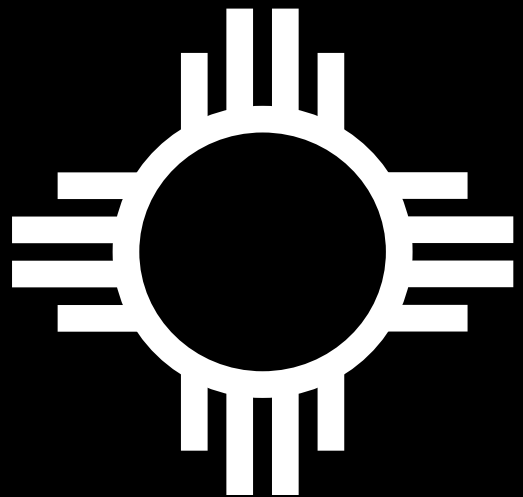


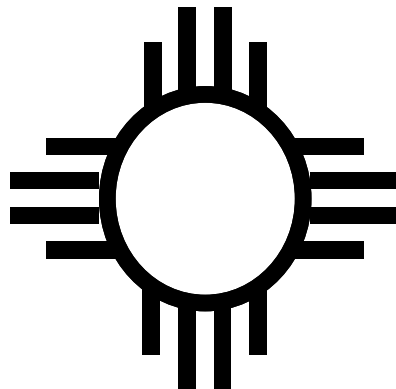
**NEW
MEXICO
REGISTER**



Volume XVIII
Issue Number 21
November 15, 2007

New Mexico Register

**Volume XVIII, Issue Number 21
November 15, 2007**



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2007

COPYRIGHT © 2007
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XVIII, Number 21

November 15, 2007

Table of Contents

Notices of Rulemaking and Proposed Rules

Medical Board

Notice of Regular Board Meeting and Public Rule Hearing 1029

Taxation and Revenue Department

Notice of Hearing and Proposed Rules 1029

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Aging and Long-Term Services Department

8.326.10 NMAC N Traumatic Brain Injury Trust Fund Program 1031

Chiropractic Examiners, Board of

16.4.1 NMAC A Chiropractic Practitioners: General Provisions 1041

16.4.10 NMAC A Continuing Education 1041

Counseling and Therapy Practice Board

16.27.5 NMAC R Requirements for Licensure as a Professional Clinical Mental Health Counselor for Current Licensed LPC's 1042

16.27.8 NMAC R Requirements for Licensure as a Professional Mental Health Counselor (LPC). 1042

16.27.23 NMAC N Licensure as an Alcohol and Drug Abuse Counselor (LADAC) for Current Credential Alcohol and Drug Abuse Counselor (CADAC) 1042

16.27.2 NMAC A Mental Health Core Curriculum Requirements 1043

16.27.3 NMAC A Application Procedures, Initial Licenses, License Period 1044

16.27.4 NMAC A Requirements for Licensure as a Professional Clinical Mental Health Counselor (LPCC) 1044

16.27.7 NMAC A Requirements for Licensure as a Professional Art Therapist (LPAT) 1044

16.27.9 NMAC A Requirements for Licensure as a Mental Health Counselor (LMHC) (Practice Under Supervision). 1045

16.27.11 NMAC A Requirements for Licensure with Examination as an Alcohol and Drug Abuse Counselor (LADAC) Effective July 1, 2005 1046

16.27.13 NMAC A Requirements for Licensure as a Substance Abuse Associate (LSAA) Effective July 1, 2005. 1047

16.27.16 NMAC A Continuing Education 1047

Finance and Administration, Department of

2.40.2 NMAC A/E Governing the Approval of Contracts for the Purchase of Professional Services 1048

Higher Education Department

5.7.20 NMAC A Legislative Lottery Scholarship Program 1048

Human Services Department

Income Support Division

8.102.110 NMAC A Cash Assistance Programs: General Operating Policies - Applications. 1051

8.102.120 NMAC A Cash Assistance Programs: Eligibility Policy - Case Administration 1054

8.102.400 NMAC A Cash Assistance Programs: Recipient Policies - Defining the Assistance Group 1058

8.102.410 NMAC A Cash Assistance Programs: Recipient Policies - General Recipient Requirements. 1062

8.102.420 NMAC A Cash Assistance Programs: Recipient Policies - Special Recipient Requirements 1067

8.102.460 NMAC A Cash Assistance Programs: Recipient Policies - Defining Group Work Program Activities 1072

8.102.500 NMAC A Cash Assistance Programs: Eligibility Policy - General Information 1078

8.102.520 NMAC	A	Cash Assistance Programs: Eligibility Policy - Income.	1081
8.102.610 NMAC	A	Cash Assistance Programs: Description of Program/Benefits - Benefit Delivery.	1084
8.102.620 NMAC	A	Cash Assistance Programs: Description of Program Benefits - Benefit Determination/General	1087
8.102.630 NMAC	A	Cash Assistance Programs: Description of Program/Benefits - Changes in Eligibility	1091
8.102.640 NMAC	A	Cash Assistance Programs: Description of Program/Benefits - Benefit Corrections	1092
Public Regulation Commission			
Fire Marshal Division			
10 NMAC 25.4	R	Portable Fire Extinguishers.	1095
10 NMAC 25.5	R	Fire Prevention	1095
10 NMAC 25.6	R	Safe Handling and Sale of Fireworks.	1095
10 NMAC 25.7	R	Flammable and Combustible Liquids.	1095
10 NMAC 25.8	R	Storage of Flammable and Combustible Liquids at Farms and Isolated Sites	1095
10 NMAC 25.9	R	Use of Public Occupancies.	1095
10.25.1 NMAC	N	State Fire Marshal: General Provisions	1095
10.25.2 NMAC	N	Certificates of Fitness	1096
10.25.5 NMAC	N	Fire Prevention and Public Occupancy	1097
10.25.6 NMAC	N	Safe Handling and Sale of Fireworks.	1100
Insurance Division			
13.9.17 NMAC	N	Military Sales Practices	1102
Public Safety, Department of			
Training and Recruiting Division - Law Enforcement Academy			
10.29.7 NMAC	A	In-Service Training Requirements	1105

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

The New Mexico Register
 Published by
 The Commission of Public Records
 Administrative Law Division
 1205 Camino Carlos Rey
 Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail staterules@state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO MEDICAL BOARD

NEW MEXICO MEDICAL BOARD

Notice

Please take notice a revised schedule is set for the Public Rule Hearing.

The New Mexico Medical Board will convene a regular Board Meeting on Thursday, November 15, 2007 at 8:00 a.m. and Friday, November 16, 2007 at 8:30 a.m. in the Conference Room, 2055 S. Pacheco, Building 400, Santa Fe, New Mexico. A Public Rule Hearing will be held on Friday, November 16, 2007 at 9:00 a.m. The Board will reconvene after the Hearing to take action on the proposed rules. The Board may enter into Executive Session during the meeting to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider amending 16.10.2 NMAC (Physicians: Licensure Requirements), 16.10.3 NMAC (Examinations), 16.10.4 (Continuing Medical Education), 16.10.9 NMAC (Fees), and 16.10.11 NMAC (Physicians Supervising Pharmacist Clinicians).

Changes to Parts 2, 3, 4 and 11 will provide further clarification of licensure requirements, examinations, continuing medical education and supervisions of Pharmacist Clinicians. Changes to Part 9 will increase licensing fees.

Copies of the proposed rules will be available on October 15th on request from the Board office at the address listed above, by phone (505) 476-7220, or on the Internet at www.nmmb@state.nm.us.

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m., November 9, 2007, to the board office, 2055 S. Pacheco, Building 400, Santa Fe, NM, 87505.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact Lynnelle Tipton, Administrative Assistant at 2055 S. Pacheco, Building 400, Santa Fe, NM at least one week prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to amend the following regulations:

Tax Administration Act

3.1.4.17 NMAC Section 7-1-71.4 NMSA 1978

(Approved Electronic Media)

Income Tax Act

3.3.12.13 NMAC Section 7-2-12.3 NMSA 1978

(Electronically Filed Returns)

The New Mexico Taxation and Revenue Department proposes to repeal the following regulation:

Tax Administration Act

3.1.11.19 NMAC Section 7-1-71.2 NMSA 1978

(Penalty for Failure to Correctly Report Deduction Amount)

These proposals were placed on file in the Office of the Secretary on November 1, 2007. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about January 15, 2008.

A public hearing will be held on the proposals on Wednesday, December 19, 2007, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before December 19, 2007.

3.1.4.17 APPROVED ELECTRONIC MEDIA: Department approved electronic media includes:

A. an electronic transmis-

sion of the personal income tax return data submitted in an approved format using a computer language designated by the department, or

B. a paper return with a PDF 2D barcode printed on the form, which contains the tax return information in a department approved format.

[3.1.4.17 NMAC - N, XXX]

3.3.12.13 ELECTRONICALLY FILED RETURNS:

[A-] A taxpayer, a taxpayer's representative or a tax return preparer may file the personal income tax return and associated schedules in an electronic format [after receiving approval for such method of filing from the department. To receive approval the taxpayer, taxpayer's representative or tax return preparer must apply in writing and demonstrate that such filing will meet] that meets all criteria for filing through an electronic media as set forth by the department. Returns filed through an electronic media must use computer programming determined by the department to be compatible with the computer programming and equipment used by the department for processing income tax returns. The returns must be submitted in an approved format using a computer language designated by the department. The product used to generate the electronic return must receive prior approval from the department for the method of filing.

[B- This section (3.3.12.13 NMAC) applies to taxable years beginning on or after January 1, 1989.]

[7/20/90, 3/16/92, 1/15/97; 3.3.12.13 NMAC - Rn & A, 3 NMAC 3.12.13, 12/14/00; A, XXX]

3.1.11.19 [PENALTY FOR FAILURE TO CORRECTLY REPORT DEDUCTION AMOUNT]

A. A taxpayer who takes the benefit of the deduction provided by either Section 7-9-92 or 7-9-93 NMSA 1978 and fails to correctly report an amount deductible under those sections is subject to the penalty provided by Section 7-1-71.2 NMSA 1972.

B. A taxpayer fails to correctly report the amount of a deduction provided by Section 7-9-92 or 7-9-93 NMSA 1978 when the taxpayer:

(1) excludes from both reported gross receipts and reported deductions an amount deductible under those sections and not otherwise exempt;

(2) example 1: a "big box" store has sales of \$200,000. \$10,000 is from sales of food in exchange for food stamps and \$20,000 is from other sales of food; the taxpayer reports gross receipts of \$170,000 and

zero deductions and pays the appropriate tax on the \$170,000; although the \$10,000 in food stamp sales is exempt under Section 7-9-18.1 NMSA 1978, the other \$20,000 in food sales is not; those sales are deductible under Section 7-9-92 NMSA 1978 and must be reported as gross receipts and then deducted properly; the penalty under Section 7-1-71.2 NMSA 1978 applies to the under-reported \$20,000;

(3) does not report an amount deductible under those sections separately from other deductions in accordance with instructions of the secretary;

(4) example 2: an osteopath has \$25,000 in receipts; the osteopath sold under contract \$5,000 worth of services to a hospital for re-sale to a patient and has accepted a type 5 nontaxable transaction certificate in connection with those services; the \$5,000 is deductible under Section 7-9-48 NMSA 1978; the remaining \$20,000 in services are also deductible, but under Section 7-9-93 NMSA 1978; the osteopath reports, contrary to the instructions of the secretary, on a single line \$25,000 in gross receipts and \$25,000 in deductions; the penalty under Section 7-1-71.2 NMSA 1978 applies to this \$20,000 under reporting of the deductions subject to Section 7-9-93 NMSA 1978;

(5) reports an amount as a deduction under those sections when the amount should be reported as an exemption or deduction under another section of the Gross Receipts and Compensating Tax Act;

(a) example 3: a grocer sells qualifying food items to a food stamp recipient in exchange for food stamps; the grocer deducts the value of the food stamps received under Section 7-9-92 NMSA 1978; the sale of food items purchased with food stamps is exempt under Section 7-9-18.1 NMSA 1978; the taxpayer has over reported deductions under Section 7-9-92 NMSA 1978 and the penalty under Section 7-1-71.2 NMSA 1978 applies to the amount of the over-reporting;

(b) example 4: a physician receives payment from a medicare administrator for health care services provided to a medicare enrollee; the physician deducts the payment from gross receipts under Section 7-9-93 NMSA 1978; medicare payments to physicians are deductible under Section 7-9-77.1 NMSA 1978; the physician has over-reported the deduction under Section 7-9-93 NMSA 1978 and the penalty under Section 7-1-71.2 NMSA 1978 applies to the over-reporting;

(6) reports as a deduction under those sections an amount in excess of that permitted by those sections.

C. The penalty provided by Section 7-1-71.2 NMSA 1978 is in addition to other penalties provided by the Tax Administration Act.

D. Because not claiming a deduction is not a failure to correctly report the amount of a deduction, the penalty will not apply if the taxpayer is entitled to, but does not claim, a deduction under Section 7-9-92 or 7-9-93 NMSA 1978.

E. If a return subject to the penalty provided by Section 7-1-71.2 NMSA 1978 is amended one or more times on or before the due date of the return, and the food and/or medical deductions provided under 7-9-92 and/or 7-9-93 NMSA 1978 are reported correctly on the last timely amended return, no local option penalty shall be assessed.

F. Example: Grocery store B has total gross receipts of \$160,000. B files a timely CRS-1 return reporting regular gross receipts of \$60,000 and deductions allowed under other sections of the Gross Receipts and Compensating Tax Act of \$10,000 on line one and gross receipts and food deductions pursuant to Section 7-9-92 NMSA 1978, of \$100,000 using the special code "F" on line two. Before the due date of the return, B discovers that food stamp sales of \$40,000 were included on line 2 as a food deduction and files an amended report changing line two to reflect the correct gross receipts and food deductions of \$60,000. B is assessed no penalty.

