

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 102 CASH ASSISTANCE PROGRAMS**  
**PART 400 RECIPIENT POLICIES - DEFINING THE ASSISTANCE GROUP**

**8.102.400.1 ISSUING AGENCY:** New Mexico Human Services Department.  
[8.102.400.1 NMAC - Rp 8.102.400.1 NMAC, 07/01/2001]

**8.102.400.2 SCOPE:** The rule applies to the general public.  
[8.102.400.2 NMAC - Rp 8.102.400.2 NMAC, 07/01/2001]

**8.102.400.3 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.** Federal legislation contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 abolished the AFDC program. The federal act 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, the New Mexico works program was created to replace the aid to families with dependent children program.

**C.** Under authority granted to the governor by the federal Social Security Act, the human services department is designated as the state agency responsible for the TANF program in New Mexico.

**D.** Effective April 1, 1998, in accordance with the requirements of the New Mexico Works Act and Title IV-A of the federal Social Security Act, the department is creating the New Mexico works program as one of its cash assistance programs.

**E.** In close 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.

[8.102.400.3 NMAC - Rp 8.102.400.3 NMAC, 07/01/2001; A, 11/15/2007]

**8.102.400.4 DURATION:** Permanent.  
[8.102.400.4 NMAC - Rp 8.102.400.4 NMAC, 07/01/2001]

**8.102.400.5 EFFECTIVE DATE:** July 1, 2001.  
[8.102.400.5 NMAC - Rp 8.102.400.5 NMAC, 07/01/2001]

**8.102.400.6 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 the education works program (EWP) is to provide cash assistance to a benefit group where at least one individual 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.

[8.102.400.6 NMAC - Rp 8.102.400.6 NMAC, 07/01/2001; A, 11/15/2007]

**8.102.400.7 DEFINITIONS:** [Reserved]  
[8.102.400.7 NMAC - Rp 8.102.400.7 NMAC, 07/01/2001]

**8.102.400.8 WHO CAN BE A RECIPIENT:** To be a recipient of cash assistance, a person must be individually eligible according to requirements set forth in 8.102.410 NMAC and 8.102.420 NMAC. The person or persons meeting individual eligibility requirements and for whom application has been or must be made constitute the benefit group.

[8.102.400.8 NMAC - Rp 8.102.400.8 NMAC, 07/01/2001; A, 11/15/2007]

**8.102.400.9 BASIS FOR DEFINING THE BENEFIT GROUP:**

**A.** At time of application for cash assistance and services, an applicant and the department shall identify everyone who is to be considered for inclusion in the benefit group. A decision to request assistance for a specific individual may require the inclusion of other individuals as well. There may be more than one benefit group in a residence.

**B.** ISD shall add or delete a person from the benefit group upon request of the household, except when the participant is a mandatory benefit group member. Changes in benefit group composition must be evaluated as it may affect who must be included in the benefit group.

**C. Benefit groups containing dependent children:** The benefit group for the NMW cash assistance program or EWP cash assistance program consists of 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 dependent child's parent or relative within the fifth degree of relationship and the parent with whom the children live and the spouse of a parent.

**D. NMW Adult only benefit groups:** An adult only benefit group may consist of:

(1) a parent or relative, and the spouse of the parent or relative, when all of the dependent children are receiving SSI;

(2) a pregnant woman in her third trimester of pregnancy who has no dependent children living with her and the father of the unborn child, if he is living in the home.

[8.102.400.9 NMAC - Rp 8.102.400.9 NMAC, 07/01/2001; A, 7/17/2006; A, 11/15/2007]

**8.102.400.10 MANDATORY MEMBERS:** Certain participants must be included in the dependent child assistance group, provided they meet the eligibility requirements.

**A.** Include the dependent child who is the natural child, adopted child, or stepchild who is 17 years of age or younger or who are 18 years of age and enrolled in high school.

**B.** Include all of that dependent child's full, half, step-siblings or adopted siblings living with the dependent child.

**C.** Include the natural parent, adoptive parent, or stepparent of the dependent child for whom assistance is being requested.

**D.** Include in the benefit group the parent of any child included in the budget group and the spouse of the parent, if living in the home.

