

This is an amendment to 8.102.620 NMAC, Sections 10 and 11.

8.102.620.10 CHILD SUPPORT AND WORK PROGRAM NON-COOPERATION PAYMENT SANCTIONS

A. General:

(1) Failure by a benefit group member to meet work program participation requirements or failure by the adult responsible for children included in a benefit group to meet child support cooperation requirements, shall result in a payment reduction~~[s]~~ of 25% for the first occurrence, 50% for the second occurrence and case closure for the third occurrence. Cases closed due to sanctioning are ineligible for a period of six months.

(a) Prior to imposition of the first sanction, the individual shall be given the opportunity to meet requirements or to have them waived for good cause through a conciliation process. If the individual does not agree to cooperate by the end of the conciliation period, a payment sanction shall be imposed. The reduction shall be applied to the payment standard.

(b) Child support cooperation requirements shall be applicable to the adult even if the adult is not included in the benefit group. Payment sanctions shall be applicable to benefit group payments even if the adult is not included in the benefit group.

(2) Occurrence of Non-Cooperation:

(a) Each instance in which an individual is determined by the Department to have failed to meet a work participation or child support requirement shall be considered a separate occurrence of noncompliance.

(b) When the noncompliance continues for three months without the sanctioned individual reestablishing compliance, progression to the next higher sanction level shall result in the fourth month.

(c) Reestablishing compliance shall allow full payment to resume or shall appropriately reduce the sanction level for the case in the month following the month compliance is established.

(3) Cumulative Sanctions: Noncompliance sanctions are cumulative as they relate to an individual in the benefit group.

(a) A cumulative sanction shall result when there is one or more failures by an individual in the benefit group to comply with work program or child support enforcement requirements.

(b) A cumulative sanction, whether or not cured, shall remain the property of the individual benefit group member who caused the sanction. An individual with a cumulative sanction who leaves a benefit group relieves the benefit group of that individual's sanction status.

(c) An individual's compliance shall reverse the sanction level to the benefit group.

(d) An individual's sanction status can be reversed based on a hearing decision in favor of the individual that renders the sanction invalid.

(e) A third sanction level, which results in a mandatory six-month closure for the benefit group, cannot be reversed.

(4) Progressive Sanctions: Sanction levels shall be progressive to the benefit group in which the sanctioned individual resides.

(a) A sanction shall progress to the next level when an individual fails to comply in three-month increments, or as a result of any individual's repeated or separate occurrence of failure to comply with work program or child support enforcement requirements.

(b) A sanction shall progress until compliance is established by the individual or there is a waiver of the requirement.

(c) A progressive sanction shall be reversed based on a hearing decision that renders the sanction level invalid.

(d) An individual's compliance cannot reverse the sanction level attributed to the benefit group. Once a sanction has been imposed, 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 an individual once during ~~[a given]~~ an occurrence of assistance. There must be a period of at least 12 months between occurrences of assistance in order for a conciliation to be available again to the benefit group. Work program conciliation and child support conciliation are independent and are counted separately from each other.

~~[(2) Conciliation Process:]~~

~~[(a)]~~ **(2) Determining that Noncompliance Has Occurred:**

~~[(a)]~~ **(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 individual has failed to cooperate. Under Subsection B of 8.102.420.14 NMAC, the non-cooperative individual shall be individually disqualified from participation in the benefit group.

~~[(ii)] (b)~~ The determination of noncompliance with work program requirements shall be made by the caseworker. ~~[Noncompliance with work programs exists if]~~ A finding of noncompliance shall be made if:

~~[(i)]~~ (i) ISD has not received a certification of assessment; ~~[as specified in 8.102.460 NMAC;~~

~~[(ii)]~~ (ii) the individual fails or refuses to complete an IRP; ~~[or if]~~

~~[(iii)]~~ (iii) the participant fails or refuses to submit an ~~[acceptable]~~ approvable WPA; ~~[or if]~~

~~[(iv)]~~ (iv) the participant's monthly ~~[participation]~~ attendance report shows fewer than the minimum required hours of participation ~~[(primary and total);]~~ in primary and total work activities.

~~[(b)] (3)~~ **Initiating Conciliation:** Within 10 days of determining that noncompliance exists, the caseworker shall take action to initiate a conciliation, if the individual's conciliation has not been used. A conciliation is initiated by the caseworker issuing a conciliation notice.

~~[(c)] (4)~~ **Conciliation Period:**

~~[(a)]~~ (a) Conciliation is a 30-day period during which the individual has the opportunity 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. 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. 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)]~~ (b) With child support cooperation 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. If the caseworker does not receive confirmation from CSED within 30 days of issuing the conciliation notice that the individual is cooperating or has requested a waiver; the conciliation process shall be considered to have failed and the participant shall be subject to removal from the benefit group and the remaining benefit group shall be subject to payment sanctioning.

~~[(c)]~~ (c) The caseworker shall make the determination whether arrangements have been made to meet work program 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 individual is subject to sanctioning.

~~[(d)] C.~~ **Sanctioning:**

~~[(1)]~~ (1) Within 10 days of determining that an individual has failed to meet a cooperation requirement, ISD shall issue notice of adverse action that the payment shall be reduced. The payment reduction shall take place ~~[in]~~ with the first payment following expiration of the notice of adverse action.

