issuance:** The following households will not be entitled to combined issuance of the food stamp benefits:

(a) a household certified for one month only;

(b) a household determined ineligible for the month of application, but eligible for the second month;

(c) a household entitled to expedited service who must provide postponed verification to obtain the second month's food stamp benefits; and

(d) a household that has been recertified.

D. Expedited service: Households eligible for expedited service will receive benefits for the application month. All verification, except identification, may be postponed. If certified for more than one month, benefits for the following month are held until postponed verification is provided. If verification is not provided, benefit issuance may not continue. The case is closed on the 30th day after application.

E. Minimum benefit amount:

(1) Except during an initial month, all eligible one- and two-person households, including categorically eligible households, will receive a minimum monthly food stamp benefit amount of \$10.00.

(2) All eligible households with three or more members entitled to \$1.00, \$3.00, and \$5.00 food stamp benefit amounts will receive food stamp benefit amounts of \$2.00, \$4.00, and \$6.00, respectively, to correspond with current coupon book denominations.

[02/01/95, 07/01/98; 8.139.610.12 NMAC

- Rn, 8 NMAC 3.FSP.620, 05/15/2001; A, 02/28/2007]

8.139.610.14 REPLACEMENT OF [COUPONS] BENEFITS:

A. Conditions for replacement: ~~[The replacements listed below are always sent to the local county office to be claimed by the household. The household must be informed that the replaced issuance will not be mailed to the household's mailing address.] Subject to certain restrictions, households may be authorized a replacement issuance when the household reports the food purchased with food stamp benefits was destroyed in a household misfortune or natural disaster. The loss must be reported within ten calendar days of the day the food purchased with food stamp benefits was destroyed. The loss is ineligible for replacement if the loss is not reported timely.~~

(1) **Replacing benefits:** Subject to certain restrictions, households may be [issued] authorized a replacement issuance of food stamp benefits when the household reports that [:

~~(a) food stamp benefits were not received in the mail, or were stolen from the mail;~~

~~(b) food stamp benefits were destroyed in a household misfortune or a natural disaster;~~

~~(c) food stamp benefits were improperly manufactured or mutilated;~~

~~(d) food purchased with food stamp benefits was destroyed in a household misfortune or natural disaster;~~

~~(e) the household received only a partial food stamp benefit amount in a month.] food purchased with the food stamp benefits was destroyed in a household misfortune or natural disaster.~~

(2) **Reporting the loss:** The loss of food stamp benefits must be reported in a timely manner by the household. The report will be considered timely if [:

~~(a) in mail issuance counties, the loss is reported within the period of intended use, which is the issuance month if the original issuance is made from the 1st through the 20th of the month; if the original issuance is made after the 20th of the month, the period of intended use is through the last day of the next month;~~

~~(b) the loss is reported within 10 days of the date the food stamp benefits or the food purchased with food stamp benefits is destroyed in a household misfortune.] the loss is reported within 10 days of the date the food purchased with food stamp benefits is destroyed in household misfortune or natural disaster.~~

(3) **Ineligible for replacement:** Food stamp benefits will not be replaced if:
(a) the household reports that the food stamp benefits were lost, stolen, or

misplaced after receipt;

(b) the household reports that the food stamp benefits were destroyed after receipt in an event other than a household misfortune or natural disaster; or

~~[(c) food stamp benefits sent by certified mail were signed for by anyone residing with or visiting the household;~~

~~(d) (c) the loss was not timely reported by the household.~~

(4) Household responsibilities: To qualify for a replacement, the household must:

(a) report the loss in a timely manner, either orally or in writing; and

(b) sign an affidavit attesting to the loss of the household's food stamp benefits.

(5) HSD responsibilities: HSD shall issue the replacement food stamp benefit amount if warranted, within ~~[ten (10)]~~ 10 days after the report of ~~[nonreceipt or loss, [15 days for benefits sent by certified or registered mail,]]~~ or within two ~~[(2)]~~ working days of the date ~~[the food assistance bureau]~~ that HSD receives the signed affidavit, whichever is later. Replacement of ~~[mutilated]~~ food stamp benefits will be delayed until a determination of the value of the ~~[coupons] benefits~~ can be made.

(6) Affidavits: If a signed affidavit is not received by the ~~[ISS] caseworker~~ within 10 days of the date the loss is reported, there will be no replacement. If the tenth day falls on a weekend or holiday, the deadline is the day after the weekend or holiday. The affidavit is retained in the client case record. It attests to the nonreceipt, theft, loss or destruction of the original issuance and specifies the reason for the replacement.

(7) Authorization:

~~(a) Benefits not received in, or stolen from, the mail:~~ Replacement issuances will be limited to a total of two replacements in six months.

~~(b) Partial receipt:~~ No limit will be placed on the number of replacements of partial food stamp benefit amounts if the partial amounts were caused by agency error.

~~(c) Benefits destroyed:~~ Replacement issuances will be limited to two replacements in six months for food stamp benefits reported as destroyed in a household misfortune. This limit is in addition to the limit for benefits reported as not received in, or stolen from, the mail.

~~(d) No limit to replacement:~~ There will be no limit on the number of replacements of:

~~(i) food stamp benefits which were improperly manufactured or mutilated; or~~

~~(ii) food purchased with food stamp benefits which was destroyed in~~

~~a household misfortune.] There will be no limit on the number of replacements a household may be authorized for food purchased with food stamp benefits which was destroyed in a household misfortune or natural disaster.~~

~~**[B. Destroyed food stamp benefits or food:**~~

~~(1) Before replacing destroyed food purchased with food stamp benefits, the ISS will determine that the destruction occurred in a household misfortune or disaster such as, but not limited to, a fire or flood. This is verified through:~~

~~(a) collateral contacts;~~

~~(b) documentation from a community agency such as but not limited to the fire department or the red cross;~~

~~(c) a home visit.~~

~~(2) Destroyed food stamp benefits:~~ A household may request a replacement of that portion of its food stamp benefit amount received but subsequently completely destroyed in a household misfortune or a disaster, such as a fire or flood. The replaced amount cannot exceed one month's food stamp benefit amount issued to the household.

~~(3) Food destroyed in a disaster:~~ A replacement of the actual value of the loss, not to exceed one month's food stamp benefit amount, may be issued if food purchased with food stamp benefits is destroyed in a household misfortune or disaster affecting a participating household. HSD will provide a replacement issuance within 10 days of a reported loss. This provision applies in cases of an individual disaster, such as a fire, as well as in natural disasters affecting more than one household. In cases where FNS has issued a disaster declaration and a household is eligible for emergency food stamp benefits, the household cannot receive both the disaster food stamp benefit and a replacement benefit for a household misfortune.

~~C. Improperly manufactured or mutilated coupons:~~ Coupons received by a household and subsequently mutilated or found to be improperly manufactured will be replaced in the amount of the loss to the household. A coupon is replaced if three fifths of the coupon is presented by the household.

~~(1) Determining value:~~ The ISS will examine any improperly manufactured or mutilated coupons to determine the validity of the claim and the amount to be replaced. The value of the improperly manufactured or mutilated coupons that can be determined is replaced in a dollar for dollar exchange. Form FNS 135, affidavit of return or exchange of food coupons, is used for replacement of food stamp benefits.

~~(2) When value cannot be determined:~~ If the value of a coupon cannot be

~~determined after exhausting all available means, the food assistance bureau will forward the improperly manufactured or mutilated coupons to FNS for a determination of the value by the U.S. bureau of engraving and printing.~~

~~D. Exchange of old series coupons:~~ Households with old series coupons are entitled to a dollar for dollar exchange of old series coupons for new series coupons. Old series coupons are exchanged using form FNS 135, affidavit of return or exchange of food coupons. The form is forwarded to the food assistance bureau for processing.

~~E. Return of unused coupons:~~ Occasionally, a household returns unused food stamp benefits, or food stamp benefits are returned because the owner is unknown, cannot be located, is incapacitated and cannot participate, or the household decides to quit the program voluntarily. Food stamp benefits returned to the local county office must be forwarded to the food assistance bureau using form FNS 135, affidavit of return or exchange of food coupons.

~~F. Misplaced or stolen coupons:~~ HSD will not replace food stamp benefits that are misplaced, lost, or stolen after receipt by the household.

~~G. Food stamp benefits lost in mail:~~ The ISS will replace food stamp benefits lost in the mail or stolen from the mail before receipt by the household only under the conditions described below:

~~(1) Period of intended use:~~ Food stamp benefits will be replaced only if the report of nonreceipt is made during the period of intended use and the household requesting the replacement has not already received two replacements in the previous six (6) months. The period of intended use is defined as follows:

~~(a) For an original issuance mailed on or before the 20th of the month, the period of intended use is the month of issuance.~~

~~(b) For an original issuance after the 20th of the month the period of intended use is the remainder of the month until the last day of the following month.~~

~~(2) Establishing eligibility:~~ The ISS must determine:

~~(a) if food stamp benefits were validly issued;~~

~~(b) if food stamp benefits were actually mailed;~~

~~(c) if enough time has elapsed for delivery;~~

~~(d) if food stamp benefits were returned in the mail;~~

~~(e) the value of the benefit amount not received by a household if delivery of a partial benefit amount is~~

reported:

~~(3) Authorization of replacement:~~ The ISS must authorize a replacement if the household is eligible, place the household on an alternate issuance system, if warranted, and take corrective action, such as correcting the address on the client computer file or reissuing the food stamp benefits if returned to the mail issuance unit at the food assistance bureau.

~~(4) Affidavit of non receipt:~~

~~(a) If the ISS determines that the food stamp benefits were validly issued, actually mailed, and have not been returned to food assistance bureau by the U.S. postal service, an affidavit of loss by mail or destruction (ISD446) must be prepared.~~

~~(i) The affidavit is forwarded to the food assistance bureau for processing. Five mailing days must elapse from the date the food stamp benefits were issued before the household can sign an affidavit.~~

~~(ii) The affidavit may be mailed to the household if a household member is unable to come into the local county office because of age, handicap or distance from the office, and is unable to appoint an authorized representative to do so.~~

~~(iii) The authorized representative may sign the affidavit for the household.~~

~~(b) An affidavit of nonreceipt is not required when the original issuance was improperly manufactured or mutilated, or if the original issuance has been returned by the U.S. postal service.~~

~~H. Partial food stamp benefit amounts:~~

~~(1) If delivery of a partial food stamp benefit amount is reported by the household, the ISS will follow the above procedures, except that the ISS must also determine the value of the food stamp benefit amount which was not delivered.~~

~~(2) The report of the partial food stamp benefit amount must be corroborated by evidence that the loss was caused by:~~

~~(a) damage in the mail before delivery; or~~

~~(b) a discrepancy in the food assistance bureau inventory; to determine if the partial food stamp benefit amount is the result of an inventory discrepancy, it will be necessary to contact the food assistance bureau in Santa Fe.~~

~~(3) If the receipt of a partial food stamp benefit amount was due to an error in the issuance unit, the remainder of the food stamp benefit amount will be issued, regardless of the number of times the household has received replacements in the past six months.~~

~~(4) Missing envelopes:~~ A single month's food stamp benefit amount may be mailed in as many as six envelopes. If a

household reports receipt of some, but not all, of the envelopes, the benefits which were not received may be replaced in accordance with the provisions in Subsection G of 8.139.610.14 NMAC. The ISS must determine the missing amount as follows:

~~(a) determine the food stamp benefit amount actually received by the household from the issuance documents contained in the envelopes which were received;~~

~~(b) determine the total amount issued from the household's benefit history on the computer file (P screen);~~

~~(c) determine any amount returned by the USPS as undeliverable from the household's benefit history detail on the computer file (P screen, 2nd page); reissue any amount returned by the USPS.~~

~~I. Remailing food stamp benefits:~~ The U.S. postal service returns food stamp benefits that are undeliverable or unclaimed by a household. Data on returns of food stamp benefits are entered daily into the clients computer file by the food assistance bureau. The returned issuance is posted to the ISS's activity detail screen (Q screen) the day after the return is entered by the food assistance bureau. The returned benefit amount is also posted on the household's benefit history file (P screen).

~~(1) Procedures:~~ Re-mailing is authorized by the ISS as follows:

~~(a) Food stamp benefits must be remailed within the period of intended use limitations.~~

~~(b) There must be an attempt to contact the household to determine why the food stamp benefits were returned if the household has not already reported a loss.~~

~~(c) Corrective action must be taken, as necessary, before the food stamp benefits are reissued to the household.~~

~~(2) Limitations:~~ When the period of intended use defined in Subsection G of 8.139.610.14 NMAC has expired, the food stamp benefits may not be reissued after the 10th day of the following month.

~~(3) Food stamp benefits returned after affidavit is sent:~~ Occasionally, food stamp benefits are returned by the U.S. postal service after an affidavit has been sent and before replacement by the food assistance bureau. In this situation, the affidavit is voided by the bureau and returned to the local county office with an explanation that the benefits have been returned. The county office is responsible for re-releasing the returned food stamp benefits. If food stamp benefits are returned after the affidavit has been processed and a replacement amount issued, the original issuance is coded in the household's computer file to prevent reissuance (code L).]

~~(8) Verification of conditions for~~

replacement: Before replacing destroyed food stamp benefits or destroyed food purchased with food stamp benefits, the caseworker shall determine that the destruction occurred in a household misfortune or natural disaster, such as a fire, as well as in natural disasters affecting more than one household. This is verified through one of the following:

(a) collateral contacts; or

(b) documentation from a community agency such as but not limited to, the fire department or the red cross; or

(c) a home visit; or

(d) FNS has issued a disaster declaration and a household is eligible for emergency food stamp benefits; a household cannot receive both the disaster food stamp benefit and a replacement benefit for a household misfortune or natural disaster.

B. Calculation of

replacement: A replacement of the actual value of the loss not to exceed one month's food stamp benefit amount may be issued if food purchased with food stamp benefits is destroyed in a household misfortune or natural disaster affecting a participating household. HSD will provide a replacement issuance within 10 days of a reported loss.

[J] C. Fair hearings:

A household must be informed of its right to a fair hearing to contest denial of a replacement issuance. Replacements will not be authorized during the appeal process. A replacement is authorized if the appeal is decided in favor of the household.

[02/01/95; 8.139.610.14 NMAC - Rn, 8 NMAC 3.FSP.627, 05/15/2001; A, 02/28/2007]

8.139.610.15 NATIONAL REDUCTION OR SUSPENSION: If funding for the food stamp program is depleted, Section 18 of the Food Stamp Act of 1977, as amended, provides for reduction, suspension or cancellation of food stamp benefits for one or more months, or a combination of these three actions.

