This is an amendment to 8.290.400 NMAC, Sections 8, 10 and 11, effective 5/1/2021.

8.290.400.8 [~~**RESERVED**~~**]** **MISSION STATEMENT:** To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.
[8.290.400.8 NMAC - A/E, 12/15/2020; A, 5/1/2021]

8.290.400.10 BASIS FOR DEFINING THE GROUP: Eligibility for applicants/recipients who apply for waiver services is determined as if he or she were actually institutionalized, although this requirement has been waived. Entry into some of the waiver programs may be based upon the number of UDRs (i.e., slots) available. The individual waiver program manager notifies the income support division (ISD) when a UDR is available.

A. Elderly, blind, and disabled individuals (categories 091, 093, and 094): For applicants/recipients who are under age 65 to qualify as disabled or blind, disability or blindness must have been determined to exist by the social security administration or the DDU. To qualify as an elderly person, the applicant/recipient must be 65 years of age or older. Applicants/recipients must also meet both the financial and non-financial eligibility requirements and meet the medical level of care for nursing facility services.

B. Developmental disabilities (DD) waiver: The DD waiver identified as category 096 was approved effective July 1984, subject to renewal. DD waiver services are intended for eligible recipients who have developmental disabilities limited to intellectual disability (IID) or a [~~specific~~] related condition as determined by the DOH/DDSD. The developmental disability must reflect the person's need for a combination and sequence of special interdisciplinary or generic treatment or other supports and services that are lifelong or of extended duration and are individually planned and coordinated. The eligible recipient must also require the level of care provided in an intermediate care facility for individuals with developmental disabilities (ICF/IID), in accordance with Section 8.313.2 NMAC, and meet all other applicable financial and non-financial eligibility requirements.

(1) Intellectual disability: An individual is considered to have an intellectual disability if she/he has significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(a) General intellectual functioning is defined as the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

(b) Significantly sub-average is defined as an intelligence quotient (IQ) of 70 or below.

(c) Adaptive behavior is defined as the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for age and cultural group.

(d) The developmental period is defined as the period of time between birth and the 18^{th} birthday.

(2) [~~Specific related~~] Related condition: An individual is considered to have a [~~specific~~] related condition if she/he has a severe chronic disability, other than mental illness, that meets all of the following [~~conditions~~]:

(a) is attributable to a condition, other than mental illness, found to be closely related to ID because this condition results in limitations in general intellectual functioning or adaptive behavior similar to that of persons with ID and requires similar treatment or services;

(b) is manifested before the person reaches age 22 years, is likely to continue indefinitely; and

(c) results in substantial functional limitations (adaptive behavior scores ≤70) in three or more of the following areas:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(v) economic self-sufficiency.

~~[**(i)** cerebral palsy or seizure disorder; or~~

~~**(ii)** is attributable to autistic disorder (as described in the fourth edition of the diagnostic and statistical manual of mental disorders); or~~

~~**(iii)** is attributable to chromosomal disorders (e.g. down), syndrome disorders, inborn errors of metabolism, or developmental disorders of the brain formation limited to the list in Paragraph (3) of Subsection B of 8.290.400.10 NMAC;~~

~~**(b)** results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with intellectual disability and requires treatment or services similar to individuals with ID;~~

~~**(c)** is manifested before the person reaches age 22 years;~~

~~**(d)** is likely to continue indefinitely; and~~

~~**(e)** 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.~~

~~**(3)** List of chromosomal disorders (e.g., down) syndrome disorders, inborn errors of metabolism or developmental disorders of the bring formation.~~

~~**(a) chromosomal disorders:** autosomes: 4p-, trisomy 4p, trisomy 8, 5p-, 9p-, trisomy 9p, trisomy 9p mosaic, partial trisomy 10q, 13q , ring 13, trisomy 13 (Patau), 18p , 18q , trisomy 18 (Edwards), Ttisomy 20p, G (21,22) monosomy/deletion, trisomy 21 (down), translocation 21 (down), "cat-eye" syndrome; Prader-Willi syndrome (15);~~

~~**(i)** x-linked intellectual disability: Allan syndrome; Atkin syndrome; Davis syndrome; Fitzsimmons syndrome; fragile x syndrome; fragile x phenotype (no fragile site); Gareis syndrome; glycerol kinase deficiency; Golabi syndrome; Homes syndrome; Juberg syndrome; Lujan syndrome; Renpenning syndrome; Schimke syndrome; Vasquez syndrome; nonspecific x-linked intellectual disability;~~