~~[(2)]~~ (2) Notice of adverse action shall apply to all work program and child support noncompliance sanctions, including those ~~[completing]~~ relating to the conciliation process.

(3) An individual who corrects the failure of compliance with work program 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. An individual 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) A sanction shall be removed effective the month following the month in which the determination is made that the individual has complied with requirements.

(b) A child support enforcement sanction shall be removed after CSED notifies the caseworker that the individual is in compliance with child support enforcement requirements.

(c) A work program sanction shall be removed after the caseworker receives verification that the individual has completed an Assessment; or has completed an IRP; or has completed a WPA that indicates the

appropriate number of weekly hours in work activities; or has met work program participation hours for at least thirty (30) days; or has good cause to waive work participation requirements.

[C-] D. Sanction Levels:

(1) First-Level Sanction:

(a) The first failure to comply, or first step sanction for failure to comply, shall result in a sanction of 25% of the standard of need. The benefit group shall be given concurrent notice of the imposition of the sanction.

(b) If the step one, or 25% sanction, lasts for more than three months, or an individual has a second incident of failure to comply, the sanction shall advance to step two, or 50% 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% of the standard of need. The second level is initiated by failure to comply with work program participation or child support enforcement requirements for more than three months; a second instance of noncompliance with a requirement by the benefit group; or failure to comply with two requirements: such as, failure to comply with both CSED and work program participation requirements. The group shall be given concurrent notice of imposition of the second-level sanction.

(b) A failure to meet work or CSED requirements for more than three months at the second level, or a third incidence of failure to comply with any program requirement, or failure to comply with work program or CSED requirement by more than one member of the benefit group, shall result in the third sanction level, 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 an individual is sanctioned at the third level, any subsequent incident of failure to comply with program requirements shall immediately result in the third level of sanction, case ineligibility for six months.

[D-] E. Sanctions by Other States or Other Programs: Individuals 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.

[E-] 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 and lose eligibility for support services

[8.102.620.10 NMAC - Rp 8.102.620.10 NMAC, 07/01/2001; A, 02/14/2002]

8.102.620.11 NON-REPORTING SANCTIONS

A. General: The eligibility determination and payment calculation process relies upon applicants and recipients to provide accurate and timely reports of information affecting their eligibility and payment. Payment sanctions for non-reporting shall be established to encourage timely and accurate reporting and to offset benefits resulting from the reporting of inaccurate or misleading information, the untimely reporting of changes, or the failure to report any required information.

B. Non-Reporting Sanctions:

(1) Length of Sanction: Each non-reporting sanction shall run for a period of four months for the first month in which failure to report occurred. An additional month shall be added for each additional month of non-reporting until the payment is corrected.

(2) Definition of an Occurrence of Non-Reporting: An occurrence of non-reporting exists when an applicant or recipient fails to report information or reports incorrect information which results in an overpayment of financial assistance benefits for which the individual is at fault.

(3) Amount of Sanction:

(a) Reporting sanctions shall be calculated at 25% of standard of need for the size of the benefit group being sanctioned.

(b) Reporting sanctions are not progressive. If there is another occurrence of non-reporting prior to the end of a non-reporting sanction period, the next and any subsequent non-reporting sanctions shall be consecutive and at the 25% level.

(c) Reporting sanctions, child support sanctions and work program sanctions shall be integrated into a single calculation to determine the final sanction amount.

(d) If a case closes during a reporting sanction period for reasons other than sanctions, the non-reporting sanction shall be suspended and resumed at the same duration the next time the case is opened.

(4) **Procedures:** The following steps shall be taken in implementing a payment sanction.

(a) The worker shall document and establish an overpayment claim using ISD2 overpayment claims procedures. The worker shall also determine whether the recipient was at fault.

(b) The county director or a designated unit supervisor shall review the overpayment and determine the accuracy of the overpayment determination and appropriateness of the fault determination. Upon determining that all is in order, the county director, or designated supervisor shall cause a notice of intent to sanction to be issued to the recipient. Failure by the recipient to contact the person issuing the notice within the 10 working days allowed shall constitute waiver of conciliation rights.

(c) If the recipient requests conciliation within the 10 working days of issuance of notice, the county director or designated supervisor shall schedule a conciliation conference.

(d) The conciliation conference is conducted by the county director or designated supervisor.

(i) The caseworker shall describe the reporting error, how the amount of the overpayment is determined and the reasons for finding the recipient at fault.

(ii) The recipient shall have the opportunity to discuss the overpayment determination, the finding of fault and to show good cause why the sanction should not be imposed.

(iii) Based upon this determination, the county director or designated supervisor shall determine whether a sanction should be imposed.

(iv) The recipient may represent himself or be represented by someone else. If the recipient wishes to be represented by another individual, the recipient must designate that individual on a form ISD-121.

(e) Following the conference, the county director shall issue written notice stating whether or not the sanction is to be imposed, and the worker shall effect the sanction causing issuance of a notice of adverse action. The payment reduction takes effect ~~the~~ in the month following expiration of the notice of adverse action.

(f) Recipients who disagree with the sanction determination shall have fair hearing rights and access to legal adjudication through the fair hearing process.

C. Quarterly Reporting: A benefit group subject to Quarterly Reporting shall be subject to non-reporting sanctions as specified in Subsection J of 8.102.120.11 NMAC.

[8.102.620.11 NMAC - Rp 8.102.620.11 NMAC, 07/01/2001; A, 02/14/2002]