

This is an emergency to amend 8.290.400 NMAC, Sections 9 and 10, which will be effective on December 1, 2006. The Medical Assistance Division amended the section to include Mi Via Home and Community-Based Services Waiver.

8.290.400.9 HOME AND COMMUNITY-BASED WAIVER SERVICES - Category 090, 091, 092, 093, 094, 095, 096: The human services department (HSD) is the single state agency designated to administer the medicaid program in New Mexico. The department of health (DOH), the aging and long term services department (ALTSD) and the human services department ~~[is]~~ are charged with developing and implementing home and community-based waiver services (HCBWS) to ~~[be furnished]~~ medicaid applicants/recipients who meet both financial and medical criteria for an institutional level of care. Provision of these services under a waiver allows applicants/recipients to receive the care required at home at less cost than in an institution. The services to be furnished under the waiver must be cost-effective. This means the aggregate cost of care must be an amount less than the cost of maintaining individuals in institutions at the appropriate level of care. The types of services for which medicaid recipients are eligible vary based on the individual waiver. See medical assistance division program manual for the standards for individual waiver of covered services and program policies for all waiver services. The following sections contain the eligibility policy for all waiver services. Unless specifically approved by the medical assistance division director, no other policies, procedures, or rules of any kind apply.
[2/1/95; 8.290.400.9 NMAC - Rn, 8 NMAC 4.WAV.400 & A, 5/1/02; A/E, 12-1-06]

8.290.400.10 BASIS FOR DEFINING THE GROUP: Eligibility for applicants/recipients who apply for waiver services is determined as if he/she were actually institutionalized, although this requirement has been waived. Entry into some of the waiver programs may be based upon the number of unduplicated recipient positions (UDRs) (i.e., slots). Some waiver categories require individuals to be placed on a central registry. The individual waiver program manager is responsible for notifying ISD when an individual is allocated into a waiver program.

A. **Disabled and elderly (D&E) waiver:** The disabled and elderly waiver identified as categories 091 (elderly), 093 (blind) and 094 (disabled) was approved effective July 1983, subject to renewal. To qualify as disabled or blind for the purposes of this waiver, disability or blindness must have been determined to exist by the disability determination contractor (DDC). To qualify as an elderly person for purposes of this waiver, the applicant/recipient must be sixty-five (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. **Developmentally disabled (DD) waiver:** The developmental disabled waiver identified as category 096 was approved effective July 1984, subject to renewal. This waiver is designed to furnish services to applicants/recipients who meet the definition of a developmental disability and mental retardation or specific related condition as determined by the department of health and the DDC in accordance with the approved DD waiver criteria, including the following:

(1) The individual has a developmental disability, defined as a severe chronic disability, other than mental illness, that:

(a) is attributable to a mental or physical impairment, including the result of trauma to the brain, or a combination of mental and physical impairments;

(b) is manifested before the person reaches the age of twenty-two years (22);

(c) is expected to continue indefinitely;

(d) results in substantial functional limitations in three or more of the following areas of major life activity:

- (i) self-care;
- (ii) receptive and expressive language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction;
- (vi) capacity for independent living; and
- (vii) economic self-sufficiency; and

(e) reflects the person's need for a combination and sequence of special or interdisciplinary treatment, generic or other support and services that are of lifelong or extended duration and are individually planned and coordinated.

(2) The individual also has mental retardation or a specific related condition, limited to cerebral palsy, autism (asberger syndrome), seizure disorders, chromosomal disorders (e.g. downs), syndrome disorders, inborn errors of metabolism, and developmental disorders of brain formation.

(3) The individual must also require the level of care provided in an intermediate care facility for the mentally retarded (ICF-MR), and meet all other applicable financial and non-financial eligibility requirements.

C. **Medically fragile (MF) waiver:** The medically fragile (MF) waiver identified as category 095 was established effective August, 1984 subject to renewal. To be eligible for the medically fragile waiver, an applicant/recipient must meet the level of care required for admission to an intermediate care facility for the mentally retarded (ICF/MR), and meet all other applicable financial and non-financial eligibility requirements.

(1) To qualify for the MF waiver an individual must:

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

(b) be diagnosed with a medically fragile condition prior to the age of twenty-two (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:

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

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

(iii) 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

(iv) 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. This waiver serves applicants/recipients diagnosed with AIDS/ARC. Applicants/recipients must require institutional level of care and meet all other applicable financial and non-financial eligibility requirements.

E. **Brain injury (BI) under the mi via waiver:** Brain injury under the mi via waiver, designated as category 092, is effective December 1, 2006 and subject to renewal. To qualify for purposes of this waiver, the applicant/recipient must be under sixty-five (65) years of age, meet all other applicable financial and non-financial eligibility requirements and have a brain injury. Brain injury is defined as 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 the following:

(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 perception and motor abilities; psychosocial behavior; physical functions; information processing; and speech;

(3) the term "brain injury" does not apply to 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, as defined by the state; a list of applicable international classification of disease (ICD9) codes can be obtained from ALTSD or HSD/MAD; and

(4) individuals who require nursing facility level of care.

[2/1/95; 3/15/96; 8.290.400.10 NMAC – Rn, 8 NMAC 4.WAV.402 & A, 5/1/02; A/E, 12-1-06]