A. Reduction:

(1) If a reduction in food stamp benefit amounts is deemed necessary, the MFSA for all household sizes is reduced by a percentage specified by FNS. The MFSA for each household size is reduced by the same percentage. This results in all households of a given size having their benefits reduced by the same dollar amount. The dollar reduction is smallest for a one-person household and greatest for the largest households. Since the dollar amount is the same for all households of the same size, the rate of reduction is lowest for zero net income households and greatest for the highest net income households.

(2) All one- and two-person households affected by a reduction action are guaranteed a minimum benefit of \$10,

unless the action is a cancellation of food stamp benefits, suspension of food stamp benefits, or reduction in food stamp benefits of ~~90%~~ 90 percent or more of the total amount of benefits projected to be issued in the affected month. The benefit reduction notice issued by USDA specifies whether the minimum food stamp benefit amount will be provided.

B. Suspension or cancellation:

(1) If a decision is made to suspend or cancel the distribution of food stamp benefits in a given month, FNS ~~will~~ shall notify HSD of the date the suspension or cancellation will take effect. If food stamp benefits are suspended or cancelled, the \$10.00 minimum benefit provision for one- and two-person households is disregarded and all households will have their benefits suspended or cancelled.

(2) **Resumption of benefits:** Upon notification by FNS that a benefit suspension has ended, HSD ~~will~~ shall act immediately to resume benefit issuance to certified households.

C. Notices: Food stamp benefit reductions, suspensions, and cancellations are considered a federal adjustment to food stamp benefits. HSD ~~must~~ shall notify all households of benefit reductions, suspensions, or cancellations in accordance with adequate notice provisions in Subsection C of 8.139.120.10 NMAC. HSD ~~will not~~ shall not provide an adverse action notice to a household affected by a benefit reduction, suspension, or cancellation.

D. Effect of reduction on certification:

(1) **Normal processing:** Eligibility determination for applicant households under normal (nonexpedited) processing will not be affected by a benefit reduction, suspension, or cancellation. HSD ~~will~~ shall accept and process applications during a month(s) in which a reduction, suspension, or cancellation is in effect in accordance with 8.139.110.12 NMAC, application processing. The determination of eligibility will also be made according to these provisions. If an applicant household is determined eligible for food stamp benefits and a reduction is in effect, the benefit amount is calculated by reducing the MFSA by the appropriate percentage for the applicant's household size and then deducting 30 percent of the household's net food stamp income from the reduced MFSA. If an applicant household is determined eligible for food stamp benefits while a suspension or cancellation is in effect, no benefits will be issued to the household until issuance is again authorized by FNS.

(2) **Expedited service:** Expedited processing continues during the months in which reductions, suspensions or

cancellations are in effect.

(a) **Reductions:** Households receiving expedited service in months in which reductions are in effect and that are determined eligible will be issued reduced benefits. The reduced food stamp benefit amount will be made available within the time frame specified for expedited issuance.

(b) **Suspension:** Households receiving expedited service in months in which a suspension is in effect and that are determined eligible will have a benefit determination made within the time frames for expedited issuance. If a suspension remains in effect at the time issuance is authorized, the issuance will be suspended until FNS lifts the suspension.

(c) **Cancellations:** Households eligible for expedited processing which apply for food stamp benefits during months in which cancellations are in effect will receive expedited service. The deadline for completing the processing is five calendar days or the end of the month of application, whichever date is later. All other rules for providing expedited service are applicable.

(3) **Certification periods:** The reduction, suspension, or cancellation of food stamp benefits in a given month will have no effect on the certification period assigned to a household. Those households with certification period expiring during a month in which food stamp benefits have been reduced, suspended or cancelled will be recertified and have a new certification period assigned.

E. Fair hearings: Any household that has its food stamp benefit amount reduced, suspended or cancelled as a result of an order issued by FNS may request a fair hearing if the household disagrees with the action. The fair hearing process is subject to the following conditions:

(1) **Basis for fair hearings:** HSD is not required to hold fair hearings unless the request is based on a household's belief that the food stamp benefit amount was computed incorrectly under suspension, reduction, or cancellation rules or that such rules were applied or interpreted incorrectly. HSD ~~may~~ shall deny a fair hearing to a household that is merely disputing the fact that a reduction, suspension, or cancellation was ordered.

(2) **Continuation of benefits pending fair hearing:** Since the reduction, suspension, or cancellation is necessary to avoid an expenditure of funds beyond those appropriated by congress, households do not have a right to continuation of food stamp benefits pending a fair hearing.

(3) **Retroactive benefits:** A household will receive retroactive food stamp benefits in an appropriate amount if it is found that its food stamp benefits were

reduced by more than the amount by which HSD was directed to reduce food stamp benefits.

F. Restoration of benefits:

(1) HSD ~~must~~ shall have issuance services available to serve households receiving restored or retroactive food stamp benefits for a previous, unaffected month if benefit reduction, suspension or cancellation has been ordered.

(2) Households whose food stamp benefits are reduced, suspended or cancelled as a result of these procedures will not be entitled to restoration of lost benefits at a future date. However, if there is a surplus of funds as a result of the reduction or cancellation, FNS will direct HSD to restore benefits to affected households, unless the secretary of agriculture determines that the amount of surplus funds is too small for this to be practical.

(3) HSD ~~will~~ shall design procedures to implement the restoration of food stamp benefits promptly if FNS directs the restoration of benefits.

[02/01/95; 8.139.610.15 NMAC - Rn, 8 NMAC 3.FSP.635, 05/15/2001; A, 02/28/2007]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This an amendment to 8.139.640 NMAC, Sections 8, 9, 10, 11, 12, 13 and 14 effective 2/28/2007.

8.139.640.8 GENERAL PROVISIONS (ERROR IN BENEFITS): The human services department (HSD) ~~will~~ shall take action to correct errors in food stamp benefit amounts issued to a household.

A. Correcting errors in benefits includes either:

(1) restoring benefits the household was entitled to receive, but did not receive; or

(2) establishing a claim against a household that received benefits it was not entitled to receive.

B. The amount of the restoration or the claim will be determined by using the maximum food stamp benefit amount (MFSA) and allowable deductions in place for the particular month, including any federal law placing a restriction on the use of deductions.

C. If a household received a larger food stamp benefit amount than it was entitled to receive, the ~~income support specialist (ISS) will~~ caseworker shall establish a claim against the household equal to the difference between the food stamp benefit amount received and the food

stamp benefit amount the household should have received.

D. For categorically eligible households, a claim is established only when it can be computed on the basis of changes in household net income and/or household size.

E. A household need not be currently participating in the food stamp program (FSP) in order for a restoration or claim to be established.

[02/01/95; 8.139.640.8 NMAC - Rn, 8 NMAC 3.FSP.641, 05/15/2001; A, 02/28/2007]

8.139.640.9 ESTABLISHING PERIOD OF ERROR

A. Restoration of food stamp benefits: If benefits must be restored to a household, the ~~[ISS will]~~ caseworker shall determine each month for which the household was under-issued benefits. The month(s) may or may not be consecutive. In some cases, federal regulations mandate the restoration of food stamp benefits to households for a specific time period.

B. Over-issuance of food stamp benefits:

(1) Establishing period of over-issuance: If food stamp benefits have been over-issued to a household, the ~~[ISS will]~~ caseworker shall determine each month in which the household received food stamp benefits it was not entitled to. The months may or may not be consecutive. The first month of over-issuance begins the month following the month the adverse action notice time limit would have expired if the notice had been sent timely.

(2) Establishing claim: A claim will be established against any household for any month in which the household received an over-issuance of food stamp benefits.

(a) At a minimum, the ~~[ISS will]~~ caseworker shall take action on claims for which 12 months or less have elapsed between the month an over-issuance occurred and the month the over-issuance was discovered.

(b) The ~~[ISS]~~ caseworker may choose to take action on claims for which more than 12 months have elapsed.

(c) No action will be taken on claims for which more than six ~~(6)~~ years have elapsed between the month an over-issuance occurred and the month the over-issuance is discovered.

[02/01/95, 09/15/98; 8.139.640.9 NMAC - Rn, 8 NMAC 3.FSP.642, 05/15/2001; A, 02/28/2007]

8.139.640.10 CALCULATING THE AMOUNT OF THE ERROR (CALCULATING CLAIMS)

A. Inadvertent house-

hold and administrative errors:

(1) Calculating claim: For each month that food stamp benefits have been over-issued to a household because of an inadvertent or administrative error, the ~~[ISS will]~~ caseworker shall determine the correct food stamp benefit amount the household was entitled to receive.

(a) The total amount of the claim is calculated, based at a minimum, on the monthly over-issuance amount which occurred during the 12 months preceding the date the over-issuance was discovered.

(b) The ~~[ISS may]~~ caseworker shall choose to calculate the amount of the claim back to the month the error occurred regardless of the length of time that elapsed until the error was discovered.

(c) The ~~[ISS]~~ caseworker shall not include in the calculation any over-issuance amount which occurred in a month more than six years before the date the over-issuance was discovered.

(2) Offsetting the claim: The claim amount will be offset against any food stamp benefit amounts which have not yet been restored to the household. Action will be taken to initiate collection of the remaining balance, if any.

B. Intentional program violation (IPV):

(1) For each month that food stamp benefits have been over-issued to a household because of an IPV the ~~[ISS will]~~ caseworker shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive.

(2) The amount of the IPV claim will be calculated back to the month the intentional violation occurred, regardless of the length of time that elapsed until the determination of an IPV was made.

(3) The ~~[ISS]~~ caseworker may not include in the calculation any amount of the over-issuance that occurred in a month more than six years prior to the date the over-issuance was discovered.

(4) If a household member is determined to have committed an IPV by intentionally failing to report a change in household circumstances, the first month affected by the failure to report will be the first month in which the change would have been effective if it had been timely reported.

(5) In no event ~~[will the ISS]~~ shall the caseworker determine as the first month in which the change would have been effective any month later than two months after the month in which the change in household circumstances occurred.

(6) If a household received a larger benefit amount than it was entitled to, a claim will be established against the household equal to the difference between the benefit amount the household received and the amount the household should have

received.

(7) Offsetting the claim: Once the amount of the IPV claim is established, the ~~[ISS will]~~ caseworker shall offset the amount of the claim against any benefit amount not yet restored to the household. Action must be taken to initiate collection of the remaining balance, if any.

(8) EID penalty: When determining the amount of benefits the household should have received, the 20~~[%]~~ percent earned income deduction is not applied to that portion of earned income that the household intentionally failed to report. A claim must be recomputed if it was initially handled as an inadvertent household error claim.

C. Claims involving reported changes: In cases involving reported changes, the ~~[ISS will]~~ caseworker shall determine the first month the over-issuance occurred as follows:

(1) Household inadvertent error: If caused by an inadvertent error on the part of the household (failure to report a change in circumstances within the required time frames), the first month affected by the household's failure to report is the first month in which the change would have been effective if it had been timely reported. In no event will the ~~[ISS]~~ caseworker determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

(2) Agency error: If a household timely reported a change but the ~~[ISS]~~ caseworker did not act on the change within the required time frame, the first month affected by the ~~[ISS's]~~ caseworker's failure to act will be the first month the change would have been effective if it had been acted on within the time frame. In no event ~~[will the ISS]~~ shall the caseworker determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred. If an adverse action notice was required but was not provided, the ~~[ISS will]~~ caseworker shall assume for the purpose of calculating the claim that the maximum advance notice period would have expired without the household requesting a fair hearing.

D. Compromising the claim:

(1) If the full or remaining amount of a claim cannot be liquidated in three years, the restitution bureau may compromise the claim by reducing it to an amount that will allow the household to make restitution within three years.

(2) A compromised claim will be offset by any food stamp benefit amount which has not yet been restored to the household.

(3) Claims caused by IPV will not be compromised.

E. Processing the claim: The ~~[ISS will]~~ caseworker shall prepare a ~~[debtor/claim]~~ debtor or claim record for all claims against a household.

(1) Computer history available: If the household's computer history file is available, the claim is established by entering data into the computer. The restitution bureau will receive the information on the claim and the amount.

(2) Computer history not available: If the household's computer history file is not available, the claim is computed manually. Form ISD 143, along with supporting documents ~~[is]~~ are sent to the restitution bureau.

(3) Combination history: In some cases, the claim is a combination of data entry on the household's computer file and the manual computation. Whether computed by data entry, by manual computation, or a combination, all claims are forwarded to the restitution bureau. No other action by the ~~[ISS]~~ caseworker is required.

(4) Collection action: The restitution bureau is responsible for collection action. When a claim has been processed the restitution bureau will notify the ~~[ISS]~~ caseworker.

[02/01/95, 09/15/98; 8.139.640.10 NMAC - Rn, 8 NMAC 3.FSP.643, 05/15/2001; A, 02/28/2007]

8.139.640.11 CORRECTING BENEFITS

A. Underpayments (restoration of benefits):

(1) Entitlement:

(a) Food stamp benefits will be restored to a household when the loss was caused by:

- (i) agency error;
- (ii) administrative disqualification for intentional program violation that is later reversed; or
- (iii) a regulation specifically requiring restoration of lost benefits.

(b) Unless there is a specific regulation authorizing benefit restoration for a longer period, food stamp benefits will be restored for not more than the 12 months prior to whichever of the following occurred first:

- (i) date HSD receives a request for restoration from a household; or
- (ii) date HSD is notified or otherwise discovers that a loss to a household has occurred; or
- (iii) if the resolution of a request extends beyond the 12 month limit, a household will be entitled to more than 12 months of restored benefits.

(2) Errors in benefits:

(a) ISD discovered errors:

(i) If ~~[an ISS]~~ the caseworker determines that a loss of food stamp benefits has occurred, and that a household is entitled to a restoration of benefits, action will be taken automatically to restore lost benefits. No action by the household is necessary.

(ii) Food stamp benefits will not be restored if benefits were lost more than 12 months before the month the loss was discovered in the normal course of business, or loss occurred more than 12 months before the month HSD was notified, in writing or orally, of a possible loss to a specific household.

(iii) The ~~[ISS will]~~ caseworker shall notify the household of entitlement to lost benefits; amount of food stamp benefits to be restored; any offsetting that will be done; method of restoration, and right to appeal through the fair hearing process if the household disagrees with any aspect of the proposed restoration.