G. If a return subject to the penalty provided by Section 7-1-71.2 NMSA 1978 is amended more than once, and all subsequently filed amended returns for that reporting period are received after the due date of the return, the maximum local option penalty shall be the penalty that would result from comparing the food and/or medical deductions reported pursuant to Sections 7-9-92 and/or 7-9-93 NMSA 1978 on the timely filed return to the food and/or medical deductions reported on the most recent amended return for that reporting period.

(1) Example: Grocery store G has total gross receipts of \$100,000. G submits a timely CRS-1 return showing \$100,000 in gross receipts and \$40,000 in deductions on line one. Line two is left blank.

(2) After the due date of the return, G amends the return to report \$70,000 in gross receipts and \$10,000 in deductions on line one, and \$30,000 in gross receipts and deductions on line two. An "F" in column B of line two identifies line two as food sales deductible under 7-9-92 NMSA 1978.

(3) G submits a second amended report in which line two is adjusted to report \$20,000 in deductible food sales. G will be assessed the local option penalty on the difference between the food deduction on the most recent amended return (\$20,000) and the first timely filed return (\$0). Since no food deduction was reported on the first filed timely return, the penalty is calculated

on the difference of \$20,000 multiplied by twice the applicable local option gross receipts tax rate.

H. If a return subject to the penalty provided by Section 7-1-71.2 NMSA 1978 is amended both before and after the due date of the return, the maximum local option penalty for that reporting period shall be the penalty that would result from a comparing the last timely filed amended return for that reporting period postmarked on or before the due date of the return and the most recent amended return for that reporting period.

I. Example: C is a medical practitioner. C files a timely CRS-1 return showing \$100,000 in total gross receipts and \$60,000 in deductions on line 1. Line 2 is blank. Before the due date of the return, C files an amended return showing \$100,000 in gross receipts and no deductions on line 1. Sixty thousand dollars in gross receipts deductible under 7-9-93, identified by an "M" in column B, are reported on line 2. After the due date of the return, C amends a second time. On the second amended return, C reports \$70,000 in gross receipts and \$30,000 in deductions on line 1 and \$30,000 in gross receipts deductible under 7-9-93 on line 2. C's penalty for misreporting will be calculated on the \$30,000 difference between the "M" deduction reported on the most recent amended report received before the due date of the return (\$60,000) and the "M" deduction reported on the last amended report received after the due date of the return (\$30,000) multiplied by twice the applicable local option gross receipts tax rate.

J. If an extension pursuant to Section 7-1-13 NMSA 1978 has been granted, for purposes of calculating the local option penalty under Section 7-9-71.1 NMSA 1978, the due date of the return is the last date of the extension period. No extension shall prevent the accrual of interest as otherwise provided by law.]

[RESERVED]
[3.1.11.19 NMAC - N, 1/31/05; A, 11/30/05; Repealed, XXX]

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT

**TITLE 8 SOCIAL SERVICES
CHAPTER 326 CASE MANAGEMENT SERVICES
PART 10 TRAUMATIC
BRAIN INJURY TRUST FUND PROGRAM**

8.326.10.1 ISSUING AGENCY:
Aging and Long-Term Services
Department.
[8.326.10.1 NMAC - N, 11/15/07]

8.326.10.2 SCOPE: This rule
applies to the general public.
[8.326.10.2 NMAC - N, 11/15/07]

**8.326.10.3 STATUTORY
AUTHORITY:** Subsection (E) of Section
9-23-6 NMSA 1978
[8.326.10.3 NMAC - N, 11/15/07]

8.326.10.4 DURATION:
Permanent
[8.326.10.4 NMAC - N, 11/15/07]

8.326.10.5 EFFECTIVE DATE:
11/15/07, unless a later date is cited at the
end of a section.
[8.326.10.5 NMAC - N, 11/15/07]

8.326.10.6 OBJECTIVE: The
objective of this rule is to establish policies,
procedures and to define standards of the
New Mexico aging and long-term services
department traumatic brain injury (TBI)
trust fund program that will provide timely
services for persons with qualifying brain
injuries that are a result of a trauma caused
by an outside force in order to promote
independence and to assist the individual in
accessing long term services and access to
community resources when there is no other
funding available.
[8.326.10.6 NMAC - N, 11/15/07]

8.326.10.7 DEFINITIONS:

**A. "Acquired brain
injury"** means a brain injury that is the
result of a metabolic disorder, cerebral vas-
cular insults, surgical procedures, tumors,
anoxia (lack of oxygen) or other internal
causes and does not fit the criteria for tra-
umatic brain injury.

**B. "Activities of daily liv-
ing"** means those tasks that define an in-
dependent existence and care of one's per-
sonal needs and may include: personal hygiene,
preparing and consuming meals, cleaning
the home, doing laundry, shopping for gro-

ceries, managing personal finances and
transporting oneself to and from various
locations in the pursuit of self-care.

**C. "Aging and long-term
services department (ALTS)"** means the
agency of New Mexico state government
that oversees the services for the elderly and
disability populations, which include the
TBI trust fund program.

D. "Crisis" means an
emergency situation that may be a serious
potential danger a turning point in an acute
injury or an emergency or an unstable or
crucial time in which a decisive change is
impending or a situation that has reached a
critical phase and may include; homeless
status, zero finances, unemployment due to
TBI, separation from support systems,
potential danger or abandonment.

**E. "Crisis interim peri-
od"** means a short-term period of 90 days
that can be reassessed and extended for
another 90-day period, limited to no more
than one consecutive year, if goals or ser-
vices have not reached completion or until
another funding source can be obtained.

F. "Education" means
providing individuals training in life skills
or activities of daily living, which they can
apply day to day, to help them to attain an
independent lifestyle.

**G. "Fiscal intermediary
agency"** means an agency that processes
reimbursement and funding for services and
goods for eligible recipients of the New
Mexico aging and long-term services
department TBI program.

H. "Grievance" means a
complaint or disagreement with regard to
how or whether a service provided through
the program is or can be provided.

I. "ICD 9 code" means
an International Code of Diseases diagnosis
assigned to a traumatic brain injury, which
has been obtained from and documented in
writing by a duly licensed physician or psy-
chologist.

J. "Imminent" means a
pending crisis that is bound to happen with
a clear and present danger to the health and
safety of a person who has sustained a tra-
umatic brain injury and who has exhausted
all available resources.

K. "Independence"
means the ability to live and perform activ-
ities of daily living with little or no assis-
tance from others and to access available
community resources.

L. "Individual" means an
individual who has been approved for ser-
vices in the TBI program through an applica-
tion process and who has provided medical
documentation of an appropriate ICD9
code.

**M. "Individual living
plan"** means a written individualized plan
with definite goals and strategies to accom-
plish that are aimed at assisting an individ-
ual in achieving strategies that lead to even-
tual independence including goals, measur-
able objectives, contact, progress, referrals,
outcome of services and other payor
resources. All TBI services must be in the
ILP, service coordinator, life skills and cri-
sis interim.

N. "Interim" means an
intervening time defined by the TBI pro-
gram as temporary, transitional services
within a defined period with a definite goal.

**O. "Legal resident of
New Mexico"** means a person residing in
New Mexico at the time of application.

P. "Life skills coach"
means a person who provides training in
activities of daily living for TBI individuals
that aids in their return to a lifestyle where
they function as independently as possible.

**Q. "Limited service coor-
dination"** means contact between the ser-
vice coordinator and the individuals once a
month either face-to-face or by telephone to
monitor status of crisis interim services or
life skills coaching, which continue after the
"active" period to ensure the continuity and
completion of specific limited services.

R. "Payor of last resort"
means a source of funding for TBI program
services that is not to be used until all other
possible payor sources have been denied or
exhausted.

S. "Residency" means
that a person must be a legal resident of
New Mexico and must be able to produce
documentation of a physical location of
New Mexico and not reside in an institution
or be in the process of being institutional-
ized.

T. "Risk" means a possi-
ble loss or injury, a dangerous element or
factor or a degree of probability of loss.

U. "Self-determination"
means the right of individuals to make deci-
sions that direct the path their life follows in
regard to medical, financial and all other
matters.

**V. "Service coordina-
tion"** means the coordinating of goods and
services and the referring of community
resources available for delivery to individ-
uals through the use of an individual living
plan (ILP).

W. "Short-term" means
an intervention period with beginning and
end points within which the trust fund may
be used to prevent or alleviate a crisis situa-
tion until circumstances stabilize or other
funding is obtained.

X. "Traumatic brain

injury (TBI)” means an insult to the brain from an outside physical force that may or may not have produced a diminished or altered state of consciousness. The term applies to open or closed head injuries resulting in an impairment of cognitive ability and/or physical functions but not necessarily both. Impairments in one or more areas such as: cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory; perceptual, and motor abilities; psychosocial behavior, physical function, information process and speech. Impairments may be either temporary or permanent and may cause partial or total functional disability and/or psychosocial disorientation.

Y. “TBI crisis interim services” means services for individuals that are critical when there has been a sudden change in the course of the medical, psychological or physical condition of an individual diagnosed with TBI or when there is an imminent risk to an individual’s health and safety.

Z. “TBI formulary” means the list of medications approved by the TBI trust fund for treatment of the TBI and related conditions, which are listed as: brand name medications; generic name medications and category of medications. Access to this formulary is through TBI service coordinators.

AA. “TBI trust fund program” means a short-term crisis interim program of up to 90-day increment duration, during which time services, goods and supports for the treatment of the TBI and conditions directly related to the TBI are offered to eligible individuals along with referrals to community resources that offer the opportunity to apply for long-term services, in order to promote an independent lifestyle of self-reliance. After the initial 90 days, a reassessment shall be done to determine whether there remains a need for an extension of additional periods of 90 days, limited to no more than one consecutive year, to complete any services that have been initiated.

BB. “TBI uniqueness” means that crisis interim services are intended to provide unique TBI specific services that are not available for eligible individuals from any other funding source.

CC. “Unit price system (UPS)” means the reimbursement for TBI services for direct care activities under state general funded contracts through the unit price system of the administrative services division of the aging and long term services department according to the component and service unit.

[8.326.10.7 NMAC - N, 11/15/07]

8.326.10.8 STANDARDS FOR PROVIDING SERVICES GOODS AND

SUPPORTS TO INDIVIDUALS WITH TRAUMATIC BRAIN INJURIES (TBI): TBI services are provided through three contractor components: service coordination, life skills coaching and crisis interim services. These services enhance the individual’s self-determination and promote independence. They include the expectation of individual and family participation. [8.326.10.8 NMAC - N, 11/15/07]

8.326.10.9 ELIGIBILITY REQUIREMENTS FOR INDIVIDUALS:

A. Diagnosis: Individuals are eligible for TBI service coordination services if they have a diagnosis of traumatic brain injury which has been documented in writing by a duly licensed physician or psychologist. Eligibility must be further substantiated by the assignment of an international code of diseases (ICD 9) TBI diagnosis obtained from their licensed practitioner of record.

B. Definition of TBI: As stated in Subsection X of 8.326.10.7 NMAC.

C. Residency: Eligible individuals must be legal residents of the state of New Mexico. They must be able to produce documentation of the physical location of their New Mexico residence. Those residing in an institution or in the process of transitioning to an institutional setting are not eligible for service coordination services through the TBI program. Those individuals who have a confirmed discharge date and are transitioning into the community are eligible for service coordination for a 30-day period prior to planned discharge date.

D. Service Coordination Duplication: Those served by other service coordination programs or systems are not eligible to receive service coordination through the TBI program. Such service coordination program might include:

- (1) medicaid salud service coordination;
- (2) medicaid adult therapy service coordination;
- (3) early periodic screening diagnostic testing service coordination;
- (4) medicaid waiver programs;
- (5) mi via waiver;
- (6) developmental disability waiver;
- (7) family infant toddler;
- (8) medically fragile;
- (9) HMOs; and
- (10) other private insurances.

E. Determination of Eligibility: The service coordination contractor is responsible for determining eligibility for the traumatic brain injury (TBI) program and maintaining documentation of eligibility status. Proof of eligibility status

including qualifying ICD 9 codes must be provided to the elderly and disability services division/TBI program or its designee upon request.

F. Limited Service Coordination: With written approval by TBI program manager or designee, rare exceptions may be made to allow individual cases to be opened for TBI program service coordination at the same time the individual is receiving non-TBI service coordination from programs such as those listed in Subsection D above. Limited service coordination of no more than 30 days may be used to make referrals of individuals to life skills coaching, crisis interim services and or to assist non-TBI program case managers in securing appropriate TBI resources for their individuals.

G. Non-TBI Service Coordination: Other case managers include such systems as those listed in Subsection D above. TBI service coordination contractors are responsible for determining eligibility for TBI life skills coaching for an individual that is receiving their service coordination from non-TBI program case managers and they must maintain documentation of proof of eligibility in the individual’s records.

[8.326.10.9 NMAC - N, 11/15/07]

8.326.10.10 SERVICE COORDINATION SERVICES PROVIDERS FOR TRAUMATIC BRAIN INJURY TRUST FUND PROGRAM:

A. Service Coordination Services: TBI service coordination is a problem-solving function that is intended to insure continuity of services and prevents fragmentation of services and endeavors to tap into any and all resources that are appropriate and accessible for eligible individuals. It is the responsibility of TBI service coordinators to neither under nor over-utilize available services. Service coordination includes the following scope of services:

- (1) process the application and assess the service needs for each individual through an appointed visit to determine the unique needs of the individual;
- (2) identify the appropriate services, supports and goods to meet the individual’s needs;
- (3) coordinate the delivery of services for the individual;
- (4) assist the individual in obtaining the qualifying ICD 9 code and access to services supports and goods;
- (5) develop an individual living plan (ILP) that includes all the services, goods, and supports recommended to the individual including referrals to life skills coaching (LSC) crisis interim services (CIS) and any other potential resources available in the local community;

(6) reassess needs every 90 days to ensure that the services the individual is receiving continue to be appropriate;

(7) maintain a 24-hour emergency response system that allows individuals to contact them. An emergency response written policy should be provided to all individuals and available for review by ALTSD;

(8) create a transition plan for eventual discharge from service coordination services; and

(9) document or record evidence of all services listed in this scope of services that are provided by the program to the individual in the individual's permanent TBI program record.

