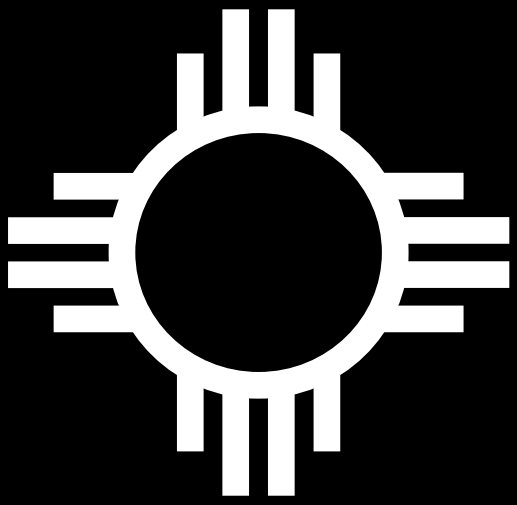
NEW MEXICO REGISTER



Volume XXIII
Issue Number 6
March 30, 2012

New Mexico Register

Volume XXIII, Issue Number 6
March 30, 2012

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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2012

New Mexico Register

Volume XXIII, Number 6
March 30, 2012

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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.

A=***Amended***, E=***Emergency***, N=***New***, R=***Repealed***, Rn=***Renumbered***

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The *New Mexico Register*
Published by
The Commission of Public Records
Administrative Law Division
1205 Camino Carlos Rey
Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is $270.00. Individual copies of any Register issue may be purchased for $12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail staterules@state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

Notice of Hearing

The New Mexico Economic Development Department (NMEDD) will hold a public hearing on the following rules:

* Creation of NMAC 3.2.250, Deduction - Gross Receipts and Compensating Taxes - Locomotive Fuel, under the Gross Receipts and Compensating Tax Act, Chapter 7, Article 9, Sections 110.1 through 110.3, New Mexico Statutes Annotated (NMSA), 1978 Compilation.

NMEDD is proposing to pass a new provision of the New Mexico Administrative Code, which would establish the procedure for obtaining from NMEDD a certificate of eligibility for the locomotive fuel deductions from gross receipts and in computing the compensating tax.

A hearing will be held in Santa Fe, New Mexico, at the Joseph Montoya Building's Bid Room, 1100 St. Francis Dr. (Corner of St. Francis and Cordova), at 10:00 a.m. on Friday, May 4, 2012. Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking relating to Wade Jackson, General Counsel, NMEDD, Joseph Montoya Building, 1100 St. Francis Dr., Santa Fe, New Mexico 87505 or wade.jackson@state.nm.us. Written statements in support or opposition and signed by the submitting person will be accepted if received prior to 5:00 p.m. on Friday, May 4, 2012. Address written statements or inquiries to Wade Jackson, General Counsel, NMEDD, Joseph Montoya Building, 1100 St. Francis Dr., Santa Fe, New Mexico 87505 or wade.jackson@state.nm.us.

A copy of all proposed rules will also be posted on the NMEDD website, http://www.gonm.biz.

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARINGS

The New Mexico Department of Health will hold public hearings on 7.30.8 NMAC "Requirements for the Family Infant Toddler Early Intervention Services". The hearings will be held:

Monday 16, April 2012 at 1:00pm
Location: 17th Floor Meeting Room, Bank of the West Building, at 5301 Central Ave, Albuquerque, NM 87108.

Monday 30, April 2012 1:00pm
Location: Department of Health, Harold Runnels Auditorium, 1190 St. Francis Drive, Santa Fe, NM 87502.

The public hearings will be conducted to amend the current regulations to align with federal regulation changes (Individuals with Disabilities Education Act - Part C) and to make a number of procedural changes regarding the provision of early intervention services to infants, toddlers and their families in New Mexico.

A copy of the proposed regulation can be obtained from:

Andy Gomm
Family Infant Toddler (FIT) Program
New Mexico Department of Health
810 San Mateo
Santa Fe, New Mexico
87505-6110
1-877-696-1472
andrew.gomm@state.nm.us

The proposed regulation can also be downloaded from www.fitprogram.org

Comments can be provided at the public hearings or written comments regarding the proposed regulation can be sent to Andy Gomm at the address listed above by May 29, 2012.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Brenda Trujillo at 505-476-3543 or brenda.trujillo12@state.nm.us. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT
NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Education Department ("NMPED") hereby gives notice that the it will conduct a public hearing in Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on May 1, 2012, from 9:30 a.m. to 11:30 a.m. The purpose of the public hearing will be to obtain input on the proposed amendment of rule 6.19.8 NMAC "Grading of Public Schools," which was adopted on December 15, 2011 and implemented the "A-B-C-D-F Schools Rating Act."

Interested individuals may either provide commends at the public hearing and/or submit written comments to Ms. Mary H. Deets, Administrative Assistant, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (MaryH.Deets@state.nm.us) (505) 827-6641 fax (505) 827-6681. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (http://ped.state.nm.us/) under the "Public Meetings and Hearings" link, or obtained from Ms. Deets at the email address or phone number indicated.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in either of these meetings are asked to contact Ms Deets as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO COMMISSIONER OF PUBLIC LANDS

NOTICE OF RULE MAKING

NOTICE IS HEREBY GIVEN that Ray Powell, M.S., D.V.M., New Mexico Commissioner of Public Lands (Commissioner), and the New Mexico State Land Office (NMSLO) propose to repeal 19.2.21 NMAC "LAND EXCHANGES" in its entirety and replace it with 19.2.21 NMAC "LAND EXCHANGES", which incorporates various changes, amendments, additions to and deletions from the previous rule.

The proposed new rule provides new and/or amended guidelines and requirements that pertain to all exchanges of lands held in the Trust managed by the New Mexico Commissioner of Public Lands pursuant to the Act of June 20, 1910, 36 Stat. 557, Chapter 310; N.M. Const. Art. XIII; and NMSA 1978, Chapter 19.

The Commissioner will take written comments on the proposed rule from any

interested person. Interested persons shall file their written comments no later than June 9, 2012. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include specific language proposed to effectuate the changes being suggested. Specific proposed language suggesting changes to the proposed new rule should, whenever possible, be in the same format as the proposed rule. An electronic copy of the proposed rule may be obtained from the Commissioner to facilitate this requirement. Any proposed changes to the proposed rule shall be submitted either in hard copy or by e-mail. The Commissioner strongly encourages all persons submitting comments in hard copy to file an additional copy in electronic format. The electronic medium shall clearly designate the name of the person submitting the proposed changes.

One public hearing to receive oral and written comments on proposed amendments to Rule 21 will be held in Santa Fe, New Mexico, at Morgan Hall, State Land Office, 310 Old Santa Fe Trail, from 10.00a.m. to 12:00p.m. on Wednesday, May 9, 2012.

Please submit any written comments regarding the proposed rule to the attention of Ley Schimoler at the address set forth below and/or by e-mail to Ley Schimoler at lschimoler@slo.state.nm.us. Comments received by e-mail will be printed by the NMSLO and entered in the rule-making record. The Commissioner will review and take into consideration all timely submitted written comments.

A copy of the proposed rule may be obtained from:
Ley Schimoler
Office of the General Counsel
New Mexico State Land Office
PO Box 1148
Santa Fe, NM 87504-1148
Tel: 505/827-5713
Fax: 505/827-4262

Copies of the proposed rule may also be viewed at, or downloaded from the NMSLO website (www.nmstatelands.org). The documents may be made available in alternative formats upon request.

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.1.1 NMAC, Sections 7, 200, 302, 303, 304, 307, 400, 402, 403, 405, 407, 500 and 501, effective April 16, 2012.

20.1.1.7 DEFINITIONS: As used in this part:

A. "board administrator" means the department employee designated by the secretary of environment to provide staff support to the board;

B. "board" means the environmental improvement board;

C. "department" means the New Mexico environment department;

D. "document" means any paper, exhibit, pleading, motion, response, memorandum, decision, order or other written or tangible item that is filed in a proceeding under this part, or brought to or before the board for its consideration, but does not include a cover letter accompanying a document transmitted for filing;

E. "exhibit" means any document or tangible item submitted for inclusion in the hearing record;

F. "general public" includes any person attending a hearing who has not submitted a notice of intent to present technical testimony;

G. "governing law" means the statute, including any applicable case law, which authorizes and governs the decision on the proposed regulatory change;

H. "hearing officer" means the person designated by the board to conduct a hearing under this part;

I. "hearing record" means:

(1) the transcript of proceedings; and

(2) the record proper;

J. "participant" means any person who participates in a rulemaking proceeding before the board;

K. "party" means the petitioner; any person filing a notice of intent to present technical testimony, and any person filing an entry of appearance;

L. "person" means an individual or any entity, including federal, state and local governmental entities, however organized;

M. "petitioner" means the person who petitioned the board for the regulatory change that is the subject of the hearing;

N. "record proper" means all documents related to the hearing and received or generated by the board prior to the beginning, or after the conclusion, of the hearing, including, but not limited to:

(1) the petition for hearing and any response thereto;

(2) the minutes (or an appropriate extract of the minutes) of the meeting at which the petition for hearing was considered, and of any subsequent meeting at which the proposed regulatory change was discussed;

(3) the notice of hearing;

(4) affidavits of publication;

(5) notices of intent to present technical testimony;

(6) statements for the public record;

(7) the hearing officer's report, if any;

(8) post-hearing submissions, if allowed;

(9) the audio [~~tapes~~] recordings (or an appropriate extract of the [~~tapes~~] recordings) of the meeting(s) at which the board deliberated on the adoption of the proposed regulatory change; and

(10) the board's decision and the reasons therefore;

O. "regulation" means any rule, regulation or standard promulgated by the board and affecting one or more persons, besides the board and the department, except for any order or decision issued in connection with the disposition of any case involving a particular matter as applied to a specific set of facts;

P. "regulatory change" means the adoption, amendment or repeal of a regulation;

Q. "service" means personally delivering a copy of the document, exhibit or pleading to the person required by this part to be served; mailing it to that person; or, if that person has agreed, sending it by facsimile or electronic transmission; if a person is represented by an attorney, service of the document shall be made on the attorney; service by mail is complete upon mailing the document; service by facsimile or electronic transmission is accomplished when the transmission of the document is completed and upon acknowledgement by designated recipient;

R. "technical testimony" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing; and

S. "transcript of proceedings" means the verbatim record (audio [~~tape~~] recording or stenographic) of the proceedings, testimony and argument in the matter, together with all exhibits proffered at the hearing, whether or not admitted into evidence, including the record of any motion hearings or prehearing conferences.

[20.1.1.7 NMAC - Rp, 20 NMAC 1.1.I.106, 08/27/06; A, 04/16/12]

20.1.1.200 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:

A. The filing of any document as required by this part shall be accomplished by delivering the document to the board administrator and the board legal counsel.

B. Any person filing any document shall:

(1) provide the board administrator with the original and nine (9) copies of the document;

(2) if the document is a notice of intent to present technical testimony filed by any person other than the petitioner, serve a copy thereof on the petitioner;

(3) any document filed pursuant to this part shall be filed with the board administrator at least [~~fifteen (15)~~] twenty (20) days before any meeting at which the board will consider the document. If the document is a motion seeking an order from the hearing officer in a rules hearing, the motion must also be served at the same time with the hearing officer and the board legal counsel.

C. Whenever this part requires service of a document, service shall be made by delivering a copy to the person to be served by mailing it, or, if that person has agreed, by sending it by facsimile or by electronic transmission to that person. Agreement to be served by facsimile or electronic transmission may be evidenced by placing the person's facsimile number or email address on a document filed pursuant to this part service shall also be made upon the board's legal counsel. If a person is represented by an attorney, service of the document shall be made on the attorney. Service by mail is complete upon mailing the document. Service by facsimile or electronic transmission is accomplished when the transmission of the document is completed and acknowledged by designated recipient.

D. The petitioner and any person who has filed a timely notice of intent to present technical testimony under this part may inspect all documents that have been filed in a proceeding in which they are involved as participants. Such inspection shall be permitted in accordance with the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through 14-2-12. The board administrator shall notify by email the petitioner and all persons who have filed a timely notice of intent to present technical testimony whenever any document

is filed in a proceeding under this part. Any such person who does not provide an email address shall instead be notified by mail.

E. All documents filed under this part shall be made available for inspection upon request and shall, to the extent possible, be made available on the department's website.

F. The board administrator shall provide copies of all documents to each board member at least [~~seven~~] fifteen (15) days before the meeting at which the board will consider the documents. With regard to those documents filed in conjunction with any rules hearing, the hearing officer may make exception to this requirement.

[20.1.1.200 NMAC - Rp, 20 NMAC 1.1.II.200, 08/27/06; A, 04/16/12]

20.1.1.302 TECHNICAL TESTIMONY:

A. Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later than [~~fifteen (15)~~] twenty (20) days prior to the hearing, file a notice of intent to present technical testimony. The notice shall:

(1) identify the person for whom the witness(es) will testify;

(2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;

(3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present;

(4) [~~summarize or~~] include a copy of the direct testimony of each technical witness [~~and state the anticipated duration of the testimony of that witness~~] in narrative form;

(5) include the text of any recommended modifications to the proposed regulatory change; and

(6) list and [~~describe, or~~] attach[~~,~~] all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

B. The hearing officer may enforce the provisions of this section through such action as [~~he~~] the hearing officer deems appropriate, including, but not limited to, exclusion of the technical testimony of any witness for whom a notice of intent was not timely filed. If such testimony is admitted, the hearing officer may keep the record open after the hearing to allow responses to such testimony. The hearing officer may also require that written rebuttal testimony be submitted prior to hearing.

[20.1.1.302 NMAC - Rp, 20 NMAC 1.1.III.302, 08/27/06; A, 04/16/12]

20.1.1.303 ENTRY OF APPEARANCE: Any person who is or may be affected by the proposed regulatory change may file an entry of appearance as a party. The entry of appearance shall be filed no later than [~~fifteen (15)~~] twenty (20) days before the date of the hearing on the petition. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries, or divide the service list to avoid waste of resources.

[20.1.1.303 NMAC - N, 08/27/06; A, 04/16/12]

20.1.1.304 PARTICIPATION BY GENERAL PUBLIC:

A. 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 non-technical exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

B. 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. Written comment must be mailed or delivered to the board administrator; e-mail comments will not be accepted. However, comments may be submitted on the board webpage.

[20.1.1.304 NMAC - Rp, 20 NMAC 1.1.III.303, 08/27/06; A, 04/16/12]

20.1.1.307 MOTIONS:

A. General: All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion and state the relief sought. Each motion shall be accompanied by an affidavit, certificate or other evidence relied upon and shall be served as provided by 20.1.1.200 NMAC.

B. Unopposed motions: An unopposed motion shall state that the concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.

C. Opposed motions: Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

D. Response to motions: Any party upon whom an opposed motion is served shall have fifteen (15) days after service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.

E. Reply to response: The moving party may, but is not required to, submit a reply to any response within ten (10) days after service of the response.

F. Decision: All motions shall be decided by the hearing officer without a hearing, unless otherwise ordered by the hearing officer sua sponte or upon written request of any party. The hearing officer shall refer any motion that would effectively dispose of the matter, and may refer any other motion to the board for a decision. A procedural motion may be ruled upon prior to the expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling. The hearing officer shall file all original documents with the board administrator.

[20.1.1.307 NMAC - N, 04/16/12]

20.1.1.400 HEARING PROCEDURES - CONDUCT OF HEARINGS:

A. The rules of civil procedure and the rules of evidence shall not apply.

B. The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome, or burdening the record with unnecessary repetition. The hearing shall proceed as follows.

(1) The hearing shall begin with an opening statement from the hearing officer. The statement shall identify the nature and subject matter of the hearing and explain the procedures to be followed.

(2) The hearing officer may allow a brief opening statement by any [~~person~~] party who wishes to make one.

(3) Unless otherwise ordered, the petitioner shall present its case first.

(4) The hearing officer shall establish an order for the testimony of other participants. The order may be based upon notices of intent to present technical testimony, sign-in sheets and the availability of witnesses who cannot be present for the entire hearing.

(5) If the hearing continues for more than one day, the hearing officer shall provide an opportunity each day for testimony from members of the general public. Members of the general public who wish to present testimony should indicate their intent on a sign-in sheet.

(6) The hearing officer may allow a brief closing argument by any person who wishes to make one.

(7) At the close of the hearing, the hearing officer shall determine whether to keep the record open for written submittals in accordance with 20.1.1.404 NMAC. If the record is kept open, the hearing officer shall determine and announce the subject(s)

on which submittals will be allowed and the deadline for filing the submittals.

C. If the hearing is conducted at multiple locations, the hearing officer may require the petitioner's witnesses to summarize their testimony or be available for cross-examination at each location. Other participants are not required to testify at more than one location, and the hearing officer may prohibit a witness from testifying at more than one location.

[20.1.1.400 NMAC - Rp, 20 NMAC 1.1.IV.400, 08/27/06; A, 04/16/12]

20.1.1.402 EXHIBITS:

A. Any person offering an exhibit at hearing shall provide at least an original and [~~twenty (20)~~] nine (9) copies for the board, and [~~for persons attending the hearing~~] a sufficient number of copies for every other party.

B. All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. If a person offers multiple exhibits, he shall identify each exhibit with an index tab or by other appropriate means.

C. Large charts and diagrams, models and other bulky exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record.

[20.1.1.402 NMAC - Rp, 20 NMAC 1.1.IV.402, 08/27/06; A, 04/16/12]

20.1.1.403 TRANSCRIPT OF PROCEEDINGS: Unless specified by the board or hearing officer, a verbatim transcript shall be made of the hearing. The cost of the original transcript of the proceeding and of providing a copy for each board member shall be borne by the petitioner.

[20.1.1. 403 NMAC - Rp, 20 NMAC 1.1.IV.403, 08/27/06; A, 04/16/12]

20.1.1.405 HEARING OFFICER'S REPORT: If the board directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, [~~explain the testimony and make a recommendation for board action~~] identify the parties' final proposals and the evidence supporting those proposals, including discussion or recommendations as requested by the board, and shall be filed with the board administrator within the time specified by the board. The board administrator shall promptly notify each [~~participant~~] party that the hearing officer's report has been filed and shall provide a copy of the report [~~upon request,~~] along with a notice of any deadline set for comments on that report.

[20.1.1.405 NMAC - Rp, 20 NMAC 1.1.IV.405, 08/27/06; A, 04/16/12]

20.1.1.407 NOTICE OF BOARD ACTION: The board administrator shall provide notice of the board's action to each of the [~~participants~~] parties, and to all other persons who have made a written request to the board for notification of the action taken.

[20.1.1.407 NMAC - Rp, 20 NMAC 1.1.IV.407, 08/27/06; A, 04/16/12]

20.1.1.500 APPEALS AND STAYS - APPEAL OF REGULATIONS:

A. Appeal of any regulatory change by the board shall be taken in accordance with governing law.

B. The appellant shall serve a copy of the notice of appeal on the board and on each [~~participant~~] party.

C. The appellant shall be responsible for preparation of a sufficient number of copies of the hearing record at the expense of appellant.

D. Unless otherwise provided by governing law, the filing of an appeal shall not act as a stay of the regulatory change being appealed.

[20.1.1.500 NMAC - Rp, 20 NMAC 1.1.V.500, 08/27/06; A, 04/16/12]

20.1.1.501 STAY OF BOARD REGULATIONS:

A. Any person who is or may be affected by a rule adopted by the board may file a motion with the board seeking a stay of that rule or regulatory change. The motion shall include the reason for, and the legal authority supporting, the granting of a stay. The movant shall file the motion at least [~~fifteen (15)~~] thirty (30) days before the meeting at which the board will consider the motion. The movant shall serve the motion for a stay as provided by this part, and shall further serve all [~~participants~~] parties in the rulemaking proceeding. The board chair will decide at which meeting the stay motion will be heard.

B. Unless otherwise provided by governing law, the board may grant a stay pending appeal of any regulatory change promulgated by the board. The board may only grant a stay if good cause is shown after a motion is filed and a hearing is held.

C. In determining whether good cause is present for the granting of a stay, the board, upon at least a two-thirds (2/3) vote of the members voting shall consider:

(1) the likelihood that the movant will prevail on the merits of the appeal;

(2) whether the moving party will suffer irreparable harm if a stay is not granted;

(3) whether substantial harm will result to other interested persons; and

(4) whether harm will ensue to the public interest.

D. If no action is taken within sixty (60) days after filing of the motion, the board shall be deemed to have denied the motion for stay.

[20.1.1.501 NMAC - Rp, 20 NMAC 1.1.V.501, 08/27/06; A, 04/16/12]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

8.102.460 NMAC, Recipient Policies - Defining Group Work Program Activities, filed 7/2/2007 is repealed and replaced by 8.102.460 NMAC, Recipient Policies - Compliance Requirements, 8.102.461 NMAC, Work Program Activities and 8.102.462 NMAC, New Mexico Wage Subsidy Program, effective 4/1/2012.

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 102 CASH ASSISTANCE PROGRAMS
PART 460 RECIPIENT POLICIES - COMPLIANCE REQUIREMENTS

8.102.460.1 ISSUING AGENCY: New Mexico Human Services Department.

[8.102.460.1 NMAC - Rp, 8.102.460.1 NMAC, 04/01/2012]

8.102.460.2 SCOPE: The rule applies to the general public.

[8.102.460.2 NMAC - Rp, 8.102.460.2 NMAC, 04/01/2012]

8.102.460.3 STATUTORY AUTHORITY:

A. New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

B. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the temporary assistance for needy families (TANF) block grant under Title IV of the Social Security Act. Through the New Mexico Works Act of 1998, NMSA 1978, Section 27-2B-1, et seq., the New Mexico works program was created.

C. In coordination with the NMW program, the department administers the food stamp employment and training program (E&T) pursuant to the Food Security Act of 1985 and federal regulations at Title 7, Code of Federal Regulations.

[8.102.460.3 NMAC - Rp, 8.102.460.3

NMAC, 04/01/2012]

8.102.460.4 DURATION: Permanent.
[8.102.460.4 NMAC - Rp, 8.102.460.4 NMAC, 04/01/2012]

8.102.460.5 EFFECTIVE DATE: April 1, 2012, unless a later date is cited at the end of a section.
[8.102.460.5 NMAC - Rp, 8.102.460.5 NMAC, 04/01/2012]

8.102.460.6 OBJECTIVE:

A. The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, resources and support. Family income is increased through family employment and child support and by utilizing cash assistance as a support service to enable and assist parents to participate in employment.

B. The objective of education works program (EWP) is to provide cash assistance to a benefit group where at least one participant is enrolled in a post-secondary, graduate or post-graduate institution. Education and training are essential to long-term career development. The applicant or recipient benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.
[8.102.460.6 NMAC - Rp, 8.102.460.6 NMAC, 04/01/2012]

8.102.460.7 DEFINITIONS: [Reserved]

8.102.460.8 [Reserved]

8.102.460.9 NMW COMPLIANCE REQUIREMENTS: Work program requirements apply to each adult and minor head of households benefit group member whether the benefit group is a two-parent or single-parent benefit group.

A. All adult and minor head of household participants are required to complete an assessment, individual responsibility plan (IRP), work participation agreement (WPA) and applicable work requirement hours.

B. Non-compliance with the NMW requirements: Participants who are in non-compliance with any of the NMW requirements are subject to conciliation and sanction as outlined at 8.102.620 NMAC.
[8.102.460.9 NMAC - Rp, 8.102.460.12 NMAC, 04/01/2012]

8.102.460.10 ORIENTATION:

A. General:

(1) Participants of NMW shall be provided a work program orientation, which explains the work program and its objectives to the participant.

(2) Participants shall be given information concerning their rights, supportive services provided during participation, and transitional services available after the NMW case closes because of earnings from employment.

(3) Participants shall be informed of their responsibilities for complying with work program requirements and that failure to do so, without good cause, shall result in the reduction or loss of NMW benefits.

B. Elements: The orientation session provides each participant with the following information:

(1) an explanation that NMW is a temporary program intended to briefly assist the family while preparing themselves for employment;

(2) an explanation of the opportunities available to the participant through the program, including education, training, work experience, and help in job search;

(3) reminder of participant's rights and responsibilities, program regulations and requirements, and the consequences for failure to meet requirements;

(4) overview of supportive services currently available;

(5) explanation of participant's obligation to obtain an assessment from the NMW service provider and return it to ISD within 15 days of the date of approval of application;

(6) explanation of participant's obligation to request approval in writing of participant's work participation activities and secure approval of activities by the department or the NMW service provider; and

(7) overview of transitional services available to participants whose NMW case closes due to employment/ earnings.
[8.102.460.10 NMAC - Rp, 8.102.460.18 NMAC, 04/01/2012]

8.102.460.11 ASSESSMENT:

A. Requirements: No later than 15 calendar days after an application is approved, participants shall have an assessment done by the NMW service provider of their education, skills, prior work experience, barriers, and employability. The assessment is a necessary pre-cursor to the IRP, development of WPA, and is a crucial and necessary element in meeting work program requirements. The assessment is also used in making determinations for requests for limited participation status. Failure to participate in or to complete the assessment may result in work program noncompliance and payment sanctions, unless good cause exists.

B. Elements: The assessment includes the following elements:

(1) a referral by the caseworker to a local agency or agencies that act on behalf of the department to carry out the assessment; and

(2) a face-to-face meeting between the participant and the agency no later than 15 calendar days following approval of assistance for the participant in which the assessment is carried out; there are a variety of assessment tools and forms that may be used, provided that they address the participant's education, skills, prior work experience and employability.

C. Participants must provide a copy of the assessment or a certification of completion of the assessment to the department by the expiration of the 15 day time period.
[8.102.460.11 NMAC - Rp, 8.102.460.14 NMAC, 04/01/2012]

8.102.460.12 INDIVIDUAL RESPONSIBILITY PLAN (IRP):

A. Requirement: All participants are required to develop an IRP with the assistance of the NMW service provider no later than 15 days from the date of approval of assistance.

B. General purpose: The IRP is:

(1) a personal planning tool, intended to assist the participant in long-term career planning, address barriers and secure and maintain employment;

(2) intended to assist the participant in setting realistic long-term employment goals and to identify those steps which must be taken to achieve the stated goals;

(3) not intended to fulfill the limited purpose of identifying work activities which will meet NMW work program participation requirements; the participant is encouraged to use the IRP to choose work activities which will meet work program participation requirements and, at the same time, will assist in setting long-term employment goals; and

(4) designed to move the participant into whatever employment the participant is capable of handling, and to provide the support services necessary to increase the responsibility and amount of work the participant will handle over time.

C. Elements: The IRP shall include the following:

(1) a specific achievable employment goal or goals and a plan for securing and maintaining employment;

(2) commitments by the participant which will assist in meeting long-term goals; such commitments may include, but are not limited to: school attendance, maintaining certain grades, keeping school-age children in school, immunizing children, undergoing substance abuse treatment, or any other activity that will help the participant become and remain employed;

(3) a signature by the participant acknowledging the importance of the IRP, the identified activities and goals which will assist in achieving self-sufficiency and the commitment to participate in activities which will achieve the stated goals; and

(4) a signature by the department's representative certifying that there was a discussion of the activities and goals with the participant, and that the department shall provide on-going support services as needed so that the participant may achieve the participant's stated goals.

D. IRP reviews: The department, the NMW service provider and the participant shall review and update the IRP at least every six months. The review consists of a meeting to review the activities and goals set forth in the IRP, to review and document the participant's progress in achieving the stated goals, and to amend activities and goals as determined necessary and appropriate by the participant. The participant and NMW service provider must initial or sign the updated IRP.

E. Conciliation and sanction: Failure or refusal to develop, sign or attend the six-month review of the IRP may result in conciliation or sanction, unless good cause exists. See 8.102.620 NMAC.

F. HUD family self-sufficiency agreements: Some housing authorities administer self-sufficiency programs under which residents develop a self-sufficiency plan and agreement with the housing authority. A participant with a HUD family self-sufficiency plan may use the plan for his or her IRP. The participant must supply a copy of the plan to the department.
[8.102.460.12 NMAC - Rp, 8.102.460.15 NMAC, 04/01/2012]

8.102.460.13 WORK PARTICIPATION AGREEMENT (WPA):

A. General: The purpose of the WPA is to assure the participant and the department that the work activities in which the participant is engaged meet the standard or limited work requirement hours and the participant is referred to receive all available support services.

B. Contents of the agreement: At a minimum, the WPA shall:

(1) list the participant's proposed work activities;

(2) list the level of effort for each activity;

(3) list the support services to be provided by the department;

(4) list the reasonable accommodations that may be necessary to ensure meaningful engagement;

(5) be signed by the participant; and

(6) upon approval of the activities and support services, signed by the NMW service provider.

C. Submission of a WPA: The participant must submit a WPA, as developed with the NMW service provider and signed by the participant to the department, its contractor or its designee:

(1) no later than 15 calendar days from date of approval for benefits; or

(2) prior to requesting support services associated with such activity;

(3) no later than 30 calendar days from approval for benefits only if good cause criteria applies to untimely completion; or

(4) no later than five days after the expiration of an existing WPA.

D. Limited work participation status requests: Participants requesting a limited work participation status must submit a preliminary WPA to the IRU in accordance with regulation 8.102.420.11 NMAC.

E. Conciliation and sanction: Failure or refusal to develop, sign or meet the activities outlined in the WPA may result in conciliation or sanction, unless good cause exists. See 8.102.620 NMAC.

F. Reopened cases: A participant whose NMW/TANF case is approved for benefits with less than a 12-month break in certification, shall have his or her case reopened and shall be required to:

(1) submit a revised WPA within 15 calendar days of approval for benefits;

(2) be engaged in an allowable work activity as specified on the participant's WPA at the participation standard specified in 8.102.460.14 or 8.102.460.15 NMAC within 15 calendar days of approval for benefits; and

(3) submit the participation report to the NMW service provider no later than the fifth calendar day of the month following the month in which the 15-day time limit expires.
[8.102.460.13 NMAC - Rp, 8.102.460.16 NMAC, 04/01/2012]

8.102.460.14 NMW STANDARD WORK PARTICIPATION HOURS: The following work participation requirement hours apply to all participants unless the participant is granted limited work participation status.

A. General: Participation activities may be met through those activities listed in 8.102.461 NMAC.

(1) A parent subject to participation shall maintain the participation standards based on their status and provide verification of participation at a rate at least equaling the applicable participation standard.

(2) Participants granted a limited work participation status must meet the limited work participation requirement hours on their WPA and provide verification of participation.

B. Two-parent participation requirement hours: Two parent families must meet the all family and two parent participation requirement hours to avoid being subject to conciliation or sanction. If the benefit group does not meet the federal work program definition of a two parent benefit group, then both parents must meet the standard work participation hours for a single parent benefit group.

(1) Two-parent family receiving CYFD child care: Listed below are the family's total monthly work participation hours that are required in a two parent family to be considered meeting the two parent rate. This standard work participation rate also applies to families where one participant is disqualified, sanctioned, or granted a limited work participation status.

(a) total combined monthly hours: 237

(b) minimum core hours: 215

(2) All family rate: Individual monthly work participation hours are required in a two participant family to be considered meeting the all family rate.

(a) total combined monthly hours: 129

(b) minimum core hours: 86

(3) Two-parent family not receiving CYFD child care: Listed below are the family's total monthly work participation hours that are required in a two parent family to be considered meeting the two parent rate. This standard applies to families where one parent is disqualified, sanctioned, or granted limited work participation requirements by the IRU or NMW.

(a) total combined monthly hours: 151

(b) minimum core hours: 129

(4) All family rate: Individual monthly work participation hours are required in a two parent family to be considered meeting the all family rate.

(a) total combined monthly hours: 129

(b) minimum core hours: 86

(5) Two parent family not meeting the definition of two parent: A two-parent family where one parent receives SSI, is an ineligible alien, or is a caretaker for a household member as determined by the IRU, must meet the work participation standard as prescribed by the single parent work participation hours based on the age of the child.

(6) Two parent family where both parents are under age 20: The participation standard shall be met for each parent if the parent is maintaining satisfactory attendance in secondary school or its equivalent during the month. Satisfactory attendance shall be based on the requirements of the school and on enrollment in sufficient course work to assure completion of secondary education

before turning age 20. Compliance with attendance requirements is deemed during school breaks lasting no longer than four consecutive weeks.

C. Single-parent benefit group: The parent in a single-parent or caretaker relative benefit group shall participate in work activities as prescribed below or be subject to conciliation or sanction.