(b) Judicial action:

(i) HSD ~~[will]~~ shall restore food stamp benefits found by any judicial action to have been wrongfully withheld.

(ii) If the judicial action is the first action the recipient has taken to obtain restoration of lost benefits, then food stamp benefits will be restored for a period of not more than 12 months from the date the court action was initiated.

(iii) If the judicial action is a review of HSD's action, food stamp benefits will be restored for a period of not more than 12 months from the first of the following dates: date HSD receives a request for restoration; or if no request for restoration is received, date the fair hearing action was initiated; but never more than one year from the date HSD is notified of, or discovers, the loss.

(c) Disqualification for IPV:

(i) For each month an household member is erroneously disqualified, not to exceed 12 months, the amount to be restored, is determined by comparing the food stamp benefit amount the household received with the amount the household would have received if the disqualified member had been allowed to participate.

(ii) Participation in an administrative disqualification hearing in which the household is contesting HSD's assertion of IPV is considered notification that the household is requesting restored food stamp benefits.

(d) Agency errors:

(i) If an eligible household's application has been erroneously denied, the month the loss initially occurred will be the month of application; or for an eligible household filing a timely reapplication, the month following the expiration of

its certification period.

(ii) If an eligible household's application was delayed, the months for which food stamp benefits were lost will be calculated in accordance with application processing guidelines in Subsection D of 8.139.110.13 NMAC, delayed eligibility determinations.

(iii) If a household's food stamp benefits were erroneously terminated, the month the loss initially occurred will be the first month that food stamp benefits were not received as a result of the erroneous action.

(3) Eligibility determination:

(a) Regardless of whether a household is currently eligible or ineligible, the ~~[ISS will]~~ caseworker shall restore lost food stamp benefits to a household by issuing an amount equal to the amount of benefits that were lost. The amount restored is issued in addition to the food stamp benefit amount a currently eligible household is entitled to receive.

(b) For each month affected by the loss, the ~~[ISS will]~~ caseworker shall determine if the household was actually eligible. In cases where there is no information in the household's case record to document that the household was actually eligible, the ~~[ISS will]~~ caseworker shall notify the household in writing of what information is necessary to determine eligibility for these months. For each month the household cannot provide the necessary information to demonstrate its eligibility, the household will be determined ineligible.

(4) Computing the lost benefit amount:

(a) For each month that a household is found to have been eligible, the ~~[ISS will]~~ caseworker shall calculate the food stamp benefit amount the household should have received. If a household received a smaller benefit amount than it was eligible for, the difference between the actual and the corrected food stamp benefit amount equals the amount to be restored.

(b) After correcting the benefit amount in future months, and excluding those months for which benefits may have been lost before the 12 month time limit, the ~~[ISS will]~~ caseworker shall calculate the amount to be restored as follows.

(i) If the household was eligible but received an incorrect food stamp benefit amount, the loss is calculated only for those months in which the household participated in the food stamp program.

(ii) If a household has received an incorrect food stamp benefit amount in the current month, and the error is discovered in the current month, a supplemental issuance is authorized.

(iii) If the error

occurred during the initial month of certification, the food stamp benefit amount is prorated from the date of application.

(iv) If the loss was caused by an incorrect delay, denial, or termination of benefits, the loss is calculated for each month until the error is corrected or the household is determined ineligible.

(5) Disputed benefits:

(a) If ~~an ISS~~ a caseworker determines that a household is entitled to restoration of lost food stamp benefits, but the household disagrees with the amount of the restoration, or any other action taken to restore benefits, the household may request a fair hearing within 90 days of the date the household is notified of its entitlement to restoration of lost benefits.

(i) If a fair hearing is requested before or during the time that lost benefits are being restored, the household will receive the lost benefit amount determined by the ~~ISS~~ caseworker pending the results of the fair hearing.

(ii) If the fair hearing decision is favorable to the household, the lost benefits will be restored in accordance with the fair hearing decision.

(b) If a household believes it is entitled to restoration of lost benefits but the ~~ISS~~ caseworker, after reviewing the case file, does not agree, the household has 90 days from the date of the ~~ISS~~ caseworker's determination to request a fair hearing. The ~~ISS~~ caseworker will restore food stamp benefits to the household only if the fair hearing decision is favorable to the household.

(c) Benefits lost more than 12 months before the date the ~~ISS~~ caseworker was initially informed of the household's possible entitlement to lost benefits will not be restored.

(6) Method of restoration:

(a) The amount restored is issued by entering the relevant data into the household's computer file. A supplement is issued in addition to the monthly food stamp benefit amount the household has already received.

(b) HSD must honor reasonable requests to restore lost food stamp benefits in monthly installments.

(c) **Offsetting claims:** If a claim against a household is unpaid or held in suspense, the amount to be restored will be offset against the claim. The balance, if any, is restored to the household. At the time a household is certified and receives an initial food stamp benefit amount, the initial food stamp benefit amount will not be reduced to offset a claim, even if the initial food stamp benefit amount is paid retroactively.

(7) Beneficiary of restoration:

Whenever lost benefits are due a household and the household's composition has changed, the ~~ISS will~~ caseworker shall

restore the lost food stamp benefits to the household containing a majority of the individuals who were household members at the time the loss occurred. If the ~~ISS~~ caseworker cannot locate or determine the household that contains a majority of the household members, lost benefits ~~will~~ shall be restored to the household containing the head of household at the time the loss occurred.

B. Overpayments (claims against households): HSD ~~will~~ shall take action to establish a claim against any household that received more food stamp benefits than it was entitled to receive, whether or not the over-issuance occurred because of an inadvertent household error, an administrative (agency) error, or an IPV.

(1) All adult household members will be jointly liable for any over-issuance of food stamp benefits to the household.

(2) A claim will be established against any or all of the adult members of a household at the time an over-issuance occurred.

(3) A claim will be established against any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.

(4) The earned income deduction of 20[~~%~~] percent is not allowed when determining an over-issuance due to the failure of a household to report earned income in a timely manner.

(5) Inadvertent household error claims:

(a) A claim will be handled as an inadvertent household error claim if the over-issuance was caused by:

(i) misunderstanding or unintended error on the part of the household; or

(ii) misunderstanding or unintended error on the part of a categorically eligible household, provided that a claim can be calculated based on a change in the household's net income, ~~and/or~~ household size, or both; or

(iii) social security administration action, or failure to take action, resulting in a household becoming or continuing categorical eligibility, provided that a claim can be calculated based on a change in net income, ~~and/or~~ household size, or both.

(b) Instances of inadvertent household errors which may result in a claim include, but are not limited to, the following:

(i) household unintentionally failed to provide HSD with correct or complete information; or

(ii) household unintentionally failed to report changes in its circumstances; or

(iii) household unintentionally received benefits or received more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief it was entitled to them; or

(iv) household received food stamp benefits solely because of categorical eligibility, but was later determined ineligible for ~~AFDC, GA, or SSI~~ cash assistance; or

(v) social security administration took action or failed to take appropriate action, resulting in the household improperly receiving SSI.

(3) Administrative errors:

(a) A claim will be handled as an administrative error claim if the over-issuance was caused by HSD action or failure to take action.

(b) In the case of categorical eligibility, a claim will be handled as an administrative error if action by an agency of the state or local government resulted in the household's improper eligibility for ~~AFDC or GA~~ cash assistance.

(c) Instances of administrative error which may result in a claim include, but are not limited to, the following:

(i) the ~~ISS~~ caseworker failed to take prompt action on a change reported by a household; or

(ii) the ~~ISS~~ caseworker incorrectly entered the household's income or deductions, or otherwise assigned an incorrect food stamp benefit amount; or

(iii) HSD failed to reduce food stamp benefits when a household's financial assistance grant changed; or

(iv) the ~~ISS~~ caseworker continued to provide food stamp benefits after a household's certification period has expired without benefit of a reapplication and redetermination interview or

(v) an agency of the state or local government took action or failed to take appropriate action resulting in a household improperly receiving ~~AFDC or GA~~ a cash assistance benefit.

(4) When claims are not established: Claims ~~will not~~ shall not be established for administrative or inadvertent household errors if an over-issuance occurred because ~~an ISS~~ a caseworker did not ensure that the following procedural requirements were fulfilled:

(a) an application form was signed; or

(b) appropriate work registration code was entered; or

(c) a household was certified in the correct project area.

(5) IPV claims:

(a) A claim will be handled as an IPV claim only if:

(i) administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member committed an IPV; or

(ii) individual is disqualified as a result of signing a waiver of disqualification hearing in a case referred for prosecution; or

(iii) individual has signed a disqualification consent agreement in a case of deferred adjudication; or

(iv) individual has signed a waiver of an administrative disqualification hearing in a case referred for disqualification.

(b) Before the determination of an IPV or the signing of either the waiver of right to a disqualification hearing or a disqualification consent agreement, the claim against a household is handled as an inadvertent household error claim.

(6) Development of information: When quality control review findings, or information reported or received, indicate that food stamp benefits may have been issued incorrectly, the ~~[HSS will]~~ caseworker shall attempt to develop first-hand information to determine whether food stamp benefits were provided in error.

(7) Time limits: Action will be taken on the claim within four weeks after a determination is made. A client/debtor record will be prepared by the ~~[HSS]~~ caseworker within four weeks after a determination of the amount of the claim is made. The record is forwarded to the restitution bureau either by entering the relevant data into the household's computer file to create the claim, or by manually calculating the claim for computer entry, or a combination.

C. Recovery (collection action): HSD ~~[will]~~ shall initiate collection action by sending the household an over-issuance notice.

(1) Adverse action notice: If the amount of the claim was not established by a fair hearing decision, the household will be provided with an adverse action notice. The adverse action notice is sent on all claims established after March 26, 1990, and on any preexisting claims if at any time after March 26, 1990 a follow-up demand letter is sent on the claim. A one-time adverse action notice which informs the household that it has 90 days to appeal the amount of the claim, will satisfy notice requirements.

(2) Demand letter: Collection action is initiated by sending the household a demand letter. The demand letter informs the household of the over-issuance amount, the reason for the claim, time period for which there is a claim, any offset which reduces the claim and how the household may pay the claim. The demand letter shall advise the household of the availability of

any individual or organization which provides free legal representation. The first demand letter to a participating household shall inform the household:

(a) that unless it elects an acceptable method of payment and informs HSD within the specified time limit, or timely requests a fair hearing and continued benefits, its food stamp benefit amount will be reduced;

(b) that benefit reduction will affect the household's monthly benefits, only if HSD has not otherwise informed the household;

(c) that if the household timely elects an acceptable benefit reduction amount, the reduction will begin with the first benefit which is issued after the election;

(d) that if the household fails to make a timely election or fails to request a fair hearing and continued benefits, the benefit reduction will be effective with the first benefit issued after timely notice of such election or request for hearing is due to HSD.

(3) Collection action:

(a) Initiating action: HSD ~~[will]~~ shall initiate collection action on all claims unless the claim is collected through an offset or one of the following conditions applies:

(i) The total amount of the claim is less than \$35.00, and the claim cannot be recovered by reducing the household's food stamp benefit amount. HSD ~~[will]~~ shall initiate collection action for claims under \$35.00 when multiple over-issuances for the household exceed \$35.00; or

(ii) HSD has documentation that establishes the household cannot be located.

(b) Postponing action: Collection action will be postponed on claims where a household is being referred for possible prosecution or for administrative disqualification, and the determination is made that collection action will prejudice the case.

(c) Collection action: Restitution bureau ~~[will]~~ shall pursue collection as specified in Subsection B of 8.139.640.11 NMAC.

(d) Offsetting claim: A claim may be offset against any restored benefits owed to any household which contains a member who was an adult member of the original household at the time the over-issuance occurred.

(4) Intentional program violation (IPV):

(a) Initiating collection: If a household member is found to have committed an IPV or has signed either a waiver or a disqualification consent agreement, HSD ~~[will]~~ shall initiate collection action

against the individual's household. Personal contact with the household is made, if possible. HSD is required to initiate such collection unless:

(i) the household has repaid the over-issuance already; or

(ii) HSD has documentation establishing that the household cannot be located; or

(iii) HSD determines that collection action will prejudice the case against a household member referred for prosecution.

(b) Partially paid claim: HSD ~~[will]~~ shall initiate collection action for an unpaid or partially paid claim, even if collection action was previously initiated while the claim was being handled as an inadvertent household error claim.

(c) In cases where a household member has been found guilty of misrepresentation or fraud by a court or has signed a disqualification consent agreement in a case referred for prosecution, HSD ~~[will]~~ shall request that the matter of restitution be brought before the court or be addressed in the agreement reached between the prosecutor and the accused individual.

(d) Changes in household composition:

(i) Collection action will be initiated by the restitution bureau against the household containing the member found to have committed an IPV.

(ii) If a change in household composition occurs, collection action is pursued against any or all of the adult members of a household at the time an over-issuance occurred.

(iii) Collection action is pursued against any household which has a member who was an adult member of the household that received the over-issuance.

(e) Offsetting restorations: A claim may also be offset against any restored benefits owed to any household which contains a member who was an adult member of the original household at the time the over-issuance occurred.

[02/01/95, 01/01/97, 09/15/98; 8.139.640.11 NMAC - Rn, 8 NMAC 3.FSP.645 - 645.3, 05/15/2001; A, 02/28/2007]

8.139.640.12 RECOUPMENT (METHOD OF COLLECTING PAYMENT): HSD ~~[will]~~ shall retain the value of food stamp benefits collected to repay a claim against a participating household, whether or not the claim occurred because of an inadvertent household error, an administrative (agency) error, or an IPV. The household's monthly food stamp benefit amount will be reduced to recover any amount of a claim which was not repaid through a lump sum cash and/or food stamp

benefit payment, unless a payment schedule has been negotiated with the household. Collection of a claim by HSD may also be obtained through recoupment of unemployment compensation benefits, federal pay, income tax intercepts, or any other method established by HSD.

A. Reduced benefit amount (recoupment):

(1) Recoupment from food stamp benefits: A claim may be recovered from a household currently participating in the [FSP] foodstamp program by reducing the household's food stamp benefit amount.

(2) Recoupment amount: The amount of food stamp benefits that will be recovered each month through benefit reduction will be determined [as follows:] by on the following methods.

(a) Inadvertent household and administrative errors: The amount of reduction will be [10%] ten percent of the household's monthly food stamp benefit amount, or \$10 per month, or the agreed amount, whichever is greater.