B. Entry into the TBI

program: Service coordinators must initiate entry into the TBI program funded services that include life skills coaching (LSC) and crisis interim services (CIS).

(1) Service coverage area for the TBI service coordination contractor must be throughout at least one entire program region as specified in the contract provider agreement with ALTSD.

(2) Frequency of contact with individual shall be no less than one hour face to face each month unless otherwise approved in writing by the TBI program manager or designee.

(3) Limited services coordination is available to individuals who continue to receive crisis interim services or life skills coaching and these individuals must be contacted monthly either face to face or by telephone. This contact may be less than one hour.

(4) Assist individuals with application process. Individuals must be found eligible prior to receiving life skills coaching or crisis interim services.

(5) Facilitate independent living to individuals who have qualified for TBI services.

(6) Coordinate with other case managers from Medicaid, waivers, and private insurance especially when the individual is transitioning from the TBI program into another system.

(7) Facilitate team meetings with individual and other program agencies or individual professionals to streamline services.

(8) Complete an individual living plan (ILP), which shall be written and developed by the individual and their service coordinator and shall include:

(a) goals and objectives;

(b) education and support necessary to reach goals and objectives;

(c) number of hours per month the individual will receive TBI service coordination;

(d) expected measurable outcomes;

(e) time frames for reaching goals and meeting objectives;

(f) plans for discharge or transfer to another program or payor source;

(g) identification of all persons, services and or products necessary to reach the individual's goals and accomplish their objectives shall be included in the ILP; and

(h) identification and estimated cost of services and or goods provided by crisis interim services.

(9) TBI life skills coaching and or crisis interim services can not be initiated until the individual's service coordinator has included the services in the ILP.

(10) Maintain case records of each individual served including but not limited to:

(a) two page application;

(b) intake form;

(c) initial assessment;

(d) eligibility documentation (ICD 9 code and medical records substantiating the TBI);

(e) individual living plan (ILP) which includes goals, measurable objectives, revisions of ILP, referrals;

(f) contacts, progress, outcomes of services and documentation of other payor resources; and

(g) maintain a copy of the life skills ILP.

C. Administrative

Requirements of Service Coordination Contractors: The intent of service coordination is to augment not replace the individual's natural supports in a non-obtrusive manner while focusing on those natural supports. Service coordination is intended to nurture individuality in the person's environment and when possible to allow the individual to live in their own home. Specified requirements are listed below:

(1) have and follow confidentiality standards;

(2) possess and maintain a current business license issued by the state, county or city government if required;

(3) comply with all applicable federal or state regulations policies and procedures that apply to their business including but not limited to policies and procedures related to:

(a) service provision and appropriate supervision;

(b) professional documentation standards;

(c) training and education on TBI; and

(d) reimbursement of service coordination services;

(4) demonstrate financial solvency;

(5) establish and maintain separate financial reporting and accounting activities that are in accordance with state

requirements;

(6) maintain an automated data system for financial and program reporting purposes (note: direct linkage/modem to the aging and long term services department may be required);

(7) have extensive knowledge of TBI and community resources individuals may access within their community, region, New Mexico and nationally and maintain an in-house directory of TBI resources on site;

(8) have an established method of information and data collection;

(9) have a readily accessible office in each geographic TBI program designated region served by the contract provider;

(10) be able to respond to individual emergency situations within a reasonable amount of time after notification on a 24-hour basis;

(11) purchase and maintain full professional liability insurance coverage;

(12) establish and maintain appropriate written grievance procedures;

(13) reports shall be submitted in the time frame and format prescribed by TBI program; reports will be submitted in the manner designated by the TBI program including a summary of the total hours of service coordination services provided to each individual;

(14) organizations must avoid conflict of interest or duplication of services and may not provide other state general funded services to individuals with traumatic brain injuries when they are also individuals for whom they provide TBI service coordination services;

(15) comply with the following quality assurance system requirements:

(a) assure that the individual achieves an optimal level of wellness and function by implementing timely and appropriate services and natural supports individualized to meet their need;

(b) assure timely assessment and implementation of necessary services supports and goods;

(c) insure that each individual's ILP addresses targeted realistic goals and objectives with measurable outcomes within a cost-effective and specific time frame;

(d) develop an ongoing monitoring process which provides for the evaluation of quality effectiveness and appropriateness of services and supports provided to the individual;

(e) utilize a monitoring system to track accurate data reported on individual issues and concerns regarding the individual from both internal and external resources;

(f) identify and resolve known or suspected issues that may have an impact on the individual;

(g) perform individual satisfaction surveys at time of inactivation that identify areas of need such as delays in implementation of services or supports, over and under utilization of services or supports and access to providers of services;

(h) employ a formal method of monitoring, regulating and documenting the quality of services or supports provided to determine if the goals and objectives of the ILP are being achieved and remain appropriate and realistic;

(i) arrange and participate in a quarterly individual progress review with other service contract and or subcontract providers to verify that the individual's goals and objectives remain appropriate and realistic;

(j) monitor and assure that services and supports are readily accessible to the individual;

(k) evaluate and monitor the appropriateness and timeliness of services delivered to the individual;

(l) maintain regular communication with all contract and subcontract providers delivering services and products to the individual;

(m) demonstrate that the quality of services has been evaluated and that all concerns and issues are identified including implementation of necessary corrective action plans; and

(n) maintain original individual records for each program individual in the local service coordination contractor agency.

D. Staffing Requirement

Qualifications: TBI service coordinators must demonstrate their qualifications in one of the following ways:

(1) have a current social worker license in good standing with the New Mexico board of social work examiners;

(2) have a current registered nurse license, in good standing from the New Mexico board of nursing;

(3) have a bachelor's degree in social work, counseling, nursing, special education or closely related field plus one year clinical experience related to the TBI population working in any of the following settings:

(a) home health or community health program;

(b) hospital;

(c) private practice;

(d) publicly funded institution or long term care program;

(e) mental health program;

(f) community based social service program; and

(g) other programs addressing the needs of individuals with TBI;

(4) with prior approval from the TBI program manager or designee, exceptions to service coordinators qualifications

can be made; providers requesting qualification exceptions must demonstrate relevant education internships and or volunteer experience of applicants and or staff;

(5) all TBI service coordinators whether subcontracting or employed by a TBI program contracting agency must meet these requirements and attend continuing education as determined by ALTSD;

(6) notify the department if key personnel changes occur (the state reserves the right to review contract status if key personnel change);

(7) service coordination agency agrees to pay the minimum hourly wage to service coordinators as stated in the request for proposals for TBI providers.

E. Reimbursements For Service Coordination Services:

Reimbursements for TBI service coordination services under state general funded contract with the aging and long-term services department is through the unit price system (UPS) of the administrative services division of the aging and long term services department.

(1) Component unit rate is as stated by ALTSD in the request for proposals for TBI providers.

(2) TBI service coordination services are calculated on a rate per hour as set by ALTSD and is payable through a monthly reimbursement not to exceed one-twelfth of the contractor's total contract for this service. Allocations for TBI service coordination services are based upon legislative appropriation and annual utilization review.

(3) TBI service coordinators can bill for activities related to assisting individuals with the application process regardless of final eligibility determination within the initial 90-day period.

(4) Activities that are not billable under the TBI trust fund include:

(a) services provided to persons once it has been established that the individual does not meet the definition of individuals with traumatic brain injuries (TBI);

(b) services provided to persons who are not residents of the state of New Mexico or who reside in an institution except those who have 30 days to transition into the community;

(c) services provided by other service coordination systems unless approved the TBI program manager or designee;

(d) direct intervention services, such as individual therapy, group therapy, support groups, homemaker personal care services personal attendant services, psychosocial rehabilitation services and or duplicate services that are being covered by TBI crisis interim services;

(e) individual outreach and identification activities in which a provider attempts to contact potential individuals;

(f) services that are not documented by the service coordinator in the individual's record;

(g) travel to and from the individual's home except when the individual is being transported unless prior approval has been given in writing by the TBI program manager or designee;

(h) attendance at training and other personnel development activities which are not face to face with the individual;

(i) preparation of billing statements progress notes or quarterly reports; and

(j) service coordination contractors cannot charge eligible individuals according to a sliding fee scale for TBI services.

[8.326.10.10 NMAC - N, 11/15/07]

8.326.10.11 LIFE SKILLS COACHING SERVICES PROVIDERS FOR TRAUMATIC BRAIN INJURY TRUST FUND PROGRAM:

New Mexico traumatic brain injury program, life skills coaching services are services provided to individuals with traumatic brain injury (TBI) to assist them in performing routine daily living tasks that will enhance their quality of life. Individuals are eligible to receive life skills coaching services that meet specific New Mexico TBI program requirements.

A. Life Skills Coaching

Services: services are focused on coaching individuals to live independently in their homes and communities. Life skills coaching is not designed to provide substitute task performance. It is customized for each individual and is usually provided in the person's home, place of work or wherever an activity would normally occur. Life skills may also be provided to family members to help them adjust to their changed roles and circumstances following the traumatic brain injury of their family member. Life skills coaching for individuals with traumatic brain injuries are those services that may include but are not limited to:

(1) assist individuals with housing and household management including:

(a) locating affordable housing,

(b) signing a rent or lease agreement,

(c) cleaning the house,

(d) shopping for household goods,

(e) cooking meals,

(f) laundry, and

(g) use of everyday tools and appliances;

(2) assist individuals in applying nutritional principles in developing menus along with comparative shopping and food preparation;

(3) coach individuals on activities

of daily living such as personal care including but not limited to hygiene, grooming and dressing;

(4) coach individuals on their physical, medical and emotional health maintenance;

(5) coach medication reminder cues;

(6) train individuals in the use of assistive devices and other durable medical equipment including communication devices;

(7) assist individuals with employment and education needs;

(8) teach individuals on the best ways to utilize and access public transportation;

(9) help individuals become aware of community resources and how they can gain access to them;

(10) assist individuals to learn and practice sensible money management;

(11) coach individuals on ways to most effectively interact and communicate with family members and other caregivers;

(12) coach individuals in the development and use of anger management skills;

(13) coach individuals in memory skills;

(14) provide coaching to improve time management skills;

(15) help individuals recognize and avoid common dangers to self and possessions, which may include basic safety skills including interaction with strangers, first aid, fire safety, crossing streets and common public courtesy;

(16) assist individuals with other social, recreational and cognitive skills as specified in their ILP;

(17) coach individuals on their communication skills;

(18) coach individuals on child-care and parenting skills;

(19) assist with other social, medical or educational skill needs as recognized by the individual, individual's service team and or the family.

B. Administrative Requirements of Life Skills Coaching Services Contractors:

Life skills coaching is intended to provide coaching of the skills that an individual needs to function in their home environment, their job and or their community.

(1) Service coverage area for TBI life skills coaching services should be throughout at least one entire TBI program region as specified in the contract provider agreement with ALTSD.

(2) Based on an initial assessment and 90-day reassessment of need, individuals may receive TBI life skills coaching for up to four hours per day, five days per week for up to one year. When it becomes evi-

dent that no progress is being made by the individual the lack of progress must be documented in the individual's record. A team staffing must be called to determine if the life skills coaching the individual is receiving is still appropriate and if it should or should not be changed or continue. The team should be comprised of the individual, the life skills coach(s), the service coordinator(s) family members and other appropriate professionals including applicable crisis interim services staff.

(3) Life skills coaching services shall follow a behavioral model for individuals in the program and be conducive to desirable behavior for everyday life and to assist the individual in learning coping skills to help improve interrelationships.

(4) Life skills coaching services shall be provided in a one to one basis or in a small group setting of no more than four individuals and shall be based on the needs of the individual. Coaching shall take place in the individual's residence or wherever the activity would take place naturally.

(5) Facilitate independent living skills by providing life skills coaching services to individuals with TBI to increase their ability to live independently.

(6) An independent living skills assessment must be completed for each individual who is determined to be eligible for life skills coaching service. This assessment must:

(a) be completed prior to beginning life skills coaching services;

(b) consist of an evaluation of daily living skills through observation, testing, questioning and consultation within the individual's everyday environment; home, work, school and general community setting;

(c) determine the individual's capabilities, long and short term goals, and needs in employment, education, transportation, housing, home management, finances, money management, self-advocacy, socialization, recreation, community living, self-care, attendant care needs, communication, and ability to access community resources;

(d) include medical documentation of a traumatic brain injury by a duly licensed physician or psychologist, including an assigned ICD 9 code;

(e) include a written ILP for life skills coaching services that covers: goals and objectives, training necessary to reach those goals and objectives, number of hours per month the individual will receive life skills coaching, expected measurable outcomes, time frames for reaching goals and meeting objectives, plans for discharge and or transition out of life skills coaching services, identification of the service coordinator(s) other persons, services, programs and

or products necessary to help the individual reach targeted goals and accomplish those objectives, and identification and estimated costs of crisis interim goods and or services;

(f) be reviewed and updated quarterly; and

(g) begin life skills coaching only after the individual's service coordinator has included life skills services in the individual's ILP and a life skills coaching plan has been submitted to the service coordinator.

(7) Maintain case records on each individual served including but not limited to: the two page application, initial life skills assessment, eligibility documentation (ICD 9 code), ILP which includes goals, measurable objectives, contact, progress, revisions of ILP that reflect changes in goals and objectives, referrals and outcomes of services.

(8) Have and follow confidentiality standards.

(9) Maintain a current business license issued by the state, county or city government if required.

(10) Life skills coaching contractors must comply with all applicable federal and state regulations, policies and procedures that apply to their business.

(11) Demonstrate financial solvency.

(12) Establish and maintain separate financial reporting and accounting activities that are in accordance with state requirements.

(13) Maintain an automated data system for financial and program reporting purposes (note: direct linkage/modem to the aging and long term services department may be required).

(14) Be knowledgeable of TBI resources within their community, their region, New Mexico and nationally and maintain an in house directory of TBI useful resources on site.

(15) Have an established method of information and data collection.

(16) Have a readily accessible office in each geographic region serviced by the contract provider.

