

TITLE 8 SOCIAL SERVICES
CHAPTER 100 GENERAL PROVISIONS FOR PUBLIC ASSISTANCE PROGRAMS
PART 180 GENERAL OPERATING POLICIES - EXTERNAL COMMUNICATIONS

8.100.180.1 ISSUING AGENCY: New Mexico Human Services Department.
[07/01/97; 8.100.180.1 NMAC - Rn, 8 NMAC 3.ISD.000.1, 04/13/2001]

8.100.180.2 SCOPE: The rule applies to the general public.
[07/01/97; 8.100.180.2 NMAC - Rn, 8 NMAC 3.ISD.000.2, 04/13/2001]

8.100.180.3 STATUTORY AUTHORITY:

A. Section 27 NMSA 1978 (1992 Repl.) provides for the department to "...adopt, amend and repeal bylaws, rules and regulations..." It also provides for administration of public assistance programs

B. The Income Support Division (ISD) of the Human Services Department (HSD) was created by the HSD Secretary under authority granted by Section 9-8-6-B-(3) NMSA 1978.
[07/01/97, 04/01/98; 8.100.180.3 NMAC - Rn, 8 NMAC 3.ISD.000.3 & 001, 04/13/2001]

8.100.180.4 DURATION: Permanent.
[07/01/97; 8.100.180.4 NMAC - Rn, 8 NMAC 3.ISD.000.4, 04/13/2001]

8.100.180.5 EFFECTIVE DATE: July 1, 1997.
[07/01/97; 8.100.180.5 NMAC - Rn, 8 NMAC 3.ISD.000.5, 04/13/2001]

8.100.180.6 OBJECTIVE: The objective of these regulations is to provide general policy and procedures for Income Support Division (ISD) administered programs.
[07/01/97; 8.100.180.6 NMAC - Rn, 8 NMAC 3.ISD.000.6, 04/13/2001]

8.100.180.7 DEFINITIONS: [Reserved]
[07/01/97; 8.100.180.7 NMAC - Rn, 8 NMAC 3.ISD.000.7, 04/13/2001]

8.100.180.8 COMMUNICATION WITH RECIPIENT - General Communication: Both oral and written communications with applicants/recipients must be courteous. ISD shall inform the client promptly and in accord with state and federal regulations of actions relating to an application or ongoing case.
[07/01/97; 8.100.180.8 NMAC - Rn, 8 NMAC 3.ISD.181.1, 04/13/2001]

8.100.180.9 DENIAL/APPROVAL OF APPLICATION: Prompt notification of action on a specific application is required. See specific program sections in this Manual.
[07/01/97; 8.100.180.9 NMAC - Rn, 8 NMAC 3.ISD.181.2, 04/13/2001]

8.100.180.10 NOTICE OF AN ADVERSE ACTION Before any action to withhold a cash assistance payment or to reduce or terminate medical, Food Stamp or cash assistance benefits, the Department must issue timely and adequate advance notice of an adverse action.

A. Adverse Action Defined: Adverse action means an action taken by HSD that adversely affects eligibility or the amount of benefits a household or benefit group receives, including withholding, suspending, reducing or terminating benefits.

B. Timing: A notice shall be issued to the household or benefit group before taking and adverse action. Benefits will not be reduced until 13 days from the date on the adverse action notice. If the 13th day falls on a weekend or holiday, the next working day is counted as the last day of the 13-day adverse action notice period.

C. Contents

(1) General: An adverse action notice shall contain, in easily understood language:

(a) Reason for the proposed action, including the specific regulations supporting the action and the information on which the proposed action is based;

(b) Date the action will take place;

(c) Statement of the right to request a fair hearing and how to request a fair hearing;

(d) Phone number of the caseworker in the event the client wants more information or wants to

request a fair hearing;

(e) Date by which the client must request a fair hearing to continue receiving assistance at the current rate;

(f) Liability of the recipient for any overissuance or overpayment;

(g) Right to be represented by legal counsel, friend or other spokesperson;

(h) Notice that free legal help may be available to the household;

(i) The current benefit amount and proposed benefit amount after reduction for any reason.