(b) IPV claims: The food stamp benefit amount to be recovered will be 20[0%] percent of the household's monthly food stamp benefit amount, or \$10 per month, or the agreed amount, whichever is greater.

B. Cash payment methods:

(1) Lump sum cash:

(a) If the household asks to make a lump sum cash payment or is financially able to repay the claim at one time, the restitution bureau [will] shall collect a lump sum cash payment.

(b) A household will not be required to liquidate all of its resources to make a lump sum payment.

(c) If a household is financially unable to pay the entire amount of the claim at one time and prefers to make a lump sum cash payment as partial payment of the claim, HSD [will] shall accept this method of payment.

(d) If a household chooses to make a lump sum payment of food stamp benefits as full or partial payment of the claim, HSD [will] shall accept this method of repayment.

(2) Installment payment schedules:

(a) HSD [will] shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment.

(b) Payments will be accepted in regular installments.

(c) A household may use its food stamp benefits as full or partial payment of any installment.

(3) Participating households:

(a) If a household is currently receiving benefits, and a payment schedule

is negotiated for repayment of a claim, the negotiated amount to be repaid each month in installment payments may not be less than the amount that could be recovered through benefit reduction.

(b) The amount to be repaid each month through installment payments will remain unchanged regardless of subsequent changes in the household's monthly food stamp benefit amount.

(4) Renegotiating payments: The restitution bureau [and/or], the household, or both, have the option to initiate renegotiation of the payment schedule if either or both believes that the household's economic circumstances have changed enough to warrant such action.

(5) Failure to pay:

(a) If a household fails to make a payment in accordance with the established repayment schedule, (either a lesser amount is paid, or no payment is made) the restitution bureau [will] shall send the household a notice explaining that no payment or insufficient payment was received.

(i) The notice informs a household that renegotiation of the payment schedule may be discussed with the restitution bureau.

(ii) The notice also informs a household that unless the overdue payments are made or the restitution bureau is contacted to discuss renegotiation of the payment schedule, the food stamp benefit amount of a currently participating household against which a claim has been established will be reduced without an adverse action notice.

(b) If the household responds to the notice, one of the following actions will be taken by the restitution bureau.

(i) If the household makes the overdue payments and wishes to continue making payments based on the previous schedule, the household is permitted to do so.

(ii) If the household requests renegotiation, and if the restitution bureau concurs, a new payment schedule will be negotiated.

(iii) If the household requests renegotiation of the amount of its repayment schedule, but the restitution bureau believes that the household's economic circumstances have not changed enough to justify the requested settlement, renegotiation will continue until a settlement can be reached.

(c) The restitution bureau has the option to invoke food stamp benefit reduction against a currently participating household for repayment of a claim if a settlement cannot be reached.

(d) If a currently participating household against which a claim has been established fails to respond to the notice, a benefit reduction will be initiated. If bene-

fit reduction is initiated, no notice of adverse action will be required.

C. Other payment methods:

(1) Federal tax intercept: HSD may recoup a claim from a household's federal income tax return following notification to the household.

(2) Unemployment compensation benefit reduction: HSD may obtain a recoupment of a food stamp claim from the unemployment compensation benefits of an adult household member, following notification to the household.

(3) Federal pay: HSD may obtain a recoupment from a household member's federal pay, following notification to the household.

(4) Any other means: HSD may invoke recoupment by any other means available, and following notification to the household.

[02/01/95, 09/15/98; 8.139.640.12 NMAC - Rn, 8 NMAC 3.FSP.645.4, 05/15/2001; A, 02/28/2007]

8.139.640.13 SUSPENDING CLAIMS

A. Inadvertent and administrative errors:

(1) An inadvertent household or administrative error claim may be suspended if no collection action was initiated because of conditions listed in Subparagraph c of Paragraph 3 of Subsection C of 8.139.640.11 NMAC.

(2) If collection action was initiated, and at least one demand letter was sent, further collection action of an inadvertent household or administrative error claim against a nonparticipating household may be suspended when:

(a) the household cannot be located; or

(b) the cost of further collection action is likely to exceed the amount that can be recovered.

(3) The guidelines for determining when a claim may be suspended because the cost of further collection is likely to exceed the amount that can be recovered are detailed in Paragraph 2 of Subsection B of 8.139.640.13 NMAC.

B. Intentional program violation:

(1) Failure to locate: Collection action on IPV claims may be suspended at any time there is documentation establishing that the household cannot be located.

(2) Suspending collection: Collection action may be suspended on any IPV claim against a nonparticipating household when the cost of further collection action is likely to exceed the amount that can be recovered when any of the following conditions exist:

(a) for claims under \$100, at least

one demand letter has been sent; or

(b) for claims between \$100 and \$400, at least two demand letters must have been sent; or

(c) for claims of more than \$400 at least three demand letters must have been sent.

C. Uncollectible claims:

(1) A claim may be determined uncollectible after being held in suspense for three years.

(2) A suspended or terminated claim may be offset against any food stamp benefit amount to be restored.

D. Overpaid claims:

(1) If a household has overpaid a claim, HSD ~~will~~ shall reimburse any overpaid amounts as soon as possible after the overpayment becomes known.

(2) The household ~~will~~ may be reimbursed by whatever method HSD deems appropriate after considering the household's circumstances.

[02/01/95; 8.139.640.13 NMAC - Rn, 8 NMAC 3.FSP.645.5 & 645.6, 05/15/2001; A, 02/28/2007]

8.139.640.14 STALE BENEFIT

ACCOUNTS: Stale benefit accounts are those food stamp accounts that have not been accessed for 90 days from the most recent date of withdrawal.

A. If EBT accounts are not accessed for 90 days, the agency may store such benefits in an offline account.

(1) Notification: The department shall notify the household of this action before storing benefits in a offline account and of the how to reactivate the account.

(2) Reinstatement: An adult household member or authorized representative may contact the department or the EBT customer service help desk and request reinstatement of their EBT account anytime within 364 days from the initial date of benefit activity. Initial date of benefit activity is the first deposit made to the account upon initial approval of the household's benefits.

B. When an account is stale the food stamp benefits shall be expunged from the account. The household loses all rights to all expunged benefits.

(1) The department shall notify the household no less than 30 days prior to the expungement of the food stamp benefits. Request from the participant to reinstate any benefit must be received prior to date of expungement.

(2) The contractor shall notify the department no less than five days prior to expungement of the food stamp benefits. The department shall identify any food stamp claims against the household and shall apply upon expungement.

[8.139.640.14 NMAC - N, 02/28/2007]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

8.314.5 NMAC, Developmental Disabilities Home and Community-Based Services Waiver, filed 6-17-02 is repealed and replaced by 8.314.5 NMAC, Developmental Disabilities Home and Community-Based Services Waiver, effective 3-1-07.

**NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

**TITLE 8 SOCIAL SERVICES
CHAPTER 314 LONG TERM CARE SERVICES-WAIVERS
PART 5 DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES WAIVER**

8.314.5.1 ISSUING AGENCY: New Mexico Human Services Department. [8.314.5.1 NMAC - Rp, 8.314.5.1 NMAC, 3-1-07]

8.314.5.2 SCOPE: The rule applies to the general public. [8.314.5.2 NMAC - Rp, 8.314.5.2 NMAC, 3-1-07]

8.314.5.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See NMSA 1978 27-2-12 et. seq. (Repl. Pam. 1991). [8.314.5.3 NMAC - Rp, 8.314.5.3 NMAC, 3-1-07]

8.314.5.4 DURATION: Permanent. [8.314.5.4 NMAC - Rp, 8.314.5.4 NMAC, 3-1-07]

8.314.5.5 EFFECTIVE DATE: March 1, 2007, unless a later date is cited at the end of a section. [8.314.5.5 NMAC - Rp, 8.314.5.5 NMAC, 3-1-07]

8.314.5.6 OBJECTIVE: The objective of these regulations is to govern the service portion of the New Mexico medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement. [8.314.5.6 NMAC - Rp, 8.314.5.6 NMAC,

3-1-07]

8.314.5.7 DEFINITIONS: [RESERVED]

8.314.5.8 MISSION STATEMENT: The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of HSD/MAD program eligible individuals by furnishing payment for quality health services at levels comparable to private health plans. [8.314.5.8 NMAC - Rp, 8.314.5.8 NMAC, 3-1-07]

8.314.5.9 DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES WAIVER: To help New Mexicans who have a developmental disability, mental retardation or a specified related condition to receive services in a cost-effective manner, the New Mexico medical assistance division (MAD) has obtained a waiver of certain federal regulations to provide home and community-based services waiver (HCBSW) programs to recipients as an alternative to institutionalization. See Section 2176 of the Omnibus Budget Reconciliation Act of 1981, codified at 42 CFR 441.300 Subpart G. The developmental disabilities waiver (DDW) annual resource allotment (ARA) allows the individual to utilize flexible combinations of services that are of benefit to them up to the maximum of their available ARA. The utilization of an ARA offers the individual more flexibility in choosing and receiving desired services. The ARA is the individual's annual funding resource for DDW services for their individualized service plan (ISP) year with the exception of community living services, environmental modifications, tier III crisis service, and outlier services. Exceptions to the ARAs for additional therapy hours, behavior support consultation, or supported employment services are subject to approval by the department of health, developmental disabilities supports division (DOH/DDSD) and in accordance with the DOH/DDSD DDW service definitions and standards. This part describes DDW eligible providers, covered waiver services, service limitations, general reimbursement methodology, and services for recipients determined to have developmental disabilities.

[8.314.5.9 NMAC - Rp, 8.314.5.9 NMAC, 3-1-07]

8.314.5.10 ELIGIBLE PROVIDERS:

A. Eligible providers must be approved by the DOH/DDSD or its designee and have an approved medicaid provider agreement with MAD. Eligible providers who contract with DOH/DDSD

for more than \$100,000. must be accredited in accordance with the DOH/DDSD accreditation policy.

B. Individual providers participate as employees or contractors of agencies, except as otherwise, recognized by this policy. Providers may subcontract only with individuals who are qualified and must follow the general contract provisions for subcontracting. Agencies may not employ or subcontract direct care personnel who are the spouse or parent, if a minor child, of the individual served pursuant to 42 CFR Section 440.167 and CMS state medicaid manual section 4480-D. For professionals governed by various licensing boards (nurses, social workers, counselors, psychologists, physical therapists, physical therapy assistants (PTAs), occupational therapists, certified occupational therapy assistants (COTAs), speech pathologists, clinical fellows, etc.), contact the appropriate licensing body for information regarding the applicable licensure.

C. Once enrolled, providers receive instruction on how to access medicaid and other medical assistance provider program policies, billing instructions, utilization review instructions, and other pertinent material from MAD and DOH/DDSD. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements. To be eligible for medical assistance program reimbursement, providers are bound by the provisions of the provider participation agreement.

D. Qualifications of case management agency providers: Case management providers must meet all qualifications set forth by the DOH/DDSD, DDW definitions and service standards. Case management providers must possess the following qualifications:

- (1) one year clinical experience, related to the target population; and
- (2) one of the following:
 - (a) social worker licensure as defined by the NM board of social work examiners; or
 - (b) registered nurse licensure as defined by the NM board of nursing; or
 - (c) bachelor's degree in social work, counseling, nursing, special education, or closely related field.

E. Qualifications of personal support service providers: Personal support service providers must meet all qualifications set forth by the DOH/DDSD, DDW definitions and service standards.

(1) Personal support service providers must complete a 40 hour personal support service training program and participate in ongoing training at a minimum of 10 hours per year after the first year.

(2) Personal support providers

must be accredited by an agency identified by DOH/DDSD, DDW service standards.

(3) Personal support service staff must possess a current CPR and first aid certification.

F. Qualifications of respite providers: Respite providers must meet all qualifications as set forth by the DOH/DDSD, DDW definitions and service standards. Respite providers must complete a 40 hour training program and participate in ongoing training at a minimum of 10 hours per year, after the first year.

G. Qualifications of private duty nursing providers: Private duty nursing providers must meet all qualifications set forth by the DOH/DDSD, DDW definitions and service standards. Direct nursing services are provided by individuals who are currently licensed as registered or licensed practical nurses by the New Mexico state board of nursing. Nurses must have a minimum of one year of supervised nursing experience, in accordance with the New Mexico Nursing Practice Act. Eligible agencies must be licensed home health agencies, licensed or certified rural health clinics, community programs or individual contractors.

H. Qualifications of therapy providers: Physical, occupational, and speech therapists, PTAs and COTAs must meet all qualification criteria in accordance with the DOH/DDSD, DDW service definitions and standards. Physical, occupational and speech therapists, PTAs and speech clinical fellows must possess a therapy license in their respective field, from the New Mexico regulation and licensing department. COTAs must possess an occupational therapy assistant certification from the New Mexico regulation and licensing department.

I. Qualifications for community living service providers: There are three types of community living services: Family living, supported living and independent living. Community living providers must meet all qualifications set forth by the DOH/DDSD, DDW definitions and service standards.

(1) Family living service providers for adults must meet the qualifications for staff required by the DOH/DDSD, DDW service definitions and standards. The direct care provider employed by or subcontracting with the provider agency must be approved through a home study completed prior to provision of services and conducted at subsequent intervals required of the provider agency. All family living sub-contracts must be approved by the DOH/DDSD.

(2) Supported living service providers must meet the qualifications for residential facility staff in accordance with the DOH/DDSD, DDW service definitions and standards.

(3) Independent living service providers must meet the qualifications for residential facility staff in accordance with the DOH/DDSD, DDW service definitions and standards.

J. Qualifications of adult day habilitation providers: Adult day habilitation service providers must meet all qualifications as set forth by the DOH/DDSD, DDW service definitions and standards.

K. Qualifications of community access providers: Community access service providers must meet all qualifications as set forth by the DOH/DDSD, DDW service definitions and standards.

L. Qualifications of supported employment providers: Supported employment providers must meet the minimum qualifications as set forth by the DOH/DDSD, DDW service definitions and standards.

M. Qualifications of behavior support consultation providers: Behavior support consultation providers must meet all qualifications as set forth by the DOH/DDSD, DDW definitions and service standards.

(1) Providers of behavior support consultation services must possess qualifications in at least one of the following areas: licensed psychiatrist, licensed clinical psychologist, licensed psychologist associate, (masters or Ph.D. level), a licensed independent social worker (LISW), licensed master social worker (LMSW), licensed professional clinical counselor (LPCC), licensed professional counselor (LPC), a licensed psychiatric nurse (MSN/RNCS), NM licensed marriage and family therapist (LMFT), NM licensed practicing art therapist (LPAT). Other related licenses and qualifications may be considered with DOH/DDSD prior written approval.