(1) Single parent with a child age six or older:

(a) total monthly hours: 129

(b) minimum core hours: 86

(2) Single parent with a child under age six:

(a) total monthly hours: 86

(b) minimum core hours: 86

(3) Single parent under age 20: A single parent under age 20 shall meet the single parent's total program participation standard, as outlined above when the parent:

(a) is enrolled in school with enough hours to ensure graduation prior to turning age 18; and

(b) reports on a monthly basis attendance at a secondary school or in a GED program; or

(c) participates in education directly related to employment for at least the average number of hours per week specified above based on the child's age.

(d) Compliance with attendance requirements is deemed during school breaks lasting no longer than four consecutive weeks.

[8.102.460.14 NMAC - Rp, 8.102.460.13 NMAC, 04/01/2012]

8.102.460.15 LIMITED WORK PARTICIPATION STATUS: A participant may request a limited work participation status reducing their individual standard work participation to no less than one hour per week, as determined by the department at 8.102.420 NMAC. Individuals who demonstrate extraordinary circumstances may be granted a zero hour limited work participation status. Participants granted a limited work participation status are required to meet the NMW compliance requirements as indicated at 8.102.460.9 NMAC. Failure to complete the assessment, IRP and WPA may be considered non-compliance with program requirements.

[8.102.460.15 NMAC - N, 04/01/2012]

8.102.460.16 CALCULATING HOURS:

A. Total monthly hours are calculated by a weekly average of core and non-core hours.

B. Time spent traveling to and from the work-site, location where child care is provided, or both, do not count as hours of participation.

C. For paid work activities:

(1) paid leave and holiday time count as actual hours;

(2) hours shall be anticipated prospectively and verification provided no more than every six months.

D. For non-paid activities allowable excused absences count as actual hours when:

(1) the absence occurs on a day that the participant is scheduled to participate in an activity; and

(2) is considered excused by the institution or sponsoring agency.

E. For non-paid activities allowable holiday absences count as actual hours when:

(1) the absence scheduled holiday occurs on a day that the participant would have been scheduled to participate in an activity; and

(2) the absence is a scheduled holiday as recognized by the department and determined at the beginning of each federal fiscal year.

F. A participant may be granted no more than 80 hours of excused absences within a 12 month period and no more than 16 hours in any one month. Any excused absence cannot exceed the number of hours the participant was scheduled to work during the period of the absence.

G. Non-paid work experience and community service participation hours are limited to the Fair Labor Standards Act (FLSA) rules. The FLSA is used to determine the maximum number of hours the department can require a participant to meet. Upon receipt and verification of meeting the maximum number of hours required by the FLSA calculation and the number is less than the core work hour requirement, the remaining hours may be deemed up to the core hour requirement. The maximum amount of weekly hours required by the FLSA is calculated as follows:

(1) Single parent: Add the monthly TANF cash assistance grant amount (prior to any reductions) to the monthly food stamp benefit and divide by the federal or state minimum wage, whichever is higher, and divide by 4.3.

(2) Two-parent: The calculation of participation requirement hours is the same as a single parent.

[8.102.460.16 NMAC - N, 04/01/2012]

HISTORY OF 8.102.460 NMAC:

NMAC History:

8 NMAC 3.FAP.460, Work Program Activities, filed 06/16/1997.

8 NMAC 3.FAP.460, Work Program Activities, filed 06/16/1998.

History of Repealed Material:

8.102.460 NMAC, Recipient Policies - Defining Group Work Program Activities, filed 03/02/2001 - Repealed effective 07/01/2001.

8.102.460 NMAC, Recipient Policies - Defining Group Work Program Activities, filed 06/18/2001 - Repealed effective 07/16/2007.

8.102.460 NMAC, Recipient Policies - Defining Group Work Program Activities, filed 07/02/2007 - Repealed effective 04/01/2012.

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 102 CASH ASSISTANCE PROGRAMS
PART 461 WORK PROGRAM ACTIVITIES

8.102.461.1 ISSUING AGENCY: New Mexico Human Services Department.

[8.102.461.1 NMAC - N, 04/01/2012]

8.102.461.2 SCOPE: The rule applies to the general public.

[8.102.461.2 NMAC - N, 04/01/2012]

8.102.461.3 STATUTORY AUTHORITY:

A. New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

B. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the temporary assistance for needy families (TANF) block grant under Title IV of the Social Security Act. Through the New Mexico Works Act of 1998, NMSA 1978, Section 27-2B-1 et seq., the New Mexico works program was created.

C. In coordination with the NMW program, the department administers the food stamp employment and training program (E&T) pursuant to the Food Security Act of 1985 and federal regulations at Title 7, Code of Federal Regulations.

[8.102.461.3 NMAC - N, 04/01/2012]

8.102.461.4 DURATION: Permanent.

[8.102.461.4 NMAC - N, 04/01/2012]

8.102.461.5 EFFECTIVE DATE: April 1, 2012, unless a later date is cited in this section.

[8.102.461.5 NMAC - N, 04/01/2012]

8.102.461.6 OBJECTIVE:

A. The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, resources and support. The further purpose of the program is to increase family income through family employment and child support and by utilizing cash assistance as a support service to enable and assist parents to participate in employment.

B. The objective of education works program (EWP) is to provide cash assistance to a benefit group where at least one participant is enrolled in a post-secondary, graduate or post-graduate institution. Education and training are essential to long-term career development. The applicant or recipient benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

[8.102.461.6 NMAC - N, 04/01/2012]

8.102.461.7 DEFINITIONS: [RESERVED]

8.102.461.8 [Reserved]

8.102.461.9 PROGRAM ACTIVITIES: The following sections describe the various work program activities in which participants may participate. A participant may participate in multiple work program activities at the same time or one after the other. The activities to be completed during an established period are identified in a work participation agreement by the participant and approved by ISD.

[8.102.461.9 NMAC - Rp, 8.102.460.9 NMAC, 04/01/2012]

8.102.461.10 WORK ACTIVITIES - CORE AND NON-CORE:

A. Core work activities: Core activities are allowable for a participant to meet the standard work participation requirement hours for a single or two parent household or to meet the minimum standard work participation requirement hours as defined at 8.102.460.14 NMAC. For purposes of meeting the participant's standard work participation requirement hours core work activities are defined in 8.102.461.11 NMAC thru 8.102.461.19 NMAC.

B. Non-core work activities: Non-core activities are allowable for a participant to address barriers or to meet the work requirement hours. A non-core activity may include, but is not limited to, an activity as defined in 8.102.461.20 NMAC thru 8.102.461.22 NMAC.

C. Limited participation status: Participants with limited participation status shall participate in the qualified activities best suited to their abilities as listed on their work participation agreement. The activities will be based upon the participant's individual circumstances as per 8.102.420.15 NMAC.

[8.102.461.10 NMAC - Rp, 8.102.460.19 NMAC, 04/01/2012]

8.102.461.11 UNSUBSIDIZED EMPLOYMENT (Core Activity):

A. Unsubsidized employment is full- or part-time employment in the public or private sector that is not funded directly or in part by TANF or any other public program. Unpaid apprenticeships and unpaid internships are included as unsubsidized employment.

B. General:

(1) Hours for participants who are employed for wages at or above minimum wage will be determined by actual hours worked and will include paid leave and holidays.

(2) Hours for participants who are self- employed will be determined by subtracting business expenses from gross income for the term reported and divided by the federal minimum wage.

C. Component activities: The following shall be considered as qualified participation hours for unsubsidized employment.

(1) A participant who is employed less than 30 hours per week in unsubsidized employment is considered to be participating in the part-time employment.

(2) A participant who is employed 30 or more hours per week is considered to be participating in the full-time employment.

(3) A participant whose employer claims a tax credit for hiring economically disadvantaged workers in lieu of public sector subsidies, will be considered unsubsidized.

(4) Child care as self-employment: Participants may meet the standard work requirement hours by providing child care services as self-employment. Participants choosing to provide child care for income shall meet the requirements as indicated below:

(a) A participant electing to participate as a child care provider is referred to CYFD to enroll in the family nutrition program and to become a registered child care provider with the state prior to placement of any children there by the department. Participants must also agree to obtain 20 hours of child care training within six months of approval.

(b) The participant is considered employed, upon placement of any child for pay, by CYFD or by a parent.

D. Supervision and documentation: Hours of participation in an employment- related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

[8.102.461.11 NMAC - Rp, 8.102.460.20 NMAC, 04/01/2012]

8.102.461.12 SUBSIDIZED PRIVATE SECTOR EMPLOYMENT (Core Activity):

A. Employment for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a participant is considered to be subsidized private sector employment.

B. General: New Mexico will use TANF funds to offset the wages of employing a TANF participant for an established period of time. Upon expiration of the subsidized term of employment, the employer is expected to hire the participant.

C. Component activities: The following shall be considered as qualified participation hours for subsidized private sector employment.

(1) Employment will be considered subsidized if the employer receives TANF or other public sector funding for an employee.

(2) Public sector paid apprenticeships and paid internships shall be considered subsidized employment.

D. Supervision and documentation: Hours of participation in an employment- related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

[8.102.461.12 NMAC - Rp, 8.102.460.21 NMAC, 04/01/2012]

8.102.461.13 SUBSIDIZED PUBLIC SECTOR EMPLOYMENT (Core Activity):

A. Employment for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a participant is considered subsidized employment. The employment will be considered subsidized if an employer receives a TANF or other public sector subsidy for an employee.

B. General: A participant is ineligible for NMW/TANF cash assistance while participating in subsidized public sector employment. Subsidized public sector employees will be paid no less than the greater of federal or state minimum wage.

C. Component activities: The following shall be considered as qualified participation hours for subsidized public sector employment:

(1) Paid apprenticeships and paid internships.

(2) Participation in various support

services designed to remove barriers towards employment shall be considered countable hours as long as the participant is paid for involvement.

D. Supervision and documentation: Hours of participation in an employment- related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

[8.102.461.13 NMAC - Rp, 8.102.460.22 NMAC, 04/01/2012]

8.102.461.14 ON-THE-JOB TRAINING (Core Activity):

A. Training in the public or private sector that is given to a paid employee that provides knowledge and skills essential to the full and adequate performance of the job shall be considered on-the-job training. On-the-job training (OJT) may be subsidized or unsubsidized. The employer of an OJT participant will retain the employee after the successful completion of the OJT contract and the existence of a written training plan; these plan requirements distinguish OJT from other subsidized employment.

B. General:

(1) Hours in an on-the-job-training activity will be determined by actual hours worked or upon the contract the HSD has with the employer including paid leave and holidays and projected for up to six months.

(2) The department will coordinate with the department of workforce solutions, Workforce Investment Act (WIA), one-stops or the New Mexico in-plant-training program to engage TANF participants in this work activity.

(3) To qualify as OJT there must be a contractual agreement with the employer and HSD may pay no more than 50 percent of the participant's wage and benefit package.

C. Component activities: The following shall be considered as qualified participation hours for OJT:

(1) on-the-job training as paid employment; or

(2) professional certification; or

(3) practicum, internship, and clinical training.

D. Supervision and documentation:

(1) Hours for this activity will be projected for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

(2) This activity must be supervised by an employer, work site sponsor, or other responsible party on a daily basis.

[8.102.461.14 NMAC - Rp, 8.102.460.23 NMAC, 04/01/2012]

8.102.461.15 JOB SEARCH AND JOB READINESS ASSISTANCE (Core Activity):

A. Job search includes the acts of seeking or obtaining employment, and preparation to seek or obtain employment.

B. General:

(1) Countable hours for looking for job openings, making contact with potential employers, applying for vacancies and interviewing for jobs, and in labor market training will be determined by actual hours spent engaged in these activities. Travel time between these activities does count as actual hours of participation, except the travel time to and from home.

(2) Job search hours are countable in meeting the core work requirement hours for an individual with the following limitations:

(a) a single parent with a child under the age of six cannot participate for more than 80 consecutive hours and not to exceed 120 hours in the preceding 12 months; or

(b) a single parent with a dependent child over age six cannot participate for more than 120 consecutive hours and not to exceed 180 hours in a preceding 12 months;

(c) in either of the above circumstances participation shall not exceed four consecutive weeks of engagement in job search and job readiness; and

(d) in either of the above circumstance participation shall not exceed six weeks of engagement in job search and job readiness.

(3) Needy state status: If New Mexico is determined to be a needy state as determined by the United States department of health and human services the maximum number of hours allowed for participation is as follows:

(a) a single parent with a child under age of six cannot participate for more than 80 consecutive hour and not to exceed 240 hours in the preceding 12 months; and

(b) a single parent with a dependent child over age six cannot participate for more than 120 consecutive hours and not to exceed 360 hours in the preceding 12 months.

C. Component activities: The following shall be considered as qualified participation hours for job search and job readiness.

(1) Participation in parenting classes, money management classes or life skills training.

(2) Participation in an alcohol or drug addiction program where a qualified health or social professional provides verification that such treatment or activity is necessary.

(3) Participation in job search including searching for job openings, applying for jobs and interviewing for positions.

(4) Addressing domestic violence issues/barriers:

(a) Participants who have significant barriers to employment because of domestic violence or abuse may participate in domestic violence work activity to receive services focused on assisting the participant to overcome the effects of domestic violence and abuse. Participants engaged in this activity may reside in a domestic violence shelter or may receive services while residing elsewhere. The primary focus of such services is on helping the participant to move into employment. Domestic violence is a temporary work-readiness activity limited to no more than 24 weeks.

(b) The need for domestic violence services can be identified at any point, starting with the resource planning session up to the point at which the case is scheduled for closure. Services are provided by local agencies or programs through referral.

(c) Domestic violence activity can include a mix of domestic violence services and other work program activities. At no point shall a victim of domestic violence be required to carry out any activity which puts the participant at risk of further violence. Domestic violence participation can include:

(i) emergency shelter or re-location assistance;

(ii) child care;

(iii) personal, family and career counseling; and

(iv) participating in criminal justice activities directed at prosecuting the perpetrator.

D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has satisfactorily completed the hours by participating in one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a monthly timesheet.

(3) Job search and job readiness assistance activities must be supervised by the NMW service provider or other responsible party on an ongoing basis no less frequently than daily.

[8.102.461.15 NMAC - Rp, 8.102.460.24 NMAC, 04/01/2012]

8.102.461.16 WORK EXPERIENCE (Core Activity):

A. Work experience is an unpaid activity. The purpose of work experience is to improve the employability of those who cannot find employment. Work experience may be in a public or private sector setting.

B. General:

(1) The type of work experience

placement needed by a participant may be identified during the assessment or the development of the IRP. Participants in a work experience placement can either be subsidized employees or trainees, depending upon the nature of the placement.

(2) Sponsoring agencies: Participants may be placed in either a public or private sector work site. The work site is selected based on a participant's individual needs. Sponsoring agencies provide supervision in a safe and healthy work environment and must ensure that the environment is free of discrimination based on race, gender, national origin, handicap, age, religion, or political affiliation.

(a) The sponsoring agency must enter into an agreement with the department which details the expectations and responsibilities of each party and ensures an appropriate work setting.

(b) The sponsoring agency may not displace any current employee in layoff status or infringe on the promotional opportunities of any current employee.

(c) The sponsoring agency shall be encouraged to give a hiring preference consideration to participants assigned to their agency.

(3) Liability insurance: All work providers must sign a work experience agreement and provide trainees with liability insurance. Participants in a trainee activity are covered by medicaid except for injuries caused on the job not covered by medicaid. Work-site accidents must be reported to the ISD office within 24 hours of occurrence. A written accident report must be obtained from the work site by the ISD office and submitted to the department's central office within five working days.

C. Component activities: Placement provides a participant with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment. Unpaid apprenticeships and unpaid internships are included as work experience.

D. Supervision and documentation:

(1) This activity must be supervised by an employer, work site sponsor, or NMW service provider on an ongoing basis no less frequently than daily.

(2) The Fair Labor Standards Act (FLSA) standards are used to determine the maximum number of hours the department can require a participant to meet. When the participant meets the maximum number of hours required by the FLSA calculation and the number is less than the core work hour requirement, the remaining hours may be deemed up. The maximum amount of weekly hours required by the FLSA are calculated as follows:

(a) Single parent: Add the monthly TANF cash assistance benefit (prior to the sanction amount) to the monthly food stamp benefit and divide by the federal or state minimum wage, whichever is higher, and divide by 4.3.

(b) Two-parent: The initial calculation of participation requirement hours is the same as a single parent. Both parents can simultaneously participate in an activity subject to FLSA NMW standard work participation requirement hours.

(c) Limited participation status: A participant in a limited work participation status may use the FLSA calculation or lesser hours to meet the hours prescribed in their work participation agreement.

[8.102.461.16 NMAC - Rp, 8.102.460.25 NMAC, 04/01/2012]

8.102.461.17 COMMUNITY SERVICE PROGRAMS (Core Activity):

A. Community service is a non-paid work activity. Participants provide services needed by their community. Sponsoring agencies may be either public sector or private nonprofit entities such as libraries, charities, churches, and schools. The department will review each placement and take into account, to the extent possible, the prior training, experience, and skills of a participant in making appropriate community service assignments.

B. General: To qualify as a community services placement, the activities carried out must be similar to those which would normally be carried out by a volunteer working with the agency rather than those carried out by an employee. Federal guidelines for determining whether a placement is a "volunteer" versus an "employee" must be followed by the sponsoring agency.

C. Component activities: The following shall be considered as qualified participation hours for community service programs.

(1) Community service programs will be limited to projects that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and child care.

(2) Head-start, schools and child care centers: Some educational and child care programs allow, or require, parents to contribute time in the classroom or on class activities outside the classroom. Time spent in such activities is considered to be community service time and is countable as a core work activity.

(3) Liability insurance: All work providers must sign a community service agreement and provide trainees with liability insurance. Participants in a trainee activity are covered by medicaid and additional medical insurance for injuries caused on the job that may not be covered by medicaid. Work-site accidents must be reported to the ISD office within 24 hours of occurrence. A written accident report must be obtained from the work site by the ISD office and submitted to the department's central office within five working days.

D. Supervision and documentation:

(1) This activity must be supervised by an employer, work site sponsor, or NMW service provider on an ongoing basis no less frequently than daily.

(2) The Fair Labor Standards Act (FLSA) standards are used to determine the maximum number of hours the department can require a participant to meet. When the participant meets the maximum number of hours required by the FLSA calculation and the number is less than the standard work participation requirement hours, the standard work participation requirement hours may be deemed as met due to compliance with FLSA standards. The maximum amount of monthly hours required by the FLSA is calculated as follows:

(a) Single parent: Add the monthly TANF cash assistance benefit (prior to the sanction amount) to the monthly food stamp benefit and divide by the federal or state minimum wage, whichever is higher, and divide by 4.3.

(b) Two-parent: The initial calculation of standard work participation requirement hours is the same as a single parent. Both parents can simultaneously participate in an activity subject to FLSA NMW standard work participation requirement hours.

(c) Limited participation status: A participant in a limited work participation status may use the FLSA calculation or lesser hours to meet the hours prescribed in their work participation agreement.

[8.102.461.17 NMAC - Rp, 8.102.460.26 NMAC, 04/01/2012]

8.102.461.18 CHILD CARE FOR COMMUNITY SERVICE PARTICIPANTS (Core Activity):

A. NMW participants may meet the NMW standard work participation requirement hours by providing child care services, at no cost, to other NMW participants engaged in community services.

B. General: Use of a child care provider by a participant, as provided in this section, is at the sole discretion of the participant.

(1) The department will make a good faith effort to assure the provision of quality care and a safe environment by referring community service participants only to childcare providers who have been certified by CYFD. The department makes no claim as to the quality of care which will be provided, and assumes no liability, for the physical or emotional condition of children

referred to a home certified by CYFD.

(2) The minimum number of children a participant may care for is determined based on the number of families needing child care while participating in a community service component. However, at no time will the number exceed child-care standards established by CYFD. A participant electing to participate as child care provider is referred to CYFD to enroll in the family nutrition program and to become a registered child care provider with the state prior to placement of any children there by the department. Participants must also agree to obtain 20 hours of child care training within six months of approval.

(3) After successful registration, meeting safety regulations, and receiving training, NMW participants shall become registered child care providers. NMW participants shall then become eligible to receive payments from CYFD for providing child care services.

(4) Hours of participation are based on the number of hours each day the participant is actually providing care for the children, plus one hour before and one after the children leave for the purposes of clean-up and preparation.

(5) Upon placement of any child for pay, by CYFD or by a parent, the participant is considered to be employed.

C. Supervision and documentation:

(1) The provider is required to maintain attendance records to verify the hours of work. Also included in participation hours is time spent registering with CYFD, time spent correcting any deficiencies necessary to complete registration as well as any time spent in attendance at child care training activities.

(2) The NMW service provider or ISD office shall maintain a list of registered child care providers who are providing non-paid child care and refer to them any participant in community services who needs child care in order to participate.

[8.102.461.18 NMAC - Rp, 8.102.460.27 NMAC, 04/01/2012]

8.102.461.19 VOCATIONAL EDUCATION AND TRAINING (Core Activity):

A. Organized career and technical educational programs that are directly related to the preparation of a participant for employment in current or emerging occupations requiring training, to include a baccalaureate or advanced degree are considered to be vocational education and training. Engagement shall be reported as core participation for not more than 12 months in a lifetime.

(1) A course of vocational education or training is one whose purpose is to provide the specific knowledge and skills needed by a participant to carry out the functions and activities of an occupation or class of occupations listed in the DOT (dictionary of occupational titles). A participant will be granted a degree or certificate at the end of the program which names the occupation.

(2) Vocational educational training must be provided by education or training organizations, which may include, but are not limited to, vocational-technical schools, community colleges, postsecondary institutions, proprietary schools, non-profit organizations, and secondary schools that offer vocational education and are certified to provide the participant a certificate of completion by an accredited agency.

B. Approval of vocational education training:

(1) A fixed number of vocational education training education slots shall be authorized by the department and shall not exceed 30 percent of the total number of persons subject to work program participation. For a participant in a slot, all approved hours of participation in vocational education activities shall count in meeting the participant's core work participation requirement.

(2) No more than 12 months in a lifetime of such activity are countable in meeting the standard work participation requirement hours.

(3) Enrollment in an agreed-upon vocational training program is the responsibility of the participant.

(4) Level of effort: Participation requirement hours shall be considered based on:

(a) actual supervised class time hours;

(b) labs and similar activities are considered class time;

(c) actual hours of completed supervised study-time;

(d) one hour of unsupervised study time per hour of class not to exceed the educational program requirements; and

(e) holiday time and excused absences.

C. Component activities: Vocational educational training programs should be limited to component activities that give participants the knowledge and skills to perform a specific occupation. The following shall be considered as qualified participation hours for vocational education and training.

(1) Vocational associate degree programs: Programs consisting of both academic and vocational for credit course work that requires 60 credits for completion. Completion of these programs can provide an associate of arts, associates of science or associates of applied science degree in fields defined as vocational as per Subsection A of this section.

(2) Instructional certificate programs: Programs designed to upgrade job related skills which generally require up to a year to complete and involve less academic work than associate degrees.

(3) Industry skills certifications: Industry developed certificates for students who demonstrate specific skills often thru testing. Preparation for tests include both self-study and courses offered at post secondary institutions or other training providers.

(4) Non-credit course work: Curriculum designed to accommodate those who want specific job related skills at an accredited institution.

(5) English as a second language (ESL) and basic education: these courses of study can count as part of the vocational training component only if they are included in the embedded activities in the curriculum. In order to count as a work activity, basic remedial education or ESL must be required subjects by counseling or evaluative services provided by the educational facility.

(6) Distance education and online certificate programs: Distance education and online certificate programs in the associate degree and certificate programs listed above must be taken through an institution accredited by an accrediting agency and recognized by the council for higher education accreditation or by the U.S. department of education in order to qualify as a work activity and approved on a case-by-case basis by the NMW service provider.

(7) Class and homework hours must be reported on timesheets and verified as supervised by the attended institution's instructor or aide.

D. Supervision and documentation:

(1) Verification of level of effort shall be required to determine that a participant has satisfactorily completed the hours by one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised and unsupervised hours documented on a monthly timesheet.

[8.102.461.19 NMAC - Rp, 8.102.460.28 NMAC, 04/01/2012]

8.102.461.20 JOB SKILLS TRAINING (Non Core Activity):

A. Job skills training required by an employer to provide a participant with the ability to obtain employment or to advance within the workplace is considered job skills training.

B. General: Non-core work activities are countable towards the total work participation requirement hours for a participant who has completed the core work activity hours.

C. Component activities:

Participation in the following is considered as meeting work participation requirement hours when combined with a core work activity:

(1) full-time training for adult basic education (ABE), English as a second language (ESL);

(2) post-secondary education; or

(3) any other job related training that can not be considered vocational education as outlined in 8.102.461.19 NMAC.

D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has satisfactorily completed the hours by participating in one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a monthly timesheet.

(3) Job skills training directly related to employment must be supervised on at least a daily ongoing basis.

(4) Countable work participation requirement hours shall be determined by actual hours spent in class time, completion of supervised and unsupervised study hours to include holidays and excused absences. One hour of unsupervised study time for each hour of classroom time will be counted, as long as the amount of study time does not exceed the educational program requirements.

[8.102.461.20 NMAC - Rp, 8.102.460.30 NMAC, 04/01/2012]

8.102.461.21 EDUCATION RELATED TO EMPLOYMENT (Non Core Activity):

A. Any organized activity which is designed to improve the participant's knowledge or skills for the specific purpose of increasing the participant's ability to perform in the workplace is considered to be education directly related to employment.

B. General: NMW participants may engage in this activity if they have not received a high school diploma or a certificate of high school equivalency or needs specific education related to current employment or job offer. Non-core work activities are countable towards the total work participation standard for a participant who has completed the core work activity hours.

C. Component activities: Participation in the following is considered as meeting work participation requirement hours when combined with a core work activity:

(1) English as a second language (ESL) for participants who are unable to or uncomfortable with their ability to communicate in English, either spoken or written; or

(2) literacy training for participants who have trouble understanding written English and is based on a demonstrated or acknowledged difficulty in reading comprehension, regardless of the level of education completed; or

(3) adult basic education (ABE) to assist participants who need classes providing basic educational training before working on a general equivalency degree (GED); or

(4) GED classes for participants who have completed a general equivalency diploma pre-test and the results indicate the participant is ready; or

(5) high school attendance for participants who are attending an accredited high school, a participant who has recently dropped out of high school shall be encouraged to re-enroll or required to pursue a GED; or

(6) post-secondary institution for participants who are enrolled in advanced educational training activity through colleges, technical institutes or universities and who are attending classes in order to complete a two- or four-year college degree; or

(7) education directly related to employment shall include any other job-related class provided by a facility or organization.

D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has completed the hours by participating in one or several of the component criteria.

(2) Countable work participation requirement hours shall be determined by actual hours spent in class time, completion of supervised and unsupervised study hours to include holidays and excused absences. One hour of unsupervised study time for each hour of classroom time will be counted, as long as the amount of study time does not exceed the educational program requirements. Hours will be documented on a monthly timesheet.

[8.102.461.21 NMAC - Rp, 8.102.460.31 NMAC, 04/01/2012]

8.102.461.22 SECONDARY SCHOOL/GED (Non Core Activity):

A. The secondary school/ GED work program activity serves participants who are age 18 or older. This may be a qualified activity for a participant who is under age 20, but cannot enroll in high school if the participant has:

(1) successfully completed a previous education work program activity - English as a second language or adult basic education; or

(2) completed a general equivalency diploma pre-test and the results indicate the participant is ready for GED classes.

B. Participation must be supervised on no less than a daily basis. Non-core work activities are countable towards the total work participation standard for a participant who has completed the standard work participation requirement hours with a core work activity.

C. Component activities: Participation in the following is considered as meeting work participation requirement hours when combined with a core work activity:

(1) ABE or ESL; or

(2) GED or high school shall only be included when they are prerequisites for employment.

D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has completed the hours by participating in one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a monthly timesheet.

(3) Countable work participation requirement hours shall be determined by actual hours spent in class time, completion of supervised and unsupervised study hours to include holidays and excused absences. One hour of unsupervised study time for each hour of classroom time will be counted, as long as the amount of study time does not exceed the educational program requirements.

[8.102.461.22 NMAC - Rp, 8.102.460.32 NMAC, 04/01/2012]

HISTORY OF 8.102.461 NMAC:

NMAC History:

8 NMAC 3.FAP.460, Work Program Activities, filed 06/16/1997.

8 NMAC 3.FAP.460, Work Program Activities, filed 06/16/1998.

History of Repealed Material:

8.102.460 NMAC, Recipient Policies - Defining Group Work Program Activities, filed 03/02/2001 - Repealed effective 07/01/2001.

8.102.460 NMAC, Recipient Policies - Defining Group Work Program Activities, filed 06/18/2001 - Repealed effective 07/16/2007.

8.102.460 NMAC, Recipient Policies - Defining Group Work Program Activities, filed 07/02/2007 - Repealed effective 04/01/2012.

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 102 CASH ASSISTANCE PROGRAMS
PART 462 NEW MEXICO WAGE SUBSIDY PROGRAM

8.102.462.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.102.462.1 NMAC - N, 04/01/2012]

8.102.462.2 SCOPE: The rule applies to the general public.
[8.102.462.2 NMAC - N, 04/01/2012]

8.102.462.3 STATUTORY AUTHORITY:

A. New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

B. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the temporary assistance for needy families (TANF) block grant under Title IV of the Social Security Act. Through the New Mexico Works Act of 1998, NMSA 1978, Section 27-2B-1 et seq., the New Mexico works program was created.
[8.102.462.3 NMAC - N, 04/01/2012]

8.102.462.4 DURATION: Permanent.
[8.102.462.4 NMAC - N, 04/01/2012]

8.102.462.5 EFFECTIVE DATE: April 1, 2012, unless a later date is cited at the end of a section.
[8.102.462.5 NMAC - N, 04/01/2012]

8.102.462.6 OBJECTIVE:

A. The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, resources and support. The further purpose of the program is to increase family income through family employment and child support and by utilizing cash assistance as a support service to enable and assist parents to participate in employment. This is achieved by participation in, and successful completion of the activities described in this part.

B. The New Mexico wage subsidy program is a subsidized employment opportunity where a TANF cash assistance participant is employed full time. The department or its agents may subsidize the up to 50 percent of the employee's salary with funds from the TANF block grant. Funding of the program is contingent on specific appropriation of state and federal funding.
[8.102.462.6 NMAC - N, 04/01/2012]

8.102.462.7 DEFINITIONS: [Reserved]

8.102.462.8 CASE ADMINISTRATION FOR THE NEW MEXICO WAGE SUBSIDY PROGRAM: The New Mexico wage subsidy program is a subsidized employment opportunity where a TANF cash assistance participant is employed full-time. Payments to employers are made from TANF block grant funds.

A. Initial eligibility: Active participants in the TANF/NMW program may be referred to participating employers to be considered for a New Mexico wage subsidy position. To be eligible for these positions, the participant must meet the following criteria:

(1) have sufficient work experience;

(2) be a registered participant in NMW;

(3) is not in current conciliation or being sanctioned for non-cooperation with the NMW work requirements or child support requirements;

(4) have citizenship documentation and a social security number; and

(5) have verification of their highest educational level attained.

B. Certification period: A participant may be employed through the New Mexico wage subsidy program for up to 12 months.

C. Effects on TANF cash assistance:

(1) the participant is ineligible for TANF cash assistance while participating in the wage subsidy program;

(2) the months of participation in the wage subsidy program will not count against a participant's 60 month term limit;

(3) the participant remains eligible for medicaid;

(4) the participant's wages count against as income for determining food stamp eligibility.

(5) the participant may be eligible for a supplemental cash assistance payment if the wage subsidy employment is lost during the month, or if the net monthly full-time wage paid to the participant is less than the TANF cash assistance to which the participant would otherwise be eligible; and

(6) the participant's earnings are exempt from HUD housing determinations.

D. Continued eligibility: the following requirements must be met for to ensure continued participation in the New Mexico wage subsidy program:

(1) the participant must remain eligible for TANF for the duration of the wage subsidy employment term;

(2) must maintain satisfactory attendance at the employment site; and

(3) continued NMW participation by the second parent in a two parent family.
[8.102.462.8 NMAC - Rp, 8.102.460.32 NMAC, 04/01/2012]

8.102.462.9 PROGRAM LIMITATIONS:

A. Failure to comply with other requirements: The benefit group shall be transitioned back to the NMW cash assistance and appropriate sanctions applied if a participant fails or refuses to comply with child support enforcement, or school attendance, or reporting requirements in the NMW cash assistance program. The transition is effective in the month following the month the failure or refusal to comply is established.

B. Two-parent family: In a two-parent family where only one of the parents is a participant in the New Mexico wage subsidy program, the other parent, if considered as a mandatory participant in the NMW work program, shall be required to participate in qualified work activities for a minimum of 30 hours per week. At least 20 hours a week must be spent in qualified primary work activities.