(2) Specific:

(a) For a disqualification from participation in the Food Stamp Program, the notice must also include the disqualification period, as appropriate, and the action the disqualified individual must take to end ineligibility.

(b) For sanctions from cash assistance, the notice must also include the conciliation period, if applicable, and the sanction period, as appropriate, as well as the action the sanctioned individual must take to end ineligibility.

(c) For termination of cash assistance benefits due to reaching the TANF 60-month term limit, the notice must also include the actions the participant must take to apply for a hardship extension, found at 8.102.410.17 NMAC, and the availability of support services in the event the benefit group is not eligible for a hardship extension.

[07/01/97, 04/01/98; 8.100.180.10 NMAC - Rn, 8 NMAC 3.ISD.181.3, 04/13/2001; A, 01/01/2003]

8.100.180.11 CONCURRENT NOTICE: A concurrent notice is one which is mailed no later than the date the benefit is or would have been received. It is also referred to as an adequate notice.

A. Food Stamps : HSD notifies a household that its FS benefits are reduced or terminated no later than the date the household receives, or would have received, its allotment, in the following circumstances:

(1) The household reports the information which results in the reduction or termination;

(2) The reported information is in writing and signed by an adult household member;

(3) HSD can determine the household's allotment or ineligibility based solely upon the household's written information.

(4) The household retains its right to a fair hearing;

(5) The household retains its right to continued benefits by requesting a fair hearing within the time period provided by the adverse action notice;

(6) HSD continues (or supplements) the household's previous benefit level, if necessary, within five working days of the household's request for a fair hearing.

B. FA and medical: HSD notifies a benefit group that its benefits are reduced or terminated by no later than the date the group receives, or would have received, its benefit in the following circumstances:

(1) **Death:** Termination or reduction of assistance is necessary because of the death of an FA benefit group member or a MA recipient whose death is documented;

(2) **Admission to institution:** Reduction of assistance is necessary because the client enters a skilled nursing home or intermediate care facility, or termination is necessary because of the client's admission to an institution which makes him/her ineligible for payment;

(3) **Client request:** The client requests in writing that the FA or MA assistance be reduced or terminated; the client gives information in a signed statement that causes a termination or reduction of services and the client indicates in writing that he/she understands this is the consequence of supplying such information;

(4) **Whereabouts unknown:** Withholding FA or MA assistance is necessary because of the unknown whereabouts of the client, as evidenced by agency mail to the client's last known address having been returned to the ISD as undeliverable;

(5) **Other assistance:** The client is accepted for FA or MA assistance in another county or state, or under another jurisdiction (including SSI) and the effective date of coverage has been established.

(6) **Removal of child:** Termination or reduction of FA is necessary because of the removal of a recipient child from the home through judicial determination or the voluntary placement of the child in foster care by the legal guardian or specified relative;

(7) **Change in medical care:** A change in a client's level of medical care is prescribed by his/her physician;

(8) **Special allowance:** A special allowance granted to a client for a specific period of time is terminated and the client has been informed at the time the allowance was granted that it would terminate at a

specific time.

(9) Fair Hearings: An adverse action has been suspended pending a fair hearing and the fair hearing determination is not in the client's favor.

(10) Recertification: A recertification is not completed by the time the certification expires and a notice of suspension is issued, or the non-certified case has been in payment suspension for a month, and the case is being closed.

(11) Sanction: An FA payment is being reduced or terminated because an individual is not cooperating with the child support enforcement program or is failing to meet work program requirements.

(12) A client is also informed of his/her right to request a hearing on the action, the way to make such a request, and the conditions under which assistance will be continued if a hearing is requested. In any contact with the county office or in a hearing, the client may speak for him/herself, or be represented by legal counsel or a friend or other spokesperson.