~~**(ii)** other x chromosome disorders: xo syndrome (Turner); xyy syndrome; xxy syndrome (Klinefelter); xxyy syndrome; xxxy syndrome; xxxx syndrome; xxxxy syndrome; xxxxx syndrome (penta-x);~~

~~**(b) syndrome disorders:**~~

~~**(i)** neurocutaneous disorders: ataxia-telangiectasia (Louis-Bar); basal cell nevus syndrome; dyskeratosis congenital; ectodermal dysplasia (hyperhidrotic type); ectromelia ichthyosis syndrome; focal dermal hypoplasia (Goltz); ichthyosis-hypogonadism syndrome, incontinentia pigmenti (Bloch-Sulzberger); Ito syndrome; Klippel-Trenauney syndrome; linear sebaceous nevus syndrome; multiple lentigines syndrome; neurofibromatosis (Type 1); poikiloderma (Rothmund-Thomsen); Pollitt syndrome; Sjogren-Larsen syndrome; Sturge-Weber syndrome; tuberous sclerosis; xeroderma pigmentosum;~~

~~**(ii) muscular disorders:** Becker muscular dystrophy; chondrodystrophic myotonia (Schwartz-Jampel); congenital muscular dystrophy; Duchenne muscular dystrophy; myotonic muscular dystrophy;~~

~~**(iii) ocular disorders:** Aniridia-Wilm's tumor syndrome; anophthalmia syndrome (x-linked); Leber amaurosis syndrome; Lowe syndrome; microphthalmia-corneal opacity-spasticity syndrome; Norrie syndrome; oculocerebral syndrome with hypopigmentation; retinal degeneration-trichomegaly syndrome; septo-optic dysplasia;~~

~~**(iv) craniofacial disorders:** acrocephaly-cleft lip-radial aplasia syndrome; acrocephalosyndactyly;type 1 (Apert); type 2 (Apert); type 3 (Saethre-Chotzen); type 6 (Pfeiffer); Carpenter syndrome with absent digits and cranial defects; Baller-Gerold syndrome; cephalopolysyndactyly (Greig) "cloverleaf skull" syndrome; craniofacial dysostosis (Crouzon); craniotelencephalic dysplasia; multiple synostosis syndrome;~~

~~**(v) skeletal disorders:** acrodysostosis, CHILD syndrome; chondrodysplasia punctata (Conradi-Hunerman type); chondroectodermal dysplasia; Dyggve-Melchior-Clausen syndrome; frontometaphyseal dysplasia; hereditary osteodystrophy (Albright); hyperostosis (Lenz-Majewski); hypochondroplasia; Klippel-Feil syndrome; Nail-patella syndrome; osteopetrosis (Albers-Schonberg); pyknodysostosis; radial aplasia-thrombocytopenia syndrome; radial hypoplasia-pancytopenia syndrome (Fanconi); Roberts-SC phocomelia syndrome;~~

~~**(c) inborn errors of metabolism:**~~

~~**(i) amino acid disorders:** phenylketonuria: phenylalanine hydroxylase (classical, Type 1); dihydropteridine reductase (type 4); dihydrobiopterin synthetase (type 5); histidinemia; gamma-glutamylcysteine synthetase deficiency; hyperlysinemia; lysinuric protein intolerance; hyperprolinemia;~~

~~hydroxyprolinemia; sulfite oxidase deficiency; iminoglycinuria; branched-chain amino acid disorders: hypervalinemia; hyperleucine-isoleucinemia; maple syrup urine disease; isovaleric academia, glutaric academia (type 2); 3-hydroxy-3-methylglutaryl CoA lyase deficiency; 3-kethothiolase deficiency;,biotin-dependent disorders: holocarboxylase deficiency; biotinidase deficiency; propionic academia: type A; Type BC; methylmalonic academia: mutase type (mut+); cofactor affinity type (mut-); adenosylcobalamin synthetase type (cbl A); ATP: cobalamin adenosyltransferase type (cbl B), with homocystinuria, type 1 (cbl C), with homocystinuria, type 2 (cbl D); folate-dependent disorders: congenital defect of folate absorption; dihydrofolate reductase deficiency; methylene tetrahydrofolate reductase deficiency; homocystinuria; hypersarcosinemia; non-ketotic hyperglycinemia; hyper-beta-alaninemia; carnosinase deficiency; homocarnosinase deficiency; Hartnup disease; methionine malabsorption (oasthouse urine disease);~~