C. If a wage subsidy participant voluntarily quits a job without good cause, as determined by the NMW service provider or the department, the participant will no longer be considered for participation in the wage subsidy program. Refer to 8.102.620 NMAC for good cause provisions.

D. The TANF cash assistance participant will then have 10 days to notify the NMW service provider and renew work participation activities or be subject to the conciliation/sanction process for non-compliance with the work program.
[8.102.462.9 NMAC - Rp, 8.102.460.32 NMAC, 04/01/2012]

8.102.462.10 REQUIREMENTS FOR PARTICIPATING EMPLOYERS: Participating employers shall:

A. hire NMW participants for subsidized positions and offer a reasonable possibility of unsubsidized employment after the subsidy period;

B. not require participants to work in excess of forty hours per week;

C. pay a wage that is equal to the wage paid to permanent employees performing the same job duties and no less than the federal minimum wage;

D. ensure that the subsidized employment does not impair an

existing contract or collective bargaining agreement;

E. ensure that the subsidized employment does not displace currently employed persons or fill positions that are vacant due to a layoff;

F. maintain health, safety and work conditions at or above levels generally acceptable in the industry and not less than those of comparable jobs offered by the employer;

G. provide on-the-job training necessary for subsidized participants to perform their duties;

H. sign an agreement for each placement outlining the specific job offered to a subsidized employee and agreeing to abide by all of the requirements of the wage subsidy program;

I. provide workers' compensation coverage for each subsidized employee;

J. provide other benefits (includes but is not be limited to, health care coverage, paid sick leave, holiday and vacation pay) equal to those for new employees, or as required by state and federal law, whichever is greater; and

K. inform the department of any absences resulting in leave without pay; and

L. proceed with termination of any New Mexico wage subsidy employee who has used an excess of 16 hours excused absences in a month or 80 cumulative hours over the course of the wage subsidy term.

[8.102.462.10 NMAC - Rp, 8.102.460.32 NMAC, 04/01/2012]

8.102.462.11 DEPARMENT REQUIREMENTS: The department shall:

A. suspend regular TANF cash assistance payments to the benefit group for the calendar month in which an employer makes the first subsidized wage payment to a participant in the benefit group;

B. pay employers each month, from the TANF block grant, an amount that equals fifty percent of the wages paid by the employer to program participants;

C. issue a supplemental TANF cash assistance payment if the net monthly full-time wage paid to the participant is less than the TANF cash assistance amount for which the participant would otherwise be eligible;

D. reimburse the participating employer each month through current invoice procedures; and

E. assist the work program contractor by referring participants who may be eligible for the New Mexico wage subsidy program.

[8.102.462.11 NMAC - Rp, 8.102.460.32 NMAC, 04/01/2012]

8.102.462.12 NMW SERVICE PROVIDER REQUIREMENTS: The department's NMW service provider shall:

A. provide an orientation for all participants who are accepted into the wage subsidy program;

B. identify eligible participants and refer them to potential employers;

C. submit a list of referrals to the local ISD office to verify eligibility for NMW cash assistance;

D. assist the TANF cash assistance participant in submitting applications for employment; and

E. provide case management by monitoring employee work efforts and production to ensure job retention.

[8.102.462.12 NMAC - Rp, 8.102.460.32 NMAC, 04/01/2012]

8.102.462.13 LEAVE BALANCES AND ABSENCES:

A. Annual and sick leave: While participating in the NMW wage subsidy program, the participant is entitled to accrue a balance of both sick and annual leave, as provided by the employer.

B. Excused absences: Participants are entitled to unpaid excused absences at the discretion of the site supervisor or NMW service provider. A participant may not be allowed more than 16 hours of unpaid excused absences in any month or 80 hours cumulatively during the wage subsidy term. Absences are approved by the site supervisor or by the NMW service provider.

D. Absences in excess of the accrued annual, sick and the unpaid excused absence totals will result in termination of the NMW wage subsidy activity and the participant will be subject to the conciliation and sanction process in accordance with regulation at 8.102.620 NMAC. The appropriate termination process dictated by the employer's human resources procedures shall be followed.

[8.102.462.13 NMAC - Rp, 8.102.460.32 NMAC, 04/01/2012]

HISTORY OF 8.102.462 NMAC:

NMAC History:

8 NMAC 3.FAP.460, Work Program Activities, filed 06/16/1997.

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History of Repealed Material:

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8.102.460 NMAC, Recipient Policies - Defining Group Work Program Activities, filed 07/02/2007 - Repealed effective 04/01/2012.

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.102.100 NMAC, Section 7, effective 4/1/2012.

8.102.100.7 DEFINITIONS:

A. Definitions A-L:

(1) Applicant: means person applying for cash assistance on behalf of a benefit group.

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

(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 who is sufficiently knowledgeable about the applicant/ benefit group's circumstances to complete the application form correctly and represent the benefit group.

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

(6) 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.

(7) Benefit group: means a pregnant woman or a group of people that includes a dependent child, all of that dependent 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.

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

(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 proceeds from the sale of capital goods or equipment.

(11) 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.

(12) Caretaker relative: means an individual who assumes parental control over a child living in the home.

(13) Categorical eligibility (CE): means a food stamp household that meets one of the following conditions is considered to be CE and have limited eligibility requirements.

(a) Financial CE: Any food stamp household in which all members receive Title IV-A assistance (TANF), general assistance (GA), or supplemental security income (SSI) benefits is considered to be categorically eligible for food stamp benefits.

(b) Broad-based CE: Any food stamp household, in good standing, in which at least one member is receiving a non-cash TANF/MOE funded benefit or service and household income is below 165% FPG.

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

(15) 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.

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

(17) Conciliation process: means a 30- day process prior to imposing a sanction 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.~~]

(18) Conversion factor: means anticipated monthly income received on a weekly or bi-weekly basis shall be converted to a monthly amount.

(19) 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.

(20) 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.

(21) Department: means the human services department.

(22) 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 public education department.

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

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

(25) 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.

(26) 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.

(27) 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.

(28) 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.

(29) Encumbrance: means debt owed on property.

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

(31) 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 food stamp program.

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

(33) Fair hearing: means an administrative proceeding which a claimant 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.

(34) 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.

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

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

(37) Federal means-tested public benefit: means benefits from the food stamp program; the food assistance block grant programs in Puerto Rico, American Samoa and the commonwealth of the Northern Mariana Islands, supplemental security income (SSI), and the TANF block grant program under Title IV of the Social Security Act; medicaid and SCHIP.

(38) 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.

(39) Five-year bar: means the federally imposed prohibition on receiving federal means-tested public benefits for certain qualified aliens who entered the United States (U.S.) on or after August 22, 1996, until they continuously lived in the U.S. for five years. The count for the five year bar begins on the date the non-citizen attains qualified alien status.

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

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

(42) 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.

(43) 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.

(44) 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.

(45) Hardship extension: means an extension of the TANF/NMW 60-month lifetime limit due to specific conditions enumerated at 8.102.410.17 NMAC.

[~~(45)~~](46) **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 relative.

[~~(46)~~](47) **Immigrant:** means a non-citizen or an alien within the meaning found in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

[~~(47)~~](48) **Immigration and naturalization service (INS):** a division of the U.S. department of justice dealing with U.S. citizenship and immigration services.

[~~(48)~~](49) **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, psychiatric, or both processes. To evaluate both physical and mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.

(50) Incapacity review unit: means a special unit in the department that determines the status of participants for the family violence option and limited work participation status. This is also known as the IRU.

[~~(49)~~](51) **Individual development account program:** means an account created for eligible individuals which is established and maintained by an authorized financial institution to be used for individual development.

[~~(50)~~](52) **Individual development program:** means a program that establishes and administers individual development accounts and reserve accounts in order to provide financial training required by the division for account owners.

[~~(51)~~](53) **Ineligible alien:** means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

[~~(52)~~](54) **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.

[~~(53)~~](55) **Inquiry:** means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application.

[~~(54)~~](56) **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.

[~~(55)~~](57) **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.

[~~(56)~~](58) **Irrevocable trust funds:** means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

[~~(57)~~](59) **Issuance month:** means the calendar month for which cash assistance is issued. In prospective budgeting, the budget and issuance months are the same.

[~~(58)~~](60) **Legal guardian:** means a judicially or parental created relationship between a child and appointed adult.

(61) Limited work participation hours: means the reduced work requirement hours approved by the IRU or the NMW service provider, as appropriate, after a participant has been approved for a limited work participation status.

(62) Limited work participation status: means a NMW participant has a verified condition or barrier as outlined at Subsection A of 8.102.420.11 NMAC that precludes the ability to meet the standard work requirement hours and has been approved for such status by the IRU or NMW service provider, as appropriate.

B. Definitions M-Z:

(1) Maintenance of effort (MOE): means the amount of general funds the state agency must expend annually on the four purposes of TANF to meet a minimum expenditure requirement based on a states historical AFDC expenditures.

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

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

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

(5) 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.

(6) 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.

(7) 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.

(8) Non-cash TANF/MOE benefit or service: means non-cash TANF/MOE benefit or services include programs or services that do not provide cash to recipients, but are funded by the TANF program, either by the federal TANF block grant or the state MOE share. These services may include transportation, childcare, counseling programs, parenting programs, pamphlets or referrals to other TANF/MOE-funded services.

(9) Non-citizen U.S. national: means a person who is not an U.S. citizen but was born in an outlying possession of the U.S. on or after the date the U.S. acquired the possession, or a person whose parents are non-citizen U.S. nationals. A person who resides on one of the following U.S. island territories is a non-citizen U.S. national: American Samoa, Swains island or the Northern Mariana islands.

(10) 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. Recipients have 13 days from the mailing date of the notice to request a fair hearing and to have benefits restored to their previous level.

(11) NMW compliance requirements: means the various work program activities a TANF/NMW participant is expected to attend and completed in order to avoid conciliation or sanction.

[~~(11)~~](12) Overissuance: means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

[~~(12)~~](13) **Parent:** means natural parent, adoptive parent, or stepparent.

[~~(13)~~](14) **Participant:** means a

recipient of cash assistance or services or a member of a benefit group who has reached the age of majority.

[~~(14)~~](15) **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, recoupment or both.

[~~(15)~~](16) **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.

[~~(16)~~](17) **Person:** means an individual.

[~~(17)~~](18) **Project area:** means the geographic area designated to a county office that is responsible for the administration of the department's programs.

[~~(18)~~](19) **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.

[~~(19)~~](20) **Qualified alien status:** means a person lawfully admitted into the United States under INA guidelines as defined in PROWRA of 1996.

[~~(20)~~](21) **Real property:** means land, affixed improvements, and structures which include mobile homes. Grazing permits are also considered real property.

[~~(21)~~](22) **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.

[~~(22)~~](23) **Recipient:** means a person receiving cash assistance benefits.

[~~(23)~~](24) **Refugee:** means a lawfully admitted individual granted conditional entry into the United States.

[~~(24)~~](25) **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.

[~~(25)~~](26) **Resource standard:** means the financial standard with respect to resources and property, $2,000 for non-liquid resources and $1500 for liquid resources.

[~~(26)~~](27) **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.

[~~(27)~~](28) **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.

[~~(28)~~](29) **School age:** means any dependent child who turns six years prior to September first and is under 18 years of age.

[~~(29)~~](30) **Secretary:** means the secretary of the department.

[~~(30)~~](31) **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.

[~~(31)~~](32) **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.

[~~(32)~~](33) **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.

[~~(33)~~](34) **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.

[~~(34)~~](35) **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.

[~~(35)~~](36) **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.

[~~(36)~~](37) **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.

[~~(37)~~](38) **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.

[~~(38)~~](39) **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.

(40) Standard work requirement hours: means the minimum number of hours in applicable core and non-core total work activities a participant must complete.

[~~(39)~~](41) **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.

[~~(40)~~](42) **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.

[~~(41)~~](43) **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.

[~~(42)~~](44) **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.

[~~(43)~~](45) **Term limits:** means NMW assistance (cash benefits and supportive 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.

[~~(44)~~](46) **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.

[~~(45)~~](47) **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 include any boat, trailer or mobile home used as the principal place of residence.

[~~(46)~~]**(48) Verification:** means the use of third-party information or documentation to establish the accuracy of statements on the application.

[~~(47)~~]**(49) Vocational education:** means an organized education program that is directly related to the preparation of a person for employment in a current or emerging occupation requiring training other than a baccalaureate or advance degree. Vocational education must be provided by an educational or training organization, such as a vocational-technical school, community college, or post-secondary institution or proprietary school.

[~~(48)~~]**(50) 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, 01/01/2004; A, 02/28/2007; A/E, 07/16/2007; A, 10/31/2007; A, 08/01/2009; A, 04/01/2010; A, 04/01/2012]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.102.410 NMAC, Sections 17 and 18, effective 4/1/2012.

8.102.410.17 LIFETIME LIMITS:

A. NMW/TANF:

(1) NMW/TANF cash assistance shall not be provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime. The benefit group shall be ineligible if the benefit group contains at least one adult, minor head of household or spouse of the minor head of household who has received 60 or more months of NMW/TANF cash assistance, unless the lifetime limit has been waived pursuant to Subsection E of 8.102.410.17 NMAC.

(2) For purposes of determining the 60-month lifetime limit, the count of months of NMW/TANF cash assistance begins on July 1, 1997 and thereafter, and includes assistance received under PROGRESS, or the court-ordered AFDC program in effect until March 31, 1998, or NMW.

(3) Any month in which an adult, a minor head of household, or the spouse of a minor head of household, has received full, partial, prorated, or retroactive NMW/TANF cash assistance shall be considered a month of receipt and shall be counted towards the 60-month lifetime limit for the benefit group in which that individual resides.

(4) The count of months of NMW/TANF assistance shall include cash benefits, supportive services reimbursements, or other forms of benefits designed to meet a family's ongoing basic needs (for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). NMW/TANF cash assistance shall include supportive services such as transportation and childcare provided to a family who is unemployed.

(5) Receipt of TANF assistance from another state after July 1997, or from a tribal entity that does meet the criteria at Subsection C of 8.102.410.17 NMAC is counted as a month of receipt of TANF assistance for purposes of the term limit regulation.

B. Non-countable assistance:

(1) The department shall not count a month of receipt of NMW/TANF cash assistance or services toward the 60-month lifetime limit if the participant was a minor who was not the head of household or the spouse of the head of household.

(2) Support services, transportation reimbursements, or child care assistance received by a benefit group with earned income shall not be considered as a month of NMW/TANF assistance against the 60-month term limit, as long as the benefit group does not also receive NMW/TANF cash assistance to meet ongoing basic needs.

(3) Assistance shall not be considered a month of NMW/TANF cash assistance if the assistance is a:

(a) non-recurrent short term benefit that will not extend beyond four months, is not intended to meet ongoing basic needs, and is designed to meet a specific crisis situation or episode of need;

(b) work subsidy to an employer to cover the cost of employee wages, benefits, supervision and training and does not use TANF funds;

(c) refundable earned income tax credit;

(d) contribution to or distribution from an individual development account;

(e) service such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, or other employment related services that do not provide basic income support; and

(f) transportation benefit provided under a job access or reverse commute project to an individual who is not receiving NMW/TANF cash assistance.

(4) Under federal law, TANF funds may be transferred into the social services block grant and the child care development block grant. Benefits provided to individuals from these transferred funds are no longer characterized as TANF funds and do not count against the lifetime limits.

C. Excluded from the term limit count: Any month in which an adult or minor head of household receives NMW or tribal TANF cash assistance or services while residing in Indian country, as the term is defined in 18 U.S.C. subsection 1151, and where at least 50 percent of the adults are not working, shall not be counted toward the lifetime limit.

D. Extension of the term limit due to hardship: Up to twenty percent of the population of TANF participants to whom the term limit applies may be waived from the 60-month term limit based on hardship or being battered or subjected to extreme cruelty.

(1) An extension of NMW/TANF cash assistance shall not be granted to a benefit group prior to exhausting the 60-month lifetime limit.

(2) The term limit extension will end if the condition or situation allowing the extension ceases to exist.

E. Hardship extension types: For purposes of establishing a hardship and eligibility for an extension of NMW/TANF cash assistance, an individual to whom the lifetime limit applies must demonstrate through reliable medical, psychological or mental reports, social security administration (SSA) records, court orders, department records or police reports that the individual:

[~~**(1)** is barred from engaging in a work activity because of a temporary or complete disability;~~

~~**(2)** is the sole provider of home care to an ill or disabled family member;~~

~~**(3)** does not have the ability to be gainfully employed because the individual is affected by domestic violence;~~

~~**(4)** has been battered or subjected to extreme cruelty;~~]

(1) is determined eligible for a limited work participation status due to one of the following qualifying conditions:

(a) an impairment, either temporarily or permanently, as determined by IRU in accordance with Paragraph (1) of Subsection C of 8.102.420 NMAC;

(b) is the sole provider of the care for an ill or incapacitated person;

(c) does not have the ability to be gainfully employed because the individual is affected by domestic violence;

(d) has been battered or subjected to extreme cruelty;

[~~**(5)**~~]**(2)** has an application for supplemental security income (SSI) pending in the application or appeals process and:

(a) is currently [~~fully waived from NMW work requirements~~] granted a limited participation status because of a temporary or complete disability; or

(b) was granted [~~a waiver of the work requirement~~] a limited participation status because of a temporary or complete disability in the previous twenty-four months;

[~~**(6)**~~]**(3)** has reached the age of 60 by the end of the last month of his or her term limit;

[~~**(7)**~~]**(4)** is otherwise qualified as defined by the department.

F. Determining hardship and eligibility for an extension:

(1) The incapacity review unit shall make a determination of hardship based on a temporary or complete disability or being the sole provider of home care to an ill or disabled family member based on criteria set forth at 8.102.420.11, 8.102.420.12 and 8.102.420.13 NMAC.

(2) The incapacity review unit may determine contingency requirements or conditions for continued participation of the individual under the applicable hardship type(s).

(3) Hardship based on domestic violence, battery, or extreme cruelty: A certification that an individual cannot be gainfully employed due to domestic violence, or has been battered or subject to extreme cruelty shall be made by a trained domestic violence counselor and shall be part of the case record.

(a) Supporting documentation shall be provided to the department and made part of the individual's case record. For purposes of determining a hardship, an individual has been battered or subjected to extreme cruelty if the individual can demonstrate by reliable medical, psychological or mental reports, court orders, department records or police reports that the individual has been subjected to and currently is affected by:

(i) physical acts that result in physical injury;

(ii) sexual abuse;

(iii) being forced to engage in non-consensual sex acts;

(iv) threats or attempts at physical or sexual abuse;

(v) mental abuse; or

(vi) neglect or deprivation of medical care except when the deprivation is based by mutual consent on religious grounds.

(b) The incapacity review unit shall review the documentation provided to demonstrate a hardship type related to domestic violence, battery, or extreme cruelty, shall ensure that the documentation supports a finding of hardship, and shall determine review periods and contingency requirements if applicable.

(4) The department shall determine the eligibility of the individual for a hardship extension based on age or whether an application for SSI is pending or in the appeals process by reviewing department records or SSA files.

G. Participating benefit group:

(1) A NMW benefit group in active status at the time the benefit group reaches the 60-month term limit may ask for an extension of NMW/TANF cash assistance under hardship provisions. The benefit group must provide supporting documentation by the 15th day of the 60th month. If otherwise eligible and a hardship type is determined, the benefit group shall be authorized cash assistance from the first day of the 61st month.

(2) A NMW benefit group whose certification period expires in the 60th month of the term limit may be recertified, if otherwise eligible, under hardship provisions, but must provide supporting documentation by the end of the benefit group's certification period.

H. Closed benefit group: A benefit group shall be required to file an application for NMW cash assistance based on hardship under the following conditions:

(1) a NMW benefit group in active status does not submit supporting documentation by the 15th day of the 60th month of receipt of cash assistance; or

(2) a NMW case closes upon reaching the term limit;

(3) a benefit group may file an application on the first day of the 61st month, or at any time after, and if eligible, benefits shall be approved effective the date of authorization or 30 days from the date of application, whichever is earlier.

I. Automatic extension of cash assistance: A NMW benefit group shall be automatically extended NMW/TANF cash assistance based on hardship when the benefit group member who has received 60 months of cash assistance is:

(1) an adult age 60 or over; or

(2) an adult or minor head of household with an application for SSI pending or in the appeals process; or based on verification in the case record that is not older than three months, the benefit group member is:

(3) [~~waived from participation in work activities~~] granted a limited participation status due to a complete disability, either permanently or temporarily;

(4) granted a limited participation status due to being the sole provider of home care to an ill or disabled family member; or

(5) unable to be gainfully employed because the benefit group member has been battered or subjected to extreme cruelty, or affected by domestic violence; or

(6) is otherwise qualified as defined by the department.

[8.102.410.17 NMAC - Rp 8.102.410.17 NMAC, 07/01/2001, A, 01/01/2003, A, 05/15/2003; A, 11/15/2007; A, 12/01/2009; A, 04/01/2012]

8.102.410.18 REQUIREMENTS FOR TANF HARDSHIP EXTENSIONS:

A. Benefit group: NMW cash assistance regulations at 8.102 NMAC continue to apply to a NMW/TANF benefit group that receives a cash assistance based on a hardship determination. A benefit group may be sanctioned at the appropriate level in compliance with regulations at 8.102.620.10 NMAC when a benefit group member fails to comply with the requirements at set forth in at 8.102.410.17 NMAC and 8.102.410.18 NMAC.

B. Certification period: In most cases the certification period for the case will be set at six (6) months, beginning with the 61st month of cash assistance. The incapacity review unit may set the certification period for a benefit group that is shorter or longer than six months when the condition for the hardship type warrants such a determination.

C. [~~Waived individual~~] Limited work participation status individuals:

(1) An individual granted [~~a waiver~~] an extension of the 60-month term limit due to a hardship determination shall be required to meet with the work program contractor. [~~An individual determined to be waived due to hardship~~] The individual shall be referred by the department to the work program contractor:

(a) no later than the first day of the 61st month for a case in active status in the 60th month; or

(b) by the end of the first month of the benefit group's hardship extension period for a benefit group whose certification period expires in the 60th month; or

(c) upon approval of a hardship extension period for a benefit group whose case is closed.

(2) [~~The waived individual shall be required to comply with any contingency for eligibility determined by the incapacity review unit~~] An individual granted an extension of the 60-month time limit shall be required to comply with the limited work participation hours as determined by the IRU under hardship, including but not limited to, counseling; substance abuse treatment; speech or physical therapy, continuing or follow up medical treatment; keeping doctor's appointments; family counseling; or engaging in programs or activities to address the hardship type.

D. Other benefit group members: Any other individual included in the NMW benefit group [~~who is determined to be a mandatory work participant must comply with work program requirements~~] must comply with NMW compliance requirements set forth at 8.102.460 NMAC.

E. Case management:

(1) The individual and the work program contractor shall develop a case

management plan that includes specific provisions for assessing barriers and determining actions or behaviors that will enhance the ability of the benefit group to become economically independent.

(2) Case management includes, but is not limited to:

(a) making referrals to appropriate agencies and providing any follow up necessary to obtain the assistance needed by the benefit group;

(b) completing an in-depth assessment and identifying individual and family barriers, such as but not limited to, learning disabilities, cognitive disabilities, substance abuse, criminal history, transportation issues, child care, school attendance for dependent children, limited English proficiency; or limited work ability;

(c) making appropriate referrals and seeking the assistance needed to address the barriers;

(d) identifying support services needs; or

(e) placement in appropriate and realistic work activities and follow up on work activity progress.

[8.102.410.18 NMAC - N, 01/01/2003; A, 11/15/2007; A, 04/01/2012]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.102.420 NMAC, Sections 11, 12 and 13, effective 4/1/2012.

8.102.420.11 [~~DISABILITY - NMW WORK PARTICIPATION WAIVER REQUIREMENTS:~~

~~**A.** To be eligible for a NMW/TANF participation waiver due to disability, a person must have a physical or mental impairment which is expected to last at least 30 days. Severity of condition must prevent the participant from participating in any approved work program activities and from meeting applicable work program participation standards.~~

~~**B.** To be eligible for a hardship extension of the NMW/TANF lifetime limit due to disability, a person must demonstrate through reliable evidence that they are barred from a work activity due to temporary or complete disability; subject to extreme cruelty; or battery, or meets other criteria as indicated at 8.102.420 NMAC.~~

~~**C.** To be eligible for a NMW participation waiver, or hardship extension of the NMW/TANF time limit, as a caretaker a person must be the sole provider for an ill or incapacitated family member living in the home who does not attend school on a full time basis.~~] **NMW/TANF LIMITED WORK PARTICIPATION STATUS DETERMINATION PROCESS**

A. Eligibility: To be eligible for a limited work participation status, a participant must meet at least one of the criteria below as verified by the department:

(1) Who is age 60 or older.

(2) A single parent, not living with the other parent of a child in the home, or caretaker relative with no spouse, with a child under the age of 12 months. A participant may be eligible for a limited work participation status using this qualification for no more than 12 months during the participant's lifetime.

(3) A single custodial parent caring for a child less than six years of age or who is a medically fragile child if the parent is unable to obtain child care for one or more of the following reasons and the children, youth and families department (CYFD) certifies as to the unavailability or unsuitability of child care:

(a) the unavailability of appropriate child care within a reasonable distance from the parent's home or work site; or

(b) the unavailability or unsuitability of appropriate and affordable formal child care by a relative or under other arrangements; or

(c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements;

(4) A participant who is a woman in her third trimester of pregnancy, or six weeks post partum.

(5) A participant whose personal circumstances preclude participation for a period not to exceed 30 consecutive days in a calendar year.

(6) A participant who demonstrates by reliable medical, psychological or mental reports, court orders, police reports, or personal affidavits (if no other evidence is available), that family violence or threat of family violence effectively bars the parent from employment.

(7) A participant who is completely impaired, either temporarily or permanently, as determined by IRU.

(8) A participant may be entitled to the family violence option (FVO). This option allows for a parent in a domestic violence environment to be in a limited work participation status for the length of time certified by a trained domestic violence counselor. The certification shall indicate that the parent is in a domestic violence environment which makes them eligible for a limited work participation status.

(a) A participant's FVO limited work participation status shall be reviewed every six months and shall be determined by IRU based on the domestic violence counselor's certification.

(b) A participant who can continue to comply with work requirements as certified by a trained domestic violence counselor may be eligible for a limited work participation status for 24 weeks as described in 8.102.461.15 NMAC.

(9) A participant who is the sole provider of the care for an ill or incapacitated person. In order to meet this exception, the participant must show that the parent is the sole caretaker for a disabled person and must demonstrate that the participant cannot be out of the home for the number of hours necessary to meet standard work participation hours. The following apply to caretaker conditions in determining if the standard work participation rate applies or if a limited work participation rate will be granted:

(a) Only those care activities around which work program activities cannot be scheduled are taken into consideration.

(b) Food purchase and preparation activities, home maintenance chores, etc. are activities which may be scheduled and performed at time other than work program participation hours and are not taken into consideration when determining the standard work participation rate.

(c) A requirement to be on call for the medical emergencies of a medically fragile person is taken into consideration in determining the standard work participation rate for the participant.

(10) A participant may demonstrate good cause for the need for the limited work participation status. A good cause limited work participation status may exist and shall be determined by the department based on the participant's existing condition(s) to include any barriers identified during the NMW assessment process that impair an individual's ability to comply with the standard work participation rate or capacity to work.

B. Determinations in general: The NMW/TANF determination for a limited work participation status is made independently of and using differing standards from those used for determining OASDI or SSI eligibility, general assistance, workman's compensation, veteran's compensation or in Americans with Disability Act (ADA) determinations. Medical and social information (as appropriate) used by the department's reviewers may differ between determinations for each type of program, and a participant's condition may improve or worsen over time. As a result, a participant may be classified disabled by one program, but not by another. A disability determination made for another program or purpose is immaterial to the NMW/TANF limited work participation status determination. NMW/TANF determinations shall be made by applying NMW/TANF regulations and medical and non-medical information (as appropriate) known to the

department. An applicant/participant may have more than one condition to qualify for limited work participation status. The limited work participation rate and work activities will reflect accommodations for all identified and approved qualifying conditions.

C. Medical and non-medical based determinations:

(1) Medical conditions: The IRU shall review all documentation and make determinations for participants requesting a limited work participation status or hardship extension due to a medical condition. To be eligible for a limited work participation status from or for a hardship extension, based on a medical condition, the department must find:

(a) evidence of a physical or mental impairment(s) supported by medical documentation; and

(b) determine that the severity of the impairment(s), as supported by appropriate medical documentation is sufficient to significantly restrict the participant's capacity to fulfill the standard work participation rate or capacity to work; requests for limited work participation status or hardship extension must be supported by medical documentation, but may be supplemented by non-medical documentation provided by the applicant as requested by the IRU.

(2) Caretaker conditions: The IRU shall review all documentation and make determinations for participants requesting a limited work participation status or hardship extension due to caretaker conditions. To be eligible for a limited work participation status or for a hardship extension, as a caretaker, the department must find the participant is:

(a) the sole provider for an ill or incapacitated family member living in the home who does not attend school on a full time basis; and

(b) providing necessary care to the extent that otherwise precludes the participant's capacity to fulfill standard work participation rates or capacity to work.

(3) Non-medical conditions: The NMW service provider shall review documentation and make determinations regarding requests for limited work participation status for non-medical conditions. If a participant has a medical condition(s) in addition to non-medical conditions, the IRU shall review documentation and make determinations regarding requests for limited work participation status for medical and non-medical conditions. To be eligible for a limited work participation status from the NMW/TANF standard work participation rate based on conditions that are not medical in nature, the department must find the participant has one of the qualifications for a limited work participation status identified in Subsection A above.

D. Case development process: The caseworker shall be responsible for explaining hardship eligibility, work program requirements, standard work participation rates, and for referring all participants requesting a limited work participation status and hardship extensions to the IRU and NMW service provider, as appropriate. Participants must complete and return the requested information to request a limited work participation status within thirty days of the request.

(1) Limited work participation status requests for medical conditions: Requests for a limited work participation status based on a medical condition shall be sent to the IRU for determination and contain the following:

(a) a completed assessment that has been conducted by the NMW service provider within the six months prior to the date of the request for a change in status;

(b) a completed individual responsibility plan conducted by the NMW service provider;

(c) copies of relevant medical reports made within the last six months;

(d) a work participation agreement with the proposed activity(ies); and

(e) additional documents for evidence of other work related factors.

(2) Limited work participation status requests for non-medical conditions: The NMW service provider shall utilize the following documents to determine eligibility for the limited work participation status:

(a) a completed assessment that has been conducted by the NMW service provider within the six months prior to the date of the request for a change in status; and

(b) a completed individual responsibility plan conducted by the NMW service provider.

E. Provision of documentation: It shall be the responsibility of the participant requesting limited work participation status or hardship extension to provide recent (within the last six months) medical and non-medical information necessary to make a determination. Non-medical evidence will not be considered in the absence of medical documentation for requests based on medical conditions. A participant, who has not provided the necessary information as requested by the department, contractor or its designee to make a determination within 30 days of the request for the limited work participation status or hardship extension, shall be subject to meeting full participation requirements. Participants who fail to provide the requested documentation within 30 days of the request, but are also eligible for a limited work participation status on the basis of a non-medical condition, shall be referred to the NMW service provider to determine the limited work participation status based on the non-medical condition. The participant is not responsible for providing documentation produced by the department, its contractors, or its designee.

(1) Medical documents: Written paperwork must be submitted to verify the existence of physical, mental impairment(s) or both; as well as the extent of the caretaking needs. It is the responsibility of the participant to get all information to the IRU for review. Determinations are based on the written evidence provided in a timely manner to IRU.

(a) Source: Medical documents must be obtained from approved source(s), limited to: medical doctors, physician assistants, doctors of osteopathy or podiatry, ophthalmologists, psychiatrists or psychologists, state-licensed providers, and individuals that meet the minimum mental health professional qualifications set by their community mental health services employer.

(b) Department assistance: The department, contractor or its designee shall offer assistance to the participant to include obtaining medical documents or other reasonable accommodations as requested by the participant. If the department is assisting the participant with obtaining documentation or other accommodation, the participant is still responsible for providing accurate and timely information.

(c) Timeliness of report: The participant shall provide medical records from the past six months. Medical documents over six months old from the date of the request for the limited work participation status or hardship extension may be useful to support a pattern of recurring impairment, but must be accompanied by current medical documents.