[8.102.400.10 NMAC - Rp 8.102.400.10 NMAC, 07/01/2001; A, 11/15/2007; A, 08/01/2009]

**8.102.400.11 OPTIONAL MEMBERS:** NMW dependent child benefit groups may include in the benefit group:

**A.** any unrelated dependent child living in the home;

**B.** the specified relative who is a caretaker and who is within the fifth degree of relationship and the specified relative's spouse, if the parent is not living in the home;

**C.** any dependent child who is within the fifth degree of relationship and not full, half, step or adopted sibling of the dependent child whom the assistance is requested;

**D.** the legal guardian(s) of the dependent child.

[8.102.400.11 NMAC - Rp 8.102.400.11 NMAC, 07/01/2001; A, 11/15/2007; A, 08/01/2009]

**8.102.400.12 SPECIAL MEMBERS**

**A. Minor unmarried parents:**

(1) A minor unmarried parent and child who live with the minor unmarried parent's parent or other adults shall be included as dependent children in the larger NMW benefit group if there is one. A minor unmarried parent and child living with parent(s) may constitute a benefit group in their own right if the minor parent is the primary caretaker for the child and the parent(s) are not receiving NMW. The minor parent's parent shall be the applicant and payee for the benefit.

(2) **Limitations regarding minor unmarried parents:**

(a) **Living arrangements:** An unmarried minor parent and the dependent child in her care must reside in the household of a parent, legal guardian, or other adult relative unless:

(i) the child is living in a second-chance home, maternity home, or other appropriate adult-supervised supportive living arrangement which takes into account the needs and concerns of the minor unmarried parent;

(ii) the minor parent has no living parent or legal guardian whose whereabouts is known,

and there are no other appropriate adult-supervised supportive living arrangements available;

(iii) no living parent or legal guardian of the minor parent allows the minor parent to live in the minor parent's home and there are no other appropriate adult-supervised supportive living arrangements available;

(iv) the minor unmarried parent is or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the home of the parent, legal guardian or other adult relative and there are no other appropriate adult-supervised supportive living arrangements available;

(v) there is substantial evidence of an act or failure to act that presents an imminent or serious harm to the minor unmarried parent and/or the child of the minor unmarried parent if they live in the same residence with the parent legal guardian or other appropriate adult and there are no other appropriate adult-supervised supportive living arrangements available; if a minor parent makes allegations supporting the conclusion that the physical or emotional health or safety of the minor unmarried parent or the dependent child(ren) will be jeopardized, the caseworker shall file any documentation regarding this allegation in the case record and grant the exemption; acceptable documentation will include written reports and statements from the children, youth, and families department, other social service agencies, and police reports; if no written documentation exists, the caseworker should summarize the client's statement in a memo to the ISD director or designee and a determination shall be made.

(vi) the department determines there is otherwise good cause for the minor parent and dependent child to receive assistance while living apart from the minor parent's parent, legal guardian, or other adult relative, or an adult-supervised supportive living arrangement; an adult-supervised supportive living arrangement is defined as a private family setting or other living arrangement (not including a public institution), which is maintained as a family setting, as evidenced by the assumption of responsibility for the care and control of the minor parent and dependent child or the provision of supportive services, such as counseling, guidance, or supervision; for example, foster homes and maternity home are adult-supervised supportive living arrangements.

(b) **Notification:** Minor applicants shall be informed about the eligibility requirements and their rights and obligations under this manual section. Minor applicants shall be advised of the possible exemptions and specifically asked whether one or more of these exemptions applies in their situation.

(c) **Payment:** If the minor parent lives with an adult receiving NMW, the minor parent and child shall be included in that NMW benefit group. If the minor parent and the minor parent's dependent child do not live with an adult who is receiving NMW, payment is made to the supervising adult in the form of a protective payment.

**B. Pregnant woman:**

(1) A pregnant woman who has no minor dependent children living with her can constitute a NMW benefit group during her last trimester of pregnancy. The woman is eligible only if the child, were it born, would be living with her and would be eligible for NMW. The pregnancy must be verified by a medical report.

(2) The needs, income and resources of an unborn child shall be considered in the determination of eligibility for NMW. The needs of the unborn child are not considered in the amount of payment.

(3) **Father living with the pregnant woman:** The needs, income and resources of the father of the unborn child shall be considered in determining eligibility and payment if the father lives in the home. The mother and the alleged father of the unborn child must provide the department with a written sworn statement attesting to paternity.

(4) A pregnant woman who has one or more dependent children living with her must meet the conditions of Subsection H of 8.102.400.9 NMAC; benefit groups containing dependent children.

**C. Specified relative of SSI child:** A specified relative whose only minor dependent child is an SSI recipient meets the requirement of living with a related minor child and constitutes a NMW benefit group. Other household members may also be included, subject to limitations set forth at 8.102.400.10 NMAC and 8.102.400.11 NMAC.

[8.102.400.12 NMAC - Rp 8.102.400.12 NMAC, 07/01/2001; A, 7/17/2006; A, 11/15/2007]

**8.102.400.13 [RESERVED]**

[8.102.400.13 NMAC - Rp 8.102.400.13 NMAC, 07/01/2001]

**8.102.400.14 NMW LIVING ARRANGEMENTS - REQUIREMENTS:**

**A.** For a NMW benefit group to exist, a dependent child must be living in the home of a parent or specified relative as specified in 8.102.400.15 NMAC. The relative must be the primary caretaker for the child and

must be within the fifth degree of relationship, as determined by New Mexico's Uniform Probate Practice Code (see Subsection A of 8.102.400.16 NMAC). To be considered as the caretaker, the specified relative in a NMW benefit group, the participant must be living, or considered to be living, in the home with the child.