(17) Comply with all federal and state regulations, policies, and procedures, including but not limited to policies and procedures related to:

(a) service provision and appropriate supervision;

(b) professional documentation standards;

(c) training and education; and

(d) reimbursement of life skills coaching services.

(18) Purchase and maintain full professional liability insurance coverage.

(19) Establish and maintain appropriate written grievance procedures.

(20) Reports shall be submitted in the time frame and format prescribed by TBI program. Reports will be submitted in the manner designated by the TBI program including a summary of the total hours of life skills coaching services provided to each individual.

(21) Organizations must avoid conflict of interest or duplication of services and may not provide other state general funded services to individuals with traumatic brain injuries when they are also individuals for whom they provide TBI life skills coaching services.

(22) Comply with the following quality assurance system requirements:

(a) assure that the TBI individual achieves an optimal level of wellness and function by implementing timely and appropriate services and natural supports individualized to meet their needs;

(b) assure timely assessment and implementation of necessary services, supports and goods;

(c) insure that each individual's ILP addresses targeted realistic goals and objectives with measurable outcomes within a cost-effective and specific time frame;

(d) develop an ongoing monitoring process which provides for the evaluation of quality effectiveness and appropriateness of services and supports provided to the individual;

(e) utilize a monitoring system to track accurate data reported on individual issues and concerns regarding the individual from both internal and external resources;

(f) identify and resolve known or suspected issues that may have an impact on the individual, perform annual individual satisfaction surveys that identify areas of need such as delays in implementation of services or supports, over and under utilization of services or supports and access to providers of services;

(g) employ a formal method of monitoring regulating and documenting the quality of services or supports provided to determine if the goals and objectives of the ILP are being achieved and remain appropriate and realistic;

(h) arrange and participate in a quarterly individual progress review with other service contract and or subcontract providers to verify that the individual's goals and objectives remain appropriate and realistic;

(i) monitor and assure that services and supports are readily accessible to the individual;

(j) evaluate and monitor the appropriateness and timeliness of services delivered to the individual;

(k) maintain regular communication with all contract and subcontract providers delivering services and products

to the individual;

(l) demonstrate that the quality of services has been evaluated and that all concerns and issues are identified including implementation of necessary corrective action plans; and

(m) maintain original individual records for each program individual in the local service coordination contractor agency.

C. Staffing Requirement Qualifications: TBI life skills coaches must demonstrate their qualifications in one of the following ways listed below.

(1) Have a current registered nurse license in good standing from the New Mexico board of nursing.

(2) Have a bachelor's degree in social work, counseling, nursing, special education or closely related field plus one year clinical experience related to the TBI population working in any of the following settings:

(a) home health or community health program;

(b) hospital;

(c) private practice;

(d) publicly funded institution or long term care program;

(e) mental health program;

(f) community based social service program; and

(g) other programs addressing the needs of individuals with traumatic brain injuries.

(3) With prior approval from the TBI program manager or designee exceptions to life skills coaching qualifications can be made. Providers requesting qualification exceptions must demonstrate relevant education internships and or volunteer experience. Other qualifications may be:

(a) associate's degree and a minimum of three years experience in the mental health or traumatic brain injury field; and

(b) high school graduation or general educational development (GED) test and a minimum of five years experience in the mental health or traumatic brain injury field.

(4) All TBI life skills coaches whether subcontracting or employed by contractor must meet requirements and attend continuing education as determined by ALTSD.

(5) Prior written approval from the TBI program is required for any intern providing life skills coaching in the TBI program.

(6) Notify the department if key personnel changes occur. The state reserves the right to review contract status if key personnel change.

(7) Life skills coaching agency agrees to pay the minimum hourly wage to life skills coaches as stated in the request for proposals for TBI providers.

D. Reimbursement for Life Skills Coaching Services: Reimbursements for TBI life skills coaching services under state general funded contract with the aging and long term services department is through the unit price system (UPS) of the administrative services division of the aging and long term services department.

(1) Component unit service rate is as stated by ALTSD in the request for proposals for TBI providers at 20 hours per week per individual maximum.

(2) TBI life skills coaching services is calculated on a rate per hour as set by ALTSD and is payable through a monthly reimbursement not to exceed one-twelfth of the contractor's total contract for this service. Allocations for TBI life skills coaching services are based upon legislative appropriation and annual utilization review.

(3) Activities that are not billable include:

(a) services provided to persons who do not meet the definition of individuals with traumatic brain injuries (TBI);

(b) services provided to persons who are not residents of the state of New Mexico or who reside in an institution or who are served through a separate system such as one provided through the medicaid waiver programs;

(c) direct intervention services such as individual therapy, support groups, homemaker personal care services, personal attendant services, psychosocial rehabilitation services and or services that are being paid by TBI crisis interim services;

(d) individual outreach and identification activities in which a provider attempts to contact potential individuals;

(e) services that are not documented by the TBI life skills coach in the individual's file;

(f) travel to and from the individual's home, except when the individual is provided transportation for service and support coaching which has been included in the ILP, unless prior approval has been given in writing by the TBI program;

(g) attendance at training and other personnel development activities which are not face to face with the individual;

(h) preparation of billing statements progress notes or quarterly reports; and

(i) life skills coaching contractors cannot charge eligible individuals according to a sliding fee scale for TBI services.

[8.326.10.11 NMAC - N, 11/15/07]

8.326.10.12 CRISIS INTERIM SERVICES TO INDIVIDUALS WITH TRAUMATIC BRAIN INJURY TRUST FUND PROGRAM: Crisis interim services to individuals with traumatic brain injury

(TBI) are provided through a contracted fiscal intermediary agency that processes reimbursement and funding for services and goods for eligible recipients of the ALTSO trust fund. Individuals are eligible to receive crisis interim services that meet specific New Mexico TBI program requirements.

A. Crisis Interim Services Eligibility Requirements: Services are focused on funding services, supports and goods for individuals who have a current service coordinator through the TBI program. External case managers must access crisis interim through the TBI service coordinator. TBI service coordinators are responsible for determining initial eligibility and arranging for crisis interim service or products with the fiscal intermediary agent. The fiscal agent must comply with the following:

(1) obtain copies of the individual's two page application, qualifying ICD 9 code and referral form from the service coordinator;

(2) have a written comprehensive ILP that includes all services, products, estimated costs, duration and or limits, before the contract fiscal agent may fund the services or product;

(3) ensure through a copy of the service coordination ILP that the applicant receiving funding has exhausted any other financial resources and that services are provided only until other resources can be made available; and

(4) applicants may be eligible to receive funding when there is an accelerated need for services on a short-term basis to protect the individual if the person has an exacerbated condition that has caused a critical need or if needs have suddenly and drastically changed.

B. Funding Limits Per Individual: There is a maximum yearly and lifetime coverage for each individual with a TBI and it is determined by the individual's need based on service coordinator assessment(s) and availability of funding. The qualifications for funding are that:

(1) all TBI individuals may or may not qualify for or receive the yearly or lifetime maximum;

(2) there is a one-time only initial housing assistance in a lifetime;

(3) a one-time only \$10,000 lifetime limit on environmental modifications;

(4) crisis interim funding is limited up to \$25,000 lifetime maximum per year per TBI individual and is dependent on legislative appropriation; and

(5) crisis interim funding is limited up to \$75,000 lifetime maximum per TBI individual and is dependent on legislative appropriation.

C. Provisions for

Utilization of Services Provided to Individual: The individual is given freedom of choice to select needed goods or a provider for a given service based on the ILP, then conveys the choice to the service coordinator who then notifies the fiscal intermediary agent through submission of a referral, to contact the provider and set up a letter of agreement and or contract, to provide said services to the individual. The crisis interim services record shall reflect the express service details stated in the individual's ILP and in the service coordinator's referral and shall include:

(1) a copy of the doctor's order recommending services due to TBI as applicable;

(2) the service being provided;

(3) the 90 days timeline;

(4) the number of sessions and hours per week or the particular service(s) or item(s) provided;

(5) the fee charged per hour or for the specified item; and

(6) in the case of provider services, notify the service coordinator who in turn notifies individual that an agreement has been completed; start date of services begins with the initial appointment for the individual.

D. Duration of Services: Crisis interim funding shall be limited to 90 days in duration. Exceptions to this 90-day timeline, may be made by the crisis interim contractor.

(1) Continuation of crisis interim services funding is contingent upon receipt of a 90-day reassessment conducted in collaboration with, and the authorization in writing by the individual's service coordinator. It is determined within each 90-day time frame if the needs being addressed still exist and cannot be provided by another payor source. Reassessment must be conducted every 90 days and documentation of reassessment and continuing need must be established and recorded in the individual's crisis interim record and service coordination file.

(2) After services have been inactivated for an individual, the individual may have services reestablished due to an exacerbated condition or extended past the initial 90 days due to continued need of a critical nature. Reassessment and documentation is required as detailed in Paragraph (1), above.

(3) Justification for continuing crisis interim services funding must be recorded with proper documentation and corroborating written assessment or progress note from a physician or licensed medical provider such as a physical or occupational therapist stating support for ongoing services.

(4) Crisis interim services may be

extended or continue past the 90-day duration until a necessary product can be obtained or modification to the individual's environment or automobile can be completed. A 90-day reassessment is not usually required during the interval between assessment and delivery, if the situation is that the initial task cannot be completed during the first 90 days. The cause for delay beyond 90 days must be recorded in the crisis interim individual's record and service coordination file and updated every 90 days until completion of the project or modification has been completed or the goods ordered are delivered.

[8.326.10.12 NMAC - N, 11/15/07]

8.326.10.13 TBI CRISIS INTERIM SERVICES GOODS AND SUPPORTS OFFERED TO INDIVIDUALS WITH TRAUMATIC BRAIN INJURY TRUST FUND PROGRAM: Crisis interim services for individuals with TBI include but are not limited to the items listed below.

A. Special Equipment: TBI crisis interim services funds may be used to pay for equipment that fills the need of a individual, that is specifically not paid for by medical assistance division (MAD) programs, medicare, the special education-individuals with disability education act (IDEA) program, department of vocational rehabilitation (DVR), HMOs, private insurance, or another payor source. The equipment must be necessary because of the individual's TBI and a prescription or a written assessment provided by a physician or licensed therapist must be submitted to justify the equipment requested.

B. Assistive Technology Assessment Services: Funds from TBI crisis interim services may be used to provide assistive technology assessment.

(1) Assistive technology assessment services are the systematic application of technologies to assist persons diagnosed with TBI to improve communications skills and the ability to perform activities of daily living.

(2) Services shall be provided by an individual or agency with a minimum of a post-Master's degree in assistive technologies; an individual or agency who is certified by the rehabilitation engineering and assistive technologies society of north America (RESNA); or an individual or agency who demonstrates a working knowledge of assistive technologies, a physician or rehabilitation provider agency. Services shall include assessment, recommendations and training by a healthcare professional.

C. Initial and or Emergency Housing Costs: Funds from TBI crisis interim services may be used to pay initial and or emergency rent, security deposit and utility start-of-service and or

one month maintenance of service charges. This is a one-time only lifetime occurrence. Housing plans shall adhere to the following guidelines:

(1) a copy of a lease or rental agreement letter that contains the name of the leaser, the address of the property and a contact name and phone number for verification of rental intent shall be obtained by the service coordinator and placed in the individual's permanent file;

(2) a copy of the lease or rental agreement shall be sent with the referral to crisis interim and placed in the individual's record;

(3) a written plan shall detail the manner in which initial housing and utility costs will be paid and included in the individual's file;

(4) start up and or emergency utility costs shall be submitted to crisis interim to be paid within 30 days of the signed rental agreement;

(5) housing plan shall include documentation that the TBI individual has sufficient long-term resources to sustain ongoing housing expenses; and

(6) document evidence that TBI funds are not being used to pay for housing that could have been provided by another more appropriate payor source.

D. Environmental Modifications: Funds from the TBI crisis interim services may be used to make an individual's home accessible due to individual's TBI and related physical limitations and must meet the following requirements:

(1) no home improvements requested by the individual will be covered by crisis interim funds;

(2) funds can only be used to make the individual's home more accessible because of their TBI condition, this includes but is not limited to, widening doorways, installing ramps and modifying bathrooms;

(3) an assessment on the proposed environmental modification must be done by a licensed physical or occupational therapist to justify the service;

(4) for any modification over \$250 at least one contractor bid shall be obtained by the service coordinator, which include blueprint and or written description of plan and price itemization for materials and labor, along with any other supporting documentation and submitted by the service coordinator to ALTSD for consideration and a written decision;

(5) there is a one-time only \$10,000 lifetime maximum for all TBI crisis interim funded services that may be used for environmental modifications;

(6) funds cannot be used to purchase a home;

(7) only contractors with current license in good standing can be engaged to do environmental modifications;

(8) individual shall provide proof of property ownership, and, if residing in or renting someone else's property, provide written permission from landlord for any environmental modification funded by the TBI crisis interim services program;

(9) the crisis interim provider in collaboration with the individual's service coordinator shall show evidence that TBI funding was the most appropriate payor source to fund an environmental modification;

(10) collaboration with other funding sources must include:

(a) detailed description/plan of the project including total cost;

(b) documentation of specific portion to be funded by the TBI program as the payor of last resort; and

(c) documentation that contractor acknowledges the specific portion and amount of the project for which the TBI program is responsible; and

(11) all environmental modifications shall be reviewed and approved by ALTSD in writing.

E. Retrofit Automobile: Funds from TBI crisis interim services shall be used to modify an automobile specifically for the use of the individual with TBI and include the following criteria:

(1) can be used to install a van lift, hand controls and modified seating;

(2) cannot be used for the purchase of an automobile nor for auto repairs; and

(3) the crisis interim provider in collaboration with the individual's service coordinator will show evidence that the TBI program was the most appropriate payor source to fund retrofitting an automobile for an individual with TBI.

F. Transportation: Funds from crisis interim services may be used to provide transportation for individuals with TBI, that is specifically not paid for by medical assistance division (MAD) programs, medicare, the special education-individuals with disability education act program (IDEA), department of vocational rehabilitation (DVR), HMO's, private insurance, or other payor sources. Planned transportation should be included in the ILP. Individuals may use funding for transportation to get to medical and therapy care for treatment of conditions directly related to the TBI, but only if they cannot access other funding sources to get them to appointments.