(d) Independent medical review: The department may request additional documentation in order to make a determination regarding a participant's request for limited work participation status. The IRU may request additional documentation in the form of an independent medical review of the participant's condition(s). If the participant is also a recipient of medicaid, the department may assist with a referral to a medicaid provider, as appropriate.

(2) Non-medical information: Non-medical information may not be used for medical condition determinations without the provision of medical documents. Non-medical information may be submitted to the IRU or the NMW service provider and will be considered if the source is public and private agencies, schools, participants and caregivers, social workers and employers, and other relevant and independent sources to assist in the determination of whether the barriers are of sufficient severity to restrict the participant's capacity to fulfill the

standard work participation rate, or that the need to care for an individual are so great as to limit or exclude participation.

F. Case disposition:

(1) Medical based conditions: The IRU shall have sole responsibility for reviewing all medical documents. When making a determination regarding a participant's capacity to fulfill the standard work participation hours, the IRU will within 30 calendar days of receipt complete the following:

(a) conduct a thorough review of the documentary evidence;

(b) make a determination as to whether a medical condition or caretaking need is supported by the evidence provided by the participant;

(c) determine the anticipated duration of the impairment;

(d) adopt or propose participation activities based on the work participation agreement submitted with the participants request packet; and

(e) establish the reduced limited work participation hours if a limited work participation status or hardship extension of the 60 month time limit is granted.

(2) Non-medical based impairments: The NMW service provider shall review all non-medical information and make a determination that a participant is eligible for a limited work participation status. The determination shall identify one of the criteria qualifying for a limited work participation status. The NMW service provider shall identify the non-medical barrier and establish the participation activity(ies) and the limited work participation rate to be included in the approved work participation agreement. All of the non-medical information is considered in assessing the participant's capacity to fulfill the standard work participation rate. Case disposition shall include:

(a) a thorough review of documentary evidence;

(b) a determination as to whether the claim of a non-medical impairment is supported; and

(c) the anticipated duration of the impairment.

(3) Duration of condition(s): The duration of the condition shall be evaluated based on documentation provided and must be expected to last at least thirty days in order to grant a limited work participation status.

(4) Evaluation of medical report(s): Reports shall be reviewed by the IRU for completeness and detail sufficient to identify the caretaking needs, limiting effects of impairment(s), probable duration of the impairment(s), and capacity to perform work program participation standards.

(a) Anatomical and physiological reports shall be reviewed for a description of the medical history, clinical findings, laboratory findings, diagnosis, prescribed treatment and prognosis, and to identify the participant's ability to sit, stand, move, lift, carry, handle objects, hear, speak and travel.

(b) Psychological assessments shall be reviewed for a description of the participant's behavior, affect, orientation, capacity for appropriate decision-making, response to stress, cognitive function (awareness, memory and intellectual capacity), contact with reality and need for occupational, personal and social adjustment(s).

G. Notification: The department shall notify the participant regarding the disposition of their request for limited work participation status in compliance with the requirements of adequate notice and notice of adverse action, as applicable.

H. Re-evaluation of status: A participant's limited work participation status shall be re-evaluated on a periodic basis, as determined by the IRU or the NMW service provider, as appropriate. At the time of reevaluation, it shall be necessary to get an update of the medical or non-medical impairment, caretaking need, and any changes in other work-related factors. The IRU shall remain responsible for deciding whether a medical impairment or caretaking need still exists, and the date of the next re-evaluation for continued approval of limited work participation status. The NMW service provider shall remain responsible for deciding whether the non-medical impairment still exists and the date of the next evaluation for continued approval of limited work participation status.

I. Determining the limited work participation rate: after a participant is approved for limited work participation status either at the initial determination or re-evaluation, the IRU or NMW may prescribe conditional work program activities and requirements designed to assist the participant to help accommodate and eliminate barriers. The participant may be assigned to core, non-core and other activities which may include, but not be limited to, one of the contingencies below:

(1) follow treatment plans as prescribed by a physician or mental health provider;

(2) seek and utilize available community based resources;

(3) accept treatment as recommended by a physician or mental health provider;

(4) pursue a referral for DVR, or other available services;

(5) apply for SSI, if applicable; or

(6) any other activity specific to the participant's circumstance and conditions.

J. Transition of currently waived participants to the limited work participation status.

(1) Currently waived: Participants who are waived on or before the effective date of this regulation shall be evaluated for a limited work participation status at their next recertification for TANF benefits or at the next waiver review, whichever is earlier.

(2) Pending waiver determination: Participants who are pending a waiver determination on or before the effective date of this regulation shall be considered for a waiver of the work participation status. They will be determined for a limited work participation status at their next recertification for ongoing TANF benefits or at the next waiver review, whichever is earlier.

[8.102.420.11 NMAC - Rp, 8.102.420.11 NMAC, 07/01/2001; A, 07/17/2006; A, 11/15/2007; A, 04/01/2012]

8.102.420.12 [~~DETERMINING DISABILITY~~

~~A. Process:~~

~~(1)~~ ~~Determination of disability requires a finding by the IRU that a participant does not have the capacity for meeting approved work participation activities.~~

~~(2)~~ ~~IRU shall determine that an participant has a physical, mental or psychological impairment. IRU shall consider the following for each participant:~~

~~(a)~~ ~~"non-work related factors" including a participant's age, education, work experience, vocational training, ability to speak English, and similar matters;~~

~~(b)~~ ~~work-related factors are considered in deciding whether employment exists which could be performed by the participant, given the participant's physical or mental impairment(s); and~~

~~(c)~~ ~~medical findings are evaluated to determine the level of activity the participant can perform.~~

~~(3)~~ ~~The NMW/TANF disability determination is made independently of and using differing standards from those used for determining OASDI or SSI eligibility, general assistance, workman's compensation, veteran's compensation or in Americans with Disability Act (ADA) determinations. Medical and social information used by disability reviewers may differ between determinations, and an participant 's condition may improve or worsen over time. As a result, an participant may be classified disabled by one program but not by another. A disability determination made for another program or purpose is immaterial to the NMW/TANF disability determination. NMW/TANF determinations shall be made considering only NMW/TANF policy and medical and non-medical information known to ISD.~~

B. Impairment: Impairment is 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, psychiatric process or both. To evaluate physical or mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.

(1) Obtaining medical information:

(a) Record or narrative reports resulting from examination, diagnostic or both procedures shall be used to evaluate an impairment.

(b) Existing medical information or knowledge shall be used. Copies of relevant existing medical reports shall be obtained and used in making a disability determination.

(c) Current medical information, dated within six months of the waiver request, is required for a disability determination. Reports over six months old may be useful in providing a history of the impairment, but must be accompanied by current medical information.

(2) Contents of reports:

(a) Medical reports should include medical history, clinical findings, laboratory findings, diagnosis, prescribed treatment and prognosis, and the practitioner's medical assessment. The medical report must be complete and detailed enough to allow a determination of the limiting effects of the impairment; probable duration of the impairment; and capacity to perform work-related activities.

(b) Medical assessments should discuss abilities such as sitting, standing, moving, lifting, carrying, handling objects, hearing, speaking and traveling.

(c) Psychiatric assessments should discuss the participant 's judgment and occupational, personal, and social adjustments.

(3) Assessing medical reports:

(a) Symptoms shall be the first item to be evaluated. These are a description by the practitioner of the mental or physical impairment. Obvious impairments such as recent fractures do not require extensive reporting. Chronic or complex ailments require more extensive reporting. Symptoms alone shall not be used to make a determination of impairment.

(i) Symptoms/signs: Signs are the observations made by the practitioner regarding anatomical, physiological, or psychological abnormalities through medically acceptable clinical techniques. In psychiatric impairments, signs are medically demonstrable abnormalities of behavior, affect, thought, memory, orientation and contact with reality.

(ii) Laboratory findings: Laboratory findings are objective demonstrations of anatomical, physiological or psychological abnormalities. They include X-rays, blood tests, and psychological tests.

(b) The physical ability of the participant to do work at a certain level shall be assessed. Below are categories of work as defined in the "dictionary of occupational titles". Many physicians use these definitions in medical reports.

(i) Sedentary work: Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one that involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and sedentary standards are met.

(ii) Light work: Light work involves lifting no more than 20 pounds at a time, with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category if it requires a good deal of walking or standing, or if it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, a participant must have the ability to do substantially all of these activities. If an participant can do light work, it is assumed that he can also do sedentary work, unless there are additional limiting factors, such as loss of fine dexterity or inability to sit for long periods of time.

(iii) Medium work: Medium work involves lifting no more than 50 pounds at a time, with frequent lifting or carrying of objects weighing up to 25 pounds. If a participant can do medium work, it is assumed that the participant can also do sedentary and light work.

(iv) Heavy work: Heavy work involves lifting no more than 100 pounds at a time, with frequent lifting or carrying of objects weighing up to 50 pounds. If a participant can do heavy work, it is assumed that the participant can also do medium, light, and sedentary work.

(v) Very heavy work: Very heavy work involves lifting objects weighing more than 100 pounds at a time, with frequent lifting or carrying of objects weighing 50 pounds or more. If a participant can do very heavy work, it is assumed that the individual can also do heavy, medium, light and sedentary work.

C. Psychological impairment: If psychological impairment is being assessed, an a participant's mental ability to function at one of the above-mentioned levels shall be evaluated in the following areas:

(1) Judgment: A participant's ability to exercise appropriate decision-making processes in a work situation consistent with the participant's abilities.

(2) Stress reaction: Participant's ability to handle stress consistent with the level of employment.

(3) Cognitive function: Participant's awareness, memory, intellectual capacity and other cognitive functions.

D. Determining duration of NMW work participation waiver: The duration of the NMW/TANF work participation waiver shall be determined based on the nature of the impairment.

E. Other work-related factors:

(1) Other factors which may affect the participant's work participation shall be taken into consideration only if an impairment materially affecting the participant's work participation has been determined to exist. The caseworker shall develop and submit a summary describing the participant's health history, appearance, work and personal situation. For a finding of disability, a significant impairment must exist; a finding of disability cannot be made based solely on other work-related factors. Other work-related factors shall be used to evaluate the ability of the participant to engage in work participation with respect to the impairment. Such factors as age, education, training, work experience, language ability, appearance, marital status, living situation, and relevant social history shall be considered. Different evaluations of disability may be made for two participants with the same impairment, based on the other work factors affecting the participants; such as, one participant may be found to be disabled by the program definition and the other participant may not.

(2) In determining complete disability with respect to work program participation, partial disabilities and other work-related factors, such as education and educational achievements, work history, job experiences, and language ability, shall not be considered. While these may present an impediment to obtaining employment, they are problems which can be overcome through work program participation. Where such impediments exist, the participant shall be expected to participate in activities which will overcome these barriers.

(a) Age: Age is a factor in the determination process. The older an participant is, the less potential there is for overcoming an impairment. Recovery is more difficult and, often, total recovery may not be achieved. There may be very little chance that the participant will ever return to functioning effectively in the participant's previous job duties.

(b) Education: A participant's educational level is a factor in the

determination process. A participant who lacks a high school degree or GED may be hampered in an ability to get a job that does not require strenuous effort. Education is defined at four levels:

(i) Illiteracy: Inability to read or write English. Illiterate participants are considered suitable for the general labor work force.

(ii) Marginal: Eight years of education or less. Marginally educated participants are considered suitable for the semi-skilled work force.

(iii) Limited: Lack of a high school diploma but more than eight years of education. Participants with limited education are considered suitable for the semi-skilled to skilled work force.

(iv) High school, GED and above: Indicates a participant's ability to compete in all levels of the job market.

(v) Training: Completion of training in a particular field of employment indicates an participant is capable of doing the job if the participant is not hindered in the performance of it by the impairment(s). Completion of a training course may offset the education factor in some instances.

(c) Job experience: Experience in a job field can overcome a lack of education or training. Jobs held in the last ten years shall be considered. Work experience shall be evaluated on the type of work previously performed, the length of employment and the potential for the experience to be transferred to other types of employment. Inability to continue working in one's prior field of work does not constitute a disability. Jobs and job experience are classified into the following categories:

(i) General labor: Does not require the ability to read or write. Such work includes, but is not limited to, field labor, construction labor, housework, and motel cleaning.

(ii) Semiskilled labor: Requires a minimal ability to read, write and do simple calculations. Such work includes, but is not limited to, security guard, taxi driver, cashier and janitor.

(iii) Skilled labor: Ability to do work where the ability to read, write and do calculations of a complex nature is needed. Specialized training in the area is also considered. Such work includes, but is not limited to, that of an accountant, mechanic, plumber, and other areas requiring some degree of skill.

(d) Language ability: Inability to speak, read and write English limits an participant's choice of jobs.

(e) Appearance: A participant's appearance may be a factor in a disability determination. On rare occasions, an impairment is disfiguring and may interfere with employment. For example, an participant with psoriasis covering the face, arms and hands might have a problem getting a job working with the public, such as cashier or waitress.

F. Assessing the disability:

(1) Disability shall be determined by evaluating the impairment and other work-related factors. An impairment must exist for there to be a finding that a participant is disabled. If an impairment does not exist, a person shall not be found disabled.

(2) When an impairment is substantiated, the other work-related factors shall be considered. Existence of an impairment does not necessarily result in a finding of disability. Many participants with impairments are able to work and thus cannot be considered disabled according to the disability standards set forth in the NMW program. Impairments, together with a combination of other work-related factors which prevent working, shall be considered in determining a work participation waiver.

G. Modified work and limited work participation: IRU shall make the final determination when placing a recipient into limited or modified work participation in accordance with 8.102.460.12 NMAC.] **ASSESS CAPACITY FOR WORK**

A. General: A medical or mental health condition that precludes a participant's capacity to fulfill the standard work participation rate or capacity to work shall be determined by evaluating the extent of the impairment and other work-related factors. A participant is eligible for a limited work participation status if there is a determination of impairment or condition by the IRU or NMW service provider, as appropriate.

B. Capacity to perform NMW program participation standards: If the participant is determined by IRU or the NMW service provider to have an impairment, the other work-related factors shall be considered. Although a participant may be determined to have some type of impairment, the existence of impairment does not necessarily result in a finding that the participant is incapable of fulfilling the standard work participation hours. A determination that a participant is a caretaker does not necessarily result in a finding that the need to care for an incapacitated or ill household family member is so great as to limit or exclude participation. Many participants with impairments are able to work and thus are not considered to have a medical condition requiring the granting of a limited work participation status according to the standards set forth in the NMW program.

(1) Sedentary work: Sedentary work involves lifting no more than ten pounds at a time and occasionally lifting or carrying articles like docket files, ledgers and small tools. Although a sedentary job is defined as one that involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and sedentary standards are met.

(2) Light work: Light work involves lifting no more than twenty pounds at a time, with frequent lifting or carrying of objects weighing up to ten pounds. Even though the weight lifted may be very little, a job is placed in this category if it requires a good deal of walking or standing, or if it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities

(3) Medium work: Medium work involves lifting no more than 50 pounds at a time, with frequent lifting or carrying of objects weighing up to 25 pounds.

(4) Heavy work: Heavy work involves lifting no more than 100 pounds at a time, with frequent lifting or carrying of objects weighing up to 50 pounds.

(5) Very heavy work: Very heavy work involves lifting objects weighing more than 100 pounds at a time, with frequent lifting or carrying of objects weighing 50 pounds or more.

C. Psychological impairment: If psychological impairment is being assessed, a participant's mental ability to function at one of the above-mentioned levels shall be evaluated in the following areas:

(1) Judgment: A participant's ability to exercise appropriate decision-making processes in a work situation consistent with the participant's abilities.

(2) Stress reaction: Participant's ability to handle stress consistent with the level of employment.

(3) Cognitive function: Participant's awareness, memory, intellectual capacity and other cognitive functions.

D. Capacity for gainful employment: A participant's verified employment status shall be taken into consideration in determining impairment based on the type, nature, and duration of employment. Impairment may still be determined where the participant is employed minimally or for rehabilitative purposes.

(1) Minimal employment: An individual who is minimally employed may still be considered impaired if the individual cannot reasonably be expected to be self-supporting by at least the standard of need for the size of the benefit group.

(2) Rehabilitative employment: Work made available to an individual

through the interest or compassion of others, or to rehabilitate an individual (as in a sheltered workshop), but which would not ordinarily exist on the open labor market, shall not be considered employment in an impairment determination.

E. Other work-related factors: Impairments together with other work-related factors may be considered to establish the participant's capacity to perform basic work program participation standards and engage in gainful employment. While these factors may present an impediment to obtaining employment, they are problems which can be overcome through work program participation. Where such impediments exist, the participant shall be expected to participate in activities which will overcome these barriers. Other work-related factors include but are not limited to the following:

(1) Language barriers: A participant's ability to speak, read, and write English.

(2) Educational level:

(a) Illiteracy: Inability to read or write English. Illiterate individuals are considered suitable for the general labor work force.

(b) Marginal: Eight years of education or less. Marginally-educated individuals are considered suitable for the semi-skilled work force.

(c) Limited: Lack of a high school diploma or GED, but more than eight years of education. Individuals with limited education are considered suitable for the semi-skilled to skilled work force.

(d) High school, GED and above: Indicates an individual's ability to compete in all levels of the job market.

(e) Training program: Completion of training in a particular field of employment may offset limited education in some instances.

(3) Job experience: Experience in a job field can overcome a lack of education, training or both. Jobs held in the last ten years shall be considered. Work experience shall be evaluated based on the type of work previously performed, the length of employment, and the potential for transferring the experience to other types of employment. Inability to continue working in one's prior field of work does not constitute a disability. Job experience is classified in the following categories.

(a) General labor: Does not require the ability to read or write.

(b) Semi-skilled labor: Requires a minimal ability to read, write and do simple calculations.

(c) Skilled labor: Ability to do work in which the ability to read, write and do calculations of a complex nature is needed. Specialized training in the area is also considered.

(4) Appearance: An individual's appearance is generally not the sole reason for an impairment determination. On rare occasions, impairment is disfiguring and may interfere with employment.

(5) Age: Age may affect participants with impairments. The older an individual is, generally, the harder it is for the person to overcome or recover from impairment. A participant's age may be considered when determining the extent of impairment and the support needed to assist a participant.

F. WPA following IRU determination of limited work participation status. After the IRU or NMW service provider, as appropriate, makes a determination to either grant or deny a request for a limited work participation status, the participant must act in accordance with the paragraphs below to ensure they are in compliance .

(1) Limited work participation status granted and adoption of the WPA: Upon approval for the limited work participation status, the participant shall continue to continue to participate in the assigned core or non-core activities or contingencies identified on the WPA submitted to IRU for determination. The WPA shall be considered finalized and the participant shall follow the WPA until the next evaluation date determined by the IRU or NMW service provider.

(2) Limited work participation status granted and modification of the WPA: If the participant is approved for a limited work participation status, but the IRU did not accept the WPA, the participant and the NMW service provider shall meet no later than 15 days following date of the limited work participation status approval to modify the WPA in accordance with the determination of the IRU. The modification will take into consideration the participant's impairment(s) and provide a limited work participation rate and suggested core and non-core work activities.

(3) Limited work participation status denial: If the IRU or NMW service provider, as appropriate, denies the participant's request for limited work participation status, the participant is required to develop a WPA with the NMW service provider no later than 15 days following the date of denial by the IRU or the NMW service provider. Failure to develop a WPA may be considered non-compliance in accordance with 8.102.460 NMAC.

[8.102.420.12 NMAC - Rp, 8.102.420.12 NMAC, 07/01/2001; A, 07/17/2006; A, 11/15/2007; A, 04/01/2012]

8.102.420.13 [~~RESPONSIBILITY FOR DETERMINATION OF DISABILITY:~~

~~A. Caseworker responsibility:~~ ~~The caseworker shall be responsible for obtaining medical reports and social information, and for preparing the medical social summary. This packet shall be submitted to the IRU for all work program participation waiver requests. After the IRU decision concerning the work participation waiver, the caseworker shall inform the NMW participant of the IRU determination.~~

~~B. IRU responsibility:~~ ~~The responsibility for deciding that a disability exists or a modified work requirement. Based upon the medical reports and social summary, and according to the guidelines in 8.102.420.11, 8.102.420.12 and 8.102.420.13 NMAC, IRU shall decide whether a disability exists.~~

~~C. Reevaluation of disability:~~ ~~A participant's disability shall be reevaluated on a periodic basis, as specified by IRU. At the time of reevaluation, it shall be necessary to get an update of the medical condition, as well as any changes in other work-related factors. IRU shall remain responsible for deciding whether a disability still exists, and the date, if applicable of the next reevaluation.~~] **[RESERVED]**

[8.102.420.13 NMAC - Rp, 8.102.420.13 NMAC, 07/01/2001; A, 07/17/2006; A, 11/15/2007; Repealed, 04/01/2012]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.102.501 NMAC, Section 11, effective 4/1/2012.

8.102.501.11 NMW PARTICIPATION REQUIREMENTS: An TBP recipient will be encouraged to participate in work program activities and shall be expected to attend and complete all required activities, such as the assessment, individual responsibility plan (IRP), work participation agreement (WPA) and monthly participation requirements in accordance with [~~8.102.460.12 through 8.102.460.16~~] 8.102.460 NMAC if not otherwise meeting. Participation requirements apply to each benefit group member whether the benefit group is considered to be a two-parent or single-parent benefit group. No TBP participant shall be sanctioned for NMW non-cooperation.

[8.102.501.11 NMAC - N, 07/01/2008; A, 08/14/2009; A, 04/01/2012]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.102.620 NMAC, Sections 10, 15 and 16, effective 4/1/2012.

8.102.620.10 CHILD SUPPORT AND [~~WORK PROGRAM~~] NMW NON-COOPERATION PAYMENT SANCTIONS:

A. General:

(1) The benefit group shall be subject to a non-cooperation payment sanction under either or both of the following circumstances:

(a) failure by a benefit group member to meet [~~work program~~] NMW requirements; or

(b) failure by the adult responsible for children included in a benefit group to meet child support enforcement division (CSED) cooperation requirements or both;

(c) good cause will be evaluated based on the circumstances of each instance of non-cooperation.

(2) Occurrence of non-cooperation:

(a) Child support:

(i) A benefit group shall be subject to a payment sanction for failure to comply with CSED cooperation requirements, even if the adult required to cooperate with child support requirements is not included in the benefit group.

(ii) Each benefit group member that fails to cooperate with the [~~work program~~] NMW requirement is subject to a sanction and shall affect the benefit group.

(iii) An occurrence of non-cooperation shall be applied when a sanction progresses to the next sanction level as a result of the noncompliance continuing for three consecutive months without the sanctioned participant reestablishing compliance. Progression to the next sanction level shall be effective in the fourth month.

(iv) A first or second level sanction is considered to be cured upon full cooperation by the sanctioned participant or a sanction shall be reversed based on a hearing decision when the sanction imposed is determined to be invalid.

(b) [~~Work program~~] NMW:

(i) A benefit group is subject to a payment sanction when a participant in the benefit group fails to cooperate with the [~~work program requirement~~] NMW requirements absent a finding of good cause.

(ii) In a two-parent benefit group, each mandatory benefit group member that fails to cooperate with the [~~work program requirement~~] NMW requirements is subject to a sanction that affects the benefit group's sanction level and payment.

(iii) A participant shall not be sanctioned for more than one [~~work program~~] NMW requirement element at one time. A participant may be sanctioned for the same or a different [~~work program~~] NMW requirement element only after the original sanction element is cured or reversed. A first or second level sanction may be cured upon full cooperation by the sanction participant and a sanction shall be reversed based on a hearing decision when the sanction imposed is determined to be invalid.

(iv) A participant with limited participation status may be sanctioned for failure to meet the work participation requirement rates as identified on the approved work participation agreement.

[~~**(iv)**~~] **(v)** An occurrence of non-cooperation shall be applied when a sanction progresses to the next sanction level as a result of the noncompliance continuing for three consecutive months without the sanctioned participant reestablishing compliance. Progression to the next sanction level shall be effective in the fourth month.

(3) Cumulative sanctions:

(a) Non-cooperation sanctions are cumulative within the benefit group and shall occur when:

(i) the participant fails to comply with the [~~work program~~] NMW and child support enforcement requirements for a one-parent benefit group;

(ii) more than one participant in the benefit group have failed to comply with either the [~~work program~~] NMW and/or child support enforcement requirement.

(b) Cumulative sanctions, whether or not cured, shall remain the property of that benefit group participant who caused the sanction.

(i) A participant with a sanction who leaves a benefit group relieves the benefit group of that participant's sanction status.

(ii) A participant with a sanction who joins another benefit group subjects the new benefit group to any sanction or sanction level that has not been cured prior to joining the benefit group.

(c) The benefit group's cumulative sanctions and benefit level shall be reevaluated when a sanction is cured or reversed.

(4) Progressive sanctions:

(a) Non-cooperation sanctions are progressive to both the participant[,] and to the benefit group and shall progress to the next level for the benefit group in which the sanctioned participant resides when:

(i) a participant fails to establish compliance in three-month increments; or

(ii) a participant fails to comply with [~~work program~~] NMW or CSED requirements as a separate occurrence.

(b) A sanction that is not cured for three consecutive months shall progress until compliance is established by the participant [~~or there is a waiver of the requirement~~].

(c) A participant's compliance cannot reverse the sanction level attributed to the benefit group. Any subsequent sanction is imposed at the next higher level, unless reversed by a hearing decision.

B. The conciliation process:

(1) When conciliation is available: Conciliation shall be available to a participant or applicant once during an occurrence of assistance. There must be a period of at least 12 months between occurrences of cash assistance in order for a conciliation to be available again to the benefit group. [~~Work program~~] NMW conciliation and child support conciliation are independent and are counted separately from each other.

(2) Determining that noncompliance has occurred:

(a) The determination of noncompliance with child support shall be made by CSED. The conciliation and sanctioning process for child support noncompliance is initiated upon receipt of notice from CSED that the participant or applicant has failed to cooperate. Under [~~Subsection B of 8.102.420.14~~] 8.102.420 NMAC, the non-cooperative participant or applicant shall be individually disqualified from participation in the benefit group.

(b) The determination of noncompliance with [~~work program~~] NMW requirements shall be made by the caseworker. A finding of noncompliance shall be made if:

(i) [~~ISD has not received a certification of~~] the participant has not completed an assessment;

(ii) the participant fails or refuses to complete an IRP;

(iii) the participant fails or refuses to submit an approvable WPA;

(iv) the participant's monthly attendance report shows fewer than the minimum required hours of participation [~~in primary and total work activities~~] and no other allowable hours of activity can be reasonably attributed by the caseworker towards the monthly participation requirement.

(3) Initiating conciliation: Within 10 days of determining that noncompliance exists, the caseworker shall take action to initiate a conciliation, if the participant 's conciliation has not been used. A conciliation is initiated by the [~~caseworker~~] department or its designee issuing a conciliation notice. CSED shall determine noncompliance and notify the caseworker who shall initiate the

conciliation process.

(4) Conciliation period: Conciliation gives a participant a 30-calendar day period to correct the current non-compliance for either a [~~work program~~] NMW participation or CSED requirement.

(a) The conciliation process is established by the department, to address the noncompliance, identify good cause for noncompliance or barriers to compliance and shall occur only once prior to the imposition of the sanction.

(i) The participant shall have ten working days from the date a conciliation notice is mailed to contact the department to initiate the conciliation process. A participant who fails to initiate the conciliation process shall have a notice of adverse action mailed to him after the tenth working day following the date on which the conciliation notice is mailed.

(ii) Participants who begin but do not complete the conciliation process shall be mailed a notice of adverse action 30 days from the date the original conciliation was initiated. The benefit group shall be subject to sanction in the month following the month the notice of adverse action expires.

(b) Non-cooperation with CSED requirements: When the participant has initiated the conciliation process, it is the participant's responsibility to contact CSED and to comply with requirements or to request a waiver from CSED due to good cause. If the caseworker does not receive confirmation from CSED within 30 days of issuing the conciliation notice that the participant is cooperating or has requested a waiver for good cause in accordance with 8.50.105.14 NMAC; the conciliation process shall be considered to have failed the benefit group shall be subject to payment sanctioning.

(c) The caseworker shall make the determination whether arrangements have been made to meet [~~work program~~] NMW requirements or whether there is good cause for waiving the cooperation requirements. If arrangements to meet the requirement or to waive it have not been made by the thirtieth day following issuance of the conciliation notice, the conciliation shall be considered to have failed and the participant is subject to sanctioning.

[~~**(d)** Good cause is considered to exist when:~~

~~**(i)** the department has failed to submit notice or assist in providing necessary support services to the participant that would adversely affect the participant's ability to timely meet work participation requirements; or~~

~~**(ii)** the total primary work participation hours reported are within four hours of the requirements as outlined in 8.102.460.13 NMAC.~~]

C. Sanctioning:

(1) Within 10 days of determining that a participant has failed to meet a [~~cooperation~~] NMW requirement, [~~ISD~~] department or its designee shall issue notice of adverse action that the payment shall be reduced. The payment reduction shall take place with the first payment following expiration of the notice of adverse action.

(2) Notice of adverse action shall apply to all [~~work program~~] NMW and child support noncompliance sanctions, including those relating to the conciliation process.

(3) A participant who corrects the failure of compliance with [~~work program~~] NMW or child support enforcement requirements during the notice of adverse action 13-day time period shall not have the sanction imposed against the benefit group or payment amount. The sanction shall not count as a cumulative or progressive sanction, since the reason for the sanction was corrected during the time period of the notice of adverse action and prior to a benefit reduction being imposed. A participant who has failed to meet work participation hours cannot correct the sanction during the notice of adverse action time period.

(4) Failure to comply during the notice of adverse action 13-day time period shall cause the sanction to become effective.

[**~~(a)~~**]**(5)** A sanction shall be removed effective the month following the month in which the determination is made that the participant has complied with requirements.

[**~~(b)~~**]**(a)** A child support enforcement sanction shall be removed after CSED notifies the caseworker that the participant is in compliance with child support enforcement requirements.

[**~~(c)~~**]**(b)** A [~~work program~~] NMW sanction shall be removed after the caseworker receives verification that the participant has completed an assessment; or has completed an IRP; or has completed a WPA that indicates the appropriate number of [~~weekly~~] monthly hours in work activities; or has met [~~work program~~] NMW participation hours for at least 30 days; or has good cause to waive work participation requirements.

[~~**(d)** Good cause is considered to exist when:~~

~~**(i)** the department has failed to submit notice to the participant or provide necessary support services that would adversely affect the participant's ability to timely meet work participation requirements; or~~

~~**(ii)** the total primary work participation hours reported are no more than four hours less than required as outlined in 8.102.460.13 NMAC.~~]

D. Sanction levels:

(1) First-level sanction:

(a) The first level sanction for failure to comply, shall result in a sanction of 25 percent of the standard of need. The benefit group shall be given notice of the imposition of the sanction.

(b) If the first level lasts for more than three months, or a participant has a second occurrence of failure to comply with [~~work program~~] NMW or CSED requirements, the sanction shall advance to a second level sanction, as described below.

(2) Second-level sanction:

(a) The second level of sanction for failure to comply shall result in a decrease of 50 percent of the standard of need. The second level shall be initiated by:

(i) failure to comply with [~~work program~~] NMW participation or child support enforcement requirements for more than three months; or

(ii) a second occurrence of noncompliance with a [~~work program~~] NMW or CSED requirement by a participant; or

(iii) failure of a participant to comply with both CSED and [~~work program~~] NMW participation requirements simultaneously. The group shall be given concurrent notice of imposition of the second-level sanction.

(b) If the second level lasts for more than three consecutive months, the sanction shall advance to level three as described below.

(3) Third-level sanction:

(a) The third sanction level is case closure for a period of not less than six months. The group shall be given notice of adverse action prior to imposition of the sanction.

(b) Once a participant is sanctioned at the third level, any subsequent occurrence of failure to comply with [~~work program~~] NMW or CSED requirements shall immediately result in a third level sanction, and case ineligibility for six months.

E. Sanctions by other states or other programs: Participants in sanction status for failure to participate in other programs, such as the food stamp E&T program, or another state's or tribal TANF program, shall not carry that sanction status into NMW.

F. Sanctions with respect to voluntary participants: A voluntary participant is not subject to sanction for failure to participate, but shall be removed from the [~~work program~~] NMW and lose eligibility for support services.

G. Good cause:

(1) Good cause applies to timely completion of assessment, IRP, WPA, work participation rates, and cooperation with the child support enforcement division.

(2) Good cause for failure to meet the NMW requirements.

(a) Good cause may be considered to exist for no more than 30 days in the event

of:

(i) family death;

(ii) hospitalization;

(iii) major injury to the participant or a benefit group member for whom the participant has been the primary caretaker;

(iv) reported domestic violence; [~~or~~]

(v) catastrophic event[~~.~~]; or

(vi) it is shown the department did not provide the participant timely assistance to complete the assessment, IRP, or WPA.