**B.** A child or the caretaker relative may in certain situations be temporarily domiciled away from home, but nonetheless be considered as living at home. Such situations result when the parent or caretaker relative has decided to domicile the child elsewhere because of a specific need identified by the parent or caretaker relative and provided that the parent or caretaker relative remains responsible for providing care and support to the child and retains parental control over the child.

[8.102.400.14 NMAC - Rp 8.102.400.14 NMAC, 07/01/2001; A, 7/17/2006; A, 11/15/2007]

#### **8.102.400.15 NMW LIVING IN THE HOME**

##### **A. Basic requirements:**

(1) To be eligible for inclusion in the NMW cash assistance benefit group, the dependent child must live with a parent or a specified relative acting as the head of household. A child lives with a participant when:

(a) the participant's home is the primary place of residence for the child, as evidenced by the child's customary physical presence in the home;

(b) the participant may or may not be the child's parent or caretaker;

(c) the caretaker is the person taking primary responsibility for the care of the child, the caretaker will be a parent, relative or it may be an unrelated adult; the caretaker may or may not be the head of household.

(2) The determination of whether a given participant functions as the parent or caretaker relative for NMW purposes shall be made by the client unless other information known to the caseworker clearly indicates otherwise.

##### **B. Extended living in the home:**

(1) Under the circumstances described in this section, a child may be physically absent from the home for periods of time, but, because of the nature of the absence and because the parent or caretaker relative continues to exercise parental control over and to provide care for the child during the time the child is physically away from the family's home, the child nonetheless remains a regular on-going member of the benefit group. Similarly, under certain circumstances, the caretaker could be physically absent from the home and still retain membership status as caretaker for purposes of eligibility.

(2) The circumstances where this occurs are:

(a) attending boarding schools or college and

(b) inpatient treatment in medicaid facilities; in order for either the child or the caretaker to retain living-in-the-home status, the person acting as the caretaker must retain responsibilities for providing care, support and supervision for the child which are appropriate to the child's specific living arrangements.

(3) In considering whether the caretaker retains care and support responsibilities for a child who is hospitalized or at school, issues which shall be reviewed include the degree to which the parent:

(a) provides financial support to the child from the cash assistance payment;

(b) continues to maintain living quarters for the child until the child reestablishes full-time physical presence in the home; and

(c) continues to make decisions regarding the care and control of the child(ren), including decisions about medical care and treatment, class scheduling, and other similar parental decisions;

(d) maintains contact with the child through regular visits or telephone calls.

(4) The determination whether living-in-the-home status is retained is fully discussed with the caretaker and carefully documented in the case record.

(a) **Boarding school:** A child or caretaker relative who is attending school away from home lives in the home if the caretaker relative retains primary responsibility for the child relative.

(b) **Medicaid:**

(i) **Caretaker:** A caretaker receiving treatment in a Title XIX facility remains a member of the benefit group of which the caretaker was a member at the time of hospitalization until the caretaker leaves the facility and returns to that home or some other. If the caretaker does not return to the home following hospitalization, the living-in-the-home requirement shall be reassessed.

(ii) **Dependent children:** For the purposes of the cash assistance program, a child hospitalized for care or treatment in a Title XIX (medicaid) facility retains living-in-the-home status, without regard to the length of hospitalization, provided that the caretaker continues to be the person with primary responsibility for

control of the child and for meeting the child's physical and emotional needs. This includes children receiving treatment in acute care hospitals, freestanding psychiatric hospitals and rehabilitation hospitals as well as residential treatment centers and group homes reimbursed by medicaid for psychosocial rehabilitation services. Medical assistance division institutional care staff may be contacted to verify New Mexico medicaid provider status of RTCs and group homes.

(5) For a child to retain living-in-the-home status while receiving rehabilitation services, including psychosocial treatment services, certain conditions must be met. Treatment of the child is the primary objective, but the program should be family-based with one objective being strengthening of family ties. Treatment plans must provide for a significant level of continuing authority, responsibility, and participation by the caretaker. In order for children receiving treatment in a Title XIX facility to be "living in the home", the caretaker must retain the authority to decide when the child should leave the facility, grant authority for provision of necessary treatment, and retain responsibility for provision of pocket money, clothing, etc.