G. Public/Private Transportation: Crisis interim fiscal agents may reimburse for public transportation, taxi services and mileage reimbursement for actual mileage according to an approved rate when a private vehicle is used. Individuals may not be reimbursed for transportation costs submitted more than

90 days past the date the transportation was provided or the trip was taken.

H. Respite Care: Funds from crisis interim services may only be used to provide an individual's primary caregiver, as identified in the ILP, with temporary respite. Respite may be provided for a period up to 72 hours per week that may or may not include overnight hours. TBI program funds cannot be used to pay for respite care provided by home health aids or salaried employees. Funds may be used for respite care that is specifically not paid for by medical assistance division programs, medicare, HMOs, private insurance or other payor sources.

I. Home Health Aide, Homemaker or Companion: Funds from TBI crisis interim services may be used to contract for the services of a home health aide, a homemaker or companion from a licensed agency that meet the quality personnel standards as stipulated by the agency and state licensing. The required license of contractors providing these services must be in good standing and current. TBI crisis interim services funds may only be used to pay for home health aides, homemaker or companion services that are not paid for by medical assistance division (MAD) programs, medicare, the special education-individuals with disability education act program (IDEA), department of vocational rehabilitation (DVR), HMOs, private insurance, or other payor source.

J. Nursing Care: Funds from crisis interim services may be used to provide private duty nursing services that are specifically not paid for by medical assistance division (MAD) programs, medicare, HMO's, private insurance or other payor sources. These services may include:

(1) direct nursing care provided in an individual's home; and

(2) a registered nurse (RN) or a licensed practical nurse (LPN) that provides services only under the orders of the individual's physician; nursing services provided by crisis interim services must be in compliance with the New Mexico Nurse Practice Act.

K. Therapies: All therapists providing services under TBI crisis interim services must hold a current license and be in good standing from their respective licensing authority. Funds from TBI crisis interim services may be used to provide necessary therapies as listed below:

(1) outpatient mental and or behavioral health;

(2) physical therapy;

(3) occupational therapy; and

(4) speech and language therapy.

L. Prescribed Medications: Funds from TBI crisis interim services may be used to provide pre-

scription medications used to treat their TBI symptoms or directly related conditions when they are not available and or covered by any third party payors, medical assistance division (MAD) programs, medicare, the special education-individual with disability education act program (IDEA), department of vocational rehabilitation (DVR), HMO's, private insurance or by another payor sources. Crisis interim services may provide:

(1) prescription medications listed in the TBI program formulary (exceptions to the TBI program formulary must be approved in writing from the TBI Program Manager or designee);

(2) individuals may not be reimbursed for prescription medications in cases where the receipt evidencing purchase is submitted more than 90 days past the date the prescription was filled;

(3) for reimbursement, the individual must submit the pharmacy print out, which has on it: individual's name, the date, doctor's name, name of the medication and the price paid; and

(4) if feasible, and the fiscal agent is able to set up an agreement with certain pharmacies, individuals may have scripts filled with the billing sent directly to crisis interim services for payment; service coordinator is responsible for checking receipts submitted by individuals to avoid duplicate payments on those submitted through the pharmacy.

M. Health Insurance Deductibles or Co pays: Funds from TBI crisis interim services may be used to pay health insurance deductibles or co pays from long-term services and private insurance to hospital or physician(s) for services and treatment for TBI or conditions directly related to TBI. Payment of insurance premiums are not covered by the TBI program.

N. Other Use of Crisis Interim Funds: TBI crisis interim services funds may be used to provide other limited services. Those services provided by a licensed practitioner may require a script or a letter of recommendation from a physician or therapist.

(1) Special training and education to individual and family in the use of tools and methods needed to promote recovery and independence of the individual.

(2) Assistive devices evaluations to show justification for said devices for treatment of TBI.

(3) Neuropsychological evaluations if there is no other payor source. Individual must present physician's order or script for approval of evaluation in order for crisis interim services fund to cover the cost.

(4) Training in the use of new equipment or existing equipment that has

been modified for the individual's use.

(5) Special health and dietary items as needed because of the TBI or conditions directly related to the TBI.

(6) Limited alternative therapies such as massage, acupuncture, and chiropractic can be provided if a contractor designated to provide the therapy is able to document the proven effectiveness of the therapy. Practitioners must possess a current license and be in good standing with respective field.

(7) Experimental therapies are not usually covered. All questionable experimental therapies require prior written approval by the TBI program manager or designee.

O. Aging and Long-Term Services Department (ALTSD), reserves the right to approve or disapprove any and all contractors used by the fiscal intermediary agent.

P. All Billings and Receipts Submitted to Crisis Interim Services, for all goods, services and supports, shall be submitted for payment or reimbursement within 90 days of the service date, by the individual, service coordinator and or vendor.

Q. Waiver of Requirements: Only ALTSD and or TBI trust fund program manager or designee can make exceptions to the provisions of the crisis interim services standards with the following stipulations:

(1) requests for waivers to the provisions and services provided by the TBI program must be made in writing;

(2) requests must have accompanying documentation justifying the exception; and

(3) approval must be made in writing and must be placed in the individual's crisis interim record and service coordination permanent file.

[8.326.10.13 NMAC - N, 11/15/07]

8.326.10.14 CRISIS INTERIM SERVICES FISCAL INTERMEDIARY AGENT FOR TRAUMATIC BRAIN INJURY TRUST FUND PROGRAM:

TBI crisis interim services fiscal agent contractor manages and tracks the expenditures on individuals of the TBI trust fund program, procures goods and arranges contracts and letters of agreement with vendors and contractors who provide the goods, services and supports.

A. Administrative Requirements for the Crisis Interim Services Fiscal Agent:

(1) Non-TBI program case management may request goods and services for an eligible individual through the TBI service coordinator. Other case managers might include such systems as medicaid salud,

medicaid waiver programs, HMO's and other insurances. The crisis interim services fiscal agent is responsible for maintaining documentation of eligibility and other required documents as described in Paragraphs (1), (2), (3) and (4) of Subsection A of 8.326.10.12 NMAC, per individual. TBI service coordination contract providers determine initial eligibility for all crisis interim services and are responsible for monitoring all individuals receiving any TBI services.

(2) Service coverage area should be throughout at least one entire TBI program region as specified in the contract/provider agreement with ALTSD.

(3) Facilitate independent living by assistance and services to the individual with TBI that will promote the ability for independent living.

(4) At least one representative of the TBI fiscal agency shall attend all quarterly trainings held by the TBI program for providers.

(5) Have and follow confidentiality standards.

(6) Crisis interim providers must document evidence, in an individual's record that reasonable attempts have been made to verify that other payor source coverage is not available to pay for services or goods.

(7) Denial of payment of benefits from an individual's other payor source should be documented in the record before crisis interim provides the service or goods. Documentation should be obtained from the service coordinator and must include a copy of a written denial or a dated detailed accounting of a verbal denial and placed in the individual's record. Minimal documentation of the denial must consist of the date, payor source, naming of the person spoken to and reason for denial.

(8) Maintain an extensive directory of TBI resources within their community, their region, New Mexico and nationally, on site.

(9) Have an established method of information and data collection.

(10) Have a readily accessible office in each TBI program geographic region served or means to communicate with other TBI program contractors or sub-contractors effectively by phone.

(11) Each individual receiving crisis interim services shall be informed of all available service providers, vendors or contractors that are eligible to provide the TBI services or goods in their region. The individual shall be the sole decision maker of who is to provide service or goods from all eligible entities that could fill his or her needs. In no instance shall a fiscal agent dictate the provider, vendor or contractor that shall provide the service, or goods.

Self-referral by a crisis interim fiscal agent, or an affiliate of the crisis interim agent, shall not be allowed.

(12) Establish and maintain appropriate written grievance procedures for individuals and other TBI services providers.

(13) Reports shall be submitted in the time frame and format prescribed by TBI program. Reports will be submitted in the manner designated by the TBI program including a summary of the total hours billed for service rendered, expenditures per individual and all other data requested by ALTSD.

(14) Crisis interim services providers shall avoid conflict of interest and or duplication of services and shall not provide TBI program service coordination or life skills coaching in the same region(s) in which they are a TBI program fiscal agent.

(15) Quality assurance system requirements: Crisis interim contractors must comply with the stipulations listed below:

(a) assure that the TBI individual achieves an optimal level of wellness and functioning by implementing timely and appropriate services and natural supports that are individualized to meet their needs;

(b) assure timely assessment and implantation of necessary services and supports;

(c) ensure that each individual's ILP addresses targeted, realistic goals and objectives with measurable outcomes within a cost-effective and specific time frame, as it applies to crisis interim services;

(d) develop an ongoing monitoring process which provides for the evaluation of quality effectiveness, and appropriateness of services and supports provided to the individual;

(e) develop a monitoring system to track accurate data reported on individual issues and concerns regarding the individual from both internal and external resources;

(f) identify and resolve known or suspected issues that may have an impact on the individual;

(g) perform annual individual satisfaction surveys that identify areas of need such as delays in implementation of services or supports over and under utilization of services or supports and access to providers or service;

(h) employ a formal method of checking, regulating and documenting the quality of services or supports provided to determine if the goals and objectives of the ILP are being achieved and remain appropriate and realistic, as the ILP applies to crisis interim services;

(i) participate in quarterly individual progress reviews called by the service coordinator and which include the indi-

vidual and life skills coach(s) if possible, to verify that the individual's goals and objectives remain appropriate and realistic;

(j) monitor and assure that services and supports are readily accessible to the individual;

(k) evaluate and monitor the appropriateness and timeliness of crisis interim services to the individual that may affect crisis interim services;

(l) maintain regular communication with all providers delivering other TBI services to the individual that may affect crisis interim services; and

(m) demonstrate that the quality of services has been evaluated and that all concerns and issues are identified, including implementation of corrective action plans.

B. Staffing Requirement
Qualifications: TBI crisis interim service staff must demonstrate their qualifications to serve TBI individuals by compliance with certain stipulations.

(1) Have a current registered nurse license in good standing, from the New Mexico board of nursing.

(2) Have a bachelor's degree in social work, counseling, nursing, special education or closely related field.

(3) Have clinical experience related to the TBI population, working in any of the following settings:

(a) home health or community health program;

(b) hospital;

(c) private practice;

(d) publicly funded institution or long term care program;

(e) mental health program; and

(f) community based social service program; and other program addressing the needs of individuals with traumatic brain injuries (TBI).

(4) Demonstrate relevant education, internships, and or extensive medical volunteer experience.

(5) With prior approval from the TBI program manager or designee exceptions to crisis interim personnel qualifications can be made. Providers requesting qualification exceptions must demonstrate relevant education internships and or volunteer experience. Other qualifications may be:

(a) associate's degree and experience in the mental health or traumatic brain injury field; and

(b) high school graduation or general educational development (GED) test and extensive experience in the mental health or traumatic brain injury field.

(6) All TBI crisis interim services contractors, whether contracting with the fiscal agent or employed by the agent, must meet these requirements and attend continuing education as determined by ALTSD. Contractor crisis interim services providers

must have the required education, and be duly licensed by the state of New Mexico within their respective disciplines. Crisis interim service fiscal agents are responsible for verifying the status of contractor licenses.

(7) Notify the department if key personnel changes occur. The state reserves the right to review contract status if key personnel change.

C. Reimbursement for Crisis Interim Services: Reimbursement for TBI crisis interim services under state general funded contract with aging and long-term services department (ALTSD) is through the unit price system (UPS) of the administrative services division of ALTSD.

(1) Component unit service rate per unit is stated by ALTSD in the request for proposals for TBI providers. No more than 25,000 units may be spent on a single eligible individual with TBI during a contract year. Under the direction of the crisis interim services contractor, and as described on the eligible individual's ILP, a licensed or certified (whenever applicable) direct service provider, or vendor of goods, will provide goods and services to the individual with TBI. The crisis interim contractor is responsible for reimbursement made to the direct service provider or vendor in accordance with the ILP and or crisis plan. When feasible, all goods and services provided under TBI crisis interim services contracts are to be consistent with the human services department (HSD) medicaid waiver, or medicaid rates.

(2) Reimbursement by the ALTSD to the contractor for TBI crisis interim services is payable through a monthly reimbursement not to exceed one-twelfth of the contractor's total contract for this service. Allocations for TBI crisis interim services are based upon legislative appropriation and annual utilization review.

(3) Activities not billable include:

(a) services provided to persons who do not meet the definition of individuals with traumatic brain injuries (TBI) as defined in section 8.326.10.7 in these regulations;

(b) individuals that do not have an ICD 9 code on file;

(c) services provided to persons who are not legal residents of the state of New Mexico, who reside in an institution or who are served through a separate system, such as one provided through the medicaid waiver programs;

(d) duplication of services that are being funded by any other payor source;

(e) individual outreach and identification activities in which a fiscal agent attempts to market their services to potential individuals;

(f) services that are not documented by the TBI crisis interim services

staff person in the individual's file;

(g) travel to and from the individual's home, except when the individual is being transported, unless approved in writing by the ALTSD TBI program;

(h) attendance at training and other personnel development activities which are not face to face with the individual;

(i) preparation of billing statements, progress notes or quarterly reports; and

(j) crisis interim services contractors cannot charge eligible individuals according to a sliding fee scale for TBI services and bill them to the ALTSD. [8.326.10.14 NMAC - N, 11/15/07]

8.326.10.15 GRIEVANCE AND APPEALS PROCESSES FOR TRAUMATIC BRAIN INJURY TRUST FUND PROGRAM: The provider will have written individual grievance procedures, which provide the individual and or their representative with a process for expressing dissatisfaction with the program services. The procedures will explain and permit an orderly resolution of informal and formal grievances. These procedures should be presented in a culturally competent format, at a language level understandable by the individual and or their representative.

A. Grievances:

(1) Ensure that a written grievance procedure is provided to the individual at the time of intake and available upon request thereafter.