(b) The participant must meet with the NMW service provider prior to the end of the 30 day period to establish a WPA for the full participation standard beginning on day 31 or must request a limited work participation status prior to the end of the 30 day period. The participant may be subject to sanction for failure to complete a WPA if a new WPA has not been established by day 31.

(i) A participant with good cause for failure to meet the NMW requirements, who expects the cause of failure to continue for more than 30 days, must contact the department to review the participant's circumstances.

(ii) Under no conditions shall good cause be granted for more than 30 days during any given reporting period.

(3) Good cause shall be considered when the department has failed to submit a notice in accordance with the requirements of adverse action notices, to the participant or provide available support services that would adversely affect the participant's ability to timely meet work participation requirements.

(4) Good cause for refusal to cooperate with the child support enforcement requirements: In some cases it may be determined by the CSED that the TANF/NMW applicant's/recipient' refusal to cooperate is with good cause in accordance with 8.50.105.14 NMAC. Any person requesting a good cause exemption to a TANF/NMW requirement to cooperate must complete a request for a good cause exemption on a form provided by the CSED and provide any documentation requested by CSED. The request for a good cause exemption will be reviewed by the CSED and the requestor will be informed of the decision in writing. The requestor's failure or refusal to complete the form or provide the requested documentation will result in an automatic denial of the request. The department may offer assistance to complete the form or obtain the necessary documentation, as appropriate.

(5) It is the applicant's/recipient's responsibility to inform the department if they are unable to meet the NMW compliance requirements or CSED cooperation requirements.

[8.102.620.10 NMAC - Rp, 8.102.620.10 NMAC, 07/01/2001; A, 02/14/2002; A, 11/15/2007; A, 04/01/2012]

8.102.620.15 CALCULATING THE SUPPORTIVE SERVICES BENEFIT: If state or federal funds are specifically appropriated, the department may issue supportive services benefits.

A. Child care: The caseworker may authorize child care reimbursement for persons for a period not to exceed 30 days. All other child care shall be authorized by CYFD. The caseworker shall authorize child care in compliance with CYFD program requirements and standards. Child care payments shall not be paid for with federal TANF funds and shall not count towards the TANF term limits.

B. Transportation: [~~There are two types of payments issued for transportation costs: advance and standard reimbursement.~~] NMW participants may receive a standard transportation reimbursement.

[~~**(1) Advance:**~~

~~**(a)** A NMW work program participant may request an advance of $10.00 to attend orientation and assessment activities or to begin participation in a work program activity. The $10.00 advance shall be deducted from the end of the month standard reimbursement.~~

~~**(b)** A NMW work program participant who gets a job as a result of participating in a previously approved component may request a one-time only travel advance. The participant shall be eligible for an advance for one month in order to pay for travel expenses until the first pay check is received. The standard travel reimbursement amount shall be provided.~~

~~**(i)** A NMW work program participant who receives a transportation advance for employment does not submit an end-of-the-month verification of incurred expenses. The participant shall not be eligible for further transportation assistance while in this job.~~

~~**(ii)** A caseworker may authorize a travel allowance for a participant who gets a job as a result of participating in a previously approved component. The participant shall be eligible for the $25.00 allowance for one month in order to pay for travel expenses incurred until the first pay check is received.~~

~~(2)~~](1) Reimbursement:

(a) The NMW [~~work program~~] allows travel reimbursement for mandatory and voluntary participants traveling to [~~work program~~] NMW offices for orientation, assessment, reassessment, or employment planning activities. In addition, travel costs are reimbursed for approved [~~work program~~] NMW activities identified and developed in the WPA.

(b) Mileage costs for paid employment are met through the cash assistance earned income deduction. Except for the one-time only advance, travel reimbursement shall not be made for any [~~work program~~] NMW activity for which the individual is paid.

[~~(3)~~](2) Reimbursement standards:

(a) NMW reimbursement for NMW [~~work program~~] participants using private automobiles shall be at a standard rate based on monthly mileage, as set forth below.

(i) The caseworker shall decide whether the claimed mileage is reasonable and, if the amount claimed is excessive, may adjust the amount downward.

Monthly Mileage	Monthly Reimbursement
1 - 499	$25
500 - 1499	$50
1500 - 2499	$100
2500 or More	$150

(ii) Mileage shall be allowed only if the activity takes place in the individual's home community. Travel may be allowed outside the individual's home community only if the [~~work program~~] NMW activity is not available in the community or if the [~~work program~~] NMW activity involves participation in an educational or vocational training program which is not available in the individual's home community.

[~~**(b)** The E&T program provides a standard monthly allowance of $25 for participants engaged in an approved work program activity. The allowance shall be available subject to receipt of a report certifying completion of required activities during the month.~~

~~**(c)**~~] **(b)** Bus tokens/passes are issued in lieu of the travel allowance and may not exceed $25 for the month. A participant shall be eligible to receive bus tokens or a one-month bus pass on an interim basis, provided that:

(i) the participant has no access to private transportation; and

(ii) public transportation is a reasonable alternative.

C. Vocational training and education: If state or federal funds are specifically appropriated, the department may issue supportive services benefits.

(1) Reimbursement for vocational training and educational expenses, but not tuition, shall be available to NMW [~~work program~~] participants. [~~E&T participants must pay such expenses using the $25.00 monthly allowance or from other non-work program sources.~~]

(2) NMW [~~work program~~] participants requesting reimbursement for various vocational training and educational expenses must provide receipts or request letters stating the amount of educational expenses. In addition, NMW [~~work program~~] participants must provide verification that financial assistance from other sources is unavailable or insufficient to cover the expenses for which the reimbursement is being requested.

(3) To be eligible for reimbursement of vocational training and educational expenses, the NMW participant must:

(a) meet [~~work program~~] NMW participation requirements;

(b) have an approved WPA which identifies and approves supportive services for further training; a NMW [~~work program~~] participant is not eligible for reimbursement of vocational training or educational expenses incurred prior to development of the WPA;

(c) apply and be denied for any educational assistance from such other sources as scholarships, PELL grants, WIA, student loans, etc. for which the participant might be eligible;

(d) provide "letters of denial" for the financial assistance listed previously; and

(e) repeat steps (a) through (c) at the beginning of each educational period (semester, quarter, trimester etc. as applicable).

(4) Reimbursable vocational training and education costs shall include only those for which a student is normally responsible, such as book and laboratory fees, special laboratory or shop clothing, work book fees, testing, registration, or graduation fees. In addition, personal classroom supplies, not to exceed $15.00 per semester, may be reimbursed.

(5) Participants enrolled in a post-graduate studies shall not be not eligible for supportive service reimbursement with respect to their post-graduate studies.

(6) Education and vocational training supportive services cannot be guaranteed beyond the end of the WPA expiration date.

(7) Test fees: Fees for completing either the scholastic aptitude test (SAT) or the American college test (ACT) may be reimbursed, provided one of the tests is required for admission into a given educational training institution.

D. Employment-related expense: If state or federal funds are specifically appropriated, the department may issue supportive services benefits.

(1) A NMW [~~work program~~] participant may receive assistance to help pay the cost for certain personal items necessary to accept a bona fide job offer, or to retain employment. The assistance shall be limited to no more than $300, and shall be available only once during the individual's lifetime.

(2) Payment method:

(a) Payment shall be made as a reimbursement for verified costs already incurred. Reimbursement must be requested within 60 days of employment.

(b) Payment may be issued prospectively, based on a billing statement or a detailed estimate of costs.

(3) Allowable costs: Allowable costs include, but are not limited to:

(a) special clothing, licensing and drug testing fees which an employer requires an employee to pay and which are a condition of employment;

(b) vehicle repairs, but not a vehicle purchase or insurance payment;

(c) tools which the employer requires an employee to pay for; or

(d) costs of bringing a home into compliance with certification requirements of the child care food program administered by CYFD, if the full cost is not available from the child care food program or CYFD.

(4) Costs not allowed: Costs associated with the start-up of a business or self-employment venture are not allowed. Such costs must be met through an IDA.

[8.102.620.15 NMAC - Rp, 8.102.620.15 NMAC, 07/01/2001; A, 04/01/2012]

8.102.620.16 SUPPORTIVE SERVICES BENEFITS:

A. Issuance schedule: If state or federal funds are specifically appropriated, the department may issue supportive services benefits.

(1) Participants assigned to a [~~work program activity~~] NMW activity may receive reimbursement on a monthly basis. Participants must submit participation reports to receive the standard month's reimbursement, timely submission is required to receive [~~additional reimbursement amount~~] the reimbursement. Reimbursement shall be authorized within five working days after receipt of all required verification. Support services shall be issued within 10 working days after authorization.

(2) Participants must submit the monthly participation report to be received no later than the fifth calendar day after a participation month's end. Reports received on the first workday after the fifth shall be considered timely if the fifth occurred on a weekend or holiday. Participants shall not be eligible to receive reimbursement if the report verifying participation is received 30 days or more following the end of the month for which participation is being reported.

B. Retroactive benefit coverage:

(1) Benefit coverage which provides supportive services may be issued retroactively to a participant if, upon individual case review, it is determined that:

(a) the participant was eligible to receive supportive services;

(b) the participant requested supportive services timely; and

(c) [~~work program~~] NMW staff inadvertently failed to process the reimbursements in a timely manner.

(2) [~~Work program~~] NMW participants must have signed a WPA, which has been approved by the [~~caseworker~~] NMW service provider, which identifies the supportive services. Under no circumstances shall [~~work program~~] NMW participants be eligible to receive supportive service reimbursement for costs incurred prior to enrollment in the [~~work program~~] NMW.

[8.102.620.16 NMAC - Rp, 8.102.620.16 NMAC, 07/01/2001; A, 04/01/2012]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, Section 11, effective April 1, 2012.

8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:

A. **100% of federal poverty:** 100% of federal poverty income guidelines

Size of assistance unit	Poverty income guidelines
1	[~~$908~~] $931 per month*
2	[~~$1,226~~] $1,261 per month*
3	[~~$1,545~~] $1,591 per month
4	[~~$1,863~~] $1,921 per month
5	[~~$2,181~~] $2,251 per month
6	[~~$2,500~~] $2,581 per month
7	[~~$2,818~~] $2,911 per month
8	[~~$3,136~~] $3,241 per month

Add [~~$318~~] $330 for each additional person in the assistance unit.

*Use only these two standards for the QMB program.

B. **120% of federal poverty:** This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants/recipients.

Applicant/recipient	Amount
1. Individual	At least [~~$908~~] $931 per month but no more than [~~$1,089~~] $1,117 per month.
2. Couple	At least [~~$1,226~~] $1,261 per month but no more than [~~$1,471~~] $1,513 per month.

For purposes of this eligibility calculation, couple means an applicant couple or an applicant with an ineligible spouse when income is deemed.

C. **133% of federal poverty:** 133% of federal poverty income guidelines

Size of assistance unit	Poverty income guidelines
1	[~~$1,207~~] $1,239 per month
2	[~~$1,631~~] $1,677 per month
3	[~~$2,054~~] $2,116 per month
4	[~~$2,478~~] $2,555 per month
5	[~~$2,901~~] $2,994 per month
6	[~~$3,324~~] $3,433 per month
7	[~~$3,748~~] $3,872 per month
8	[~~$4,171~~] $4,311 per month

Add [~~$423~~] $439 for each additional person in the assistance unit.

D. **135% of federal poverty:** This income level is used only in the determination of the maximum income limit for qualified individuals 1 (QI-1) applicants/recipients. The following income levels apply:

Applicant/recipient	Amount
1. Individual	At least [~~$1,089~~] $1,117 per month but no more than [~~$1,226~~] $1,257 per month.
2. Couple	At least [~~$1,471~~] $1,513 per month but no more than [~~$1,655~~] $1,703 per month.

For purposes of this eligibility calculation, couple means an applicant couple or an applicant with an ineligible spouse when income is deemed.

E. **150% of federal poverty:** This income level is used only in the determination of the maximum income limit for state coverage insurance (SCI) (category 062) applicants/recipients. The following income levels apply:

Size of assistance unit	Poverty income guidelines
1	[~~$1,362~~] $1,397 per month
2	[~~$1,839~~] $1,892 per month
3	[~~$2,317~~] $2,387 per month
4	[~~$2,794~~] $2,882 per month
5	[~~$3,272~~] $3,377 per month
6	[~~$3,749~~] $3,872 per month
7	[~~$4,227~~] $4,367 per month
8	[~~$4,704~~] $4,862 per month

Add [~~$477~~] $495 for each additional person in the assistance unit.

F. **185% of federal poverty:**

Size of assistance unit	Poverty income guidelines
1	[~~$1,679~~] $1,723 per month
2	[~~$2,268~~] $2,333 per month
3	[~~$2,857~~] $2,944 per month
4	[~~$3,446~~] $3,554 per month
5	[~~$4,035~~] $4,165 per month
6	[~~$4,624~~] $4,775 per month
7	[~~$5,213~~] $5,386 per month
8	[~~$5,802~~] $5,996 per month

Add [~~$589~~] $610 for each additional person in the assistance unit.

G. **200% of federal poverty:** 200% of federal poverty income guidelines

Size of assistance unit	Poverty income guidelines
1	[~~$1,815~~] $1,862 per month
2	[~~$2,452~~] $2,522 per month
3	[~~$3,089~~] $3,182 per month
4	[~~$3,725~~] $3,842 per month
5	[~~$4,362~~] $4,502 per month
6	[~~$4,999~~] $5,162 per month
7	[~~$5,635~~] $5,822 per month
8	[~~$6,272~~] $6,482 per month

Add [~~$637~~] $660 for each additional person in the assistance unit.

H. **235% of federal poverty:** 235% of federal poverty income guidelines

Size of assistance unit	Poverty income guidelines
1	[~~$2,134~~] $2,188 per month
2	[~~$2,882~~] $2,963 per month
3	[~~$3,631~~] $3,739 per month
4	[~~$4,379~~] $4,514 per month
5	[~~$5,126~~] $5,290 per month
6	[~~$5,875~~] $6,065 per month

7	[~~$6,623~~] $6,841 per month
8	[~~$7,370~~] $7,616 per month

Add [~~$747~~] $775 for each additional person in the assistance unit.

I. **250% of federal poverty:** 250% of federal poverty income guidelines

Size of assistance unit	Poverty income guidelines
1	[~~$2,269~~] $2,328 per month
2	[~~$3,065~~] $3,153 per month
3	[~~$3,861~~] $3,978 per month
4	[~~$4,657~~] $4,803 per month
5	[~~$5,453~~] $5,628 per month
6	[~~$6,248~~] $6,453 per month
7	[~~$7,044~~] $7,278 per month
8	[~~$7,840~~] $8,103 per month

Add [~~$796~~] $825 for each additional person in the assistance unit.

[1-1-95, 4-1-95, 4-15-96, 4-1-97, 3-31-98, 3-1-99, 4-1-99, 4-1-00; 8.200.520.11 NMAC - Rn, 8 NMAC 4.MAD.520.1-5, & 14, & A, 1-1-01; A, 4-1-01; A, 4-1-02; A, 4-1-03; A, 4-1-04; A, 4-1-05; A, 4-1-06; A, 4-1-07; A, 4-1-08; A, 4-1-09; A, 4-1-11; A, 4-1-12]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.314.6 NMAC, Sections 7 – 17 and 20 and 22, effective April 1, 2012.

8.314.6.7 DEFINITIONS:

A. **AIDS waiver:** A medicaid home and community-based services (HCBS) waiver program for recipients who are diagnosed as having acquired immunodeficiency syndrome (AIDS) or AIDS-related conditions and who meet the level of care provided in a nursing facility (NF).

B. **Authorized agent:** The participant may choose to appoint an authorized agent designated to have access to medical and financial information for the purpose of offering support and assisting the participant in understanding waiver services. The participant will designate a person to act as an authorized agent by signing a release of information form indicating the participant's consent to the release of confidential information. The authorized agent will not have the authority to direct mi via waiver services. Directing services remains the sole responsibility of the participant or his/her legal representative. The participant's authorized agent does not need a legal relationship with the participant. While the participant's authorized agent can be a service provider for the participant, the authorized agent cannot serve as the participant's consultant. If the authorized agent is an employee, he/she cannot sign his/her own timesheet.

C. **Authorized annual budget (AAB):** The actual amount of the annual budget approved for a participant by the TPA. Participants work with their consultant to develop an annual budget request, which is submitted to the TPA for review and approval. The total amount approved by the TPA is the authorized annual budget (AAB).

D. **Brain injury (BI):** Individuals (through age 65) with an injury to the brain of traumatic or acquired origin resulting in a total or partial functional disability or psychosocial impairment or both. The BI participant must have a documented BI diagnosis, as included in the international classification of diseases [~~9th revision clinical modification (ICD 9-CM) codes which are attached to this part of the NMAC as attachment I~~] (ICD-9-CM or its successor).

E. **Category of eligibility (COE):** To qualify for medicaid, a person must meet financial criteria and belong to one of the groups that the state has defined as eligible. All participants in mi via must belong to one of the categories of eligibility (COE) described in 8.314.6.13 NMAC.

F. **Centers for medicare and medicaid services (CMS):** Federal agency within the United States department of health and human services that works in partnership with the states to administer medicaid.

G. **Consultant provider:** May be an agency or an individual. Provides consultant and support guide services to mi via participants that assist the participant (or the participant's family or legal representative, as appropriate) in arranging for, directing and managing mi via services and supports, as well as developing, implementing and monitoring the service and support plan (SSP) and AAB.

H. **Employer of record (EOR):** The employer of record (EOR) is the individual responsible for directing the work of mi via employees, including recruiting, hiring, managing and terminating all employees. The EOR tracks expenditures for employee payroll, goods, and services. EORs authorize the payment of timesheets by the financial management agency (FMA). A participant may be his/her own EOR unless the participant is a minor, or has a plenary or limited guardianship or conservatorship over financial matters in place. Participants may also designate an individual of their choice to serve as their EOR, subject to the EOR meeting the qualifications specified in these regulations.

I. **Financial management agency (FMA):** Contractor that helps implement the AAB by paying the participant's service providers and tracking expenses.

J. **Home and community-based services (HCBS) waiver:** Medicaid program that provides alternatives to long-term care services in institutional settings. The federal government waives certain statutory requirements of the Social Security Act to allow states to provide an array of community-based options through these waiver programs.

K. **Individual budgetary allotment (IBA):** The maximum budget allotment available to an individual participant, determined by his/her established level of care (LOC) and category of eligibility. Based on this maximum amount, the participant will develop a plan to meet his/her assessed functional, medical and habilitative needs to enable the participant to remain in the community.

L. **Intermediate care facilities for the mentally retarded (ICF/MR):** Facilities that are licensed and certified by the New Mexico department of health (DOH) to provide room and board, continuous active treatment and other services for eligible medicaid recipients with a primary diagnosis of mental retardation.

M. **Legal representative:** A person that is a legal guardian, conservator, power of attorney or otherwise has a court established legal relationship with the participant. The participant must provide certified documentation to the consultant provider and FMA of the legal status of the representative and such documentation will become part of the participant's file. The legal representative will have access to participant medical and financial information to the extent authorized in the official court documents.

N. **Legally responsible individual (LRI):** A legally responsible individual (LRI) is any person who has a duty under state law to care for another person. This category typically includes: the parent (biological, legal, or adoptive) of a minor child; the guardian of a minor child who must provide care to the child; or a spouse.

O. **Level of care (LOC):** The level of care (LOC) required by an individual in an institution. Participants in the mi via program must be determined to need either the LOC required for admittance to a licensed nursing facility (NF) or an ICF/MR.

P. **Mi via:** Mi via is the name of the Section 1915 (c) medicaid self-directed HCBS waiver program through which eligible participants have the option to access services to allow them to remain in the community.

Q. **Participant:** Individuals meeting the financial and medical LOC criteria who are approved to receive services through the mi via program.

R. **Reconsideration:** Participants who disagree with a clinical/medical utilization review decision or action may submit a written request through a consultant to the third party assessor (TPA) for a re-consideration of the decision.

S. **Self-direction:** Process applied to the service delivery system wherein participants identify, access and manage the services they obtain (among the state-determined waiver services and goods) to meet their personal assistance and other health-related needs.

T. **Service and support plan (SSP):** Participant plan that includes waiver services that meet the participant's needs to include the projected amount, frequency and duration of the services; the type of provider who will furnish each service; other services that the participant will access; and the participant's available supports that will complement waiver services in meeting his/her needs.

U. **State or state agency:** The mi via waiver program is managed and administered by [~~three~~] two state agencies, [~~the aging and long term services department (ALTSD),~~] the department of health (DOH) and the human services department, medical assistance division (HSD/MAD). References to the "state" or "state agency" means these [~~three~~] two agencies or other specifically indicated agency as appropriate.

V. **Support guide:** A function of the consultant provider that directly assists the participant in implementing the SSP to ensure access to mi via services and supports and to enhance success with self-direction. Support guide services provide assistance to the participant with employer/vendor functions or with other aspects of implementing his/her SSP.

W. **Third-party assessor (TPA):** The contractor that determines and re-determines LOC and medical eligibility for mi via services. The TPA also reviews each participant's SSP and approves an AAB for each participant. The TPA performs utilization management duties of all waiver services.

X. **Waiver:** A program in which the federal government has waived certain statutory requirements of the Social Security Act to allow states to provide an array of home and community-based service options through medicaid as an alternative to providing long-term care services in an institutional setting.

[8.314.6.7 NMAC - N, 4-1-11; A, 4-1-12]

8.314.6.8 MISSION STATEMENT: [~~To reduce the impact of poverty on people living in New Mexico and to assure low income and individuals with disabilities in New Mexico equal participation in the life of their communities.~~] To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[8.314.6.8 NMAC - Rp, 8.314.6.8 NMAC, 4-1-11; A, 4-1-12]

8.314.6.9 MI VIA HOME AND COMMUNITY-BASED SERVICES WAIVER:

A. Mi via, New Mexico's self-directed waiver program (mi via), is intended to provide a community-based alternative to institutional care that allows eligible participants to have control over services and supports. Mi via provides self-directed home and community-based services to eligible recipients, hereafter referred to as participants, who are living with disabilities (CoLTS (c)), conditions associated with aging (CoLTS (c)), certain traumatic or acquired brain injuries (BI), acquired immunodeficiency syndrome (AIDS), developmental disabilities (DD), or medically fragile conditions (MF). (See 42 CFR 441.300.)

B. Mi via is comprised of two medicaid home and community-based waivers established under Section 1915(c) of the Social Security Act. One waiver is specifically for eligible individuals who meet the LOC otherwise provided in a nursing facility (NF). The second waiver is specifically for eligible individuals who meet the LOC otherwise provided in an ICF/MR. Both waivers are managed as a single self-directed program and are administered collaboratively by the [~~ALTSD,~~] DOH and HSD/MAD.

(1) The [~~ALTSD~~] HSD/MAD is responsible for the daily administration of mi via for eligible individuals living with disabilities, conditions associated with aging, and certain traumatic or acquired brain injuries who meet the LOC for admittance to an NF. The DOH is responsible for the daily administration of mi via for eligible individuals living with developmental disabilities and medically fragile conditions who meet the LOC for admittance to an ICF/MR The DOH also manages the waiver for individuals living with AIDS who meet the LOC for admittance to an NF.

(2) Enrollment in mi via is limited to the number of federally authorized unduplicated participants and funding appropriated by the New Mexico legislature for this purpose.

[8.314.6.9 NMAC - Rp, 8.314.6.9 NMAC, 4-1-11; A, 4-1-12]

8.314.6.10 MI VIA CONTRACTED ENTITIES AND PROVIDERS SUPPORTING SELF-DIRECTED SERVICES: The following resources and services have been established to assist participants to self-direct services. These include the following.

A. **Consultant services:** Consultant services are direct services intended to educate, guide and assist the participant to make informed planning decisions about services and supports, to develop a service and support plan (SSP) that is based on the participant's assessed needs and to assist the participant with quality assurance related to the SSP and AAB.

B. **Third-party assessor:** The TPA or HSD/MAD's designee is responsible for determining medical eligibility through an LOC assessment, assigning the applicable individual budgetary allotment (IBA), approving the SSP and authorizing a participant's annual budget in accordance with mi via regulations. The TPA:

(1) determines medical eligibility using the LOC criteria in 8.314.6.13 NMAC; LOC determinations are done initially for individuals who are newly allocated to the waiver and at least annually for currently enrolled mi via participants; the LOC assessment is done in person with the participant in his/her home, an agreed upon location or in an inpatient setting; the TPA may re-evaluate the LOC more often than annually if there is an indication that the participant's condition or LOC has changed;

(2) applies the information from the LOC documentation and the following assessments, long-term care assessment abstract (NF or ICF/MR), the comprehensive individual assessment (CIA), the universal assessment tool (UAT), or other state approved assessment tools, as appropriate for the category of eligibility, to assign the IBA for participants that are medically eligible; and

(3) reviews and approves the SSP and the annual budget request resulting in an AAB, at least annually or more often if there is a change in the participant's circumstances in accordance with mi via regulations.

C. **Financial management agent:** The FMA acts as the intermediary between the participant and the medicaid payment system and assists the participant or the EOR with employer-related responsibilities. The FMA pays employees and vendors based upon an approved SSP and AAB. The FMA assures participant and program compliance with state and federal employment requirements, monitors, and makes available to participants and the state reports related to utilization of services and

budget expenditures. Based on the mi via participant's individual approved SSP and AAB, the FMA must:

(1) verify that mi via participants are eligible for medicaid prior to making payment for services;

(2) receive and verify that all required employee and vendor documentation and qualifications are in compliance with the mi via regulations;

(3) establish an accounting for each participant's AAB;

(4) process and pay invoices for goods, services, and supports approved in the SSP and the AAB and supported by required documentation;

(5) process all payroll functions on behalf of participants and EORs including:

(a) collect and process timesheets of employees;

(b) process payroll, withholding, filing, and payment of applicable federal, state and local employment-related taxes and insurance; and

(c) track and report disbursements and balances of the participant's AAB and provide a monthly report of expenditures and budget status to the participant and his/her consultant and quarterly and annual documentation of expenditures to the state;

(6) receive and verify provider agreements, including collecting required provider qualifications;

(7) monitor hours billed for services provided by the LRI and the total amounts billed for all goods and services during the month;

(8) answer inquiries from participants and solve problems related to the FMA's responsibilities; and

(9) report any concerns related to the health and safety of a participant or that the participant is not following the approved SSP and AAB to the consultant provider, HSD/MAD[~~, and ALTSD or~~] and DOH, as appropriate.

[8.314.6.10 NMAC - Rp, 8.314.6.10 NMAC, 4-1-11; A, 4-1-12]

8.314.6.11 QUALIFICATIONS FOR ELIGIBLE INDIVIDUAL EMPLOYEES, INDEPENDENT PROVIDERS, PROVIDER AGENCIES, AND VENDORS:

A. **Requirements for individual employees, independent providers, provider agencies and vendors:** In order to be approved as an individual employee, an independent provider, including non-licensed homemaker/companion workers, a provider agency (excluding consultant providers which are covered in a different subsection) or a vendor, including those that provide professional services, each entity must meet the general and service specific qualifications set forth in these regulations and submit an employee or vendor enrollment packet, specific to the provider or vendor type, for approval to the FMA. In order to be an authorized provider for mi via and receive payment for delivered services, the provider must complete and sign an employee or vendor provider agreement and all required tax documents. The provider must have credentials verified by the participant/EOR and the FMA. In order to be an authorized consultant provider for the mi via program, the provider must have an approved provider agreement executed by the DOH/developmental disabilities supports division (DDSD) and HSD/MAD.

B. **General qualifications:**

(1) Individual employees, independent providers, including non-licensed homemaker/companion workers and provider agencies (excluding consultant providers) who are employed by a mi via participant to provide direct services shall:

(a) be at least 18 years of age;

(b) be qualified to perform the service and demonstrate capacity to perform required tasks;

(c) be able to communicate successfully with the participant;

(d) pass a nationwide caregiver criminal history screening pursuant to NMSA 1978, Section 29-17-2 et seq. and 7.1.9 NMAC and an abuse registry screen pursuant to NMSA 1978, Section 27-7a-1 et seq. and 8.11.6 NMAC;

(e) complete training on critical incident, abuse, neglect, and exploitation reporting;

(f) complete participant specific training; the evaluation of training needs is determined by the participant or his/her legal representative; the participant is also responsible for providing and arranging for employee training and supervising employee performance; training expenses for paid employees cannot be paid for with the mi via participant's AAB; and

(g) meet any other service specific qualifications, as specified in these regulations.

(2) Vendors, including those providing professional services, shall:

(a) be qualified to provide the service;

(b) possess a valid business license, if applicable;

(c) if a professional provider, be required to follow the applicable licensing regulations set forth by the profession; refer to the appropriate New Mexico board of licensure for information regarding applicable licenses;

(d) if a consultant provider, meet all of the qualifications set forth in 8.314.6.11 NMAC;

(e) if a currently approved waiver provider, be in good standing with the appropriate state agency; and

(f) meet any other service specific qualifications, as specified in the mi via regulations.

(3) Relatives/legal representatives except LRIs (e.g., parents of minor children or spouses) may be hired and paid for provision of waiver services (except consultant/support guide, assisted living, and customized community supports services); payment is made to a participant's relative or legal representative for services provided when the relative/legal representative is qualified and approved to provide the service; the services must be identified in the approved SSP and AAB, and the participant or his/her legal representative is responsible for verifying that services have been rendered by completing, signing and submitting documentation, including the timesheet, to the FMA; relatives/legal representatives must provide services within the limits of the approved SSP and AAB and may not be paid in excess of 40 hours in a consecutive seven-day period; LRIs, legal representatives or relatives may not be both a paid employee for a participant and serve as his/her EOR.

(4) LRIs, e.g., the parent (biological, legal or adoptive) of a minor child (under age 18) or the guardian of a minor child, who must provide care to the child, or a spouse of a mi via participant, may be hired and paid for provision of waiver services (except consultant/support guide, assisted living, and customized community supports services) under extraordinary circumstances in order to assure the health and welfare of the participant, to avoid institutionalization and provided that the state is eligible to receive federal financial participation (FFP).

(a) Extraordinary circumstances include the inability of the LRI to find other qualified, suitable caregivers when the LRI would otherwise be absent from the home and, thus, the caregiver must stay at home to ensure the participant's health and safety.

(b) LRIs may not be paid for any services that they would ordinarily perform in the household for individuals of the same age who do not have a disability or chronic illness.

(c) Services provided by LRIs must:

(i) meet the definition of a service or support and be specified in the participant's approved SSP and AAB;

(ii) be provided by a parent or spouse who meets the provider qualifications and training standards specified in the waiver for that service; and

(iii) be paid at a rate that does not exceed that which would otherwise be paid to a provider of a similar service and be approved by the TPA.

(d) An LRI who is a service provider must comply with the following:

(i) a parent, parents

in combination, or a spouse, may not provide more than 40 hours of services in a consecutive seven-day period; for parents, 40 hours is the total amount of service regardless of the number of children who receive services under the waiver;

(ii) planned work schedules must be identified in the approved SSP and AAB, and variations to the schedule must be reported to the participant's consultant and noted and supplied to the FMA when billing; and

(iii) timesheets and other required documentation must be maintained and submitted to the FMA for hours paid.

(e) Married individuals must be offered a choice of providers. If they choose a spouse as their service provider and it is approved in writing by [~~ALTSD~~] HSD/MAD or DOH, it must be documented in the SSP.

(f) Children 16 years of age or older must be offered a choice of provider. If a child chooses his or her parent and it is approved in writing by [~~ALTSD~~] HSD/MAD or DOH, it must be documented in the SSP.

(g) The FMA monitors, on a monthly basis, hours billed for services provided by the LRI and the total amounts billed for all goods and services during the month.

(h) Hiring of LRIs must be approved in writing by [~~ALTSD~~] HSD/MAD for CoLTS (c) and BI populations, or DOH for the AIDS, DD and MF populations.

(5) Once enrolled, providers, vendors and contractors receive a packet of information from the mi via participant or FMA, including medicaid billing instructions, and other pertinent materials. Mi via participants are responsible for ensuring that providers, vendors and contractors have received these materials and for updating them as new materials are received from the state ([~~ALTSD~~] HSD/MAD for CoLTS (c), and BI or DOH for AIDS, DD, and MF).

(a) No provider of any type may be paid in excess of 40 hours within the established work week for any one participant or EOR.

(b) No provider agency is permitted to perform both LOC assessments and provide any services for mi via participants.