(2) Providers of behavior support consultation must have a minimum of one year of experience working with persons with developmental disabilities. All behavior support consultants must maintain current New Mexico licensure with their professional field licensing body.

N. Qualifications of nutritional counseling providers: Nutritional counseling providers must meet all other qualification criteria in accordance with the DOH/DDSD, DDW service definitions and standards. Nutritional counseling providers must be registered as dietitians by the commission on dietetic registration of the American dietetic association.

O. Qualifications of environmental modification providers: Environmental modification providers must be a licensed contractor authorized by the State of New Mexico to complete the specified project. Environmental modification

providers must meet all qualification criteria in accordance with the DOH/DDSD, DDW service definitions and standards.

P. Qualifications of personal planning facilitation providers: Personal planning facilitation providers must meet all qualifications as set forth by the DOH/DDSD, DDW definitions and service standards.

Q. Qualifications of goods and services providers: Goods and services providers must meet all qualifications as set forth by the DOH/DDSD, DDW definitions and service standards.

R. Qualifications of tier III crisis support providers: Tier III crisis support providers must meet all qualifications as set forth by the DOH/DDSD, DDW definitions and service standards.

S. Qualifications for non-medical transportation providers: Non-medical transportation providers must meet all qualifications as set forth by the DOH/DDSD, DDW definitions and service standards.

T. Qualification for outlier providers: Outlier providers must meet all qualifications as set forth by the DOH/DDSD, DDW definitions and service standards.

[8.314.5.10 NMAC - Rp, 8.314.5.10 NMAC, 3-1-07]

8.314.5.11 PROVIDER RESPONSIBILITIES:

A. Providers who furnish services to HSD/MAD program eligible recipients must comply with all specified HSD/MAD participation requirements. See 8.302.1 NMAC, *General Provider Policies*.

B. Providers must verify that individuals are eligible for medicaid and DDW services at the time services are furnished and determine if medicaid recipients have other health insurance.

C. Providers must maintain any and all medical or business records as necessary to fully disclose the type and extent of services provided to recipients. See 8.302.1 NMAC, *General Provider Policies*.

[8.314.5.11 NMAC - Rp, 8.314.5.11 NMAC, 3-1-07]

8.314.5.12 ELIGIBLE RECIPIENTS: DDW services are limited to individuals who meet the definition of developmental disability and mental retardation or specific related conditions as determined by the DOH/DDSD in accordance with approved DDW criteria, including the following. The individual has a severe chronic disability, other than mental illness, that:

A. is attributable to a mental or physical impairment, including the

result from trauma to the brain, or a combination of mental and physical impairments;

B. is manifested before the person reaches the age of twenty-two years;

C. is expected to continue indefinitely;

D. results in substantial functional limitations in three or more of the following areas of major life activity:

(1) self-care;

(2) receptive and expressive language;

(3) learning;

(4) mobility;

(5) self-direction;

(6) capacity for independent living; and

(7) economic self-sufficiency;

E. reflects the person's need for a combination and sequence of special, interdisciplinary or generic care treatment or other support and services that are of life long or extended duration and are individually planned and coordinated;

F. have mental retardation or a specific related condition; related conditions are limited to cerebral palsy, autism (including asperger syndrome), seizure disorder, chromosomal disorders (e.g. downs), syndrome disorders, inborn errors of metabolism, and developmental disorders of brain formation; and

G. who meet the intermediate care facility for the mentally retarded (ICF/MR) level of care criteria in accordance with 8.313.2 NMAC.

[8.314.5.12 NMAC - Rp, 8.314.5.12 NMAC, 3-1-07]

8.314.5.13 COVERED WAIVER SERVICES: This medicaid waiver covers the following services for a specified and limited number of waiver recipients as a cost effective alternative to institutionalization in an ICF-MR. The program is limited to the number of federally authorized unduplicated recipient (UDR) positions and program funding.

A. Case management services: Case management services are person-centered and intended to support the individual in pursuing their desired life outcomes by assisting them in accessing supports and services necessary to achieve the quality of life that they desire, in a safe and healthy environment. Case management services assist participants in gaining access to needed DDW, medicaid state plan services, and needed medical, social, educational and other services, regardless of the funding source for the services to which access is needed. Case management services include but are not limited to activities such as: assessing needs; facilitating eligibility determination for persons with developmental disabilities; directing the service

planning process; advocating on behalf of the individual; coordinating service delivery; assuring services are delivered as described in the individualized service plan (ISP); and maintaining a complete current central client record (e.g. ISP, ISP budget, level of care documentation, assessments).

(1) Cost-effectiveness is a waiver program requirement mandated by federal policy. The fiscal responsibilities of the case manager include assuring cost containment by preventing the expense of waiver services from exceeding a maximum cost established by DOH and by exploring other options to address expressed needs. Case management services are intended to assist individuals to enable, not replace, existing natural supports and other available community resources in collaboration with waiver services.

(2) Case managers must evaluate and monitor direct service through face-to-face visits with the individual to ensure the health and welfare of the recipient, and to monitor the implementation of the ISP.

(3) Case management services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

B. Personal support services: Individuals receiving personal support services live in the community, in their own home or in the home of their family. Personal support/companion services assist the individual with activities of daily living while providing companionship to acquire, maintain or improve social interaction skills in the community or at the job site. Personal support services duties include accompanying the individual to community events and activities of interest to the individual; assistance at the individual's place of employment; and assistance at the individual's home. Legal guardians or natural family members who meet DOH/DDSD requirements must be approved by DOH/DDSD to provide personal support services. Personal support services may include performing and/or assisting the individual with the following:

(1) household services, cleaning, laundry, meal preparation and assistance, support service that promote the recipient's independence (appointments, shopping and/or errands, extension of skilled therapy services, individualized exercise program);

(2) individual care services (hygiene/grooming, oral care with intact swallowing reflux, nail care, perineal care, toileting), minor maintenance of assistive device(s), skin care prevention/maintenance, and mobility assistance (ambulation and transfer);

(3) individuals requiring the assistance for their individualized bowel and bladder program must be determined to

be medically stable; a personal support direct care provider must demonstrate competency to perform individualized bowel and bladder programs.

(a) An individualized bladder program may include the following tasks: straight in and out catheterization; changing of catheter bag; application and care of external catheter; care of indwelling catheter; individualized crede bladder massage if appropriate; care of indwelling catheter; irrigation of indwelling catheter with medicated or non-medicated solutions; and insertion and care of suprapubic catheter.

(b) An individualized bowel program may include the following tasks: insertion of medicated or non-medicated suppositories; digital stimulation; enemas; manual impaction removal; and ostomy care, including irrigations, changing, cleaning of bags and skin care;

(4) assist individuals with self-administration of medication, including prompting and reminding; this must be accomplished in accordance with the New Mexico Nursing Practice Act;

(5) assist the recipient with eating as determined by the interdisciplinary team; the recipient must have an intact swallowing reflex in order to receive assistance; in the instance where the recipient requires tube feeding, the personal support attendant must be trained and supervised by a registered nurse or this task may be delegated to the personal support attendant as governed by the New Mexico Nursing Practice Act;

(6) personal support services can be provided with respite services, adult day habilitation, or individual, group and customized supported employment as long as the combination is deemed appropriate in the ISP and is not provided for the same hours of the same day;

(7) personal support services cannot be included in the ISP in combination with any community living support service (i.e. family living, supported living or independent living); in addition, personal support services may not be provided to recipients by their spouses or to minor recipients by their parents; other family members may be covered as personal support services providers only if the following requirements are met:

(a) the family member meets the qualifications for providers of care;

(b) there are strict controls to assure that payment is made to the family member only in return for specific services rendered; and;

(c) there is adequate written justification as to why the family member is the only available provider of care (e.g. a lack of other qualified providers in the geographic area);

(8) personal support services

must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

C. Respite care services:

Respite is a flexible family support service. The primary purpose of respite is to provide support to the individual and give the primary, unpaid caregiver time away from their duties. The respite care provider assists the individual in activities of daily living to promote the individual's health and safety, as well as maintain a clean and safe environment. Respite will be scheduled as determined by the primary caregiver. Respite services can be included in the ISP with personal support, adult day habilitation, individual, group and customized supported employments, and community access as long as the services are not provided for the same hours of the same day with the exception of therapies and case management. Respite services cannot be provided for individuals receiving supported or independent living services. Respite may be provided to individuals in family living, but the service may not be billed for the same time period as family living. Respite may be provided in the client's own home, in a provider's home or in a community setting of the family's choice. Respite services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

D. Private duty nursing:

Private duty nursing services are provided by registered nurses or licensed practical nurses to adults. Nursing intervention are activities, procedures and treatments provided to treat a physical condition, physical illness or chronic physical disability. Activities, procedures and treatments may include, but not be limited to: health assessment; aspiration precautions; bowel management; feeding tube management; health education; health screening; infection control; medication management; medication administration; nutrition management; oxygen management; seizure management; seizure precautions; self-care assistance, skin care; teaching of prescribed medication; weight management; wound care; and staff supervision of such activities, procedures and treatment. (Children receive this service through the medicaid early periodic screening, diagnosis and treatment [EPSDT] program.)

(1) Nursing services may be combined with other services, except as specified below.

(a) Nursing services cannot be included in the ISP for individuals receiving a community living service.

(b) Because nursing is included in the adult day habilitation rate, any nursing provided during the hours of adult day habilitation cannot be billed as a separate service.

(2) Private duty nursing services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

E. **Therapy services for adults:** Therapy services include physical therapy, occupational therapy and speech and language therapy. Based on therapy goals, services may be delivered in an integrated natural setting, clinical setting or in a group setting.

(1) **Individual integrated therapy:** Individual integrated therapy services are provided within the natural context of an individual's life (i.e. home, day habilitation site, vocational site or community locations). Consultative services may be provided at ISP planning meetings. This model does not include services provided in an isolated, non-integrated manner unless a direct skilled therapy service is provided and applied to a functional activity/routine in collaboration with a caregiver during the same session.

(2) **Individual clinical therapy:** Individual clinical therapy services are provided in a clinic setting such as in a therapist's office or when services are delivered in an isolated, non-integrated manner. A clinical context would include any location that an individual would not otherwise visit, if they did not have a therapy appointment.

(3) **Group integrated therapy:** Group integrated therapy services are delivered in a group with a ratio of two or three individuals to one therapist designed to benefit the individuals involved due to a group context. The context of the group must reflect the context of a naturally occurring activity/routine i.e., yoga group instruction; social interaction; leisure activity; etc.

(4) **Group clinical therapy:** Group clinical therapy services are delivered in a clinical setting, in a group with a ratio of two or three individuals to one therapist designed to benefit the individuals involved due to a group context. A clinical setting would include any location that an individual would not otherwise visit, if they did not have a therapy appointment.

(5) **Physical therapy:** Physical therapy is a skilled therapy service performed by a licensed physical therapist or a licensed physical therapist assistant (PTA) under the supervision of a licensed physical therapist. Services include the diagnosis and management of movement dysfunction and the enhancement of physical and functional abilities. Physical therapy addresses the restoration, maintenance and promotion of optimal physical function, wellness and quality of life related to movement and health. Physical therapy activities: increase, maintain or reduce the loss of functional skills; treat a specific condition clinically related to an individual's developmental disability; or support the individ-

ual's health and safety needs. Activities include the identification, implementation or training of therapeutic strategies to support the individual and their family or support staff in efforts to meet the individual's ISP vision and goals.

(6) Occupational therapy:

Occupational therapy is a skilled therapy service performed by a licensed occupational therapist or certified occupational therapy assistant (COTA) under the supervision of a licensed occupational therapist. Occupational therapy services include diagnosis, assessment and management of functional limitations intended to assist adults to regain, maintain, develop and build skills that are important for independence, functioning and health. Occupational therapy services typically include: customized treatment programs to improve one's ability to perform daily activities; comprehensive home and job site evaluations with adaptation recommendations; performance of skills assessments and treatment; assistive technology recommendations and usage training; and guidance to family members and caregivers. Occupational therapy services: increase, maintain or reduce the loss of functional skills; treat specific conditions clinically related to an individual's developmental disability; or support the individual's health and safety needs. Activities include the identification, implementation or training of therapeutic strategies to support the individual and their family or support staff in efforts to meet the individual's ISP desired outcomes and goals. Based on therapy goals, services may be delivered in an integrated natural setting, clinical setting or in a group setting.

(7) Speech therapy: Speech therapy is a specialized therapy service performed by a licensed speech language pathologist or a speech clinical fellow under the supervision of a licensed speech language pathologist. Speech therapy services include the diagnosis, counseling and instruction related to the development and disorders of communication including speech fluency, voice, verbal and written language, auditory comprehension, cognition, swallowing dysfunction, oral pharyngeal or laryngeal, or sensory motor competencies. Speech language pathology is also used when an individual requires the use of an augmentative communication device. Services are intended to improve or maintain the individual's capacity for successful communication, to lessen the effects of the individual's loss of communication skills, or to improve or maintain the individual's ability to eat foods, drink liquids, and manage oral secretions with minimal risk of aspiration, other potential injuries or illnesses related to swallowing disorders. Activities include identification, implemen-

tation and training of therapeutic strategies to support the individual and their family or support staff in efforts to meet the individual's ISP vision and goals. Based on therapy goals, services may be delivered in an integrated natural setting, clinical setting or in a group setting.

(8) Providers of therapy services must prepare progress notes and reports as required by the DOH or designee, including analysis of data, progress, effectiveness of strategies and significant events in the individual's life which may impact progress. Physical, occupational, and speech therapy services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

F. Therapy services for children: Therapy services include physical therapy, occupational therapy and speech and language therapy. Based on therapy goals, services may be delivered in an integrated natural setting, clinical setting or in a group setting.

(1) Individual integrated therapy: Individual integrated therapy services are provided within the natural contexts of an individual's life (i.e. home, day habilitation site, vocational site, community locations). Consultative services may be provided at ISP planning meetings. This model does not include services provided in an isolated, non-integrated manner unless a direct skilled therapy service is provided and applied to a functional activity/routine in collaboration with a caregiver during the same session.