(2) Ensure that the grievance procedures clearly explain to individuals which staff members are assigned to receive informal and formal complaints, the expected procedure and the time frames for doing so.

(3) Ensure that a staff member is designated as having primary responsibility for the maintenance of the grievance procedures, review of their operation, and revision of related policies and procedures whenever necessary.

(4) Ensure that procedures are in place for tracking, investigating, recording, resolving and appealing decisions concerning grievances made by the individual, their representative or others.

(5) Ensure that all provider grievance procedures and any subsequent changes are approved by ALTSD and included in the intake documentation.

(6) Ensure there is no discrimination against an individual solely on the grounds that the individual or their representative filed a grievance.

B. Appeals:

(1) If the individual and or their representative do not agree with the outcome of an informal or formal grievance filed and reviewed at the provider agency,

they may appeal, in writing, to the TBI program manager.

(2) The TBI program manager will review the written appeal along with any supporting documentation as applicable and will respond in writing to the individual filing the appeal within 30 days with notification of the outcome to the provider agency.

[8.326.10.15 NMAC - N, 11/15/07]

HISTORY OF 8.326.10 NMAC:
[RESERVED]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.1 NMAC Sections 6 and 13, effective 11/19/07.

16.4.1.6 OBJECTIVE: To establish definitions, practicing without a license, annual registration displayed, duplicate license, change of address, advertising requirements and administrative fees. In doing so, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the board member to attend the meeting in person, and participation by such means shall constitute presence in person at the meeting. When a board member participates in a meeting by conference telephone or other similar communications equipment, each board member participating by telephone must be able to be identified when speaking, all participants must be able to hear each other at the same time, and members of the public attending the meeting must be able to hear any board member who speaks during the meeting.

[11/16/97; 16.4.1.6 NMAC - Rn, 16 NMAC 4.1.6, 1/15/2005; A, 11/19/07]

16.4.1.13 ADMINISTRATIVE FEES:

A. In accordance with Section 61-4-7.G and Section 61-4-13.B of the New Mexico Chiropractic Physicians Practice Act, NMSA 1978, the board of chiropractic examiners establishes the following nonrefundable fees:

- (1) ~~application~~ fees:
 - (a) ~~licensure by examination~~ application fee ~~[\$325]~~ \$350;
 - (b) ~~licensure~~ without examination ~~[\$625]~~ \$350;
 - (c) temporary licensure \$50;
 - (d) reinstatement of license \$125 (in addition to back renewal and penalty fees for each year, not to exceed two years);
 - (e) ~~application for examination~~

~~§325;~~ initial license fee \$300.

(2) annual renewal fees:

- (a) active \$300;
- (b) inactive \$100;
- (c) impairment fee of \$25 in addition to the license renewal fee, each chiropractor subject to renewal will be assessed an amount not to exceed \$60 per renewal period.

(3) penalty for late renewal \$100 (per month or portion of a month for which the license renewal fee is in arrears, the penalty not to exceed \$500).

(4) continuing education fee \$50.
(5) miscellaneous fees listed below will be approved annually by the board and made available by the board office upon request:

- (a) photocopying;
- (b) written license verifications;
- (c) list of licensees;
- (d) duplicate licenses;
- (e) duplicate renewal certificate;
- (f) copies of statutes, rules and regulations.

B. The board shall annually designate that proportion of renewal fees which shall be used for the exclusive purposes of investigating and funding hearings regarding complaints against chiropractic physicians.

[3/22/95, 11/16/97, 10/31/98, 1/29/99; 16.4.1.13 NMAC - Rn & A, 16 NMAC 4.1.1.13, 1/15/2005; A, 4/10/06; A, 11/19/07]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.10 NMAC Section 8, effective 11/19/07.

16.4.10.8 CONTINUING EDUCATION:

A. In accordance with Section 61-4-3 NMSA 1978, New Mexico Chiropractic Physician Practice Act, chiropractic physicians licensed in New Mexico are required to complete a minimum of sixteen (16) hours of board approved continuing education annually by the time of license renewal. Credit hours may be earned at any time during the annual reporting period, July 1 through June 30, immediately preceding annual renewal.

B. Each chiropractor renewing a license shall attest that they have obtained the required hours of continuing education on the renewal form. The board will select by random RLD computer processes, no less than 10% of renewal applications for audit to verify completion of acceptable continuing education. Audit requests will be included with the renewal notice and those selected chiropractors will

be asked to submit proof of compliance with the continuing education requirements. The board may audit continuing education records at any time. Continuing education records must be maintained for three years following the renewal cycle in which they are earned.

C. The board will approve continuing education programs which in its determination, advance the professional skills, risk management understanding and knowledge of the licensee that is directly related to the practice of chiropractic art, science or philosophy. Practice building and self-motivational courses, and courses that are determined not to have significant or a direct relationship to the safe and effective practice of chiropractics; or such portions of those programs or courses, may not be approved. There will be no charge to a licensee for individual request for approval.

D. The board may determine that, in its opinion, a particular course or area of professional education is of such importance or addresses an area of special need as it pertains to public protection that all licensees shall be required to take the course of study as a part of or in addition to the CE requirements:

(1) the declaration of a mandatory course must be made by a majority vote of the board at a regular scheduled meeting;

(2) the course title, approved instructors (if appropriate), locations of course delivery or methods of securing approved print or electronic presentations of the course must be communicated to all licensed New Mexico chiropractors on or before September 1st of the year that the course is made mandatory;

(3) the mandatory nature of courses so designated shall expire on June 30th of the current licensing year or the determination must be renewed by a majority vote of the board at a regular scheduled meeting and the extension of the mandatory nature communicated to all active licensees on or before September 1st.

~~D.~~ E. The following seminars or continuing education programs meeting board criteria for license renewal credit by the following entities shall be automatically approved:

(1) American chiropractic association and international chiropractic association, or their successors;

(2) the annual convention of any state recognized chiropractic association; or

(3) chiropractic colleges having accreditation status with the chiropractic council on education (CCE);

(4) officiating during national board examinations shall be credited to the professional members of the NMBCE as approved hours of continuing education;

(5) those courses that have secured accreditation through the "NBCE"

and carry the "PACE" designation.

~~F.~~ E. A fee as set forth in Paragraph (4) of Subsection A of 16.4.1.13 NMAC will be assessed to all non approved entities, sponsoring institutions, or organizations requesting approval of any seminar or continuing education programs not noted in Subsection C of 16.4.10.8 NMAC.

~~F.~~ G. All non approved entities, sponsoring institutions, or organizations requesting approval of seminars or continuing education programs must be submitted to the board office in writing by the licensee or sponsoring entity at least forty-five (45) days prior to the first day of the seminar or continuing education program and must include:

(1) course title, objective and format;

(2) sponsoring entity;

(3) total class hours;

(4) method for certification of attendance; or documentation of completion of program;

(5) instructors credentials; and

(6) courses that in the boards opinion enhance the professional practice procedures, risk management, clinical skills or the doctor's ability to understand and operate within managed care guidelines and regulations are not approved.

~~G.~~ H. The board may waive or extend the time for completion of the annual continuing education requirement if the licensee has reached the age of 70 years or if the licensee files with the board the statement of a licensed physician certifying the physical inability of the licensee to attend a seminar.

~~H.~~ I. Licensees serving in the United States military practicing or residing outside the United States shall not be required to fulfill the continuing education requirements for the period of the absence.

(1) The board must be notified prior to license expiration that the licensee will be outside the United States, including the period of the absence.

(2) Upon return to the United States, the licensee shall complete the continuing education required for the years of practice within the United States during the renewal cycle, or apply for an emergency deferral.

(3) All renewal fees shall be waived while the licensee is practicing or residing outside the country serving in the military or under armed services contract.

(4) The board may waive any and all deadlines by special request of licensee in active military service or under armed services or federal contract requiring absence from the jurisdiction.

~~H.~~ J. The board may, under circumstances deemed appropriate by the board, waive the forty-five (45) day advance requirement set forth in Subsection

F of 16.4.10.8 NMAC for request of approval by individual licensees.

~~J.~~ K. All licensees shall comply with the requirements of this regulation on or before July 1st of each year.

~~K.~~ L. This rule supersedes all prior continuing education rules.

~~L.~~ M. The board may recognize, upon application, a chiropractic association for the purpose of this part if the association:

(1) has 100% voluntary membership as evidenced by a written affirmative request for membership;

(2) has 100% of its membership which is licensed in New Mexico, in good standing as a chiropractic physician;

(3) submits a copy of the association charter, by-laws and any similar association documents;

(4) is organized for the express purpose of promoting good and ethical chiropractic practice.

[1/11/74; 10/23/86; 3/22/95; 11/16/97; 10/31/98; 1/29/99; 16.4.10.8 NMAC - Rn & A, 16 NMAC 4.10.8, 1/15/2005; A, 3/15/06; A, 11/19/07]

NEW MEXICO COUNSELING AND THERAPY PRACTICE BOARD

16.27.5 NMAC, Requirements for Licensure as a Professional Clinical Mental Health Counselor for Current Licensed LPC's (filed 05-15-2001) is repealed effective 11-19-07.

16.27.8 NMAC, Requirements for Licensure as a Professional Mental Health Counselor (LPC) (filed 05-15-2001) is repealed effective 11-19-07.

NEW MEXICO COUNSELING AND THERAPY PRACTICE BOARD

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 27 COUNSELORS AND
THERAPISTS
PART 23 LICENSURE AS AN
ALCOHOL AND DRUG ABUSE COUNSELOR (LADAC) FOR CURRENT
CREDENTIAL ALCOHOL AND DRUG
ABUSE COUNSELOR (CADAC)**

16.27.23.1 ISSUING AGENCY:
Regulation and Licensing Department
Counseling and Therapy Practice Board
[16.27.23.1 NMAC - N, 11-19-07]

16.27.23.2 SCOPE: All individuals applying for licensure through grandfathering as an alcohol and drug abuse counselor who hold a current CADAC.
[16.27.23.2 NMAC - N, 11-19-07]

16.27.23.3 STATUTORY AUTHORITY: These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Section 61-9A-9 NMSA 1978.
[16.27.23.3 NMAC - N, 11-19-07]

16.27.23.4 DURATION: Permanent
[16.27.23.4 NMAC - N, 11-19-07]

16.27.23.5 EFFECTIVE DATE: November 19, 2007 unless a later date is cited at the end of a section.
[16.27.23.5 NMAC - N, 11-19-07]

16.27.23.6 OBJECTIVE: The objective of Part 23 is to state the minimum requirements for licensure as an alcohol and drug abuse counselor and list the documentations required for application.
[16.27.23.6 NMAC - N, 11-19-07]

16.27.23.7 DEFINITIONS:
[Reserved]

16.27.23.8 APPLICANTS FOR LICENSURE: As a pre-approved continuing education provider must possess the following qualifications and provide the required documentation with the application.

A. Age requirement. Must be at least 21 years of age.

B. Applicant/presenter must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics.

C. Education requirements. Holds masters or doctoral degree in counseling or a counseling-related field from an accredited institution.

D. Applicants/presenter must hold a current license in the following disciplines:

(1) licensed professional clinical mental health counselor;
(2) licensed marriage and family therapist;

(3) licensed art therapist;

(4) licensed psychiatrist;

(5) licensed psychologist;

(6) licensed independent social

worker; or

(7) licensed alcohol and drug abuse counselor with a masters degree.

E. Application fee of \$100.00.

[16.27.23.8 NMAC - N, 11-19-07]

HISTORY OF 16.27.23 NMAC:
[Reserved]

NEW MEXICO COUNSELING AND THERAPY PRACTICE BOARD

This is an amendment to 16.27.2 NMAC Section 8 effective 11-19-07.

16.27.2.8 MENTAL HEALTH CLINICAL CORE CURRICULUM:

The core curriculum must be met using only transcribed courses dedicated to the required course area, thesis or dissertation will not be accepted, partitioning, divisioning, or sectioning of courses into various core course areas will not be accepted. The 11 core curriculum graduate areas of study include the following: Applies to applicants who hold a related-field degree.

A. Human growth and development: A minimum of 3 semester hours or 4 quarter hours of graduate coursework in studies that provide an understanding of the nature and needs of individuals at all developmental levels. Essential components include, the following:

(1) theories of individual development and transitions across the life-span;

(2) theories of learning and personality development;

(3) human behavior including an understanding of developmental crises, disability, addictive behavior, psychopathology, and environmental factors as they affect both normal and abnormal behavior;

(4) strategies for facilitating development over the life span[~~and~~].

B. Social and cultural foundations: A minimum of 3 semester hours or 4 quarter hours of graduate coursework in studies that provide an understanding of issues and trends with multicultural and diverse populations. Essential components include, the following.

(1) theories of multicultural counseling;

(2) prejudicial attitudes and behavior based on such factors as age, race, religious preference, physical disability, sexual orientation, ethnicity and culture, family patterns, gender, socioeconomic status, and intellectual ability;

(3) individual, family, and group strategies with diverse populations.

C. Helping relationships: A minimum of 3 semester hours or 4 quarter hours of graduate coursework in studies that provide an understanding of counseling and consultation processes. Essential components include, the following:

(1) counseling and consultation theories including both individual and sys-

tems perspectives;

(2) counselor or consultant characteristics and behaviors that influence helping processes, including age, gender and ethnic differences, and personal characteristics;

(3) client or consultee characteristics and behaviors that influence helping processes, including age, gender and ethnic differences, verbal and nonverbal behaviors and personal characteristics, traits, capabilities, and live circumstances[~~and~~].

D. Group work: A minimum of 3 semester hours or 4 quarter hours of graduate coursework in studies that provide an understanding of group development, dynamics, counseling theories, group counseling methods and skills, and other group work approaches. Essential components include, the following:

(1) theories of group dynamics including group process, developmental stages, and group members roles and behaviors;

(2) group leadership styles and approaches including the various types of groups;

(3) staged appropriate group counseling techniques and methods of evaluating effectiveness[~~and~~].