(c) Mi via providers may market their services, but are prohibited from soliciting participants under any circumstances.

(6) Employer of record. The EOR is the individual responsible for directing the work of employees. Mi Via encourages the participant to be the EOR. It is also possible to designate someone else to act as the EOR.

(a) If a participant is the subject of a plenary or limited guardianship or conservator regarding financial matters, he/she may not be his or her own EOR.

(b) A person under the age of 18 years may not be an EOR.

(c) An EOR who lives outside New Mexico shall reside within 100 miles of the New Mexico state border. If the participant wants to have an EOR who resides beyond this radius, he/she must obtain written approval from the appropriate state program manager prior to the EOR performing any duties.

(d) A participant's provider may not also be his/her EOR.

(e) An EOR whose performance compromises the health, safety or welfare of the participant, may have his/her status as an EOR terminated.

(f) An EOR may not be paid for any services provided to the participant for whom they are the EOR, whether as an employee of the participant, a vendor, or an employee or contactor of an agency. An EOR makes important determinations about what is in the best interest of a participant, and should not have any conflict of interest. An EOR assists in the management of the participant's budget and should have no personal benefit connected to the services requested or approved on the budget.

C. **Service specific qualifications for consultant services providers:** Consultant providers shall ensure that all individuals providing consultant services meet the criteria specified in this section in addition to the general requirements.

(1) Consultant providers shall:

(a) possess a minimum of a bachelor's degree in social work, psychology, human services, counseling, nursing, special education or a closely related field, and have one year of supervised experience working with seniors or people living with disabilities; or

(b) have a minimum of six years of direct experience related to the delivery of social services to seniors or people living with disabilities, and be employed by an enrolled mi via consultant provider agency; and

(c) complete all required mi via orientation and training courses.

(2) Consultant providers may also use non-professional staff to carry out support guide functions. Support guides provide more intensive supports, as detailed in the service section of these rules. Support guides help the participant more effectively self-direct services when there is an identified need for this type of assistance. Consultant providers shall ensure that non-professional support staff:

(a) are supervised by a qualified consultant as specified in this regulation;

(b) have experience working with seniors or people living with disabilities;

(c) demonstrate the capacity to meet the participant's assessed needs related to the implementation of the SSP;

(d) possess knowledge of local resources, community events, formal and informal community organizations and networks;

(e) are able to accommodate a varied, flexible and on-call type of work schedule in order to meet the needs of participant; and

(f) complete training on self-direction and incident reporting.

D. **Service specific qualifications for personal plan facilitation providers:** A personal plan facilitator agency must hold a current business license, and meet financial solvency, training, records management, and quality assurance rules and requirements. Personal plan facilitators must possess the following qualifications in addition to the general qualifications:

(1) have at least one year of experience working with persons with disabilities; and

(2) be trained and certified in the planning tool(s) used; and

(3) have at least one year experience in providing the personal plan facilitation service.

E. **Service specific qualification for living supports providers:** In addition to the general qualifications, the following types of providers must meet additional qualifications specific to the type of services provided.

(1) **Qualifications of homemaker/direct support service providers:** Homemaker agencies must be certified by the HSD/MAD or its designee. Home health agencies must hold a home health agency license. Homemaker/home health agencies must hold a current business license, and meet financial solvency, training, records management, and quality assurance rules and requirements.

(2) **Qualifications of home health aide service providers:** Home health agency/homemaker agencies must hold a current home health agency, rural health clinic, or federally qualified health center license. Home health aides must have successfully completed a home health aide training program, as described in 42 CFR 484.36(a)(1) and (2); or have successfully completed a home health aide training program pursuant to 7.28.2.30 NMAC. Home health aides must also be supervised by a registered nurse. Such supervision must occur at least once every 60 days in the participant's home, and shall be in accordance with the New Mexico Nurse Practice Act and be specific to the participant's SSP.

(3) **Qualifications of assisted living providers:** Assisted living providers must be licensed as an adult residential care

facility by DOH pursuant to 7.8.2 NMAC, and meet all the requirements and regulations set forth by DOH as an adult residential care facility pursuant to 7.8.2 NMAC et seq.

(4) **Qualifications of customized in-home living supports providers:** The individual customized living provider must have at least one year of experience working with people with disabilities. Provider agencies must hold a current business license, and meet financial solvency, training, records management, and quality assurance rules and requirements. Customized living agency staff must have one year of experience working with people with disabilities.

F. **Service specific qualifications for community membership support providers:** In addition to the general qualifications, the following types of providers must meet additional qualifications specific to the type of services provided. Community access provider agencies providing community direct support services must hold a current business license, and meet financial solvency, training, records management, and quality assurance rules and requirements.

(1) **Qualifications of supported employment providers:**

(a) Job developers must have experience as a job developer for at least one year; have experience for at least one year developing and using job and task analyses; have experience for at least one year working with the division of vocational rehabilitation (DVR), a traditional DD waiver employment provider, an independent living center or other organization that provides employment supports or services for people with disabilities; and be trained on the purposes, functions and general practices of entities such as the department of workforce solutions navigators, one-stop career centers, business leadership network, chamber of commerce, job accommodation network, small business development centers, retired executives and New Mexico employment institute.

(b) Job coaches must have experience as a job coach for at least one year in the state of New Mexico; have experience for at least one year using job and task analyses; be trained on the Americans with Disabilities Act (ADA); and be trained on the purpose, function and general practices of the DVR office.

(2) **Qualifications of customized community supports providers:** Adult habilitation agency staff must have at least one year of experience working with individuals with disabilities. Adult day health provider agencies must be licensed by DOH as an adult day care facility pursuant to 7.13.2 NMAC. Adult day health agency staff must have at least one year of experience working with individuals with disabilities.

G. **Service specific qualifications for providers of health and wellness supports:** In addition to the general qualifications, the following types of providers must meet additional qualifications specific to the type of services provided.

(1) **Qualifications of extended state plan skilled therapy providers for adults:** Physical and occupational therapists, speech/language pathologists, and physical therapy assistants must possess a therapy license in their respective field from the New Mexico regulation and licensing department (RLD). Certified occupational therapy assistants must possess an occupational therapy assistant certification from the New Mexico RLD. Speech clinical fellows must possess a clinical fellow license from the New Mexico RLD.

(2) **Qualifications of behavior support consultation providers:** Behavior consultant provider agencies shall have a current business license issued by the state, county or city government, if required. Behavior consultant provider agencies shall comply with all applicable federal, state, and waiver regulations, policies and procedures regarding behavior consultation. 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), licensed independent social worker (LISW), licensed master social worker (LMSW), licensed professional clinical counselor (LPCC), licensed professional counselor (LPC), licensed psychiatric nurse (MSN/RNCS), licensed marriage and family therapist (LMFT), or licensed practicing art therapist (LPAT). Providers of behavior support consultation must maintain a current New Mexico license with the appropriate professional field licensing body.

(3) **Qualifications of nutritional counseling providers:** Nutritional counseling providers must maintain a current registration as dietitians by the commission on dietetic registration of the American dietetic association.

(4) **Qualifications of private duty nursing providers for adults:** Direct nursing services are provided by individuals who are currently licensed as registered or practical nurses by the New Mexico state board of nursing.

(5) **Qualifications of specialized therapy providers:** Specialized therapy providers must possess a current New Mexico state license, as applicable, in at least one of the following areas:

(a) acupuncture and oriental medicine;

(b) biofeedback or a health care profession whose scope of practice includes biofeedback, and appropriate specialized training and clinical experience and supervision;

(c) chiropractic medicine;

(d) cognitive rehabilitation therapy or a health care profession whose scope of practice includes cognitive rehabilitation therapy, and appropriate specialized training and clinical experience and supervision;

(e) hippotherapy or a health care profession whose scope of practice includes hippotherapy, and appropriate specialized training and experience;

(f) massage therapy;

(g) naprapathic medicine;

(h) play therapy or a mental health profession whose scope of practice includes play therapy, a master's degree or higher mental health degree, and specialized play therapy training and clinical experience and supervision; or

(i) Native American healers are individuals who are recognized as traditional healers within their communities.

H. **Service specific qualifications for other supports providers:** In addition to the general qualifications, the following types of providers must meet additional qualifications specific to the type of services provided.

(1) **Qualifications of transportation providers:** Individual transportation providers must possess a valid New Mexico driver's license with the appropriate classification, be free of physical or mental impairment that would adversely affect driving performance, have no driving while intoxicated (DWI) convictions or chargeable (at fault) accidents within the previous two years, have current CPR/first aid certification; and be trained on DOH/division of health improvement (DHI) critical incident reporting procedures and have a current insurance policy and vehicle registration. Transportation vendors must hold a current business license and tax identification number. Each agency will ensure drivers meet the following qualifications:

(a) possess a valid, appropriate New Mexico driver's license;

(b) be free of physical or mental impairment that would adversely affect driving performance;

(c) have no DWI convictions or chargeable (at fault) accidents within the previous two years;

(d) have current CPR/first aid certification;

(e) be trained on DOH/DHI critical incident reporting procedures;

(f) have a current insurance policy and vehicle registration; and

(g) each agency will ensure vehicles have a current basic first aid kit in the vehicle.

(2) Q**ualifications of emergency response providers:** Emergency response providers must comply with all laws, rules and regulations of the New

Mexico state corporation commission for telecommunications and security systems.

(3) **Qualifications of respite providers:** Respite services may be provided by eligible individual respite providers; licensed registered (RN) or practical nurses (LPN); or respite provider agencies. Individual RN/LPN providers must be licensed by the New Mexico state board of nursing as an RN or LPN. Respite provider agencies must hold a current business license, and meet financial solvency, training, records management and quality assurance rules and requirements.

(4) **Qualifications of related goods vendors:** Related goods vendors must hold a current business license for the locale they are in and a tax ID for the state and federal government.

(5) **Qualifications of environmental modifications providers:** Environmental modification providers must possess an appropriate plumbing, electrician, contractor or other appropriate license.

[8.314.6.11 NMAC - Rp, 8.314.6.11 NMAC, 4-1-11; A, 4-1-12]

8.314.6.12 RECORDKEEPING AND DOCUMENTATION RESPONSIBILITIES: Service providers and vendors who furnish goods and services to mi via participants are reimbursed by the FMA and must comply with all mi via regulations. The FMA, consultants and service providers must maintain records, which are sufficient to fully disclose the extent and nature of the goods and services provided to participants, pursuant to 8.302.1.17 NMAC, *record keeping and documentation requirements*, and comply with random and targeted audits conducted by HSD/MAD [~~ALTSD,~~] and DOH or their audit agents. HSD/MAD or its designee will seek recoupment of funds from service providers when audits show inappropriate billing for services. Mi via vendors who furnish goods and services to mi via participants and bill the FMA must comply with all medicaid participation requirements, including but not limited to 8.302.1 NMAC, *General Provider Policies*.

[8.314.6.12 NMAC - Rp, 8.314.6.12 NMAC, 4-1-11; A, 4-1-12]

8.314.6.13 ELIGIBILITY REQUIREMENTS FOR PARTICIPANT ENROLLMENT IN MI VIA: Enrollment in mi via is contingent upon the applicant meeting the eligibility requirements as described in the mi via regulations, the availability of funding as appropriated by the New Mexico legislature, and the number of federally authorized unduplicated participants. When sufficient funding as well as waiver positions are available, the appropriate state administering agency will offer the opportunity to individuals to apply for mi via. Once an allocation has been offered to the applicant he/she must meet certain medical and financial criteria in order to qualify for enrollment. Applicants must meet the following eligibility criteria: financial eligibility criteria determined in accordance with 8.290.500 NMAC, and the participant must meet the LOC required for admittance to an NF or an ICF/MR and additional specific criteria as specified in the categories below.

A. **Developmental disability:** Individuals who have a severe chronic disability, other than mental illness, that:

(1) is attributable to a mental or physical impairment, including the result of trauma to the brain, or a combination of mental and physical impairments;

(2) is manifested before the person reaches the age of 22 years;

(3) is expected to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activity: self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency;

(5) reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other supports and services that are of life-long or extended duration and are individually planned and coordinated;

(6) the individual__must have a developmental disability and mental retardation or a specific related condition; related conditions are limited to cerebral palsy, autism (including asperger syndrome), seizure disorder, chromosomal disorders (e.g. down), syndrome disorders, inborn errors of metabolism, and developmental disorders of brain formation; and

(7) the individual must require an ICF/MR LOC.

B. **Medically fragile:** Individuals who have been diagnosed with a medically fragile condition before reaching age 22, and who:

(1) have a developmental disability or developmental delay, or who are at risk for developmental delay; and

(2) have a chronic physical condition 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) have a life-threatening condition, characterized by reasonably frequent periods of acute exacerbation, which requires frequent medical supervision or physician consultation, and which, in the absence of such supervision or consultation, would require hospitalization; or have frequent, time-consuming administration of specialized treatments which are medically necessary; or dependence on medical technology such that without the technology a reasonable level of health could not be maintained; examples include, but are not limited to, ventilators, dialysis machines, enteral or parenteral nutrition support and continuous oxygen; and

(b) require ICF/MR LOC.

C. **Disabled and elderly:** Individuals who are elderly (age 65 or older), blind or disabled, as determined by the disability determination unit utilizing social security disability guidelines, who require NF LOC and either reside in the community, are institutionalized, or are at risk of institutionalization.

D. **AIDS:** Individuals who have been diagnosed as having AIDS or AIDS-related condition (ARC) and who require NF LOC.

E. **Brain-injury (BI):** Individuals (through age 64) with an injury to the brain of traumatic or acquired origin resulting in total or partial functional disability or psychosocial impairment or both. Additional criteria include:

(1) the term applies to open and closed head injuries caused by an insult to the brain from an outside physical force, anoxia, electrical shock, shaken baby syndrome, toxic and chemical substances, near-drowning, infections, tumors, or vascular lesions;

(2) BI may result in either temporary or permanent, partial or total impairments in one or more areas including, but not limited to: cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory perceptual and motor abilities, psychosocial behavior, physical functions, information processing and speech;

(3) the term ***"brain injury"*** does not apply to brain injuries that are congenital, degenerative, induced by birth trauma or neurological disorders related to the aging process, or chemically caused brain injuries that are a result of habitual substance abuse; the BI participant must have a documented BI diagnosis contained in the ICD-9-CM [~~document (see Attachment I to these regulations)~~] or its successor; and

(4) the individual must require NF LOC.

F. After initial eligibility has been established, on-going eligibility must be re-determined on an annual basis.

[8.314.6.13 NMAC -Rp, 8.314.6.13 NMAC, 4-1-11; A, 4-1-12]

8.314.6.14 PARTICIPANT RESPONSIBILITIES: Mi via participants have certain responsibilities to participate in the waiver. Failure to comply with these responsibilities or other program rules and

regulations can result in termination from the program. The participant and EOR have the following responsibilities.

A. To maintain eligibility a participant must complete required documentation demonstrating medical and financial eligibility both upon application and annually at recertification, meet in person with the TPA for a comprehensive LOC assessment in the applicant/participant's home, an agreed upon location or an inpatient setting, and seek assistance with the application and the recertification process as needed from a mi via consultant.

B. To participate in mi via a participant must:

(1) comply with the rules and regulations that govern the program;

(2) collaborate with the consultant to determine support needs related to the activities of self-direction;

(3) collaborate with the consultant to develop an SSP using the IBA in accordance with mi via program regulations;

(4) use state funds appropriately by only requesting and purchasing goods and services covered by the mi via program in accordance with program regulations and which are identified on the approved SSP;

(5) comply with the approved SSP and not exceed the AAB;

(a) if a participant does not adequately allocate the resources contained in the AAB resulting in a premature depletion of the AAB amount during an SSP year due to mismanagement or failure to properly track expenditures, the failure to properly allocate does not substantiate a claim for a budget increase (i.e., if all of the AAB is expended within the first three months of the SSP year, it is not justification for an increase in the budget for the SSP year);

(b) revisions to the AAB may occur within the SSP year, and the participant is responsible for assuring that all expenditures are in compliance with the most current AAB in effect; the SSP must be amended first to reflect a change in the participant's needs or circumstances before any revisions to the AAB can be requested; other than for critical health and safety reasons, budget revisions may not be submitted to the TPA for review [~~during the first 90 days of the participant's budget year, or~~] within the last 60 days of the budget year;

(c) no mi via program funds can be used to purchase goods or services prior to TPA approval of the SSP and annual budget request;

(d) any funds not utilized within the SSP and AAB year cannot be carried over into the following year;

(6) access consultant services based upon identified need(s) in order to carry out the approved SSP;

(7) collaborate with the consultant to appropriately document service delivery and maintain those documents for evidence of services received;

(8) report concerns or problems with any part of mi via to the consultant;

(9) work with the TPA agent by attending scheduled meetings, in the participant's home if necessary and providing documentation as requested;

(10) respond to requests for additional documentation and information from the consultant provider, FMA, and the TPA within the required deadlines;

(11) report to the local income support division office within 10 days any change in circumstances, including a change in address, which might affect eligibility for the program. Changes in address or other contact information must also be reported to the consultant provider and the FMA within 10 days;

(12) report to the TPA and consultant provider if hospitalized for more than three nights so that an appropriate LOC can be obtained; and

(13) keep track of all budget expenditures and assure that all expenditures are within the AAB; and

(14) meet monthly and quarterly with the consultant.

C. Additional responsibilities of the participant or EOR:

(1) Submit all required documents to the FMA to meet employer-related responsibilities. This includes, but is not limited to documents for payment to employees and vendors and payment of taxes and other financial obligations within required timelines.

(2) Report any incidents of abuse, neglect or exploitation to the appropriate state entity.

(3) Arrange for the delivery of services, supports and goods.

(4) Hire, manage, and terminate employees.

(5) Maintain records and documentation in accordance with 8.302.1.17 NMAC, related to personnel, payroll and service delivery.

D. **Voluntary termination:** Current waiver participants are given a choice of receiving services through an existing waiver or mi via. Mi via participants, who transition from the current traditional waivers (CoLTS (c), DD, MF, or AIDS) and decide to discontinue self-directing their services, may return to the traditional waiver in accordance with the mi via rules and service standards. Mi via participants who are eligible under the BI category of eligibility and choose to discontinue self-direction may be transitioned to CoLTS (c) services.

E. **Involuntary termination:** A mi via participant may be terminated involuntarily and offered services through another waiver or the medicaid state plan under the following circumstances.

(1) The participant refuses to follow mi via rules and regulations after receiving focused technical assistance on multiple occasions, support from the program staff, consultant, or FMA, which is supported by documentation of the efforts to assist the participant.

(2) The participant is in immediate risk to his/her health or safety by continued self-direction of services, e.g., the participant is in imminent risk of death or serious bodily injury related to participation in the waiver. Examples include but are not limited to the following.

(a) The participant refuses to include and maintain services in his/her SSP and AAB that would address health and safety issues identified in his/her medical assessment or challenges the assessment after repeated and focused technical assistance and support from program staff, consultant, or FMA.

(b) The participant is experiencing significant health or safety needs, and, after having been referred to the state contractor team for level of risk determination and assistance, refuses to incorporate the team's recommendations into his/her SSP and AAB.

(c) The participant exhibits behaviors which endanger him/herself or others.

(3) The participant misuses mi via funds following repeated and focused technical assistance and support from the consultant or FMA, which is supported by documentation.

(4) The participant commits medicaid fraud.

(5) Participant who is involuntarily terminated from mi via will be offered a non self-directed waiver alternative. If transfer to another waiver is authorized by the state and accepted by the participant, he/she will continue to receive the services and supports from mi via until the day before the new waiver services start. This will ensure that no break in service occurs. The mi via consultant and the service coordinator in the new waiver will work closely together with the participant to ensure that the participant's health and safety is maintained. Fair hearing notice and rights apply to the participant.

[8.314.6.14 NMAC -Rp, 8.314.6.14 NMAC, 4-1-11; A, 4-1-12]

8.314.6.15 SERVICE DESCRIPTIONS AND COVERAGE CRITERIA: The services covered by mi via are intended to provide a community-based alternative to institutional care that allows greater choice, direction and control over services and supports in a self-directed environment. Mi via services must specifically address a therapeutic, rehabilitative, habilitative, health or safety need that results from the participant's

qualifying condition. The mi via program is the payor of last resort. The coverage of mi via services must be in accordance with the mi via program regulations.

A. **General requirements regarding mi via covered services.** For a service to be considered a covered service under the mi via program, the following criteria must be met. Services, supports and goods must:

(1) directly address the participant's qualifying condition or disability;

(2) meet the participant's clinical, functional, medical or habilitative needs;

(3) be designed and delivered to advance the desired outcomes in the participant's service and support plan; and

(4) support the participant to remain in the community and reduce the risk of institutionalization.

B. **Consultant pre-eligibility/enrollment services:** Consultant pre-eligibility/enrollment services are intended to provide information, support, guidance, and assistance to individuals during the medicaid financial and medical eligibility process. The level of support provided is based upon the unique needs of the individual. When an opportunity to be considered for mi via waiver services is offered to an individual, he/she must complete a primary freedom of choice form. The purpose of this form is for the individual to select a consultant provider. The chosen consultant provider provides pre-eligibility/ enrollment services as well as on-going consultant services. Once the individual is determined to be eligible for mi via waiver services, the consultant service provider will continue to provide consultant services to the newly enrolled participant as set forth in the consultant service standards.

C. **Consultant services:** Consultant services are required for all mi via participants to educate, guide, and assist the participant to make informed planning decisions about services and supports. The consultant helps the participant develop the SSP based on his/her assessed needs. The consultant assists the participant with implementation and quality assurance related to the SSP and AAB. Consultant services help the participant identify supports, services and goods that meet his/ her needs, meet the mi via requirements and are covered mi via services. Consultant services provide support to participants to maximize their ability to self-direct in mi via.

(1) **Contact requirements:** Consultant providers shall make contact with the participant in person or by telephone at least monthly for a routine follow-up. Consultant providers shall meet in person with the participant at least quarterly; one visit must be conducted in the participant's home. Quarterly visits will be conducted for the following purposes:

(a) review and document progress on implementation of the SSP;

(b) document usage and effectiveness of the 24-hour emergency backup plan;

(c) review SSP/budget spending patterns (over and under-utilization);

(d) assess quality of services, supports and functionality of goods in accordance with the quality assurance section of the SSP and any applicable mi via regulations and service standards;

(e) document the participant's access to related goods identified in the SSP;

(f) review any incidents or events that have impacted the participant's health, welfare or ability to fully access and utilize support as identified in the SSP; and

(g) other concerns or challenges raised by the participant, legal representative, or authorized representative.

(2) **Change of consultants:** Consultants are responsible for assisting participants to transition to another consultant provider when requested. Transition from one consultant provider to another can only occur at the first of the month.

(3) **Critical incident management responsibilities and reporting requirements:** The consultant provider shall provide training to participants regarding recognizing and reporting critical incidents. Critical incidents include abuse, neglect, exploitation, emergency services, law enforcement involvement, environmental hazards and participant deaths. This participant training shall also include reporting procedures for participants, employees, participant representatives or other designated individuals. The consultant provider shall report incidents of abuse, neglect and exploitation as directed by the state. The consultant provider shall maintain a critical incident management system to identify, report, and address critical incidents. The consultant provider is responsible for follow-up and assisting the individual to help ensure health and safety when a critical incident has occurred. Critical incident reporting requirements:

(a) For mi via participants who have been designated with an ICF/MR level of care, critical incidents should be directed in the following manner.

(i) The DOH/DHI/ incident management bureau (IMB) receives, triages, and investigates all reports of alleged abuse, neglect, exploitation, and other incidents for mi via services provided by community-based waiver service agencies, to include expected and unexpected deaths. The reporting of incidents is mandated pursuant to 7.1.13 NMAC. Any suspected abuse, neglect, or exploitation must be reported to the children, youth and families department (CYFD)/child protective services (CPS) for individuals under the age of 18 or to the ALTSD/adult protective services (APS) for individuals age 18 or older by reporting or faxing an incident report (IR). Additionally, the IR form must be faxed to DOH/DHI within 24 hours of knowledge of an incident or the following business day when an event occurs on a weekend or holiday. Anyone may report an incident; however, the person with the most direct knowledge of the incident is the individual who is required to report the incident.

(ii) When an incident is reported late, and the mi via service is provided by a community-based waiver service agency, a letter is sent to the provider stating that an incident report was received beyond the required 24-hour timeline for reporting. The letter further reiterates the requirement to report incidents within 24 hours. The consequences of non-compliance may result in sanctions, as set forth in 7.1.13.12 NMAC.

(iii) With respect to waiver services provided by any employee, contractor or vendor other than a community-based waiver service agency, any suspected abuse, neglect, or exploitation must be reported to the CYFD/CPS for individuals under the age of 18 or to the ALTSD/APS for individuals age 18 or older by reporting or faxing an incident report. See NMSA 1978, Sections 27-7-14 through 27-7-31 (Adult Protective Services Act) and in NMSA 1978, Sections 32A-4-1 through 32A-4-34 (Child Abuse and Neglect Act).

(b) For individuals in mi via that have been designated with an NF LOC, critical incidents should be directed to:

(i) ALTSD/APS for individuals age 18 or older or CYFD/ CPS for individual under the age of 18 for critical incidents involving abuse, neglect or exploitation; and

(ii) [~~ALTSD, elderly and disability services division (EDSD)~~] HSD/MAD, quality assurance bureau as well as the managed care organization, if applicable; the consultant provider shall fax all critical incidents in the standardized format provided by the state.

D. **Personal plan facilitation:** Personal plan facilitation supports planning activities that may be used by the participant to develop his/her SSP as well as identify other sources of support outside the SSP process. This service is available to participants one time per budget year.

(1) In the scope of personal planning facilitation, the personal plan facilitator will:

(a) meet with the participant and his/her family (or legal representative, as appropriate) prior to the personal planning session to discuss the process, to determine

who the participant wishes to invite, and determine the most convenient date, time and location; this meeting preparation shall include an explanation of the techniques the facilitator is proposing to use or options if the facilitator is trained in multiple techniques; the preparation shall also include a discussion of the role the participant prefers to play at the planning session, which may include co-facilitation of all or part of the session;

(b) arrange for participation of invitees and location;

(c) conduct the personal planning session;

(d) document the results of the personal planning session and provide a copy to the participant, the consultant and any other parties the participant would like to receive a copy.

(2) Elements of this report shall include:

(a) recommended services to be included in the SSP;

(b) services from sources other than medicaid to aid the participant;

(c) long-term goals the participant wishes to pursue;

(d) potential resources, especially natural supports within the participant's community that can help the participant to pursue his or her desired outcomes(s)/goal(s); and

(e) a list of any follow-up actions to take, including time lines.

(3) Provide session attendees, including the participant, with an opportunity to provide feedback regarding the effectiveness of the session.

E. **Living supports:**

(1) **Homemaker/direct support services:** Homemaker/direct support services are provided on an episodic or continuing basis to assist the participant with activities of daily living, performance of general household tasks, and enable the participant to accomplish tasks he/she would normally do for him/herself if he/she did not have a disability. Homemaker/direct support services are provided in the participant's home and in the community, depending on the participant's needs. The participant identifies the homemaker/direct support worker's training needs, and, if the participant is unable to do the training him/herself, the participant arranges for the needed training. Services are not intended to replace supports available from a primary caregiver.

(a) Two or more participants living in the same residence, who are receiving services and supports from mi via will be assessed both independently and jointly to determine coverage of services and supports that are shared. Services and supports will be approved based on common needs and not individual needs, unless the TPA has assessed that there is an individual need for the services.

(b) Personal care services are covered under the medicaid state plan as expanded EPSDT benefits for waiver participants under age 21.

(2) **Home health aide services:** Home health aide services provide total care or assist an adult participant in all activities of daily living. Home health aide services assist the participant in a manner that will promote an improved quality of life and a safe environment for the participant. Home health aide services can be provided outside the participant's home. State plan home health aide services are intermittent and provided primarily on a short-term basis. Mi via home health aide services are hourly services for participants who need this service on a more long-term basis. Home health aide services are not duplicative of homemaker services. Home health aides may provide basic non-invasive nursing assistant skills within the scope of their practice. Homemakers do not have this ability to perform such tasks.

(3) **Assisted living:** A residential service that includes personal care and supportive services (homemaker, chore, attendant services, meal preparation); medication oversight (to the extent permitted under state law); and 24-hour, on-site response capability to meet scheduled or unpredictable participant needs and to provide supervision, safety, and security.

(a) Services also include social and recreational programming. Coverage does not include 24-hour skilled care or supervision or the cost of room or board.

(b) Nursing and skilled therapy services are incidental, rather than integral, to the provision of assisted living services.

(c) Services (other than those included in the bundle of "assisted living" services) provided by third parties must be coordinated with the assisted living provider.

(d) Participants who access this service cannot utilize mi via homemaker/direct support, environmental modifications, emergency response, customized community supports and customized in-home living supports services because they are provided by assisted living services.

(4) **Customized in-home living supports:** Customized in-home living supports are related to the participant's qualifying condition or disability and enable him/her to live in his /her apartment or house. [~~This is for~~] Services must be provided in homes/apartments owned or leased by the participant or in the participant's family home. [~~This is not available for a provider's home.~~]

(a) These services and supports are provided in the participant's home and are individually designed to instruct or enhance home living skills as well as address health and safety.

(b) Customized in-home living supports include assistance with activities of daily living and assistance with the acquisition, restoration, or retention of independent living skills. This service is provided on a regular basis at least four or more hours per day one or more days per week as specified in the service plan.

(c) Participants receiving customized in-home living supports may not use homemaker/direct support or home health aide services because they are provided by customized in-home living supports.

F. **Community membership supports:**

(1) **Community direct support:** Community direct support providers deliver support to the participant to identify, develop and maintain community connections and access social[~~, educational, recreational and leisure~~] and educational options.

(a) The community direct support provider may be a skilled independent contractor or a hired employee depending on the level of support needed by the participant to access the community.

(b) The community direct support provider may instruct and model social behavior necessary for the participant to interact with community members or in groups, provide assistance in ancillary tasks related to community membership, provide attendant care and help the participant schedule, organize and meet expectations related to chosen community activities.

(c) Community direct support services include:

(i) provide assistance to the participant outside of his/her residence and segregated facilities;

(ii) promote the development of social relationships and build connections within local communities;

(iii) support the participant in having frequent opportunities to expand roles in the community to increase and enhance natural supports, networks, friendships and build a sense of belonging; and

(iv) assist in the development of skills and behaviors that strengthen the participant's connection with his or her community.

(d) The skills to assist someone in a community setting may be different than those for assisting a person at home. The provider will:

(i) demonstrate knowledge of the local community and resources within that community that are identified by the participant on the SSP; and

(ii) be aware of the participant's barriers to communicating and maintaining health and safety while in the community setting.

(2) **Employment supports:** Employment supports include job development, support to find a job, and job coaching after available vocational rehabilitation supports have been exhausted. The job coach provides training, skill development, and employer consultation that a participant may require while learning to perform specific work tasks on the job; co-worker training; job site analysis; situational or vocational assessments and profiles; education of the participant and co-workers on rights and responsibilities; and benefits counseling.

(a) Job development is a service provided to participants by skilled staff. The service has five components:

(i) job identification and development activities;

(ii) employer negotiations;

(iii) job restructuring;

(iv) job sampling; and

(v) job placement.

(b) Employment supports will be provided by staff at current or potential work sites. When supported employment services are provided at a work site where persons without disabilities are employed, payment is made only for the adaptations, supervision and training required by participants receiving waiver services as a result of their disabilities, but does not include payment for the supervisory activities rendered as a normal part of the business setting.

(c) Documentation is maintained in the file of each participant receiving this service that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or IDEA.

(d) FFP is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

(i) incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;

(ii) payments that are passed through to users of supported employment programs; or

(iii) payments for training that is not directly related to an individual's supported employment program;

(iv) FFP cannot be claimed to defray expenses associated with starting up or operating a business.

(3) **Customized community supports:** Customized community supports can include participation in congregate community day programs and centers that offer functional meaningful activities that assist with acquisition, retention, or improvement in self-help, socialization and adaptive skills. Customized community supports may include adult day habilitation, adult day health and other day support models. Customized community supports are provided in community day program facilities and centers and can take place in non-institutional and non-residential settings. These services are provided at least four or more hours per day one or more days per week as specified in the participant's SSP.

G. **Health and wellness:**

(1) **Extended state plan skilled therapy for adults:** Extended state plan skilled therapy for adults includes physical therapy, occupational therapy or speech language therapy. Services are provided when state plan skilled therapy services are exhausted. Adults on mi via access therapy services under the state plan for acute and temporary conditions that are expected to improve significantly in a reasonable and generally predictable period of time. Therapy services provided to adults in mi via focus on improving functional independence, health maintenance, community integration, socialization, and exercise, or enhance support and normalization of family relationships.