(2) Individual clinical therapy: Individual clinical therapy services are provided in a clinic setting such as in a therapist's office or when services are delivered in an isolated, non-integrated manner. A clinical context would include any location that an individual would not otherwise visit, if they did not have a therapy appointment.

(3) Group integrated therapy: Group integrated therapy services are delivered in a group with a ratio of two or three individuals to one therapist designed to benefit the individuals involved due to a group context. The context of the group must reflect the context of a naturally occurring activity/routine i.e. yoga group instruction; social interaction; leisure activity; etc. One therapist can bill for no more than three individuals regardless of the number of participants.

(4) Group clinical therapy: Group clinical therapy services are delivered in a clinical setting, in a group with a ratio of two or three individuals to one therapist designed to benefit the individuals involved due to a group context. A clinical setting would include any location that an individual would not otherwise visit, if they did not have a therapy appointment. One

therapist can bill for no more than three individuals regardless of the number of participants.

(5) Physical therapy for children: Services are delivered by a licensed physical therapist to provide services not covered by the state plan under medicaid EPSDT requirements, nor through an individualized education program (IEP) through the public schools. Services include: physical therapy interventions that are used to promote participation in community integration activities as defined in the DDW service standards; adaptation of exercise equipment and associated training for family members or other support persons to promote ongoing fitness of the child; assessment for appropriate environmental modifications in the home as described in the DDW service standards; recommendations for equipment, techniques or therapy interventions to increase family or caregiver ability to provide support for the child's comfort and conveniences; interventions for children with swallowing disorders to prevent aspiration in accordance with the team approach described in the DOH/DDSD aspiration prevention policy and procedures, as appropriate to the therapist's scope of practice; coordination with other therapists serving the child through EPSDT or the public schools or with other disciplines on the child's DDW interdisciplinary team; and associated evaluation, assessment and training of the child, family or other caregivers related to the above activities.

(6) Occupational therapy for children: Services are delivered by a licensed occupational therapist to provide services not covered by the state plan under medicaid EPSDT requirements, nor through an IEP through the public schools. Services include: occupational therapy interventions that are used to promote participation in community integration activities as defined in the DDW service standards; adaptation of exercise equipment and associated training for family members or other support persons to promote ongoing fitness of the child; assessment for appropriate environmental modifications in the home as described in the DDW service standards; recommendations for equipment, techniques or therapy interventions to increase family or caregiver ability to provide support for the child's comfort and conveniences; interventions for children with swallowing disorders to prevent aspiration in accordance with the team approach described in the DOH/DDSD aspiration prevention policy and procedures, as appropriate to the therapist's scope of practice; coordination with other therapists serving the child through EPSDT or the public schools or with other disciplines on the

child's DDW interdisciplinary team; and associated evaluation, assessment and training of the child, family or other caregivers related to the above activities. Based on therapy goals, services may be delivered in an integrated natural setting, clinical setting or in a group setting.

(7) Speech and language pathology for children: Services are delivered by a licensed speech language pathologist to provide services not covered by the state plan under medicaid EPSDT requirements, nor through an IEP through the public schools. Speech language services: interventions to promote participation in community integration activities as defined in the DDW service standards; interventions for children with swallowing disorders to prevent aspiration in accordance with the team approach described in the DOH/DDSD aspiration prevention policy and procedures, as appropriate to the therapist's scope of practice; recommendations for equipment, techniques or therapy interventions to increase family or caregiver ability to facilitate; coordination with other therapists serving the child through EPSDT or the public schools or with other disciplines on the child's DDW interdisciplinary team; and associated evaluation, assessment and training of the child, family or other caregivers related to the above activities. Based on therapy goals, services may be delivered in an integrated natural setting, clinical setting or in a group setting.

G. Community living services: Community living services are intended to provide persons with the assistance and support needed in a home environment in order to increase or maintain an individual's capacity for independent functioning, self-determination, interdependence, productivity and integration in the community. Community living services are only available for individuals for whom no other residential or support options are clinically appropriate to meet the needs of the individual. Community living services must be justified by the IDT as the only service which can meet the needs of the individual.

(1) This service includes personal support, nutritional counseling and nursing supports and, therefore, personal support, nutritional counseling and private duty nursing services may not be included in an ISP for an individual receiving community living services. Respite services cannot be provided to individuals receiving supported or independent living services. Respite services may be provided to individuals in family living, but the service may not be billed for the same time period as family living. Room and board costs are reimbursed through the individual's SSI or other personal accounts and cannot be paid through the waiver service.

(2) This service is available to individuals 18 years of age or older.

(3) This service may be available to individuals under 18 years of age in extraordinary circumstances and are approved by the DOH/DDSD Director on a case-by-case basis. Community living services for individuals under 18 years of age may not be provided by legally responsible individuals.

(4) Legally responsible individuals (i.e. spouses or parents of minor children) may not be paid for any services that they would ordinarily perform in the household for individuals of the same age who did not have a disability or chronic illness.

(5) This medicaid waiver covers the following three living supports services. Each of these services is a distinct service and must be billed in accordance with DDSD of the DOH standards:

(a) Family living services: These services may be furnished by a companion, surrogate, foster or natural family member who has been studied and approved to provide family living in the individual's home or the home of the family living provider. Legal guardians or natural family members who meet the DOH/DDSD requirements must be approved by DOH/DDSD to provide family living services.

(i) Family living can be provided to no more than two individuals with developmental disabilities in the home environment at a time.

(ii) The direct support provider must be present when the individual is in the home, as described in the ISP or other coverage specified below.

(iii) The direct support provider is responsible for services up to 24 hours per day as described in the ISP, but does not include time when an individual is in an employment, school, adult habilitation or other day program. Twenty-four hour support includes coverage in the residential setting during times when the individual is unable to attend other scheduled services and/or activities due to reasons beyond their control (e.g. illness). The direct support provider is responsible for arrangements for back-up supports and staffing. The person(s) providing back-up supports and staffing must be listed with and meet the requirements of the provider agency.

(iv) The provider agency is responsible for providing on-call emergency staffing coverage. The 24 hour per day requirement may be met through the emergency on-call system, when necessary. If the individual requires emergency staffing services, those services must reach the individual within 60 minutes.

(v) Family living direct support providers must complete all DOH/DDSD requirements for approval, including completion of a home study, and

compliance with all relevant policies, procedures, standards, requirements and training.

(vi) Substitute care is available to individuals receiving family living services.

(vii) Family living cannot be included in the ISP for individuals receiving any other living support service.

(viii) The family living direct support provider may be a single person, couples, roommates, companions, friends, and natural family members. The direct support provider may not be the spouse of the individual served. Family members providing direct supports to the recipient with developmental disabilities must meet all the requirements for approval and ongoing service provision as other family living direct support providers.

(ix) Family living services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

(b) Supported living services: Supported living services are provided in a home setting to four or fewer individuals. This service model can only be accessed by individuals for whom all other residential services are clinically inappropriate and is documented in the ISP. Supported living services must be available up to 24 hours per day, as determined by the IDT, but does not include time when an individual is in an employment, school, adult habilitation or other day program. Supported living is not an appropriate model for individuals needing less than 340 hours of face-to-face service and support per month. Twenty-four hour staff support includes coverage in the residential setting during times when persons are unable to attend other scheduled services and/or activities due to reasons beyond their control (e.g. illness). Additional residential staff support may also be available in an emergency through an on-call system. If the individual requires on-call services, those services must reach the individual within 60 minutes. Supported living provider services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

(c) Independent living services: Independent living services are individual intervention and support services promoting a more independent environment and life style. Independent living supports are only provided in the individual's home and community in groups of three or fewer individuals with developmental disabilities. Individuals must be at least 18 years of age. Staff support is available as needed and is furnished on a planned periodic schedule of less than 24 hours per day as required in the ISP. Unscheduled staff support may be available through an on-call system. If the

individual requires on-call services, those services must reach the individual within 60 minutes. Independent living is reimbursed at two levels based on the number of support hours needed. Providers serving individuals requiring at least 20 but less than 100 hours of support per month will be reimbursed at level II rates. Individuals requiring 100 or more hours per month will receive level I funding. Independent living cannot be included in the ISP for individuals receiving any other community living service. Independent living services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

H. Community inclusion services: Community inclusion services provide individuals with connection to and membership in the same community life that is desired and chosen by the general population. This includes: purposeful, meaningful and equitably paid work; sustained opportunity for self-empowerment and personal relationships; skill development in natural settings; and social, education and community membership activities that are specified in the individual's ISP. Community inclusion services also assist the individual to develop skills and relationships that reduce dependence on paid, specialized services. Community inclusion services include the following: community access, supported employment and adult habilitation.

(1) Community inclusion services support measurable individual progress as specified in the ISP including the individual's personal definition of a meaningful day. The outcome of community inclusion services is that the individual becomes an integral part of his community in the manner desired by the individual.

(2) Community inclusion providers must be provided in accordance with the DOH/DDSD DDW services definitions and standards.

(3) Community inclusion services include the following:

(a) **Community access services:** Community access services are designed to promote maximum participation in community life, support individuals in achieving their desired outcome, promote self-advocacy, and enhance a participant's ability to control his environment through focused teaching of adaptive skills, self-help and socialization skills. These services may be used by adults and children. For children and youth, the objective of the community access services is to support the family in understanding and promoting his child's development. This service promotes the acquisition and retention of skills necessary for the child to participate successfully in family and community life as well as future

employment. Community access services address the child's development in natural settings with age appropriate strategies of self-help, cognitive, physical/motor, communication, and social skills; potentially reducing dependence on specialized supports.

(i) Community access services may be provided in a group (not to exceed three persons), or individual arrangement as outlined in the ISP. Services must accommodate non-traditional hours (e.g., evenings) as outlined in the ISP. Services are to be provided in integrated environments that enhance the person's contribution to the community and increase independence.

(ii) Community access cannot replace, supplant, or duplicate services included in community living services.

(iii) Community access services can be provided with any other service, as long as the combination is deemed appropriate in the ISP and as long as the services are not provided for the same hours of the same day, except for therapies or case management.

(iv) Community access services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

(b) **Supported employment services:** Supported employment services are intended to provide ongoing supports, as needed for persons seeking or maintaining community based employment for which compensation, if it is covered work, would be made in compliance with the Fair Labor Standards Act (FLSA) and New Mexico labor laws. Supported employment services may be conducted in a variety of settings, in which most persons employed do not have disabilities. Activities are designed to increase or maintain the individual's skills and independence; and may include job development, job placement, and job coaching. Individuals are eligible for DD waiver supported employment services insofar as the service is not otherwise available or appropriate under a program funded under the Rehabilitation Act of 1973, VI-C funds available through the division of vocational rehabilitation, New Mexico public education department (as amended, 1992). DOH will require reporting on supported employment services as specified in the DDSD of the DOH DDW service definitions and standards. Waiver services included in this category are individual supported employment, group supported employment and customized supported employment.

(c) **Group supported employment:** Group supported employment provides onsite supervision of persons with developmental disabilities working as part of a group in a community-based employ-

ment setting, including employment by the provider agency, which promotes opportunities for integration with non-disabled people. Supervision and support is usually furnished on a continual basis as scheduled by the provider or may include full or part-time supervision by the employer.

(i) Reimbursement to the recipient must be at prevailing hourly wage with regard to productivity and in compliance with the Federal Fair Labor Standards Act. Wages are to be commensurate with the hourly wages or salaries of those performing the same or similar work.

(ii) Group supported employment services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

(iii) Group supported employment services can be provided with any other service, as long as the combination is deemed appropriate in the ISP and as long as the services are not provided for the same hours of the same day; however, therapy services are reimbursable when provided simultaneously.

(d) **Individual supported employment:** Individual supported employment offers one-to-one support to participants placed in jobs in the community and support is provided at the work site as needed for the individual to learn and perform the job. Participants must have the opportunity for integration into work settings where most of the people in the work setting are not disabled. Individual supported employment may include competitive jobs in the public or private sector and self-employment. The service delivery model for individual supported employment includes a job coach, job developer and personal support companion. Providers must document time spent on allowable activities on behalf of the individuals and include at least two face-to-face contacts with the individual each month in order to receive reimbursement.

(i) Supervision and supports are furnished in response to the individual's needs and preferences. Full time support may be needed at the beginning of employment. The fading of support is required in accordance with the ISP supported employment fading plan as the recipient stabilizes in the job. A fading plan must include supports and training needed for a specified period of time at a defined level or degree. The plan will specify natural supports available to the recipient and will address related training for the employer's staff who will be providing the supports. The provider agency will furnish coordination activities including assistance in arranging transportation, job development and job placement.

(ii) Reimbursement to

the recipient must be paid at prevailing hourly wages with regard to productivity and in compliance with the Federal Fair Labor Standards Act.

(iii) Supported employment services are described in the ISP and must be provided in accordance with the DOH/DDSD DDW service definitions and standards. Individual supported employment services can be provided with any other service, as long as the combination is deemed appropriate in the ISP and as long as the services are not provided for the same hours on the same day; however, therapy services are reimbursable when provided simultaneously.

(e) **Self-employment:** Self-employment services assist the individual to gain self-employment or engage in other entrepreneurial initiatives. The service delivery model for self-employment services includes a business consultant and a personal support companion if needed. The business consultant assists the individual with the development of a business plan; location of business loans and leverage of other financial resources; marketing, advertising, obtaining a business license, permits, tax registration and other legal requirements for a business enterprise; and with banking services, financial management and the development and maintenance of information management systems necessary for business operations. Self-employment services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

(f) **Intensive supported employment:** Intensive supported employment offers individual's one to one job coaching for employed individuals in integrated community based settings. Intensive supported employment is intended for individuals who need 1:1 job support (face to face) 32 or more hours per month.

I. **Adult habilitation services:** Adult habilitation services are designed to meet the needs of individuals 18 years of age or older. The service consists of daily functional and purposeful activities, including choice-making and community membership, specified by the IDT members that relate to his desired outcomes, objectives, interests and skills that leads to a reduction of dependence on paid, specialized services. The objective of adult habilitation services is to support measurable individual progress toward ISP specified outcomes, as well as, to meet the individual's personal definition of a meaningful day. Adult habilitation services include participation in adult education; identification of community resources and connections; development of pre-vocation skills; opportunities to pursue hobbies and recreation, leisure or other interests; transportation during adult habilitation services; personal care

and activities of daily living; assistance with self-administration of medication; reminding, observing, monitoring of medication and pharmacy needs; and medication administration. When individuals receive compensation in adult habilitation settings, the compensation shall comply with the Fair Labor Standards Act and code of federal regulations. Medicaid funds (e.g. the provider agency's reimbursement) may not be used to pay the individual for work.