(6) A significant issue in determining whether a child retains living-in-the-home status is the authority of the caretaker to control the child's treatment and duration of stay. Under the state's mental health code, a court order placing the child in a psychiatric facility must be issued. The court findings serve to make sure that the child needs such treatment. Such orders do not prevent the specified relative from removing the child from the facility. These orders must be differentiated from correctional commitments or sentences. A child receiving treatment in a Title XIX facility, or placed in other substitute care living arrangements by juvenile authorities as the result of a sentence or commitment by a judicial authority does not meet the definition of actually living in the home, as the caretaker no longer has significant control over the child.

(7) A child may qualify for extended living-in-the-home provisions under these conditions:

- (a) the child must have been living in the home before hospitalization;
- (b) the child must have been living in the home before attending boarding school or college.

**C. Joint custody:** A child who is in the joint custody of divorced parents who are living apart and who is actually spending equal amounts of time with both parents shall not be considered to be living with the caretaker. If the divorce decree specifies equal joint custody, but the child is actually spending more time with one parent than the other, the child would be determined to be living with the parent with whom the child spends the most time.

**D. Absence from the home:**

(1) A minor child may remain in the benefit group and remain eligible for benefits for up to 45 days following the date of departure or expected absence from the home. Such a child may not simultaneously be in another NMW or GA benefit group.

(2) A child shall be considered to have left the home, when the child is physically absent from the home and is under the care, control, custody, of himself, another relative or another adult, social services or correctional agency, or other agency of state, local, or tribal government.

**E. Reporting departure of child from the home:** Pursuant to Section 408 (a)(10)(C) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the parent, relative, or caretaker of a minor child included in the NMW benefit group is ineligible to be included in the benefit group if the parent or relative or caretaker fails to report the absence from the home of a minor child who is a member of the benefit group. To be eligible, the adult must report the departure of the minor child by no later than 5 days after the adult becomes aware that the child is absent or will be absent in excess of the 45 days allowed under Subsection D of 8.102.400.15 NMAC. The adult shall remain ineligible for the number of months that the benefit group is sanctioned for non-reporting as provided for at 8.102.620.11 NMAC.

[8.102.400.15 NMAC - Rp 8.102.400.15 NMAC, 07/01/2001; A, 7/17/2006; A, 11/15/2007]

**8.102.400.16 RELATIONSHIP**

**A. NMW requirement:**

(1) The following relatives are within the fifth degree of relationship to the dependent child:

- (a) father (biological or adoptive);
- (b) mother (biological or adoptive);
- (c) grandfather, great grandfather, great-great grandfather, great-great-great grandfather;
- (d) grandmother, great-grandmother, great-great-grandmother, great-great-great grandmother;
- (e) spouse of child's parent (stepparent);
- (f) spouse of child's grandparent, great grandparent, great-great grandparent, great-great-great grandparent (step-grandparent);

- (g) brother, half-brother, brother-in-law, stepbrother;
- (h) sister, half-sister, sister-in-law, stepsister;
- (i) uncle of the whole or half-blood, uncle-in-law, great uncle, great-great uncle;
- (j) aunt of the whole or half blood, aunt-in-law, great aunt, great-great aunt;
- (k) first cousin and spouse of first cousin;
- (l) son or daughter of first cousin (first cousin once removed);
- (m) son or daughter of great aunt or great uncle (first cousin once removed) and spouse;
- (n) nephew/niece and spouses.

(2) A second cousin is a child of a first cousin once removed or child of a child of a great aunt or uncle and is not within the fifth degree of relationship.

(3) GA is not provided to dependent children where a NMW application has been made and verification of relationship is pending.

(4) Below is the table of relationship based on the Uniform Probate Practice Code. The relationships shown with an "X" are not within the fifth degree of relationship.

**B. Effect of divorce or death on relationship:** A relationship based upon marriage, such as the "in-law", or "step-" relationships, continues to exist following the dissolution of the marriage by divorce or death.

**C. Table of relationships:**

					5 Great-Great- Great Grandparents
				4 Great-Great Grandparents	X
			3 Great Grandparents	5 Great-Grand Uncles and Aunts	
		2 Grandparents	4 Great Aunt Great Uncle	X	
	1 Parents	3 Aunt/Uncle	5 First Cousin Once- Removed		
Dependent Child	2 Siblings	4 First Cousins	X		
	3 Nephew/ Niece	5 First Cousin Once- Removed			
	4 Grand Nephew Grand Niece	X			
	5 Great Grand Nephew or Niece				
	X				

**D. Verifying relationship:** Standards for verification of relationship are set forth at Subsection H of

8.100.130.13 NMAC.

[8.102.400.16 NMAC - Rp 8.102.400.16 NMAC, 07/01/2001]

**History of 8.102.400 NMAC:**

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

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**History of Repealed Material:** 8 NMAC 3.FAP, Financial Assistance Program - Repealed, 07/01/97.

8.102.400 NMAC Recipient Policies- Defining the Assistance Group - Repealed 07/01/01.