(a) **Physical therapy:** 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 do the following:

(i) increase, maintain or reduce the loss of functional skills;

(ii) treat a specific condition clinically related to a participant's disability;

(iii) support the participant's health and safety needs; or

(v) identify, implement, and train on therapeutic strategies to support the participant and his/her family or support staff consistent with the participant's SSP desired outcomes and goals.

(b) **Occupational therapy:** 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:

(i) customized treatment programs to improve the participant's ability to perform daily activities;

(ii) comprehensive home and job site evaluations with adaptation recommendations;

(iii) skills assessments and treatment;

(iv) assistive technology recommendations and usage training;

(v) guidance to family members and caregivers;

(vi) increasing or maintaining functional skills or reducing the loss of functional skills;

(vii) treating specific conditions clinically related to a participant's developmental disability;

(viii) support for the participant's health and safety needs, and

(ix) identifying, implementing, and training therapeutic strategies to support the participant and his/her family or support staff consistent with the participant's SSP desired outcomes and goals.

(c) **Speech and language pathology:** 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, and sensor motor competencies. Speech language pathology is also used when a participant requires the use of an augmentative communication device. Based upon therapy goals, services may be delivered in an integrated natural setting, clinical setting or in a group. Services are intended to:

(i) improve or maintain the participant's capacity for successful communication or to lessen the effects of the participant's loss of communication skills; or

(ii) improve or maintain the participant's ability to eat foods, drink liquids, and manage oral secretions with minimal risk of aspiration or other potential injuries or illness related to swallowing disorders;

(iii) identify, implement and train therapeutic strategies to support the participant and his/her family or support staff consistent with the participant's SSP desired outcomes and goals.

(d) **Behavior support consultation:** Behavior support consultation services consist of functional support assessments, treatment plan development, and training and support coordination for a participant related to behaviors that compromise a participant's quality of life. Based on the participant's SSP, services are delivered in an integrated, natural setting, or in a clinical setting. Behavior support consultation:

(i) informs and guides the participant's service and support employees/vendors toward understanding the contributing factors to the participant's behavior;

(ii) identifies support strategies to ameliorate contributing factors with the intention of enhancing functional capacities, adding to the provider's competency to predict, prevent and respond to interfering behavior and potentially reducing interfering behavior(s);

(iii) supports effective

implementation based on a functional assessment and SSP;

(iv) collaborates with medical and ancillary therapies to promote coherent and coordinated services addressing behavioral issues, and to limit the need for psychotherapeutic medications; and

(v) monitors and adapts support strategies based on the response of the participant and his/her service and support providers.

(e) **Nutritional counseling:** Nutritional counseling services include assessment of the participant's nutritional needs, development or revision of the participant's nutritional plan, counseling and nutritional intervention and observation and technical assistance related to implementation of the nutritional plan.

(f) **Private duty nursing for adults:** Private duty nursing for adults includes activities, procedures, and treatment for a participant's physical condition, physical illness or chronic disability. Services include medication management, administration and teaching, aspiration precautions, feeding tube management, gastrostomy and jejunostomy, skin care, weight management, urinary catheter management, bowel and bladder care, wound care, health education, health screening, infection control, environmental management for safety, nutrition management, oxygen management, seizure management and precautions, anxiety reduction, staff supervision, behavior and self-care assistance.

(2) **Specialized therapies:** Specialized therapies are non-experimental therapies or techniques that have been proven effective for certain conditions. Experimental or investigational procedures, technologies or therapies and those services covered as a medicaid state plan benefit are excluded. Services in this category include the following therapies:

(a) **Acupuncture:** Acupuncture is a distinct system of primary health care with the goal of prevention, cure, or correction of any disease, illness, injury, pain or other physical or mental condition by controlling and regulating the flow and balance of energy, form and function to restore and maintain physical health and increased mental clarity. Acupuncture may provide effective pain control, decreased symptoms of stress, improved circulation and a stronger immune system, as well as other benefits. See acupuncture and oriental medicine practitioners 16.2.1 NMAC.

(b) **Biofeedback:** Biofeedback uses visual, auditory or other monitors to feed back to patients physiological information of which they are normally unaware. This technique enables an individual to learn how to change physiological, psychological and behavioral responses for the purposes of improving emotional, behavioral, and cognitive health and performance. The use of biofeedback may assist in strengthening or gaining conscious control over the above processes in order to self-regulate. Biofeedback therapy is also useful for muscle re-education of specific muscle groups or for treating pathological muscle abnormalities of spasticity, incapacitating muscle spasm, or weakness.

(c) **Chiropractic:** Chiropractic care is designed to locate and remove interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the vertebral column and pelvis, for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, adjustment and manipulation of the human structure. Chiropractic therapy may positively affect neurological function, improve certain reflexes and sensations, increase range of motion, and lead to improved general health. See [~~chiropractitioners~~] 16.4.1 NMAC.

(d) **Cognitive rehabilitation therapy:** Cognitive rehabilitation therapy services are designed to improve cognitive functioning by reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems. Treatments may be focused on improving a particular cognitive domain such as attention, memory, language, or executive functions. Alternatively, treatments may be skill-based, aimed at improving performance of activities of daily living. The overall goal is to restore function in a cognitive domain or set of domains or to teach compensatory strategies to overcome specific cognitive problems.

(e) **Hippotherapy:** Hippotherapy is a physical, occupational, and speech-language therapy treatment strategy that utilizes equine movement as part of an integrated intervention program to achieve functional outcomes. Hippotherapy applies multidimensional movement of a horse for individuals with movement dysfunction and may increase mobility and range of motion, decrease contractures and aid in normalizing muscle tone. Hippotherapy requires that the individual use cognitive functioning, especially for sequencing and memory. Individuals with attention deficits and behavior problems are redirecting attention and behaviors by focusing on the activity. Hippotherapy involves therapeutic exercise, neuromuscular education, kinetic activities, therapeutic activities, sensory integration activities, and individual speech therapy. The activities may also help improve respiratory function and assist with improved breathing and speech production.

(f) **Massage therapy:** Massage therapy is the assessment and treatment of soft tissues and their dysfunctions for therapeutic purposes primarily for comfort and relief of pain. It includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, stretching the tissue and exercising the range of motion, and may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Massage increases the circulation, helps loosen contracted, shortened muscles and can stimulate weak muscles to improve posture and movement, improves range of motion and reduces spasticity. Massage therapy may increase, or help sustain, an individual's ability to be more independent in the performance of activities of daily living; thereby, decreasing dependency upon others to perform or assist with basic daily activities. See massage therapists 16.7.1 NMAC.

(g) **Naprapathy:** Naprapathy focuses on the evaluation and treatment of neuro-musculoskeletal conditions, and is a system for restoring functionality and reducing pain in muscles and joints. The therapy uses manipulation and mobilization of the spine and other joints, and muscle treatments such as stretching and massage. Based on the concept that constricted connective tissue (ligaments, muscles, and tendons) interfere with nerve, blood, and lymph flow, naprapathy uses manipulation of connective tissue to open these channels of body function. See naprapathic practitioners 16.6.1 NMAC.

(h) **Native American healers:** Native American healing therapies encompass a wide variety of culturally-appropriate therapies that support participants in their communities by addressing their physical, emotional and spiritual health. Treatments may include prayer, dance, ceremony, song, plant medicines, foods, participation in sweat lodges, and the use of meaningful symbols of healing, such as the medicine wheel or other sacred objects.

(i) **Play therapy:** Play therapy is a variety of play and creative arts techniques ("the play therapy tool-kit") utilized to alleviate chronic, mild and moderate psychological and emotional conditions in children that are causing behavioral problems or are preventing children from realizing their potential. The play therapist works integratively using a wide range of play and creative arts techniques, mostly responding to the child's wishes.

H. **Other supports:**

(1) **Transportation:** Transportation services are offered to enable participants to gain access to services, activities, and resources, as specified by the SSP. Transportation services under the waiver are offered in accordance with the participant's SSP. Transportation services provided under the waiver are non-medical

in nature whereas transportation services provided under the medicaid state plan are to transport participants to medically necessary physical and behavioral health services. Payment for mi via transportation services is made to the participant's individual transportation employee or to a public or private transportation service vendor. Payment cannot be made to the participant. Whenever possible, family, neighbors, friends, or community agencies who can provide this service without charge shall be identified in the SSP and utilized.

(2) **Emergency response services:** Emergency response services provide an electronic device that enables a participant to secure help in an emergency at home and avoid institutionalization. The participant may also wear a portable help button to allow for mobility. The system is connected to the participant's phone and programmed to signal a response center when a help button is activated. The response center is staffed by trained professionals. Emergency response services include:

(a) testing and maintaining equipment;

(b) training participants, caregivers and first responders on use of the equipment;

(c) 24-hour monitoring for alarms;

(d) checking systems monthly or more frequently, if warranted by electrical outages, severe weather, etc.;

(e) reporting emergencies and changes in the participant's condition that may affect service delivery; and

(f) ongoing emergency response service is covered, but initial set up and installation is not.

(3) **Respite:** Respite is a family support service, the primary purpose of which is to give the primary, unpaid caregiver time away from his/her duties. Respite services include assisting the participant with routine activities of daily living (e.g., bathing, toileting, preparing or assisting with meal preparation and eating), enhancing self-help skills, and providing opportunities for leisure, play and other recreational activities; assisting the participant to enhance self-help skills, leisure time skills and community and social awareness; providing opportunities for community and neighborhood integration and involvement; and providing opportunities for the participant to make his/her own choices with regard to daily activities. Respite services are furnished on a short-term basis and can be provided in the participant's home, the provider's home, in a community setting of the family's choice (e.g., community center, swimming pool and park) or at a center in which other individuals are provided care. FFP is not claimed for the cost of room and board as part of respite services.

(4) **Related goods:** Related goods are equipment, supplies or fees and memberships, not otherwise provided through mi via, the medicaid state plan, or medicare.

(a) Related goods must address a need identified in the participant's SSP and meet the following requirements:

(i) be responsive to the participant's qualifying condition or disability; and

(ii) meet the participant's clinical, functional, medical or habilitative needs; and

(iii) supports the participant to remain in the community and reduces the risk for institutionalization; and

(iv) promote personal safety and health; and afford the participant an accommodation for greater independence; and

(v) decrease the need for other medicaid services; and

(vi) accommodate the participant in managing his/her household; or

(vii) facilitate activities of daily living.

(b) Related goods must be documented in the SSP, comply with Paragraph (3) of Subsection D of 8.314.6.17 NMAC, and be approved by the TPA. The cost and type of related good is subject to approval by the TPA. Participants are not guaranteed the exact type and model of related good that is requested. The consultant, TPA or the state can work with the participant to find other (including less costly) alternatives.

(c) The related goods must not be available through another source and the participant must not have the personal funds needed to purchase the goods.

(d) These items are purchased from the participant's AAB.

(e) Experimental or prohibited treatments and goods are excluded.

(5) **Environmental modifications:** Environmental modification services include the purchase and installation of equipment or making physical adaptations to a participant's residence that are necessary to ensure the health, safety, and welfare of the participant or enhance the participant's level of independence.

(a) Adaptations include the installation of ramps and grab-bars; widening of doorways/hallways; installation of specialized electric and plumbing systems to accommodate medical equipment and supplies; lifts/elevators; modification of bathroom facilities such as roll-in showers, sink, bathtub, and toilet modifications, water faucet controls, floor urinals and bidet adaptations and plumbing; turnaround space adaptations; specialized accessibility/safety adaptations/additions; trapeze and mobility tracks for home ceilings; automatic door openers/doorbells; voice-activated, light-activated, motion-activated and electronic devices; fire safety adaptations; air filtering devices; heating/cooling adaptations; glass substitute for windows and doors; modified switches, outlets or environmental controls for home devices; and alarm and alert systems or signaling devices.

(b) All services shall be provided in accordance with applicable federal, state, and local building codes.

(c) Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the participant, such as fences, storage sheds or other outbuildings. Adaptations that add to the total square footage of the home are excluded from this benefit except when necessary to complete an adaptation.

(d) The environmental modification provider must: ensure proper design criteria is addressed in the planning and design of the adaptation;[~~provide or secure licensed insured and bonded contractor(s) or approved vendor(s) to provide~~] be a licensed and insured contractor(s) or approved vendor(s) that provides construction/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 participant's residence; and inspect the final environmental modification project to ensure that the adaptations meet the approved plan submitted for environmental adaptation.

(e) Environmental modifications are managed by professional staff available to provide technical assistance and oversight to environmental modification projects.

(f) Environmental modification services are limited to $7,000 every five years. Environmental modifications must be approved by the TPA.

(g) Environmental modifications are paid from a funding source separate from the AAB.

[8.314.6.15 NMAC - Rp, 8.314.6.15 NMAC, 4-1-11; A, 4-1-12]

8.314.6.16 NON-COVERED SERVICES: Non-covered services include, but are not limited to the following:

A. services covered by the medicaid state plan (including EPSDT), medicaid school-based services, medicare and other third-parties;

B. any service or good, the provision of which would violate federal or state statutes, regulations or guidance;

C. formal academic degrees or certification-seeking education, educational services covered by IDEA or vocational training provided by DVR;

D. room and board, meaning shelter expenses, including

property-related costs, such as rental or purchase of real estate and furnishing, maintenance, utilities and utility deposits, and related administrative expenses; utilities include gas, electricity, propane, fire wood, wood pellets, water, sewer, and waste management;

E. experimental or investigational services, procedures or goods, as defined in 8.325.6 NMAC;

F. any goods or services that a household that does not include a person with a disability would be expected to pay for as a routine household expense;

G. any goods or services that are to be used primarily for recreational or diversional purposes;

H. personal goods or items not related to the disability;

I. [~~service animals and the costs of maintaining service animals, with the exception of training and certification~~] animals and costs of maintaining animals including the purchase of food, veterinary visits, grooming and boarding but with the exception of training and certification for service dogs;

J. gas cards and gift cards;

K. purchase of insurance, such as car, health, life, burial, renters, home-owners, service warrantees or other such policies;

L. purchase of a vehicle, and long-term lease or rental of a vehicle;

M. purchase of recreational vehicles, such as motorcycles, campers, boats or other similar items;

N. firearms, ammunition or other weapons;

O. gambling, games of chance (such as bingo or lottery), alcohol, tobacco, or similar items;

P. vacation expenses, including airline tickets, cruise ship or other means of transport, guided tours, meals, hotel, lodging or similar recreational expenses;

Q. purchase of usual and customary furniture and home furnishings, *unless* adapted to the participant's disability or use, or of specialized benefit to the participant's condition; requests for adapted or specialized furniture or furnishings must include a recommendation from the participant's health care provider and, when appropriate, a denial of payment from any other source;

[~~R. purchase of food, maintenance, routine veterinary visits, medication, grooming and boarding for any therapeutic service or assistance animal;~~

~~S. purchase of any pet animal, food, maintenance, routine veterinary visits, medication, grooming and boarding costs associated with maintaining any pet;~~]

[~~T.~~] R. regularly scheduled upkeep, maintenance and repairs of a home and addition of fences, storage sheds or other outbuildings, *except* upkeep and maintenance of modifications or alterations to a home which are an accommodation directly related to the participant's qualifying condition or disability;

[~~U.~~] S. regularly scheduled upkeep, maintenance and repairs of a vehicle, or tire purchase or replacement, *except* upkeep and maintenance of modifications or alterations to a vehicle or van, which is an accommodation directly related to the participant's qualifying condition or disability; requests must include documentation that the adapted vehicle is the participant's primary means of transportation;

[~~V.~~] T. clothing and accessories, except specialized clothing based on the participant's disability or condition;

[~~W.~~] U. training expenses for paid employees;

[~~X.~~] V. conference or class fees may be covered for participants or unpaid caregivers, but costs associated with such conferences or class cannot be covered, including airfare, lodging or meals;

[~~Y.~~] W. consumer electronics such as computers, printers and fax machines, or other electronic equipment that does not meet the criteria specified in Subsection A of 8.314.6.15 NMAC; no more than one of each type of item may be purchased at one time; and consumer electronics may not be replaced more frequently than once every three years;

[~~Z.~~] X. cell phone services that include: fees for data; or more than one cell phone line per participant; and

Y. if a participant requests a good or service, the consultant TPA and the state can work with the participant to find other (including less costly) alternatives.

[8.314.6.16 NMAC - Rp, 8.314.6 NMAC, 4-1-11; A, 4-1-12]

8.314.6.17 SERVICE AND SUPPORT PLAN (SSP) AND AUTHORIZED ANNUAL BUDGET(AAB): An SSP and an annual budget request are developed at least annually by the mi via participant in collaboration with the participant's consultant and others that the participant invites to be part of the process. The consultant serves in a supporting role to the mi via_participant, assisting the participant to understand mi via, and with developing and implementing the SSP and the AAB. The SSP and annual budget request are developed and implemented in accordance with the mi via program rules and service standards and submitted to the TPA for final approval. Upon final approval the annual budget request becomes an AAB.

A. **SSP development process:** For development of the participant-centered service plan, the planning meetings are scheduled at times and locations convenient to the participant. The state obtains information about participant strengths, capacities, preferences, desired outcomes and risk factors through the LOC assessment and the planning process that is undertaken between the consultant and participant to develop the participant's SSP. If the participant chooses to purchase personal plan facilitation services, that assessment information would also be used in developing the SSP.

(1) **Assessments:**

(a) Assessment activities that occur prior to the SSP meeting assist in the development of an accurate and functional plan. The functional assessments conducted during the LOC determination process address the following needs of a person: medical, adaptive behavior skills, nutritional, functional, community/social and employment; LOC assessments are conducted in person and take place in the applicant/participant's home, an agreed upon location or an inpatient setting.

(b) Assessments occur on an annual basis or during significant changes in circumstance or at the time of the LOC determination. After the assessments are completed, the results are made available to the participant and his/her consultant for use in planning.

(c) The participant and the consultant will assure that the SSP addresses the information and concerns, if any, identified through the assessment process.

(d) Participant/employer self assessments are completed prior to SSP meetings (participant/employer self assessments may be revised during the year to address any life changes). The SSP must address areas of need, as recognized in the participant/employer self-assessment.

(2) **Pre-planning:**

(a) The consultant contacts the participant upon his/her choosing mi via to provide information regarding mi via, including the range and scope of choices and options, as well as the rights, risks, and responsibilities associated with self-direction.

(b) The consultant discusses areas of need to address on the participant's SSP. The consultant provides support during the annual recertification process to assist with completing medical and financial eligibility in a timely manner.

(c) Personal plan facilitators are optional supports. To assist in pre-planning, the participant is also able to access an approved provider to develop a personal plan.

(3) **SSP components:** The SSP contains:

(a) the waiver services that are furnished to the mi via participant, the

projected amount, frequency and duration, and the type of provider who furnishes each service;

(i) the SSP must describe in detail how the services or goods relate to the participant's qualifying condition or disability;

(ii) the SSP must describe how the services and goods support the participant to remain in the community and reduce his/her risk of institutionalization; and

(iii) the SSP must specify the hours of services to be provided and payment arrangements;

(b) other services needed by the mi via participant regardless of funding source, including state plan services;

(c) informal supports that complement waiver services in meeting the needs of the participant;

(d) methods for coordination with state plan services and other public programs;

(e) methods for addressing the participant's health care needs when relevant;

(f) quality assurance criteria to be used to determine if the services and goods meet the participant's needs as related to his/her qualifying condition or disability;

(g) information, resources or training needed by the mi via participant and service providers;

(h) methods to address the participant's health and safety, such as 24-hour emergency and back-up services; and

(i) the IBA.

(4) **Service and support plan meeting:**

(a) The participant receives an LOC assessment and local resource manual prior to the SSP meeting.

(b) The participant may begin planning and drafting the SSP utilizing those tools prior to the SSP meeting.

(c) During the SSP meeting, the consultant assists the participant to ensure that the SSP addresses the participant's goals, health, safety and risks. The participant and the consultant will assure that the SSP addresses the information and concerns identified through the assessment process. The SSP must address the participant's health and safety needs before addressing other issues. The consultant ensures that:

(i) the planning process addresses the participant's needs and goals in the following areas: health and wellness and accommodations or supports needed at home and in the community;

(ii) services selected address the participant's needs as identified during the assessment process; needs not addressed in the SSP will be addressed outside the mi via program;

(iii) the outcome of the assessment process for assuring health and safety is considered in the plan;

(iv) services do not duplicate or supplant those available to the participant through the medicaid state plan or other programs;

(v) services are not duplicated in more than one service code;

(vi) job descriptions are complete for each provider and employee in the plan; job descriptions will include frequency, intensity and expected outcomes for the service;

(vii) the quality assurance section of the SSP is complete and specifies the roles of the participant, consultant and any others listed in this section;

(viii) the responsibilities are assigned for implementing the plan;

(ix) the back-up plans are complete; and

(x) the SSP is submitted to the TPA after the SSP meeting, in compliance with mi via waiver rules.

B. **Individual budgetary allotment (IBA):** Each mi via participant's annual IBA is determined by the state as follows.

(1) Budgetary allotments are based on calculations developed by the state for each mi via population group, including AIDS, former Disabled & Elderly (D&E) now CoLTS (c), DD or MF waiver, and BI category of eligibility, utilizing historical traditional waiver care plan authorized budgets within the population, minus the case management costs, and minus a 10 percent discount[~~; the budget methodology is attached to this section of the NMAC as Attachment II~~].

(2) The determination of each mi via participant's sub-group is based on a comprehensive assessment. The participant then receives the IBA available to that [~~sub-group~~] category of need, according to the participant's age[~~, the IBA for each sub-group is attached to this section as Attachment III~~].

(3) A mi via participant has the authority to expend the IBA through an AAB that is to be expended on a monthly basis and in accordance with the mi via rules and program service standards.

(a) The current mi via rate schedule, available on the HSD MAD website under fee schedules, shall be used as a guide in evaluating proposed payment rates for services that are currently covered or similar to currently covered services. The participant must justify in writing the rate that he/she wishes to pay when that rate exceeds the rate schedule. The participant must include this justification with the SSP and annual budget request when it is submitted for approval.

(b) The AAB shall contain goods and services necessary for health and safety (i.e. direct care services and medically related goods) which will be given priority over goods and services that are non-medical or not directly related to health and safety. This prioritization applies to the IBA, AAB, and any subsequent modifications.

C. **SSP review criteria:** Services and related goods identified in the participant's requested SSP may be considered for approval if the following requirements are met:

(1) the services or goods must be responsive to the participant's qualifying condition or disability; and

(2) the services or goods must address the participant's clinical, functional, medical or habilitative needs; and

(3) the services or goods must accommodate the participant in managing his/her household; or

(4) the services or goods must facilitate activities of daily living; or

(5) the services or goods must promote the participant's personal health and safety; and

(6) the services or goods must afford the participant an accommodation for greater independence; and

(7) the services or goods must support the participant to remain in the community and reduce his/her risk for institutionalization; and

(8) the services or goods must be documented in the SSP and advance the desired outcomes in the participant's SSP; and

(9) the SSP contains the quality assurance criteria to be used to determine if the service or goods meet the participant's need as related to the qualifying condition or disability; and

(10) the services or goods must decrease the need for other medicaid services; and

(11) the participant receiving the services or goods does not have the funds to purchase the services or goods; or

(12) the services or goods are not available through another source; the participant must submit documentation that the services or goods are not available through another source, such as the medicaid state plan or medicare; and

(13) the service or good is not prohibited by federal and state statutes, regulations and guidance; and

(14) each service or good must be listed as an individual line item whenever possible; when services or goods are 'bundled' the SSP must document why bundling is necessary and appropriate.

D. **Budget review criteria:** The participant's proposed annual budget request may be considered for approval, if all of the following requirements are met:

(1) the proposed annual budget

request is within the participant's IBA; and

(2) the proposed rate for each service is within the mi via range of rates for that chosen service; and

(3) the proposed cost for each good is reasonable, appropriate and reflects the lowest available cost for that chosen good; and

(4) the estimated cost of the service or good is specifically documented in the participant's budget worksheets; and

(5) no employee exceeds 40 hours paid work in a consecutive seven-day period.

E. **Modification of the SSP:**

(1) The SSP may be modified based upon a change in the participant's needs or circumstances, such as a change in the participant's health status or condition or a change in the participant's support system, such as the death or disabling condition of a family member or other individual who was providing services.

(2) If the modification is to provide new or additional services than originally included in the SSP, these services must not be able to be acquired through other programs or sources. The participant must document the fact that the services are not available through another source.

(3) The participant must provide written documentation of the change in needs or circumstances as specified in the mi via service standards. The participant submits the documentation to the consultant. The consultant initiates the process to modify the SSP by forwarding the request for modification to the TPA for review.

(4) The SSP must be modified before there is any change in the AAB.

(5) The SSP may be modified once the original SSP has been submitted and approved. Only one SSP revision may be submitted at a time, e.g., an SSP revision may not be submitted if an initial SSP request or prior SSP revision request is under initial review by the TPA. This requirement also applies to any re-review or re-consideration of the same revision request. Other than for critical health and safety reasons, neither the SSP nor the AAB may be modified within [~~90 days of initial approval or within~~] 60 days of expiration of the current SSP.

F. **Modifications to the annual budget:** Revisions to the AAB may occur within the SSP year, and the participant is responsible for assuring that all expenditures are in compliance with the most current AAB in effect. The SSP must be amended first to reflect a change in the participant's needs or circumstances before any revisions to the AAB can be requested.

(1) Budget revisions involve requests to add new goods or services to a budget or to reallocate funds from any line item to another approved line item. Budget revisions must be submitted to the TPA for review and approval. Other than for critical health and safety reasons, budget revisions may not be submitted to the TPA for review [~~during the first 90 days of the participant's budget year, or~~] within the last 60 days of the budget year.

(2) The amount of the AAB cannot exceed the participant's annual IBA. The rare exception would be a participant whose assessed or documented needs, based on his/her qualifying condition, cannot be met within the annual IBA, in which case the participant would initiate a request for an adjustment through his/her consultant.

(3) If the participant requests an increase in his/her budget above his/her annual IBA, the participant must show one of the following circumstances:

(a) chronic physical condition: the participant has one or more chronic physical conditions, which are identified during the initial or reevaluation of the LOC, that result in a prolonged dependency on medical services or care, for which daily intervention is medically necessary; the participant's needs cannot be met within the assigned IBA or other current resources, including natural supports, medicaid state plan services, medicare or other sources; and which are characterized by at least one of the following:

(i) a life-threatening condition with frequent or constant periods of acute exacerbation that places the participant at risk for institutionalization; that could result in the participant's inability to remember to self-administer medications accurately even with the use of assistive technology devices; that requires a frequency and intensity of assistance, supervision, or consultation to ensure the participant's health and safety in the home or in the community; or which, in the absence of such skilled intervention, assistance, medical supervision or consultation, would require hospitalization or admission to an NF or ICF/MR;

(ii) the need for administration of specialized medications, enteral feeding or treatments that: are ordered by a medical doctor, doctor of osteopathy, certified nurse practitioner or physician's assistant; and require frequent and ongoing management or monitoring or oversight of medical technology;

(b) change in physical health status; the participant has experienced a deterioration or permanent change in her/her health status such that the participant's needs for services and supports can no longer be met within the AAB or other current resources, including natural supports, are not covered under the medicaid state plan, medicare or other sources; these are the types of changes that may necessitate an increase in the AAB; the participant now requires the administration of medications via intravenous or injections on a daily or weekly basis; the participant has experienced recent onset or increase in aspiration of saliva, foods or liquids; the participant now requires external feedings, e.g. naso-gastric, percutaneous endoscopic gastrostomy, gastric-tube or jejunostomy-tube; the participant is newly dependent on a ventilator; the participant now requires suctioning every two hours, or more frequently, as needed; the participant now has seizure activity that requires continuous monitoring for injury and aspiration, despite anti-convulsant therapy; the participant now requires increased assistance with activities of daily living;

(i) the participant must submit a written, dated, and signed evaluation or letter from a medical specialist either a medical doctor, doctor of osteopathy, certified nurse practitioner or physician's assistant that documents the change in the participant's health status relevant to the above criteria; the evaluation or letter must have been completed since the last LOC assessment or less than one year from the date the request is submitted, whichever is most recent;

(ii) the participant may submit additional supportive documentation by others involved in the participant's care, such as a current individual service plan if the participant is transferring from another waiver, a recent evaluation from a specialist or therapist, a recent discharge plan, relevant medical records or other documentation or recent statements from family members, friends or other support individuals;

(c) chronic or intermittent behavioral conditions or cognitive difficulties: the participant has chronic or intermittent behavioral conditions or cognitive difficulties, which are identified during the initial or reevaluation LOC assessment, or the participant has experienced a change in his/her behavioral or mental health status, for which the participant requires additional services, supports, assistance, or supervision to address the behaviors or cognitive difficulties in order to keep the participant safe; these behaviors and cognitive difficulties are so severe and intense that they result in considerable risk to the participant, caregivers or the community; require a frequency and intensity of assistance, supervision or consultation to ensure the participant's health and safety in the home or the community; are likely to lead to incarceration or admission to a hospital, NF or ICF/MR; require intensive intervention or medication management by a doctor or mental health practitioner or care practitioner; and cannot be effectively addressed within the AAB or other resources, including natural supports, the medicaid state plan, medicare or other sources;

(i) examples of chronic or intermittent behaviors or cognitive

difficulties are that the participant injuries him/herself frequently or seriously; has uncontrolled physical aggression toward others; disrupts most activities to the extent that his/her SSP cannot be implemented or routine activities of daily living cannot be carried out; withdraws personally from contact with most others; leaves or wanders away from the home, work or service delivery environment in a way that puts him/herself or others at risk;

(ii) the participant must submit a written dated and signed evaluation or letter from a medical doctor, doctor of osteopathy, certified nurse practitioner, physician's assistant, psychiatrist or psychologist with a doctorate of psychology that documents the participant's mental health or behavioral status relevant to the criteria; if the need for additional budgetary allotment is identified during the LOC assessment, it must be reflected in the assessment; if there has been a change in the participant's behaviors or cognitive difficulties, additional documentation is required; with a change in the participant's behavior or cognitive difficulties, the evaluation or letter must have been completed since the last LOC assessment or less than one year from the date the request is submitted, whichever is more recent;

(iii) the participant may submit additional supportive documentation including a current individual service plan if the participant is transferring from another waiver, a positive behavioral support plan or assessment, recent notes, a summary or letter from a mental health practitioner or professional with expertise in developmental disabilities, brain injury or geriatrics, recent discharge plan, recent recommendations from a rehabilitation facility, any other relevant documentation or recent statements from family members, friends or other support individuals involved with the participant;

(d) change in natural supports: the participant has experienced a loss, as a result of situations such as death, illness, or disabling condition, of his/her natural supports, such as family members or other community resources that were providing direct care or services, whether paid or not; this absence of natural supports or other resources is expected to continue throughout the period for which supplemental funds are requested; the type, intensity or amount of care or services previously provided by natural supports or other resources cannot be acquired within the IBA and are not available through the medicaid state plan, medicare, other programs or sources in order for the participant to live in a home and community-based setting.

(4) A mi via participant is responsible for tracking all budget expenditures and assuring that all expenditures are within the AAB. The participant must not exceed the AAB within any SSP year. A participant's failure to properly allocate the expenditures within the SSP year resulting in the depletion of the AAB, due to mismanagement of or failure to track the funds, prior to the calendared expiration date does not substantiate a claim for a budget increase (i.e, if all of the AAB is expended within the first three months of the SSP year, it is not justification for an increase in the annual budget for that SSP year). Amendments to the AAB may occur within the SSP year and the participant is responsible for assuring that all expenditures are in compliance with the most current AAB in effect. Amendments to the AAB must be preceded by an amendment to the SSP.

(5) The AAB may be revised once the original annual budget request has been submitted and approved. Only one annual budget revision request may be submitted at a time, e.g., an annual budget revision request may not be submitted if a prior annual budget revision request is under initial review by the TPA. The same requirement also applies to any re-review or reconsideration of the same revision request.

G. **SSP and annual budget supports:** As specified in the mi via program regulations and service standards, the mi via participant is assisted by the consultant in development and implementation of the SSP and AAB. The FMA assists the participant with implementation of the AAB.

H. **Submission for approval:** The TPA must approve the SSP and associated annual budget request (resulting in an AAB). The TPA must approve certain changes in the SSP and annual budget request, as specified in the mi via program rules and service standards and in accordance with 8.302.5 NMAC, *Prior Authorization and Utilization Review.*

(1) At any point during the SSP and associated annual budget utilization review process, the TPA may request additional documentation from the participant. This request must be in writing and submitted to both the participant and the consultant provider. The participant has 15-working days from the date of the request to respond to the request for additional documentation. Failure by the participant to submit the requested information may subject the SSP and annual budget request to denial.