~~**(ii) carbohydrate disorders:** glycogen storage disorders: type 1, with hypoglycemia (von Gierke); type 2 (Pompe); galactosemia; fructose-1, 6-diphosphatase deficiency; pyruvic acid disorders: pyruvate dehydrogenase complex (Leigh); pyruvate carboxylase deficiency; mannosidosis; fucosidosis; aspartylglucosaminuria;~~

~~**(iii) mucopolysaccharide disorders:** alpha-L-iduronidase deficiency: Hurler type; Scheie type, Hurler-Scheie type; iduronate sulfatase deficiency (Hunter type); Heparan N-sulfatase deficiency (Sanfilippo 3A type); N-acetyl-alpha-D-glucosaminidase deficiency (Sanfilippo 3B type); Acetyl-CoA; glucosaminide N-acetyltransferase deficiency (Sanfilippo 3C type); N-acetyl-alpha-D-glucosaminide-6-sulfatase deficiency (Sanfilippo 3D type); beta-glucuronidase deficiency (Sly type);~~

~~**(iv) mucolipid disorders:** alpha-neuraminidase deficiency (type1); N-acetylglucosaminyl phosphotransferase deficiency: I-cell disease (Type 2); Pseudo-Hurler syndrome (type 3); mucolipidosis type 4;~~

~~**(v) urea cycle disorders:** carbamyl phosphate synthetase deficiency; ornithine transcarbamylase deficiency; argininosuccinic acid synthetase deficiency (citrullinemia); argininosuccinic acid (ASA) lyase deficiency; arginase deficiency (argininemia);~~

~~**(vi) nucleic acid disorders:** Lesch-Nyhan syndrome (HGPRTase deficiency); orotic aciduria; xeroderma pigmentosum (group A); DeSanctis-Cacchione syndrome;~~

~~**(vii) copper metabolism disorders:** Wilson disease; Menkes disease;~~

~~**(viii) mitochondrial disorders:** Kearns-Sayre syndrome; MELAS syndrome; MERRF syndrome; cytochrome c oxidase deficiency; other mitochondrial disorders;~~

~~**(ix) peroxisomal disorders:** Zellweger syndrome; adrenoleukodystrophy: neonatal (autosomal recessive); childhood (x-linked); infantile Refsum disease; hyperpipecolic academia; chondrodysplasia punctata (rhizomelic type);~~

~~**(d) developmental disorders of brain formation:**~~

~~**(i)** neural tube closure defects: anencephaly; spina bifida; encephalocele;~~

~~**(ii)** brain formation defects: Dandy-Walker malformation; holoprosencephaly; hydrocephalus: aqueductal stenosis; congenital x-linked type; Lissencephaly; pachygyria; polymicrogyria; schizencephaly;~~

~~**(iii)** cellular migration defects: abnormal layering of cortex; colpocephaly; heterotopias of gray matter; cortical microdysgenesis~~

~~**(iv)** intraneuronal defects: dendritic spine abnormalities; microtubule abnormalities;~~

~~**(v)** acquired brain defects: hydranencephaly; porencephaly; and~~

~~**(vi)** primary (idiopathic) microcephaly.~~]

C. Medically fragile (MF) waiver: The medically fragile (MF) waiver identified as category 095 was established effective August, 1984 subject to renewal. Medically fragile is characterized by one or more of the following: a life threatening condition characterized by reasonable frequent periods of acute exacerbation which require frequent medical supervision, or physician consultation and which in the absence of such supervision or consultation would require hospitalization; a condition requiring 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 supplemental oxygen. The eligible recipient must require the level of care provided in an ICF/IID, in accordance with 8.313.2 NMAC, and meet all other applicable financial and non-financial eligibility requirements and must have:

(1) a developmental disability, developmental delay, or be at risk for developmental delay as determined by the DDU, and

(2) a diagnosed medically fragile condition prior to the age of 22, defined as a chronic physical condition, which results in a prolonged dependency on medical care for which daily skilled (nursing) intervention is medically necessary, and which is characterized by one or more of the following:

(a) a life threatening condition characterized by reasonably frequent periods of acute exacerbation, which require frequent medical supervision or physician consultation and which, in the absence of such supervision or consultation, would require hospitalization;

(b) frequent, time-consuming administration of specialized treatments, which are medically necessary;

(c) dependency 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

(d) periods of acute exacerbation of a life-threatening condition, the need for extraordinary supervision or observation, frequent or time-consuming administration of specialized treatments, dependency on mechanical (life) support devices, and developmental delay or disability.