[07/01/97, 04/01/98; 8.100.180.11 NMAC - Rn, 8 NMAC 3. ISD.181.33, 04/13/2001]

8.100.180.12 FOOD STAMP EXCEPTIONS: Adverse action notices are not required under the following conditions:

A. Mass changes: The state initiates a mass change;

B. Death: The ISS determines, based on reliable information, that all members of a household have died;

C. Move from project area: The ISS determines, based on reliable information, that the household has moved from the project area, or will move before the next FS issue;

D. Completion of restoration of lost benefits: The client has been receiving an increased allotment to restore benefits, the restoration is complete, and the client has been previously notified in writing when the increased allotment would end;

E. Anticipated changes in monthly benefit amount: A household's allotment varies from month to month within the certification period to take into account changes which are anticipated at the time of certification, and the household was notified at the time of certification of the allotment variations;

F. Benefit reduction upon approval of household's FA application: The household jointly applied for FA and FS benefits, and has been receiving Food Stamps pending the approval of the FA grant, and was notified at the time of certification that FS benefits would be reduced upon approval of the FA grant;

G. Household member disqualified for intentional program violation: The benefits of the remaining household members are reduced or terminated to reflect the disqualification of a household member.

H. Benefits contingent upon providing postponed verification: The ISS has assigned a normal certification period to a household certified on an expedited basis, for whom verification was postponed, and the household was given a written notice that the receipt of benefits beyond the month of application was contingent upon its providing the required verification.

I. Conversion: Converting a household from cash and/or FS benefit recovery to recoupment (benefit reduction) because of failure to make agreed-upon repayment;

J. Loss of certification by drug or alcoholic treatment center or group living arrangement: The ISS terminates the eligibility of a resident of a drug or alcoholic treatment center or a group living arrangement because the facility loses either its certification from the New Mexico Health Department or other appropriate state agency, or has its status as an authorized representative suspended because FCS has disqualified it as a retailer;

K. Transfer between FSP and food distribution programs. If a local office is notified by the appropriate Indian tribal organization (ITO) that a participating household wishes to switch programs, the ISS

(1) advises the ITO of the earliest date that program transfer may occur without risk of dual participation;

(2) closes the FS case without advance notice; and

(3) follows up with the appropriate ITO-provided form;

L. Household requests termination.

[07/01/97, 04/01/98; 8.100.180.12 NMAC - Rn, 8 NMAC 3. ISD.181.34, 04/13/2001]

8.100.180.13 FRAUD: If the agency obtains facts indicating that FA or MA should be suspended, terminated or reduced because of probable fraud by the recipient which has been verified, if possible, by collateral sources, notice of the action being taken is mailed at least five days before the action is to become effective.

[07/01/97, 04/01/98; 8.100.180.13 NMAC - Rn, 8 NMAC 3. ISD.181.35, 04/13/2001]

8.100.180.14 CONTINUATION OF BENEFITS: If a fair hearing request is filed, benefits are continued, under the circumstances described below, until the fair hearing determination is completed.

A. Timely Requests

(1) **Advance Notice:** If a household requests a fair hearing within the advance notice period provided by the advance adverse action notice, and its certification period has not expired, the household's participation in the program is continued on the same basis authorized immediately before the adverse action notice, unless the household specifically waives a continuation of benefits.

(2) All fair hearing request forms contain a space for a household to indicate whether or not continuation of benefits is requested. If the form does not positively indicate that the household has waived continuation of benefits, the ISS assumes that continuation of benefits is desired and the benefits are issued accordingly. Such benefits are continued until the end of the certification period or the resolution of the fair hearing, whichever is first.

B. Concurrent Notice: If a benefit group requests a fair hearing within 13 days of issuance of a concurrent adverse action notice, and its certification period has not expired, cash assistance, Food Stamps and Medicaid benefits are reinstated. Unless other intervening changes occur, assistance is not reduced or terminated, nor may the manner or form of payment be changed to a protective payment, during the period until the hearing decision is rendered, except as provided in regulations at 8.100.180.10 and 8.100.180.15.

(1) Additionally, receipt of continued benefits ends if a determination is made at the hearing that the sole issue is one of federal policy or law, or change in such policy or law, and not one of incorrect grant computation.