(2) Services cannot begin and goods may not be purchased before the start date of the approved SSP and AAB or approved revised SSP and revised AAB.

(3) Any revisions requested for other than critical health or safety reasons within [~~the first 90 days of approval of the SSP and AAB or within~~] 60 days of expiration of the SSP and AAB are subject to denial for that reason.

[8.314.6.17 NMAC - Rp, 8.314.6.17 NMAC, 4-1-11; A, 4-1-12]

8.314.6.20 RIGHT TO A HEARING:

A. The HSD/MAD must grant an opportunity for an administrative hearing as described in this section in the following circumstances pursuant to 42 CFR Section 431.220(a)(1) and (2), NMSA 1978, Section 27-3-3 and 8.352.2 NMAC:

(1) when a mi via applicant has been determined not to meet the LOC requirement for waiver services;

(2) when a mi via applicant has not been given the choice of HCBS as an alternative to institutional care;

(3) when a mi via applicant is denied the services of his/her choice or the provider of his/her choice;

(4) when a mi via participant's services are denied, suspended, reduced or terminated;

(5) when a mi via participant has been involuntarily terminated from the program;

(6) when a mi via participant's request for a budget adjustment has been denied.

B. [~~ALTSD and its counsel, if necessary, shall participate in any fair hearing involving a disabled or elderly participant, or a participant diagnosed with BI.~~] DOH and its counsel, if necessary, shall participate in any fair hearing involving a DD or MF participant, or a participant diagnosed with AIDS. HSD/MAD, and its counsel, if necessary, may participate in fair hearings.

[8.314.6.20 NMAC - N, 4-1-11; A, 4-1-12]

8.314.6.22 GRIEVANCE/COMPLAINT SYSTEM: [~~The HSD/MAD, DOH and ALTSD~~] HSD/MAD and DOH operate a grievance/complaint system that affords participants the opportunity to register grievances or complaints concerning the provision of services under the mi via program. [~~Any mi via participant may file a grievance with HSD/MAD.~~

~~A. ALTSD/EDSD~~] HSD/MAD administers the grievance/complaint process for participants in the [~~NF waiver~~] mi via NF LOC waiver who are brain injured or disabled and elderly. DOH administers the grievance/complaint process for participants in the ICF/MR level of care (LOC) waiver and for participants in the AIDS program who are in the NF LOC waiver. Participants may register complaints with [~~ALTSD/EDSD~~] either department via e-mail, mail or phone. [~~Participants can also register a complaint with HSD/MAD or DOH/DDSD, which is then referred to ALTSD/EDSD.~~] Complaints will be referred to the appropriate department for resolution. The participant is informed that filing a grievance or complaint

is not a prerequisite or substitute for a fair hearing.

[~~(1)~~] A. A grievance or complaint is required to be resolved within 30 days from the date it was received.

[~~(2)~~] B. Upon receipt of the grievance or complaint, [~~ALTSD~~] DOH or HSD/MAD enters it into the complaint tracker and informs the contractor or provider of the grievance or complaint. [~~ALTSD/EDSD~~] DOH or HSD/MAD notifies the participant within one day of receipt of the grievance or complaint who will be responsible for resolution of the grievance or complaint.

[~~(3)~~] C. [~~ALTSD/EDSD~~] DOH or HSD/MAD gives the contractor or provider 14 days to resolve the grievance or complaint. If the grievance or complaint contains an issue that may compromise the health or safety of the participant, [~~ALTSD/EDSD~~] DOH or HSD/MAD remains involved with the parties until the grievance or complaint is resolved.

[~~(4)~~] D. The contractor or provider shall notify [~~ALTSD/EDSD~~] DOH or HSD/MAD of their progress toward resolution of the grievance or complaint. If the grievance or complaint has not been resolved in 14 days, [~~ALTSD/EDSD~~] DOH or HSD/MAD becomes involved to ensure that [~~resolution occurs~~] a response is issued within 30 days of receipt of the grievance or complaint.

~~[B. Participants in the ICF/MR waiver may register a complaint or grievance about any program issue with which they are dissatisfied. Participants may register complaints with DOH/DDSD via e-mail, mail, or by phone. The DOH/DDSD utilizes a standardized complaint form and has established a dedicated e-mail address to register complaints. Participants can also register complaints with the ALTSD/EDSD, and HSD/MAD, which is then referred to DOH/DDSD. The participant is informed that filing a grievance or making a complaint is not a prerequisite or substitute for a fair hearing.~~

~~(1) The complaint/grievance is required to be resolved within 14 days from the date the complaint/grievance was filed by the participant.~~

~~(2) Upon receipt of the complaint/grievance, the complaint is entered into the complaint tracker by DOH/DDSD and the appropriate contractor/provider is e-mailed the nature of the complaint/grievance to begin the resolution process.~~

~~(3) The participant is contacted within one business day from the date the complaint/grievance is received by DOH/DDSD to acknowledge receipt of the complaint/grievance.~~

~~(4) On either the fifth or tenth day after the filing of the complaint, the DOH/DDSD follows up with the contractor/provider on the status of the complaint/grievance. The DOH/DDSD enters the status information into the complaint tracker.~~

~~(5) No later than the 14th day after the complaint was filed, the contractor/provider is required to e-mail the resolution to the DOH/DDSD. The date the e-mail is sent to DOH/DDSD is the date the complaint/grievance is resolved. Once received, the DOH/DDSD enters the resolution into the complaint tracker and calls the participant to verify that resolution occurred. The conversation with the participant is documented into the complaint tracker.~~

~~(6) Contractor/providers may request extensions to resolve issues at least three days prior to the 14-day deadline. Extensions to resolve complaints must occur via e-mail to DOH/DDSD. DOH/DDSD will grant or deny extensions within one business day. If approved by DOH/DDSD, extensions will be granted for an additional 14 days.~~]

[8.314.6.22 NMAC - N, 4-1-11; A, 4-1-12]

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

Explanatory paragraph: This is an amendment to 16.22.1 NMAC, Section 7, April 11, 2012. Two definitions, "Year of supervised experience" and "Doctoral training program" were added to Subsection A of 16.22.1.7 NMAC, Definitions.

16.22.1.7 DEFINITIONS:

A. As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning:

(83) "Year of supervised experience" means 1500 hours of psychological work conducted under supervision satisfactory to the board. The 1500 hours may be accumulated in one or two consecutive calendar years in the case of an internship, three consecutive years in the case of post-doctoral experience, or over the course of graduate training in the case of predoctoral experience.

(84) "Doctoral training program" means the program from which the applicant received his or her doctoral degree to fulfill the educational requirements for licensure (NMAC)

[16.22.1.7 NMAC - Rp, 16.22.1.7 NMAC, 11/15/06; A, 03/21/09; A, 09/16/10; A, 04/11/12]

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

This is an amendment to 16.22.5 NMAC, Sections 8 through 13, effective April 11, 2012.

16.22.5.8 APPLICATION; EXAMINATION; PROCESS

A. A non-refundable application fee set by the board is due at the time of each initial application. Additional fees may be charged and will be collected by the board, as necessary, for the administration of examinations.

B. The applicant may be considered for licensure if he fulfills conditions of 16.22.5.9, 16.22.5.10, 16.22.5.11, 16.22.5.12, 16.22.5.13, 16.22.5.14 or 16.22.5.15 NMAC.

C. NATIONWIDE CRIMINAL HISTORY SCREENING. All applicants for initial licensure in any category in New Mexico are subject to a [~~state and~~] national criminal history screening at their expense. All applicants must submit two (2) full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee at the time of application.

(1) Applications for licensure will not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

(2) Applications will be processed pending the completion of the nationwide criminal background screening [~~and may be granted while the screening is still pending~~].

(3) If the criminal background screening reveals a felony or a violation of the Psychologist Examiners Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.22.5.8 NMAC - Rp, 16.22.5.9 NMAC, 11/15/06; A, 09/16/10; A, 04/11/12]

16.22.5.9 APPLICATIONS NOT PREVIOUSLY LICENSED IN ANY JURISDICTION

A. Initial application procedure. To open an initial application file, the applicant shall submit the following to the satisfaction of the board:

(1) a completed and signed application;

(2) verification of predoctoral internship and supervision as described in 16.22.5 NMAC;

(3) the application fee as required

by the board;

(4) official transcripts directly from the institution's office of the registrar;

(5) if the applicant chooses, a notarized letter from the graduate office of the degree-granting institution that documents the date of the doctoral degree; indicating (a) the date of completion of all requirements for the doctoral degree, and (b) the specific psychology program that the applicant completed;

(6) three (3) letters of reference; dated within the last two (2) years and two (2) of the letters must be from a licensed practicing psychologist familiar with their clinical work, and can attest to their competency and moral character;

(7) verification of postdoctoral supervision as described in 16.22.6 NMAC.

B. [~~If the application is not complete, the applicant will be notified of all deficiencies within thirty (30) days of the board's receipt. The application process shall be completed within thirty (30) days of the receipt at the board office of all materials listed in Subsection A of 16.22.5.9 NMAC.~~] The applicant must have all documents in the board office at least sixty (60) days prior to taking the examination for professional practice in psychology (EPPP).

C. Complete applications will be reviewed by the board or its designee and a notification of approval, denial or need for additional information will be issued to the applicant [~~within thirty (30) days~~].

D. The written examination for licensure is the EPPP, developed by the association of state and provincial psychology boards (ASPPB) and administered by the professional examination service (PES). An applicant shall be eligible to take the EPPP three (3) times within the eighteen 18 months following the date the applicant was notified of the board's approval of their application.

(1) If the applicant does not pass the EPPP any of the three (3) times it is administered within eighteen (18) months, the applicant shall submit a new initial application.

(2) Upon the submission of the new application, the rules and regulations in effect at the time the new initial application is received will be used to determine whether an applicant meets the requirements for licensure.

E. The applicant shall take and pass [~~an online~~] a jurisprudence examination [~~after the board had received his EPPP score from the ASPPB reporting service, indicating that the applicant received a passing score pursuant to the act~~].

F. During the first year of licensure an applicant shall furnish evidence to the board that demonstrates an awareness and knowledge of New Mexico cultures.

G. When the applicant fulfills all the requirements of this section, a license will be issued. If postdoctoral supervised experience is incomplete, the applicant will be issued an 18-month provisional license. This is not subject to renewal or extension. The applicant will be issued an unrestricted license when the applicant has met the postdoctoral supervised experience as defined in 16.22.6 NMAC.

H. The applicant may request an additional twelve (12) months to complete necessary supervisory hours in accordance with the act, but the applicant will be practicing under supervision and under the supervisor's license and can no longer hold a provisional license. This request will only be honored one (1) time.

[16.22.5.9 NMAC - Rp, 16.22.5.10 NMAC, 11/15/06; A, 03/21/09; A, 09/16/10; A, 04/11/12]

16.22.5.10 APPLICANTS HOLDING A VALID LICENSE IN ANOTHER STATE FOR TEN YEARS OR MORE SEEKING LICENSURE UNDER SECTION 61-9-10 - RECIPROCITY

A. An applicant seeking licensure under this section may obtain a license pursuant to Section 61-9-10 of the act if the applicant fulfills the following conditions.

(1) At the time of application, the applicant shall possess a current license to practice psychology in another state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or other country.

(2) The applicant shall possess a doctoral degree in psychology or a related field.

(3) The applicant shall have no pending disciplinary actions, no formal disciplinary actions issued against the license in the last five (5) years and no past suspensions or revocations.

(4) The applicant shall have been licensed for a minimum of ten (10) years.

B. Application under this board regulation shall be made on a form [~~provided~~] approved by the board. The applicant shall submit the following to the satisfaction of the board:

(1) completed and signed application;

(2) application fee as required by the board; (for fee schedule, see 16.22.13.8 NMAC)

(3) license verification from all jurisdictions in which the applicant is or has been granted a psychologist license;

(4) official doctoral degree college or university transcripts; and

(5) three (3) current letters of reference; applicants under this section are not required to submit verification of predoctoral internship and postgraduate experience.

C. [~~Upon approval by the board, an~~] Applicant must take and pass [~~an online~~] a jurisprudence examination and during the first year of licensure furnish evidence to the board that demonstrates an awareness and knowledge of New Mexico cultures.

[16.22.5.10 NMAC - Rp, 16.22.5.11 NMAC, 11/15/06, A, 03/21/09; A, 04/11/12]

16.22.5.11 APPLICANTS HOLDING AN ASPPB CERTIFICATION OF PROFESSIONAL QUALIFICATION OR A NATIONAL REGISTER HEALTH SERVICE PROVIDER IN PSYCHOLOGY CREDENTIAL: RECIPROCITY

A. Eligibility. A licensee in good standing for a minimum of five (5) years in another jurisdiction is eligible for licensure pursuant to Section 61-9-10 of the act if the applicant holds current certification of professional qualification (CPQ) or holds a current national register (HSPP) credential at the doctoral level, pursuant to Subsection A of 16.22.4.8 NMAC. In addition, the applicant shall have passed the EPPP with a minimum score required for licensure as set forth in Paragraph (6) of Subsection A of Section 61-9-11 of the act, have no disciplinary actions within five (5) years immediately preceding the date of application, and shall have no prior license suspensions or revocations in any jurisdiction in which the applicant is or has been licensed.

B. Application procedure. The applicant shall submit the following to the satisfaction of the board:

(1) a verified or certified copy of the applicant's CPQ or national register HSPP credential or other evidence satisfactory to the board that the applicant holds a CPQ or national register HSPP credential;

(2) a completed application on a form [~~provided~~] approved by the board;

(3) license verification from any jurisdictions in which the applicant is or has been granted a psychologist license;

(4) verification of passing the EPPP with a minimum score required for licensure as defined in Paragraph (6) of Subsection A of Section 61-9-11 of the act; and

(5) the non-refundable application fee established by the board.

C. Examination. Upon approval by the board or its designee, an applicant must take and pass [~~an online~~] a jurisprudence examination and during the first year of licensure furnish evidence to the board that demonstrates an awareness and knowledge of New Mexico cultures.

D. Applicability of other provisions. The provisions of Section 61-9-13 of the act shall apply to applications filed under this section. A psychologist licensed pursuant to this section is subject to all

requirements and obligations applicable to licensees under the act and board regulations. [16.22.5.11 NMAC - Rp, 16.22.5.13 NMAC, 11/15/06; A, 03/21/09; A, 04/11/12]

16.22.5.12 APPLICANTS LICENSED IN ANOTHER JURISDICTION WHO DO NOT QUALIFY UNDER SECTION 16.22.5.10, 16.22.5.11, 16.22.5.12, 16.22.5.13, 16.22.5.14 OR 16.22.5.15 NMAC

A. Application procedure. An applicant seeking licensure under this section may obtain a license pursuant to Section 61-9-12 of the act if the applicant [~~fulfills~~] submits the following conditions:

(1) a completed and signed application;

(2) the application fee as required by the board;

(3) official doctoral degree transcripts sent directly from the institution's office of the registrar;

(4) if the applicant chooses, a notarized letter from the graduate office of the degree-granting institution that documents the date of the doctoral degree; the letter shall indicate (a) the date of completion of all requirements for the doctoral degree, and (b) the specific psychology program the applicant completed;

(5) license verification from all jurisdictions in which the applicant is or has been granted a psychologist license;

(6) three (3) letters of reference dated within the last two (2) years and two (2) of the letters must be from a licensed practicing psychologist familiar with their clinical work, and can attest to their competency and moral character;

(7) verification of predoctoral internship and supervision as defined in 16.22.6 NMAC;

(8) verification of postdoctoral supervised experience as defined in 16.22.6 NMAC; and

(9) verification of passing the EPPP as defined in 16.22.7.8 NMAC.

B. [~~Upon approval by the board, an~~] Applicant must take and pass [~~an online~~] a jurisprudence examination with a score of 75% and during the first year of licensure furnish evidence to the board that demonstrates an awareness and knowledge of New Mexico cultures.

[16.22.5.12 NMAC - Rp, 16.22.5.12 NMAC, 11/15/06; A, 03/21/09; A, 09/16/10; A, 04/11/12]

16.22.5.13 APPLICANTS SEEKING A TEMPORARY LICENSE

A. A temporary six (6) month license may be issued to a psychologist who meets the following conditions:

(1) the applicant is licensed in another jurisdiction and in good standing, and the out-of-state- license meets current licensing criteria for New Mexico;

(2) the applicant qualifies under 16.22.5.10, 16.22.5.11, 16.22.5.12 or 16.22.5.15 NMAC of this part;

(3) the applicant completes a form [~~provided~~] approved by the board that includes required information and the appropriate fees set by the board;

(4) the temporary license will expire in six (6) months; and

(5) the temporary license may be extended at the discretion of the board with a written request thirty (30) days prior to the expiration, stating the reason for extension.

B. Nothing in this section should be construed to prevent an applicant with a temporary license from applying for an unrestricted license. The applicant may apply for an unrestricted license by completing a form [~~provided~~] approved by the board, remitting appropriate fees, and taking and passing the online jurisprudence examination.

[16.22.5.13 NMAC - N, 11/15/06; A, 09/16/10; A, 04/11/12]

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

This is an amendment to 16.22.6 NMAC, Sections 7, 8 and 9, effective April 11, 2012.

16.22.6.7 DEFINITIONS:

A. "Year of supervised experience" means 1500 hours of psychological work conducted under supervision satisfactory to the board. The 1500 hours may be accumulated in one or two consecutive calendar years in the case of an internship, three consecutive years in the case of post-doctoral experience, or over the course of graduate training in the case of predoctoral experience.

B. "Doctoral training program" means the program from which the applicant received his or her doctoral degree to fulfill the educational requirements for licensure.

[16.22.6.7 NMAC - N, 04/11/12]

16.22.6.8 PREDOCTORAL/ POSTDOCTORAL SUPERVISED EXPERIENCE

A. Supervised experience leading toward licensure:

(1) two (2) years (3,000 hours) of supervised experience are required for licensure; [~~a predoctoral APA approved internship will count for 1,500 hours while other internships will count for 750 hours of the 3,000 hours, as explained in 16.22.6.8 NMAC below;~~

~~(2) postdoctoral experience shall be completed within three (3) consecutive years; and~~]

(a) up to one year (1500 hours) of the supervised experience may be obtained in predoctoral practicum hours overseen by the doctoral training program and consistent with the guidelines on practicum experience for licensure promulgated by the association of state and provincial psychology board; and

(b) up to one year (1500 hours) of the supervised experience may be obtained in a predoctoral internship approved by the American psychological association; or

(c) up to one-half year (750 hours) of the supervised experience may be obtained in a predoctoral internship not approved by the American psychological association; and

(d) after totaling approved predoctoral practicum hours and allowed hours for predoctoral internship, the remainder of the (3000 hours) supervised experience must be obtained in supervised postdoctoral psychological work.

[~~(3)~~] (2) predoctoral and postdoctoral experience from all supervisors shall be documented on forms provided by the board.

B. [~~**No predoctoral internship.** If the applicant did not complete one (1) year of predoctoral internship, the applicant shall complete 3,000 hours in postdoctoral supervised experience.~~] **Predoctoral practicum experience.** Predoctoral practicum training is an organized, sequential series of supervised experiences of increasing complexity, serving to prepare the student for internship and partially meeting the requirements for licensure. Training experiences shall follow appropriate academic preparation and shall be overseen by the doctoral training program. Not all supervised experience accumulated during graduate training may count toward licensure. The board requires that all predoctoral practicum experiences counting toward licensure be of high quality and carefully approved and monitored by the doctoral training program. In particular, these experiences should advance the doctoral student's role and identity as a psychologist. All experiences counting toward licensure must be supervised one hour per week by a licensed psychologist or clinical faculty member who is allowed to practice psychology under the laws of the state. The director of clinical training of the doctoral training program, or designee of that program's chair, shall certify, in a form satisfactory to the board, that the hours meet the following specifications of type of clinical activity and supervision:

(1) The practicum setting was approved by, integrated with and monitored by the doctoral training program;

(2) The hours were obtained in the course of an organized, sequential series of supervised experiences of increasing

complexity, serving to prepare the student for internship and partially meeting the requirements for licensure.

(3) Supervised practicum experience occurred in psychological service settings that had, as part of the organizational mission, a goal of training professional psychologists.

(4) Each practicum setting had an identified, licensed psychologist who was responsible for maintaining the integrity and quality of the experience for each trainee. The doctoral training program shall assign a licensed psychologist to serve in this role if none is available on site.

(5) All supervisors were qualified by education, licensure and experience to provide supervision of doctoral students.

(6) Where experiences counted for licensure were obtained in various settings, each setting was an appropriate experience in itself, the particular student was academically prepared for that experience and the combination of experiences was appropriate to the student's training needs.

(7) The following clinical experiences and supervision were present across settings:

(a) At least 50% of the total hours of supervised experience were in service-related activities, defined as treatment/intervention, assessment, interviews, report-writing, case presentations, and consultations.

(b) At least 25% of the total hours were face-to-face patient/client contact.

(c) Supervision by a licensed psychologist or clinical faculty member who is allowed to practice psychology under the laws of the state was at least one hour for each day (eight (8) hours including the supervision; 12 ½ % of total) of supervised experience for experienced students. The doctoral training program shall assure that higher levels of supervision are provided for less experienced students. All supervision time, whether individual or group, including additional supervision beyond that may be counted as part of the total supervised experience.

(8) The board requires that all predoctoral practicum experiences counting toward licensure be of high quality and carefully approved and monitored by the doctoral training program. In particular, these experiences should advance the doctoral student's role and identity as a psychologist. All experiences counting toward licensure must be supervised one hour per week by a licensed psychologist or clinical faculty member who is allowed to practice psychology under the laws of the state.

(9) The board may, at its discretion, require documentation that above system of training was in place for the applicant. Possible forms of documentation include but are not limited to:

(a) individual written training plans between the doctoral training program and each practicum training cite;

(b) policies and procedures of the doctoral training program designating the expectations for practicum training sequences;

(c) program descriptions or self-study documents submitted for program approval to the American psychological association or the American association of state and provincial psychology boards.

C. Internship or fellowship accredited by the APA. If the predoctoral or postdoctoral experience is obtained in an internship or fellowship accredited by the APA, a board form completed by the director of training will satisfy the requirement of certifying all supervision received during the internship or fellowship.

D. Internship not accredited by the APA. If the predoctoral experience is obtained in an internship that is not accredited by the APA, it will be counted for 750 hours of the required 3,000 hours if it meets the following criteria:

(1) the agency or institution offers internship education and training in psychology, one goal of which is to prepare applicants for the practice of professional psychology;

(2) the internship program is sponsored by an institution or agency, which has among its primary functions the provision of service to a population of recipients sufficient in number and variability to provide interns with adequate experiential exposure to meet its training purposes, goals, and objectives;

(3) the internship is completed within twenty-four (24) consecutive months at a minimum of twenty (20) hours per week:

(a) an internship that involves more than one agency, organization, or institution will be accepted if the primary supervisor and the applicant can demonstrate that the internship program is organized under a unifying or coordinating structure (e.g. a consortium with a core clinical faculty) and central leadership (e.g., one director of training or central supervisor overseeing the entire internship program and the supervision of the intern);

(b) internships consisting of less than twenty (20) hours per week will not be accepted;

(4) the director of clinical training of the applicant's doctoral training program certifies in a manner acceptable to the board that the internship was approved as part of the degree requirements for obtaining the doctoral degree.

[~~**E.** The internship makes available to all interested parties formal brochures describing the internship program and adheres to and makes available formal written policies and procedures that govern intern selection, practicum academic preparation requirements, administrative and financial assistance; and intern performance evaluations.~~

~~**F.**~~] **E. Postdoctoral supervised practice leading toward licensure.**

(1) The applicant may complete a predoctoral supervised practicum up to fifteen hundred (1500) hours and a predoctoral internship up to 1500 hours before completing the doctorate. Depending on the number of hours of predoctoral supervised experience, the applicant shall complete the [~~remaining~~] remainder of the required 3,000 hours through postdoctoral supervision.

(2) If the applicant chooses, the applicant may submit a postdoctoral supervisory plan to the board for review before beginning supervised practice. Once a plan for supervision is submitted to the board, the board or a designated board member will respond in writing to the acceptability of such a plan within sixty (60) days. If the plan is found unacceptable, the board or a designated board member will specify the areas of deficiency based on the guidelines specified in Part 3. If the board approves the plan, the applicant will be assured that postdoctoral experience, if completed according to the plan, will meet the postdoctoral requirements.

(3) If the applicant does not obtain a board-approved postdoctoral supervisory plan, the applicant shall submit documentation of the postdoctoral supervised practice after its completion. However, if the board does not approve this experience, part or all of the postdoctoral supervised experience shall be repeated. In this case, the board will require the applicant to submit a supervisory plan, and the supervisory plan must be approved by the board before the applicant's supervised practice begins.

[16.22.6.8 NMAC - Rp, 16.22.6.8 NMAC, 11/15/06; A, 04/11/12]

16.22.6.9 CONDITIONS OF POSTDOCTORAL SUPERVISION

A. Primary supervisors.

(1) [~~The~~] One licensed psychologist who serves as a primary supervisor shall be responsible for the overall supervision of the supervisee's professional growth. Specific skill training may be assigned to other licensed specialists, under the authority of the supervising psychologist. The other licensed specialists shall have clearly established practice and teaching skills demonstrable to the satisfaction of both the primary supervisor and the supervisee.

(2) The primary supervisor shall limit the number of applicants supervised to the number that the supervisor's work

position and clinical responsibilities reasonably permit, so as to maintain a level of supervision and practice consistent with professional standards and ensure the welfare of the supervisees and their clients or patients.

(3) The supervisor shall not be a member of the supervisee's immediate family or in a dual relationship that would compromise the supervisor's objectivity.

B. Supervisory contact.

(1) The applicant shall have on-site supervision. The on-site supervisor may be either the primary supervisor or a licensed specialist designated by the primary supervisor.

(2) At a minimum, supervision by the primary supervisor shall be provided on a one-to-one basis for one (1) hour per week for a total at least forty-six (46) hours of one-to-one supervision per year. [~~If there is not a licensed psychologist available who can serve as a primary supervisor and the closest licensed psychologist is 100 miles or more away, face-to-face supervision by a primary supervisor shall be at least two (2) hours per month and telephone supervision may be substituted for the rest of this supervision requirement. However,~~] If the primary supervisor is more than 100 miles from the site, in person supervision shall be at least two (2) hours per month and telephonic or videoconference may be substituted for the rest of this supervision requirement. The applicant and supervisor must arrange on-site supervision by a licensed psychiatrist, social worker, professional clinical mental health counselor, or marriage and family therapist. The on-site licensed mental health professional shall provide supervision to the applicant on a one-to-one basis for one (1) hour per week and shall be available to the applicant whenever decisions about patients are made.

C. Conduct of supervision.

(1) The board recognizes that variability in preparation for practice of the applicant will require individually tailored supervision. The specific content of the supervision procedures shall be worked out between the primary supervisor and the applicant.

(2) The primary supervisor who provides supervision for the applicant for licensure shall have clinical and professional responsibility for the work of the applicant.

(3) A supervisor, either primary or designated, shall be available to the applicant whenever decisions about clients or patients are made.

(4) The primary supervisor shall be responsible for the delivery of services, the representation to the public of services, and the supervisor/applicant relationship. This responsibility includes, but is not limited to, the following requirements.

(a) All clients or patients shall be informed of the availability or possible necessity of meetings with the primary supervisor at the request of the client or patient, the applicant, or the psychologist. The supervisor shall be available for emergency consultation or intervention.

(b) All written communication shall clearly identify the primary supervisor as clinically and professionally responsible for all psychological services provided. Public announcement of services and fees and contact with the public or professional community shall be offered in the name of the primary supervisor, business, or agency. Both the primary supervisor and the applicant shall inform the client or patient, to whatever extent is necessary for the client or patient to understand, of the supervisory status and other specific information as to the applicant's qualifications and functions.

(c) The primary supervisor shall oversee the maintenance of information and files relevant to the client or patient during the supervisory period.

(d) The primary supervisor shall not be a member of the applicant's extended or immediate family or be involved in a dual relationship.

(e) The supervision shall not be delivered in an agency or business in which the applicant has a financial interest.

D. Inappropriate representation. In the event the applicant publicly represents himself inappropriately, or supervision is not conducted according to Subsection C of 16.22.6.9 NMAC, conduct of supervision, any experience gained under such circumstances does not comply with these rules and regulations and will not be accepted as experience toward licensure. Any psychologist providing supervision under such circumstances is in violation of these rules and regulations and may be subject to disciplinary action.

[16.22.6.9 NMAC - Rp, 16.22.6.9 NMAC, 11/15/06; A, 04/11/12]

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

This is an amendment to 16.22.8 NMAC, Sections 7 and 8, effective April 11, 2012.

16.22.8.7 DEFINITIONS:

A. "Nationwide criminal history record" means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states.

B. "Nationwide criminal history screening" means a criminal history background investigation of a licensee applying for licensure renewal through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

[~~**C. "Statewide criminal history record"** means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized database of the department of public safety or the repositories of criminal history information in municipal jurisdictions.~~

~~**D. "Statewide criminal history screening"** means a criminal history background investigation of a licensee applying for licensure renewal through the use of fingerprints submitted to the department of public safety and resulting in the generation of a statewide criminal history record for that licensee.~~]

[16.22.8.7 NMAC - N, 09/16/10; A, 04/11/12]

16.22.8.8 LICENSE RENEWAL: Licensees shall renew their licenses to practice psychology biennially on or before July 1 of alternate years by remitting to the board office a renewal fee of six hundred dollars ($600) with the renewal application form provided by the board. Continuing education hours shall be documented every two (2) years at the time of license renewal as described in Part 9. Background fees shall be the amount established by the department of public safety for the processing of criminal history background checks.

A. All renewal applications will be subject to a one time nationwide [~~and statewide~~] criminal history screening. Renewal applications will be processed pending the completion of the [~~statewide~~] criminal history screening [~~and may be granted while the screening still pending~~].

B. If the nationwide [~~or statewide~~] criminal background screening reveals a felony or a violation of the Psychologist Examiners Act, the licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.22.8.8 NMAC - Rp, 16.22.8.8 NMAC, 11/15/06; A, 09/16/10; A, 04/11/12]

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

This is an amendment to 16.22.13 NMAC, Section 8, effective April 11, 2012.

16.22.13.8 FEE SCHEDULE:

A. All fees payable to the board are non-refundable. The fees for the (EPPP), and the (PEP) are in addition to the fees described below, and determined by the professional examination service offering the examination on behalf of the board. Background fees shall be the amount established by the department of public safety for the processing of criminal history background checks.

B. Application fees. (psychologists, psychologist associates, conditional prescribing and prescribing psychologists):

(1) initial application fee- [initial application fee expires 24 months from the date application is received in the board office] $300.00

(2) [~~online~~] jurisprudence examination: $75.00

(3) re-examination fee for jurisprudence exam: $75.00

(4) application for an out of state psychologist to conduct court-ordered independent examination
(per case): $150.00

(5) initial conditional prescription certificate: $75.00

(6) 60 day extension of conditional prescription: $100.00

(7) second-year conditional prescription certificate: $75.00

(8) prescription certificate: $75.00

(9) temporary license fee: $300.00

C. Biennial/annual renewal fees psychologists, psychologist associates, conditional prescribing and prescribing psychologists:

(1) one-time annual renewal by psychologists and psychologist associates meeting first-year New Mexico licensure requirements: $300.00

(2) biennial renewal active status psychologists and psychologist associates: $600.00

(3) biennial renewal active status (conditional prescribing and prescribing psychologists): $150.00

(4) annual renewal inactive status: $150.00

(5) late fee (received after July 1 and within 1 year of suspension): active status (psychologists, psychologist associates, conditional prescribing and prescribing psychologist): $100.00

(6) reinstatement fee from inactive to active status: $300.00

D. Other miscellaneous charges

(1) duplicate/replacement wall certificate: $25.00

(2) licensee lists: $100.00

(3) licensee labels: $150.00

(4) per page copy fee for public information request: $ .25 cents

(5) license verification fee: $15.00

[16.22.13.8 NMAC - Rp, 16.22.13.8 NMAC, 11/15/06; A, 03/21/09; A, 09/16/10; A, 04/11/12]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates
2012

Volume XXIII	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 17
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 15
Issue Number 4	February 16	February 29
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
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 14
Issue Number 12	June 15	June 29
Issue Number 13	July 2	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	August 31	September 14
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Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
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

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