(1) Adult habilitation services that are segregated (e.g. center-based or sheltered work) are time limited as determined by the IDT to support movement to more appropriate, integrated, and age appropriate options such as employment.

(2) Personal support, nutritional counseling and nursing supports are included in adult day habilitation services. Therefore, personal support, nutritional counseling and private duty nursing services may not be included as separate billable services in the ISP for the time period in which the individual is receiving adult habilitation services.

(3) Adult habilitation services must take place outside of the individual's residence or any other residential setting unless approved as an exception by DOH/DDSD in accordance with the DOH/DDSD DDW service standards.

(4) Adult habilitation services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

J. **Behavior support consultation services:** Behavior support consultant services consist of functional support assessments, positive behavioral support plan development, training and support coordination for an individual and their IDT related to behaviors that compromise an individual's quality of life. Factors that compromise an individual's quality of life include behaviors that: interfere with forming and maintaining relationships, integrating into the community, or completing activities of daily living; or pose a health and safety risk to the individual or others. Providers of behavior support consultation services must prepare progress notes and reports as required by DOH or its designee, including progress, effectiveness of strategies and significant events in the individual's life, which may impact progress. Behavior support consultation services must be provided in accordance with the DDSD DDW service definitions and standards.

K. **Nutritional counseling services:** Nutritional counseling is designed to meet unique food and nutrition needs presented by persons with developmental disabilities. This service does not include oral-motor skill development services, such as those services provided by a

speech pathologist. Because nutritional counseling is included in the reimbursement rate for community living services and adult day habilitation, nutritional counseling cannot be billed as a separate service during the hours of community living or day habilitation. Nutritional counseling services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

L. **Outlier services:** Outlier services cover individuals recognized as having extreme medical needs or behavioral issues requiring services of a frequency, duration, and intensity that surpass those described in other covered DDW services. Outlier services reimburse providers for those few individuals that meet outlier services criteria. Reimbursement is only available after approval has been given by the DOH/DDSD or its designee. Outlier residential services are available only to individuals who receive supported living services. Outlier habilitation services are available to only individuals in adult habilitation. The outlier services are intended to meet the needs of individuals with severe chronic needs. Individuals with short term acute support needs are covered within the existing rates or through supports available through the regular medicaid state plan package. Individuals with extraordinary need fit into one of two categories: 1) high medical necessity or; 2) behavioral outlier.

(1) **High medical necessity outlier:** To be considered for the high medical necessity outlier rate of reimbursement, individuals must first meet the definition for high medical necessity. Individuals who meet the definition for high medical necessity may qualify for the outlier services and corresponding funding if the frequency, duration, and intensity of staff supports greatly surpass those described in service definitions rates and the following conditions and criteria are met. High medical necessity is defined as a chronic physical condition, including brain disorders, which results in a prolonged dependency on medical care for which daily skilled (nursing) intervention is medically necessary and is characterized by one or more of the following:

(a) there is a life threatening condition characterized by frequent periods of acute exacerbation which require frequent medical supervision, and/or physical consultation and which in the absence of such supervision or consultation, would require hospitalization;

(b) the individual requires frequent time consuming administration of specialized treatments which are medically necessary and will be required for more than 30 days; and

(c) the individual is dependent on

medical technology such that without the technology a reasonable level of health could not be maintained; examples include: ventilators, dialysis machines, enteral or parenteral nutrition support and continuous oxygen.

(2) High medical necessity criteria:

(a) All requests for high medical necessity outlier funding must be in writing and must be accompanied by written documentation that meets the definition for high medical necessity.

(b) The IDT will initiate the request for outlier funding.

(c) The IDT will gather all pertinent reports and documentation and ensure timely submission to the DOH/DDSD by the provider.

(d) Documentation for high medical necessity outlier funding will be submitted by the provider to DOH/DDSD or its designee for review and approval.

(e) Staffing ratios must be submitted for the habilitation or residential setting as applicable to the request. This information will be used when determining the need for additional enhanced support hours for an individual with an intense staffing need.

(f) Documentation must show the number of hours necessary to meet the individual's needs, in relation to the total number of hours of staff time available within the setting.

(g) In order for the request to be considered for outlier funding the number of hours of enhanced support hours must exceed 360 hours per month within the residential setting; except in the situation where the hours of enhanced supports are nursing hours, an equivalent amount of enhanced support hours may be considered.

(h) In order for the request to be considered for outlier funding the number of hours of enhanced support hours must exceed 84 hours per month within the habilitation setting; except in situations where the number of hours of enhanced supports are nursing hours, then an equivalent amount of enhanced support hours may be considered.

(i) All generic resources must be identified and accessed prior to requesting outlier funding. The request must be accompanied by documentation of successful or unsuccessful attempts at accessing generic resources.

(j) Documentation must include a signed attending physician's evaluation report which documents the individual's medical status as it relates to the high medical necessity definition and a signed detailed nursing plan that outlines all procedures to be completed and indicates why the staffing within the setting must include the enhanced hours.

(k) The ISP incorporates a detailed nursing plan which specifically addresses the individual's condition, needs and outlines the duties of additional or specialized staff.

(l) Outlier rates will be approved for a specified number of days per year not to exceed the annual waiver billing limits. Each approval will not exceed 180 days.

(3) **Behavioral outlier:** To be considered for the behavioral outlier rate of reimbursement individuals must exhibit frequent or regular episodes of behavior that is historical, chronic, and predictable. Examples include suicidal behavior, self injurious behavior, physical aggression towards others with intent to cause injury, disruption of most activities which requires intensive staff attention, personal withdrawal from all contact with staff and others, dangerous elopement, or serious criminal activities that are dangerous to others or to the recipient (e.g., rape, manslaughter, battery). Individuals who meet the definition for behavioral outlier may qualify for the outlier services and corresponding funding if the frequency, duration, and intensity of staff supports greatly surpass those described in the service definitions and the following conditions and criteria are met.

(4) Behavioral criteria:

(a) All requests for outlier funding must be in writing and must be accompanied by written documentation from an appropriate mental health professional (psychiatrist, psychologist, neurologist) that addresses the chronic care criteria that meets the definition of behavioral outlier.

(b) The IDT will initiate the request for outlier funding.

(c) The IDT will gather all pertinent reports and documentation and ensure timely submission by the provider to the DOH/DDSD or its designee.

(d) Documentation for behavioral outlier funding will be submitted by the provider to the DOH/DDSD or its designee for review and approval.

(e) Staffing ratios must be submitted for the habilitation or residential setting, as applicable to the request. This information will be used when determining the need for additional enhanced support hours for an individual with an intense staffing need.

(f) Documentation must show the number of hours necessary to meet the individual's needs, in relation to the total number of hours of staff time available within the setting.

(g) In order for the request to be considered for outlier funding the number of hours of enhanced support hours must exceed 360 hours per month within the residential setting.

(h) In order for the request to be considered for outlier funding the number

of hours of enhanced support hours must exceed 84 hours per month within the habilitation setting.

(i) All generic resources must be identified and accessed prior to requesting outlier funding. The request must be accompanied by documentation of successful or unsuccessful attempts at accessing generic resources.

(j) Documentation must include the psychiatric/neurological/ psychological evaluation report which documents the individual's mental health/health status as it relates to the behavioral outlier definition; and provides justification for the use of additional or specialized staffing.

(k) The psychiatric/neurological/psychological evaluation must be completed by a professional who is not employed by the agency providing supported living or adult habilitation services.

(l) Individuals being considered for behavioral outlier funding must have a current active behavior support plan that outlines the specific duties of additional staff; and the plan is intensively monitored by the behavior support consultant.

(m) The behavior plan must be in compliance with the DOH/DDSD DDW policy governing the process of behavioral support service planning for persons with developmental disabilities.

(n) The ISP specifically addresses the individual's condition, needs and outlines the daily responsibilities of additional or specialized staff.

(o) Outlier rates will be approved for a specified number of days per year not to exceed the annual waiver billing limits. Each approval will not exceed 180 days.

M. Environmental modification services: Environmental modifications services include the purchase and installation of equipment or making physical adaptations to an individual's residence that are necessary to ensure the health, welfare and safety of the individual or enhance the individual's access to the home environment and increase the individual's ability to act independently. Adaptations include the installation of ramps and grab-bars; widening of doorway or hallways; installation of specialized electric and plumbing systems to accommodate medical equipment and supplies; purchase or installation of lifts or elevators; modification of bathroom facilities (roll-in showers, sink, bathtub, and toilet modification, water faucet controls, floor urinals and bidet adaptations and plumbing); turnaround space adaptations; specialized accessibility, safety adaptations, or additions; installation of trapeze and mobility tracks for home ceilings; purchase or installation of automatic door openers or door bells, and voice-activated, light-activated, motion-activated and electric

devices; fire safety adaptations; purchase and installation of air filtering devices; heating and cooling adaptations; the purchase and installation of glass substitute for windows and doors; purchase and installation of modified switches, outlets or environmental controls for home devices; and purchase and installation of alarm and alert systems or signaling devices.

(1) No duplicate adaptations or improvements shall be approved regardless of the payment source. Home modifications, adaptations, or improvements cannot be part of new construction. Adaptations, modifications, improvements or repairs to the existing homes, which are not of direct medical or remedial benefits to the individual, and automobile/vehicle retrofitting shall not be approved. Such non-beneficial adaptations, or improvements include, that are not limited to carpeting, roof repair, central air conditioning, furnace replacement, remodeling bare rooms and other general household repairs.

(2) An occupational therapist shall assess the individual's needs and the effectiveness of the requested environmental modification and submit a written recommendation to the case manager that is consistent with DOH/DDSD DDW service standards. If an occupational therapist is not available, the services of a physical therapist or other qualified individual approved by DOH/DDSD may be substituted. A complete report specifying how the environmental modification would contribute to the individual's ability to remain in or return to his home, and how the modification or improvements would increase the individual's independence and decrease the need for other services such as personal support, must be completed on a DOH/DDSD approved form. The report must be completed and submitted to the environmental modification provider and DOH/DDSD for approval before the contractor can be authorized to begin construction. This evaluation must be submitted to DOH/DDSD with the prior authorization request (PAR).

(3) All services must be provided in accordance with applicable federal, state and local building regulations, standards and codes.

(4) The environmental modification provider must ensure that proper design criteria are addressed in planning and design of the adaptation, provide or secure licensed contractor(s) or approved vendor(s) to provide construction or remodeling services, provide administrative and technical oversight of construction projects, provide consultation to family members, waiver providers and contractors concerning environmental modification projects to the individual's residence, and inspect the

final environmental modification project to ensure that the adaptations meet the approved plan.

(5) Environmental modifications are managed by professional staff available to provide technical assistance and oversight to environmental modification projects.

(6) Each environmental modification must be:

(a) documented with written recommendations from a qualified professional that specifies the model and type of equipment;

(b) deemed medically necessary by a physician or appropriate licensed professional;

(c) approved by DOH/DDSD in accordance with written policy including defined qualifying criteria prior to start of adaptations;

(d) documented as not otherwise available as a medicaid state plan service;

(e) completed by a DOH approved modification provider that has a GB-2 class construction license.

(7) Environmental modification services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

N. Personal planning facilitation: Personal planning facilitators will work with individuals to select a method for this person-centered enhanced planning activity. The results will be incorporated into the individual's individual service plan (ISP). The facilitator will work with the individual to identify the individuals they wish to invite to the personal planning event. The purpose is to generate a more thorough understanding of the individual's background, preferences, dreams, life goals, natural supports, and to foster creative thinking about how to support the individual to achieve their dreams beyond what occurs in a typical ISP planning process.

O. Goods and services: Goods and services replaces the stipend provided to the individual or family available in community access. Goods and services include services, supports or goods that enhance opportunities to achieve outcomes related to living arrangements, relationships, inclusion in community activities and work so long as the items or services meet the following requirements:

(1) the item or service is not covered by the medicaid state plan or DD waiver services;

(2) the item or service is designed to meet the individual's non-covered functional, medical or social needs and advances the desired outcomes in his ISP;

(3) the item or service is not prohibited by federal and state statutes and regulation;

(4) one or more of the following additional criteria are met:

(a) the item or service would increase the individual's functioning related to the disability;

(b) the item or service would increase the individual's safety in the home environment; or

(c) the item or service would decrease dependence on other medicaid-funded services.

(5) examples of this service may include the purchase of non-medical transportation, memberships to support community inclusion, and education materials.

P. Tier III crisis supports: Tier III crisis supports are services that provide intensive supports by appropriately trained staff to an individual experiencing a behavioral or medical crisis via one of the following models.

(1) **Crisis supports in the individual's residence:** These services provide crisis response staff to assist in supporting and stabilizing the individual while also training and mentoring staff and/or family members, who normally support the individual, in order to remediate the crisis and minimize or prevent recurrence.

(2) **Crisis supports in an alternate residential setting:** These services arrange an alternative residential setting and provide crisis response staff to support the individual in that setting, to stabilize and prepare the individual to return home or to move into another permanent location. In addition, staff will arrange to train and mentor staff and/or family members who will support the individual long term once the crisis has stabilized, in order to minimize or prevent recurrence.

(3) Crisis supports must be prior authorized by the DOH/DDSD office of behavioral services. Crisis supports must be authorized in 14 to 30 calendar day increments, typically not to exceed 90 calendar days. In situations requiring crisis supports in excess of 90 calendar days, the DOH/DDSD director must approve such authorization upon submittal of a written plan to transition the individual from crisis supports to typical menu of DDW services.

Q. Non-medical transportation: Non-medical transportation services assists the individual in accessing other waiver supports and non-waiver activities identified in the individual service plan (ISP). Non-medical transportation enables individuals to gain physical access to non-medical community services and resources promoting individual opportunity and responsibility in carrying out ISP activities. This service is to be considered only when transportation is not available through the state medicaid plan or when other arrangements cannot be made. Non-medical transportation includes funding to purchase a

pass for public transportation for the individual. Non-medical transportation provider services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

R. Supplemental dental care: Supplemental dental care provides one routine oral examination and cleaning to individuals on the waiver for the purpose of preserving and/or maintaining oral health. Supplemental dental care provided on the waiver is for individuals that require routine cleaning more frequently. Supplemental dental care includes an oral examination and a routine dental cleaning.