E. Career and lifestyle development: A minimum of 3 semester hours or 4 quarter hours of graduate coursework in studies that provide an understanding of career development and related life factors. Essential components include, the following:

(1) career development theories and decision-making models;

(2) labor market information resources, and including accessing computer-based career information systems;

(3) career development program planning, organization, implementation, administration, and evaluation;

(4) interrelationships among work, family, and other life roles and factors, including multicultural and gender issues as they relate to career development;

(5) assessment instruments and techniques relevant to career planning and decision-making[~~and~~].

F. Appraisal: A minimum of 3 semester hours or 4 quarter hours of graduate coursework in studies that provide an understanding of individual and group approaches to assessment and evaluation. Essential components include, the following:

(1) theoretical and historical bases for assessment;

(2) selection, administration and interpretation of psychological tests considering examinee characteristics such as age, gender and cultural background;

(3) validity and reliability of

appraisal instruments;

(4) psychometric statistics, including types of assessment scores, measures of central tendency, indices of variability, standard errors, and correlation's;

(5) age, gender, ethnicity, language, disability, and culture factors related to the assessment and evaluation of individuals and groups;

(6) strategies for selecting, administering, interpreting and using assessment and evaluation instruments and techniques in counseling[~~and~~].

G. Research methods: A minimum of 3 semester hours or 4 quarter hours of graduate coursework and studies that provide an understanding of types of research methods, basic statistics, and ethical and legal considerations in research. Essential components include, the following:

(1) basic types of research methods to include qualitative and quantitative research designs;

(2) uses of statistics software programs[~~and~~].

H. Professional orientation: A minimum of 3 semester hours 4 quarter hours of graduate coursework in studies that provide an understanding of all aspects of professional functioning including history, roles, organizational structures, ethics, standards, and credentialing. Essential components include the following:

(1) history of the helping professions;

(2) professional roles scope of practice, including similarities and differences with other types of professionals;

(3) professional organizations, primarily the American counseling association, its divisions, branches, and affiliates, including membership benefits, activities, services to members, and current emphases;

(4) ethical standards of the American counseling association and related entities, ethical and legal issues, and their applications to various professional activities;

(5) professional credentialing including certification, licensure and accreditation practices and standards[~~and~~].

I. Specialized clinical studies: A minimum of 12 semester hours or 18 quarter hours of graduate coursework in studies that provide an understanding of all aspects of diagnosis and treatment of mental disorders. Studies in this area to include but are not limited to, the following:

(1) clinical case study

(2) psychodynamics and psychotherapy

(3) treatment planning

(4) clinical supervision

(5) psychopharmacology

(6) advanced testing

(7) addictions

(8) psychopathology

(9) clinical theory and practice

J. Supervised practicum:

A minimum of 9 semester or 12 quarter hours of graduate coursework in practicum and/or internship. The practicum and/or internship training shall focus on the provision of counseling services within a professional setting under the direction of a faculty member and/or on-site supervisor designated by the college or university.

[16.27.2.8 NMAC - Rp 16 NMAC 27.1.7.24, 6-15-01; A, 7-1-04; A, 11-19-07]

NEW MEXICO COUNSELING AND THERAPY PRACTICE BOARD

This is an adding of new Section 12 to 16.27.3 NMAC effective 11-19-07.

16.27.3.12 INACTIVE STATUS:

A. A licensed person may request inactive status by notifying the board in writing before the expiration of the retirement status license.

B. Along with the completed inactive renewal application, the licensee must show proof of ten (10) hours of continuing education and an inactive fee of \$100.00.

C. Inactive renewals expire on September 30 of your licensing year.

[16.27.3.12 NMAC - N, 11-19-07]

NEW MEXICO COUNSELING AND THERAPY PRACTICE BOARD

This is an amendment to 16.27.4 NMAC Section 9 effective 11-19-07.

16.27.4.9 APPLICANTS FOR LICENSURE: AS A PROFESSIONAL CLINICAL MENTAL HEALTH COUNSELOR (LPCC) MUST POSSESS THE FOLLOWING QUALIFICATIONS AND PROVIDE THE REQUIRED DOCUMENTATION WITH THE APPLICATION:

A. Age requirement. Be at least 21 years of age.

B. Applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics.

C. Education requirement. Hold a master's or doctoral degree in coun-

seling or a counseling-related field from an accredited institution. Applicants who hold a degree in a related-field must complete attachment E, provide syllabus and actual catalog course descriptions.

D. Applicants must have a masters or doctoral degree in counseling or a counseling-related field and a total of no less than forty-eight (48) graduate semester hours or seventy-two (72) quarter graduate hours in the mental health clinical core curriculum as defined in 16.27.2 NMAC. The hours must be acquired as a part of a master's or doctoral degree, or acquired as additional graduate education to complete the required 48 clinical core curriculum hours.

E. Experience requirements.

(1) A minimum of two years' postgraduate professional clinical counseling experience.

(2) Evidence of having participated in a total of three thousand (3,000) hours of postgraduate clinical client contact and 100 hours of appropriate face to face postgraduate supervision. One thousand (1,000) clinical client contact hours may be from the applicant's internship or practicum.

F. Application fee of \$75.00.

[16.27.4.9 NMAC - Rp 16 NMAC 16.27.4.8, 6-15-01; A, 7-1-04; A, 2-10-06; A, 11-19-07]

NEW MEXICO COUNSELING AND THERAPY PRACTICE BOARD

This is an amendment to 16.27.7 NMAC Sections 10, 11 and 13 effective 11-19-07.

16.27.7.10 APPLICANTS FOR LICENSURE: AS A PROFESSIONAL ART THERAPIST (LPAT) MUST POSSESS THE FOLLOWING QUALIFICATIONS AND PROVIDE THE REQUIRED DOCUMENTATION WITH THE APPLICATION: A licensed professional art therapist (LPAT) must possess the following qualifications and provide the required documentation with the application:

A. Age requirement. Be at least 21 years of age.

B. Applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics.

C. Education requirements. Holds a masters or doctoral degree in art therapy, counseling or counseling related field from an accredited institution

or nationally approved art therapy program with a total of no less than forty eight (48) graduate semester hours or seventy-two (72) quarter [graduate] hours in the art therapy core curriculum as defined in 16.27.7.11 NMAC[:

~~(1) a master's or doctoral degree from an accredited or nationally approved art therapy program in art therapy that includes seven hundred hours of supervised internship experience from an accredited institution;~~

~~(2) a masters degree in a counseling related field, and completed a minimum of twenty four (24) semester hours or thirty six (36) quarter hours in an art therapy certified program from an accredited institution or a nationally approved American art therapy association program.]~~

D. Experience requirements:

(1) a minimum of two years postgraduate professional art therapy experience;

(2) evidence of having participated in a total of three thousand (3,000) hours of postgraduate clinical client contact and one hundred (100) hours of appropriate face-to-face postgraduate supervision; seven hundred (700) clinical client contact hours may be from the applicant's internship or practicum.

E. Application fee of \$75.00.

F. Is of good moral character with conduct consistent with the code of ethics.

[16.27.7.10 NMAC - Rp 16 NMAC 27.6.8, 6-15-01; A, 7-1-04; A, 2-10-06; A, 1-15-07; A, 11-19-07]

16.27.7.11 ART THERAPY

CORE CURRICULUM: Means a curriculum for training art therapists that includes a minimum of [~~forty five (45)~~] forty-eight (48) semester graduate hours or [~~sixty (60)~~] seventy-two (72) quarter hours of graduate level coursework and consists of the following areas of graduate studies.

A. History of art therapy: A minimum of 3 semester hours or 4 quarter hours of graduate coursework. Course content deals with origins, historical development, and major theoretical trends in art therapy.

B. Theories of art therapy: A minimum of 3 semester hours or 4 quarter hours of graduate coursework. Included in the course content are differentiation of art therapy from other mental health and educational professions, major theories, and practical applications.

C. Techniques in art therapy: A minimum of 3 semester hours or 4 quarter hours of graduate coursework which explores various art therapy techniques and

interventions. The coursework may examine art therapy processes and approaches appropriate for different diagnostic and presenting problems based on the DSM IV criteria and/or art based assessments.

D. Application of art therapy with different populations in a variety of treatment settings: A minimum of 3 semester hours or 4 quarter hours of graduate coursework which examines the therapeutic relationship in working with various client populations using art therapy. The coursework may examine individual, group, conjoint, and family art therapy as it applies to child, adolescent, and adult populations.

E. Art therapy assessment: A minimum of 3 semester hours or 4 quarter hours of graduate coursework which introduces clinical diagnostic profiles and criteria as it applies to the art image.

F. Ethical and legal issues of art therapy practice: A minimum of 3 semester hours or 4 quarter hours of graduate coursework which explores the philosophical origins and clinical application of professional ethics.

G. Standards of practice in art therapy: A minimum of 3 semester hours or 4 quarter hours of graduate coursework designed to review art therapy practice procedures and case consultation. The coursework may include therapeutic processes, legal considerations, licensure requirements, self care, and case collaborations.

H. Cultural diversity issues relevant to art therapy practice: A minimum of 3 semester hours or 4 quarter hours of graduate coursework which studies the practice of art therapy in the context of cultural diversity. Content includes assessment, therapeutic strategies, and creative interventions appropriate for different cultural populations.

I. Thesis or written and oral comps.

J. Related core curriculum: The remaining graduate coursework includes psychopathology and diagnostics, human growth and development, group dynamics, research, and studio art to satisfy the 45-hour requirement.

[16.27.7.11 NMAC - N, 6-15-01; A, 1-15-07; A, 11-19-07]

16.27.7.13 DOCUMENTATION REQUIRED FOR LICENSURE:

A. A completed application as specified in 16.27.3.8 NMAC.

B. Proof of education and experience:

(1) The applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's master or doctoral degree a total of no less than [~~forty five (45)~~] forty-

eight (48) semester hours or seventy two (72) quarter hours which includes the required 48 clinical core curriculum.

(2) A statement from each supervisor in a sealed envelope on a form provided by the board (attachment B) verifying the applicant's supervised experience and setting forth the nature and extent of such supervision must be submitted with the application; the statement shall verify that the applicant's performance was in accordance with adequate counseling and therapy standards of practice; if a supervisor's statement is not available, the applicant may submit documentation explaining why the supervisor's statement is not available and sworn affidavits from other individuals verifying that supervision took place and describing the nature and the extent of the supervision.

(3) Documentation of three thousand (3000) client contact hours and one hundred (100) hours of appropriate face-to-face supervision.

(4) Attachment E, listing only specific graduate coursework. A course syllabus and actual course catalogue descriptions for all courses must be included (applies only to applicants who hold counseling or counseling related field degree).

(5) Documentation of the applicant's licensure, registration or certification status must be submitted on application attachment form A, which must be sent directly to the board by the jurisdiction in which the applicant is licensed, certified, or registered.

(6) Application fee of \$75.00.
[16.27.7.13 NMAC - Rp 16 NMAC 27.6.10, 6-15-01; A, 7-1-04; A, 2-10-06; A, 1-15-07; A, 11-19-07]

NEW MEXICO COUNSELING AND THERAPY PRACTICE BOARD

This is an amendment to 16.27.9 NMAC Section 8 effective 11-19-07.

16.27.9.8 SUPERVISION:

A. Supervision must be provided by a licensed professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LMFT), licensed professional art therapist (LPAT), licensed psychologist, licensed psychiatrist, or licensed independent social worker (LISW). The licensed mental health counselor (LMHC) or the licensed professional mental health counselor (LPC) must practice under supervision at all times. Once the licensed mental health counselor or the licensed professional mental health counselor acquired the official LPCC, LMFT or

LPAT license then the licensee may practice independently without supervision.

B. It is the responsibility of the individual seeking supervision to assure the supervision is acceptable for the level of licensure that will be requested at the completion of the required supervision. The relationship between the supervisor and the applicant must promote the development of skill and responsibility in the delivery of counseling or therapy services.

C. Client contact and supervision hours prior to being licensed will not be acceptable for licensure.

[16.27.9.8 NMAC - N, 6-15-01; A, 7-1-04; A, 2-10-06; A, 11-19-07]

NEW MEXICO COUNSELING AND THERAPY PRACTICE BOARD

This is an amendment to 16.27.11 NMAC Sections 8, 9 and adding new Section 11 effective 11-19-07.

16.27.11.8 SUPERVISION:

A. Supervision for alcohol ~~and/or~~ and drug abuse counselors must be provided by a licensed professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LMFT), licensed professional art therapist (LPAT), licensed psychologist, licensed psychiatrist, licensed alcohol and drug abuse counselor (LADAC) with three years of alcohol and drug abuse experience acquired after licensure, clinical nurse specialist in substance abuse or licensed independent social worker (LISW). Supervisors must have experience in alcohol and drug abuse counseling. Effective July 1, 2007, the alcohol and drug counselor may provide therapeutic services that may include treatment of clients with co-occurring disorders or dual diagnosis in an integrated behavioral health setting in which a multidisciplinary team has developed a multidisciplinary treatment plan that is co-authorized by an independently licensed counselor or therapist. The treatment of a mental health disorder must be supervised by an independently licensed counselor or therapist.

B. It is the responsibility of the individual seeking supervision to assure the supervision is acceptable for the level of licensure that will be requested at the completion of the required supervision. The relationship between the supervisor and the applicant must promote the development of skill and responsibility in the delivery of counseling or therapy services.

C. Client contact and supervision hours acquired prior to being licensed will not be acceptable for licen-

sure.

[16.27.11.8 NMAC - Rp 16 NMAC 27.1.7.5.3&4, 6-15-01; A, 7-1-04; A, 2-10-06; A, 11-19-07]

16.27.11.9 APPLICANTS FOR LICENSURE: An alcohol and drug abuse counselor (LADAC) must possess the following qualifications and provide the required documentation with the application.

A. Age requirement: Be at least 21 years of age.

B. Applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics.

C. Applicant must demonstrate professional competency by passing the national certification examination for addiction counselors (NCAC level 1).