D. Acquired immunodeficiency syndrome (AIDS) and AIDS related condition (ARC) waiver: The acquired immunodeficiency syndrome (AIDS) and AIDS related condition waiver designated as category 090, was established effective July 1987, subject to renewal. The AIDS and AIDS related condition waiver stopped covering new individuals effective January 01, 2014 as the waiver was sunset and not renewed. Individuals already on the AIDS and AIDS related condition waiver are grandfathered and remain eligible as long as eligibility requirements are met.

E. Brain injury (BI): The brain injury category 092 stopped covering new individuals effective January 01, 2014. Individuals already on the brain injury category are grandfathered and remain eligible as long as eligibility requirements are met.

[8.290.400.10 NMAC - Rp, 8.290.400.10 NMAC, 1/1/2019; A/E, 12/15/2020; A, 5/1/2021]

8.290.400.11 GENERAL RECIPIENT REQUIREMENTS: Eligibility for the waiver programs is always prospective per 8.290.600.11 NMAC. Applicants/recipients must meet, or expect to meet, all non-financial eligibility criteria in the month for which determination of eligibility is made including any mandatory income or resources deemed to a minor child per 8.290.500.17 and 8.290.500.21 NMAC.

A. Enumeration: An applicant/recipient must furnish his social security number in accordance with 8.200.410.10 NMAC.

B. Citizenship: Refer to 8.200.410.11 NMAC for citizenship requirements.

C. Residence: To be eligible for medicaid, an applicant/recipient must be physically present in New Mexico on the date of application or final determination of eligibility and must have declared an intent to remain in the state. If the applicant/recipient does not have the present mental capacity to declare intent, the applicant's/recipient's representative may assume responsibility for the declaration of intent. If the applicant/recipient does not have the mental capacity to declare intent and there is no representative to assume this responsibility, the state where the applicant/recipient is living will be recognized as the state of residence. If waiver services are suspended because the recipient is temporarily absent from the state but is expected to return within 90 consecutive days at which time waiver services will resume, the medicaid case remains open. If waiver services are suspended for any other reason for 90 consecutive days, the medicaid case is closed after appropriate notice is provided to the recipient.

D. Non-concurrent receipt of assistance: HCBS waiver services furnish medicaid benefits to an applicant/recipient who qualifies both financially and medically for institutional care but who, with provision of waiver services, can receive the care he needs in the community at less cost to the medicaid program than the appropriate level of institutional care. Individuals receiving services under a HCBS waiver may not receive concurrent services under nursing facility (NF), ICF/IID, personal care or any other HCBS waiver.

(1) SSI recipients: Applicants receiving supplemental security income (SSI) benefits are categorically eligible for waiver services. No further verification of income, resources, citizenship, age, disability, or blindness is required. The applicant must, however, meet the level of care requirement. (An SSI recipient must meet the assignment of rights and TPL requirements and not be ineligible because of a trust).

(2) Married SSI couples: All married SSI couples where neither member is institutionalized in a medicaid-certified facility are treated as separate individuals for purposes of determining eligibility and benefit amounts beginning the month after the month they began living apart. See Section 8012 of the Omnibus Budget Reconciliation Act of 1989. In the case of an initial application, or reinstatement following a period of ineligibility, when members of a married couple are not living together on the date of application or date of

request for reinstatement, each member of the couple is considered separately as of the date of application or request, regardless of how recently the separation occurred.

E. INTERVIEW REQUIREMENTS: [~~An interview is required at initial application for all home and community-based waiver medical assistance programs in accordance with all of the requirements set forth at 8.281.400.11 NMAC.~~] An interview is not required in accordance with 8.281.400.11 NMAC.

[8.290.400.11 NMAC - Rp, 8.290.400.11 NMAC, 1/1/2019; A/E, 12/15/2020; A, 5/1/2021]