(1) The supplemental dental care provider will ensure that a licensed dentist per New Mexico regulation and licensing provides the oral examination; ensure that a dental hygienist certified by the New Mexico board of dental health care provides the routine dental cleaning services; demonstrate fiscal solvency; and will function as a payee for the service.

(2) The supplemental dental care service must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

[8.314.5.13 NMAC - Rp, 8.314.5.13 NMAC, 3-1-07]

8.314.5.14 NON-COVERED SERVICES:

Only the services listed as covered waiver services are covered under the DDW program. Medicaid state plan services may be available to waiver recipients through the regular Medicaid program. Medicaid state plan services are subject to the limitations and coverage restrictions that exist for other Medicaid services. See 8.301.3 NMAC, *General Noncovered Services* for an overview of non-covered services. Medicaid does not cover room and board as waiver service or ancillary services.

[8.314.5.14 NMAC - Rp, 8.314.5.14 NMAC, 3-1-07]

8.314.5.15 INDIVIDUALIZED SERVICE PLAN (ISP):

An ISP must be developed by an interdisciplinary team of professionals in consultation with the recipient and others involved in the recipient's care. The ISP must be in accordance with the DOH/DDSD DDW services definitions and standards. The ISP is submitted to DOH/DDSD or its designee for final approval. DOH/DDSD or its designee must approve any changes to the ISP. See 7.26.5 NMAC.

A. The interdisciplinary team must review the treatment plan every twelve (12) months or more often if indicated.

B. The individualized service plan must contain the following information:

(1) statement of the nature of the specific problem and the specific needs of the recipient;

(2) description of the functional level of the recipient;

(3) statement of the least restrictive conditions necessary to achieve the purposes of treatment;

(4) description of intermediate and long-range goals, with a projected timetable for their attainment and the duration and scope of services;

(5) statement and rationale of the treatment plan for achieving these intermediate and long-range goals, including provision for review and modification of the plan; and

(6) specification of responsibilities for areas of care, description of needs, and orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the recipient.

C. All services must be provided as specified in the ISP.

[8.314.5.15 NMAC - Rp, 8.314.5.15 NMAC, 3-1-07]

8.314.5.16 PRIOR AUTHORIZATION AND UTILIZATION REVIEW:

All Medicaid services, including services covered under this Medicaid waiver, are subject to utilization review for medical necessity and program compliance. Reviews may be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. Once enrolled, providers receive instructions and documentation forms necessary for prior authorization and claims processing.

A. **Prior authorization:** To be eligible for DDW program services, Medicaid recipients must require the level of care (LOC) of services provided in an intermediate care facility for the mentally retarded (ICF-MR). LOC determinations are made by MAD or its designee. The ISP must specify the type, amount and duration of services. Certain procedures and services specified in the ISP may require prior authorization from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. **Eligibility determination:** Prior authorization of services does not guarantee that individuals are eligible for Medicaid. Providers must verify that individuals are eligible for Medicaid, DDW services or other health insurance prior to the time services are furnished. Recipients may not be institutionalized, hospitalized, or receive Medicaid personal care option

services or other HCBS waiver services at the time DDW services are provided, except for certain case management services that are required to coordinate discharge plans or transition of services to DDW services.

C. **Reconsideration:** Providers who disagree with the denial of a prior authorization request or other review decisions may request a re-review and a reconsideration. See 8.350.2 NMAC, *Reconsideration Of Utilization Review Decisions*.

[8.314.5.16 NMAC - Rp, 8.314.5.16 NMAC, 3-1-07]

8.314.5.17 REIMBURSEMENT:

Waiver service providers must submit claims for reimbursement to the MAD Medicaid management information system (MMIS) contractor for processing. Claims must be filed per the billing instructions in the Medicaid policy manual. Providers must follow all Medicaid billing instructions. See 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, providers receive instructions on documentation, billing, and claims processing. Reimbursement to providers of waiver services is made at a predetermined reimbursement rate.

[8.314.5.17 NMAC - Rp, 8.314.5.17 NMAC, 3-1-07]

HISTORY OF 8.314.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives.

ISD-Rule 310.2000, Coordinated Community In-Home Care Services, 3/19/84.

History of Repealed Material:

ISD-Rule 310.2000, Coordinated Community In-Home Care Services, Repealed 1/18/95.

8 NMAC 4.MAD.736.12 - Repealed 9/1/98; and

8 NMAC 4.MAD.736.412 - Repealed 9/1/98.

8.314.5 NMAC, Developmental Disabilities Home and Community-Based Services Waiver, Repealed 3/1/07.

NEW MEXICO PUBLIC REGULATION COMMISSION

**TITLE 17 PUBLIC UTILITIES
AND UTILITY SERVICES
CHAPTER 11 TELECOMMUNICATIONS
PART 26 811 SERVICES**

17.11.26.1 ISSUING AGENCY:

New Mexico Public Regulation Commission.

[17.11.26.1 NMAC - N, 2-28-07]

17.11.26.2 SCOPE: This rule applies to all telecommunications carriers operating in New Mexico subject to the jurisdiction of the commission pursuant to applicable laws.

[17.11.26.2 NMAC - N, 2-28-07]

17.11.26.3 STATUTORY AUTHORITY: The New Mexico Public Regulation Act, Sections 8-8-4 and 8-8-15 NMSA 1978; Chapter 63, Article 7, Sections 63-7-1.1A(1) and 63-7-1.1A(2) NMSA 1978; the New Mexico Telephone and Telegraph Company Certification Act, Section 63-9-1 et seq. NMSA 1978; the New Mexico Telecommunications Act, Section 63-9A-1 et seq. NMSA 1978; the Cellular Telephone Services Act, Section 63-9B-1 et seq. NMSA 1978; and the Rural Telecommunications Act of New Mexico, Section 63-9H-1 et seq. NMSA 1978.

[17.11.26.3 NMAC - N, 2-28-07]

17.11.26.4 DURATION: Permanent.

[17.11.26.4 NMAC - N, 2-28-07]

17.11.26.5 EFFECTIVE DATE: February 28, 2007, unless a later date is cited at the end of a section.

[17.11.26.5 NMAC - N, 2-28-07]

17.11.26.6 OBJECTIVE: The purpose of this rule is to implement 811 as the toll-free, abbreviated dialing code to be used by the public to provide advance notice of excavation activities to one call notification systems and thereby to underground facilities operators as required by federal law.

[17.11.26.6 NMAC - N, 2-28-07]

17.11.26.7 DEFINITIONS: [RESERVED]

17.11.26.8 RELATIONSHIP TO OTHER COMMISSION RULES: Unless otherwise specified, this rule is not intended to supersede any other rule of the commission but to supplement such rules. Nevertheless, if any provision of this rule is inconsistent with the provisions of any other commission rule, the provisions of this rule shall apply. The responsibilities of New Mexico one call notification systems relating to 811 implementation are prescribed in 18.60.6 NMAC.

[17.11.26.8 NMAC - N, 2-28-07]

17.11.26.9 RESPONSIBILITIES OF TELECOMMUNICATIONS CARRIERS: All telecommunications carriers operating in New Mexico shall route all 811

calls made in the state of New Mexico to New Mexico One Call, Inc.

A. Local calls. All wireline telecommunications carriers operating in New Mexico shall route all 811 calls made within New Mexico One Call, Inc.'s local calling area to New Mexico One Call, Inc.'s local phone number.

B. Toll calls. All wireline telecommunications carriers operating in New Mexico shall route all 811 calls made within New Mexico but outside New Mexico One Call, Inc.'s local calling area to New Mexico One Call, Inc.'s toll free phone number.

C. Wireless carriers. Wireless and other non-wireline telecommunications carriers operating in New Mexico may route 811 calls either to New Mexico One Call Inc.'s local phone number or to New Mexico One Call Inc.'s toll free phone number.

[17.11.26.9 NMAC - N, 2-28-07]

17.11.26.10 TARIFFS FOR 811 SERVICES:

A. Tariffed rates prohibited. A wireline telecommunications carrier shall not impose any rate, charge or fee for the provision of 811 services as required by this rule.

B. Terms and conditions to be filed as tariffs. A wireline telecommunications carrier shall file terms and conditions for the provision of 811 services as tariffs pursuant to applicable law.

[17.11.26.10 NMAC - N, 2-28-07]

HISTORY OF 17.11.26 NMAC: [RESERVED]

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 60 PIPELINE CONSTRUCTION AND MAINTENANCE
PART 6 ONE CALL NOTIFICATION SYSTEMS REQUIREMENTS FOR 811 SERVICES

18.60.6.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[18.60.6.1 NMAC - N, 2-28-07]

18.60.6.2 SCOPE: This rule applies to one call notification systems subject to the jurisdiction of the commission pursuant to applicable laws.
[18.60.6.2 NMAC - N, 2-28-07]

18.60.6.3 STATUTORY AUTHORITY: NMSA 1978, Sections 8-

8-4 and 62-14-7.1.

[18.60.6.3 NMAC - N, 2-28-07]

18.60.6.4 DURATION: Permanent.

[18.60.6.4 NMAC - N, 2-28-07]

18.60.6.5 EFFECTIVE DATE: February 28, 2007, unless a later date is cited at the end of a section.

[18.60.6.5 NMAC - N, 2-28-07]

18.60.6.6 OBJECTIVE: The purpose of this rule is to impose requirements on one call notification systems regarding the implementation of 811 as the toll-free, abbreviated dialing code to be used by the public to provide advance notice of excavation activities to one call notification systems and thereby to underground facilities operators as required by federal law.

[18.60.6.6 NMAC - N, 2-28-07]

18.60.6.7 DEFINITIONS: In addition to the definitions in Section 62-14-2 NMSA 1978 and 18.60.4.7 NMAC, as used in this rule, non-jurisdictional entity means an underground facility operator not subject to federal and state excavation laws. Generally, non-jurisdictional entities are operators specifically exempt in federal or state excavation law or exempt operators with facilities in geographical areas where state and federal excavation law does not apply as a matter of law.

[18.60.6.7 NMAC - N, 2-28-07]

18.60.6.8 RELATIONSHIP TO OTHER COMMISSION RULES: Unless otherwise specified, this rule is not intended to supersede any other rule of the commission but to supplement such rules. Nevertheless, if any provision of this rule is inconsistent with the provisions of any other commission rule, the provisions of this rule shall apply. The responsibilities of telecommunications carriers relating to 811 implementation are prescribed in 17.11.26 NMAC.

[18.60.6.8 NMAC - N, 2-28-07]

18.60.6.9 RESPONSIBILITIES OF ONE CALL NOTIFICATION SYSTEMS: During normal working hours, one call notification systems shall follow the following procedures.

A. Emergency calls. One call notification systems shall instruct callers (other than underground facility operators) that emergency calls should be made either directly to 911 or to the underground facility operators. One call notification systems shall process emergency calls made by underground facility operators in accordance with Subsection B of 18.60.5.16 NMAC.

B. Calls intended for other states. One call notification systems shall make a reasonable effort to forward any calls intended for a one call notification system located in an adjacent state to the appropriate state one call notification system.

C. Non Jurisdictional Entities. One call notification systems shall enter into written reciprocal agreements with non-jurisdictional entities on a voluntary basis. Such agreements shall provide the following procedures for 811 calls received during normal working hours:

(1) the one call notification system shall forward free of charge an advisory ticket to the non-jurisdictional entity when incoming calls are related to excavation work intended to be done in the geographical area of the non-jurisdictional entity;

(2) the one call notification system shall instruct the caller that the advisory ticket has been forwarded to the appropriate non-jurisdictional entity;

(3) the one call notification system shall instruct the caller that it has no member underground facility operators within the geographical area of the intended excavation and that the caller is required to directly contact and notify any nonmember underground facility operators of the intended excavation; and

(4) the one call notification system shall issue tickets to any member underground facility operator operating within the geographical boundaries of the non-jurisdictional entity.

[18.60.6.9 NMAC - N, 2-28-07]

18.60.6.10 OPERATOR OR RECORDED MESSAGE REQUIRED:

For 811 calls received after normal working hours, one call notification systems shall have either an operator or a recorded message that provides the following information to callers:

A. a statement that emergency calls should be made either directly to 911 or to the underground facility operators;

B. a statement that the phone numbers for all member underground facility operators are listed on the specified one call notification systems website;

C. a statement the call is being received after normal working hours and that the caller should call back during specified normal working hours

D. a statement that locate requests can be made by either a specified fax number or by a specified email address; and

E. a statement that locate requests made by either fax or email will be considered received at 8:00 a.m. on the next

working day.

[18.60.6.10 NMAC - N, 2-28-07]

HISTORY OF 18.60.6 NMAC:
[RESERVED]

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC MEETING AND STATE IMPLEMENTATION PLAN REVISION

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on May 7, 2007 at 1:00 p.m. at the Sunland Park City Council Chambers, 1000 McNutt, Sunland Park, New Mexico 88063. The purpose of the hearing is to consider the matter of EIB 06-18 (R), proposed revisions to the New Mexico State Implementation Plan (SIP) for the Sunland Park 1-Hour Ozone Nonattainment area.

The proponent of this regulatory adoption and revision is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from the New Mexico Environment Department (NMED) regarding proposed changes the above listed SIP. These proposed changes are intended to redesignate the Sunland Park 1-Hour Ozone Nonattainment area to attainment/maintenance status. This revision is in response to the revocation of the 1-Hour ozone National Ambient Air Quality Standard by the US Environmental Protection Agency. The NMED proposal includes a maintenance plan. The NMED will host an informational open house on the proposed Sunland Park SIP revisions at the Sunland Park City Council Chambers, 1000 McNutt, Sunland Park, New Mexico 88063, from 4:00p.m-8:00p.m on March 22, 2007.

The proposed revisions may be reviewed during regular business hours at the NMED Air Quality Bureau office, 2044 Galisteo, Santa Fe, New Mexico. Full text of NMED's proposed revisions to the Sunland Park 1-Hour Ozone SIP are available on NMED's web site at www.nmenv.state.nm.us, or by contacting Gail Cooke at (505) 955-8022 or gail.cooke@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section, 74-2-6 NMSA 1978, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- (4) list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed new and revised regulations.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on April 20, 2007, and should reference the docket number, EIB 06-18 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Joyce Medina, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2150 / 2153
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-2836

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by April 20, 2007 at the NMED, Personnel Services

Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

End of Other Related Material Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2007

Volume XVIII	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 16
Issue Number 2	January 17	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 30
Issue Number 7	April 2	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
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Issue Number 11	June 1	June 14
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Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.