(2) If a later change affecting the client's grant occurs while the hearing decision is pending and the client does not request a hearing regarding the change, the payment which the client continues to receive during the hearing period is adjusted only by the amount required by the change.

(3) If assistance is to be continued, it is continued through the end of the month in which a decision on the hearing is reached.

(4) If hearing decisions are delayed, assistance is continued only if the delay is caused by HSD or if a delay of five days or less is requested by the client because of unusual circumstances beyond his/her control.

C. Late Requests

(1) If a hearing request is not made within the period provided by the adverse action notice, benefits are reduced or terminated as provided in the notice.

(2) If a client demonstrates that failure to make the request within the advance notice period was for good cause, benefits are reinstated to the previous level. The hearing unit supervisor decides if the failure was for good cause.

[07/01/97,07/01/98; 8.100.180.14 NMAC - Rn, 8 NMAC 3.ISD.181.41, 04/13/2001]

8.100.180.15 MASS CHANGES

A. General: Certain changes initiated by the state or federal government may affect the entire caseload or significant portions of it. These changes include, but are not limited to, increases or decreases in eligibility or payment standards changes in excluded or deducted items or amounts. Mass changes affecting income include annual adjustments of Social Security, SSI, and other federal benefit programs, and any other changes in eligibility criteria based on legislative or regulatory actions.

B. Notice of Mass changes: Adverse action notices are required for mass changes resulting from statutory or regulatory changes in eligibility or payment standards, benefit, changes in excluded or deducted items or amounts for purposes of eligibility or calculation of benefit levels. The department will either provide concurrent notice to affected households of the mass change no later than the date the household receives, or would have received, its benefit issuance, or the affected cases will be notified through the media, and/or posters in county offices.

C. Appeal rights: Notice of the change will include the recipient's right to appeal. A hearing is not available, and benefits are not continued, when automatic benefit adjustments are required by federal or state law unless the specific, express basis for the hearing request is incorrect benefit computation. If the recipient requests a fair hearing within the advance notice period, benefits will be continued at the former amount. If the appeal results in a decision that the reduction or closure was incorrect, the difference between what the recipient received pending the appeal decision and the amount that should have been received will be restored to the recipient.

[07/01/97, 07/01/98; 8.100.180.15 NMAC - Rn, 8 NMAC 3.ISD.181.43, 04/13/2001]

8.100.180.16 DISPUTED CONTINUATION OF BENEFITS: If a client and the ISS disagree about the continuation of benefits, the client may request a fair hearing. Adverse action defined. "Adverse action" is action taken by HSD which adversely affects the amount of benefits a client receives. Such actions include holding mailing of assistance warrants, and suspension, reduction or termination of benefits.
[07/01/97, 07/01/98; 8.100.180.16 NMAC - Rn, 8 NMAC 3.ISD.181.44, 04/13/2001]

8.100.180.17 HOME VISIT NOTICE: The worker shall give advance notice to an applicant or recipient of any visit to the applicant's or recipient's home.

A. Verbal Notice: The advance notice may be in the form of a verbal communication between the worker and the applicant or recipient. The time and date of the visit must be mutually agreeable and should, in most cases, be made at least one day in advance of the visit. The worker shall provide an explanation of the need for the visit to the applicant or recipient. The worker shall document the discussion in the case narrative and provide a justification if the period of advance notice is any less than one day.

B. Written Notice: The home visit notice may be written. The written notice shall be mailed at least 10 days in advance of the intended visit. The notice shall indicate the time, date, and purpose of the visit. The notice shall request the applicant or recipient to confirm the appointment date with the worker. In the absence of a response from the applicant or recipient, the visit shall take place and the applicant or recipient is expected to be at home for the visit.

[07/01/98; 8.100.180.17 NMAC - Rn, 8 NMAC 3.ISD.182, 04/13/2001]

History of 8.100.180:

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

ISD Rule 180, Notice Requirements, 2-9-88.

History of Repealed Material:

8 NMAC 3.ISD.180, General Operating Policies, External Communications - Repealed, 7-1-97.