D. Education requirements

(1) Holds an associate degree in counseling, counseling related field or a substance abuse related field from an accredited institution. The board may approve, on a case-by-case basis, applicants whose education is not a counseling related field, and education and training to include 276 clock hours in the following areas:

(a) 90 hours in the field of alcohol abuse

(b) 90 hours in the field of drug abuse

(c) 90 hours in the field of counseling

(d) 6 hours that pertain specifically to alcohol and drug counseling ethics training.

(2) Holds a baccalaureate degree in a counseling related field or a substance abuse related field from an accredited institution. The board may approve, on a case-by-case basis, applicants whose education is not in a counseling related field; and to include 276 clock hours in the following areas:

(a) 90 hours in the field of alcohol abuse

(b) 90 hours in the field of drug abuse

(c) 90 hours in the field of counseling

(d) 6 hours that pertain specifically to alcohol and drug counseling ethics training, (must be acquired two years prior to submission of an application).

(3) Holds a masters or doctoral degree in counseling, a counseling related field or a substance abuse related field from an accredited institution and education and training that includes 276 clock hours with 90 hours in each area of alcohol, drug abuse, counseling and 6 hours of professional ethics. One year and 1,000 client contact hours under appropriate supervision

of experience in the practice of alcohol and drug abuse counseling and fifty hours of face to face supervision. The board may approve, on a case-by-case basis, applicants whose education is not in a counseling related field or substance abuse related field and to include 276 clock hours in education or training.

E. Experience requirements.

(1) associate degree requires a minimum of three years and three thousand client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and two hundred hour of face-to-face supervision; or

(2) a baccalaureate degree requires a minimum of two years and two thousand client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and one hundred hours of face-to-face supervision under appropriate supervision; or

(3) a masters or doctoral degree requires a minimum of one year and one thousand client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and fifty hours of face-to-face supervision.

F. Documentation required for licensure:

(1) a completed application as specified in 16.27.3.8 NMAC, and

(2) proof of completed education and experience requirements:

(a) the applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's associate, baccalaureate, or masters degree; the official transcript must be submitted with the application; applicants educated in foreign institutions who are unable to submit certified official transcripts shall submit a statement explaining why such transcripts are not available and shall submit certified copies of the degree certificates granted, information on the curricula offered, and any other documentation requested by the board, ~~and/or~~ and

(b) documentation of required drug, alcohol, counseling and ethics training (attachment D) shall include:

(i) transcripts from the college or university, or

(ii) the date, course title, course description, number of hours attended and certificate of attendance, and

(c) a statement from each supervisor in a sealed envelope on a form provided by the board (attachment B) verifying the applicant's supervised experience and setting forth the nature and extend of such supervision must be submitted with the application; the statement shall verify that the applicant's performance was in accor-

dance with adequate counseling standards of alcohol and drug practice; if a supervisor's statement is not available, the applicant may submit documentation explaining why the supervisor's statement is not available and sworn affidavits from other individuals verifying that supervision took place and describing the nature and the extent of supervision, and

~~[(3) original letters of recommendation are to be submitted with the application in a sealed envelope.~~

~~(a) provide one letter from current supervisor attesting to good moral character and competency of the applicant, and~~

~~(b) provide one letter from current employer attesting to good moral character and competency of the applicant, and~~

~~(c) provide one letter from a professional substance abuse colleague attesting to the professionalism of the applicant.]~~

~~[(4) (3) applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics, and~~

~~[(5) (4) verification of the applicant's licensure, registration, or certification status must be submitted on attachment form A, which must be sent directly to the board by the jurisdiction in which the applicant is licensed, certified or registered. [16.27.11.8 NMAC - Rp 16 NMAC 27.26.8, 6-15-01; A, 7-1-04; A, 2-10-06; A, 11-19-07]~~

16.27.11.11 ALCOHOL AND DRUG ABUSE COUNSELOR:
Requirements for grandfathered licensure.

A. Effective July 1, 2007 through July 1, 2010, the board shall license as an alcohol and drug abuse counselor a person who holds a current certified alcohol and drug abuse counselor certification (CADAC) issued between July 1, 1996 and July 1, 2010 and files a completed application accompanied by the required fees and submits satisfactory evidence that the applicant:

(1) is of good moral character with conduct consistent with the code of ethics;

(2) has reached the age of twenty-one;

(3) has submitted evidence of having participated in a total of six thousand client contact hours and three hundred supervised face-to-face hours; and

(4) has completed two hundred seventy-six clock hours of education or training that includes ninety hours in each area of the fields of alcohol, drug abuse and counseling and six hours of training in professional ethics acquired, within two years of receipt of the application.

B. An applicant who

meets the requirements of Subsection A of this section will not be required to complete an examination.

[16.27.11.11 NMAC - N, 11-19-07]

**NEW MEXICO
COUNSELING AND
THERAPY PRACTICE
BOARD**

This is an amendment to 16.27.13 NMAC Sections 8 and 9 effective 11-19-07.

16.27.13.8 SUPERVISION:

A. Supervision received for substance abuse associate must be provided by a licensed professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LFMT), licensed professional art therapist (LPAT), licensed psychologist, licensed clinical psychiatrist, licensed alcohol and drug abuse counselor (LADAC) with three years of alcohol and drug abuse experience acquired after licensure, clinical nurse specialist in psychiatry or licensed independent social worker (LISW). Supervisors must have experience in alcohol and drug abuse counseling. A licensed substance abuse associate must practice under supervision at all times. If the associate has completed the requirements for LADAC the associate must continue practicing under supervision until the associate has acquired the official LADAC license.

B. It is the responsibility of the individual seeking supervision to assure the supervision is acceptable for the level of licensure.

[16.27.13.8 NMAC - Rp 16 NMAC 27.1.7.5.3&4, 6-15-01; A, 7-1-04; A, 2-10-06; A, 11-19-07]

16.27.13.9 APPLICANTS FOR LICENSURE: A substance abuse associate (LSAA) must possess the following qualifications and provide the required documentation with the application.

A. Age requirement: Be at least 21 years of age.

B. Applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics.

C. Supervisory requirements: Applicant must have arranged for appropriate supervision, including an experience plan.

D. Holds an associate degree in counseling, counseling related field, or a substance abuse related field from an accredited institution and has a total of ninety (90) clock hours of education and training in the areas of alcohol, drug, and

counseling. The board may approve, on a case-by-case basis, applicants whose education is not in counseling, counseling related field, or substance related field.

E. Documentation required for licensure:

(1) a completed application as specified in 16.27.3.8 NMAC, and

(2) proof of completed education requirements: the applicant is required to submit an official transcript in a sealed envelope from each institution associate, baccalaureate, masters or doctoral degree; the transcript must be submitted with the application; and

(3) verification of associates degree in counseling, a counseling-related field, or substance abuse related field and 90 clock hours of education and training in the fields of alcohol and/or drug abuse, and

(4) verification on attachment C that an appropriate supervisor has been obtained and an experience plan has been established and a signed statement is provided by the supervisor indicating the associate shall only participate in alcohol and drug abuse counseling sessions[~~and~~

~~(5) original letters of recommendation: letters must be in a sealed envelope and submitted with the application:~~

~~(a) one letters from a current supervisor attesting to good moral character and competency of the applicant, and~~

~~(b) one letter from a professional substance abuse colleague attesting to good moral character and competency of the applicant].~~

[16.27.13.9 NMAC - Rp 16 NMAC 27.27.8, 6-15-01; A, 7-1-04; A, 2-10-06; A, 11-19-07]

**NEW MEXICO
COUNSELING AND
THERAPY PRACTICE
BOARD**

This is an amendment to 16.27.16 NMAC Section 11 effective 11-19-07.

16.27.16.11 FAILURE TO MEET CONTINUING EDUCATION REQUIREMENTS:

The board will refuse to renew the licensee's license in accordance with the Uniform Licensing Act NMSA 1978 sections 61-1-1 through 61-1-31. If continuing education units requirements are not completed within the licensing period and by the expiration date, the licensee or registrant will be considered expired and will refrain from practicing. Individuals unable to meet continuing education requirements due to circumstances beyond their control must submit a written request for a waiver sixty (60) days prior to their renewal date. Extenuating circum-

stances include illness, death in immediate family, military service, or other severe circumstances, which do not allow an applicant to meet continuing education requirements. The applicant may request a one-time extension approved by the board and must pay an additional \$300.00 fee. The board will review each request on a case-by-case basis.

[16.27.16.11 NMAC - Rp 16 NMAC 27.11.11, 6-15-01; A, 7-1-04; A, 11-19-07]

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

THIS IS AN EMERGENCY AMENDMENT TO 2.40.2 NMAC, SECTIONS 2, 8 AND 11 EFFECTIVE OCTOBER 30, 2007.

2.40.2.2 SCOPE:

A. The contracts review bureau of the department of finance and administration shall review and approve all professional services contracts which result in expenditures ~~[equal to or]~~ greater than five thousand dollars (\$5,000), including applicable gross receipts tax, and all amendments to those contracts for all state agencies except as provided in Subsections B and C of Section 2.40.2.2 NMAC of this rule. Contracts expending public funds in accordance with the Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978 as amended are included within the scope of this rule.

B. The following state agencies are currently exempt from submitting professional services contracts and amendments through the contracts review bureau of the department of finance and administration:

(1) state agencies within the judicial branch of government as defined by the New Mexico Constitution, Article VI;

(2) state agencies within the legislative branch of government as defined by the New Mexico Constitution, Article IV;

(3) state educational institutions as defined by the New Mexico Constitution, Article XII, Section 11 and Chapter 21, Articles 13, 14, 16 and 17 NMSA 1978;

(4) the state fair pursuant to Section 16-6-8 NMSA 1978;

(5) the New Mexico public school insurance authority pursuant to Sections 22-29-6 (F) and 22-29-8 NMSA 1978 for contracts for procuring goods or services and paying for insurance or insurance-related services;

(6) the New Mexico mortgage finance authority pursuant to Section 58-18-20 NMSA 1978; and

~~[(7) the livestock board pursuant to Section 77-2-10 NMSA 1978; and]~~

~~[(8) (7) other state agencies exempt by statute.~~

C. Pursuant to Section 6-5-9 NMSA 1978, the secretary of the department of finance and administration may exempt a state agency's contracts from contracts review bureau review and approval when the secretary of the department of finance and administration determines that efficiency or economy so requires. A state agency seeking an exemption must:

(1) apply in writing to the secretary of the department of finance and administration; and

(2) meet all of the following requirements:

(a) issue its own warrants;

(b) be exempt from prior submission of vouchers or purchase orders to the financial control division of the department of finance and administration;

(c) receive the majority of its money from non-general fund sources;

(d) maintain pre-audit and post-audit fiscal accounting controls;

(e) maintain and operate its own administrative unit for procurement and controls its own encumbrance of funds available for professional service contracts;

(f) provide administrative control and review of professional services contracts through its own administrative unit; and

(g) employs in-house counsel to prepare, review, and approve professional services contracts for form and legal sufficiency and to advise the state agency with respect to all applicable laws and regulations; provided, however, that the attorney general shall also review and approve all contracts subject to Paragraph (1) of Subsection C of 2.40.2.10 NMAC of this rule prior to approval and execution by the state agency.

[7-1-76, 8-15-77, 7-1-78, 7-1-84, 7-10-85, 7-1-87, 12-20-89, 5-15-97, 7-1-01; 2.40.2.2 NMAC - Rn & A, 2 NMAC 40.2.2, 1-14-2005; A, 9-15-2005; A/E, 10-17-2005; A/E, 10-30-2007]

2.40.2.8 DELEGATION OF APPROVAL AUTHORITY:

A. The bureau shall review all contracts and contract amendments for professional services with state agencies as to form, and budgetary requirements.

B. The bureau shall consult with the department's legal counsel as needed regarding any issues of legal sufficiency of a state agency's contracts and contract amendments for professional services.

C. The DFA secretary shall delegate, in writing to certain members of the bureau, the authority to approve

professional services contracts which result in expenditures ~~[equal to or]~~ greater than five thousand dollars (\$5,000), including gross receipts tax, and all amendments to those contracts except retroactive approval to contracts and contract amendments and sole source contracts and amendments to sole source contracts as provided herein.

[7-1-78, 7-1-84, 7-10-85, 7-1-87, 12-20-89, 5-15-97, 6-15-98, 7-1-01; 2.40.2.8 NMAC - Rn & A, 2 NMAC 40.2.8, 1-14-2005; A/E, 10-17-2005; A/E, 10-30-2007]

2.40.2.11 SMALL PURCHASES:

A contract for professional services having a value over five thousand dollars (\$5,000) including applicable gross receipts taxes, but not exceeding ~~[thirty thousand dollars (\$30,000)]~~ fifty thousand dollars (\$50,000) excluding applicable gross receipts taxes, except for the services of architects, landscape architects engineers, or surveyors for state public works projects, may be procured in accordance with the Procurement Code, Sections 13-1-28 to 13-1-99 NMSA 1978.

[7-10-85, 7-1-87, 5-15-97, 6-15-98, 7-1-01; 2.40.2.11 NMAC - Rn & A, 2 NMAC 40.2.11, 1-14-2005; A, 9-15-2005, A/E, 10-17-2005; A/E, 10-30-2007]

NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.20 NMAC, Sections 1, 3, and 7 through 12, effective 11/15/2007. The part name has also been amended.

PART 20 ~~[SUCCESS]~~ LEGISLATIVE LOTTERY SCHOLARSHIP PROGRAM

5.7.20.1 ISSUING AGENCY: State of New Mexico ~~[Commission on Higher Education]~~ Higher Education Department.

[5/31/97; 5.7.20.1 NMAC - Rn & A, 5 NMAC 7.20.1, 8/14/2000, A, 11/15/2007]

5.7.20.3 STATUTORY AUTHORITY: ~~[Section 6-24-23, 6-24-24, 21-1-4, 21-16-10, 21-17-6 NMSA 1978]~~ Sections 6-24-23, 21-1-4.3, and 21-16-10.1, NMSA 1978

[5/31/97; 5.7.20.3 NMAC - Rn & A, 5 NMAC 7.20.3, 8/14/2000, A, 11/15/2007]

5.7.20.7 DEFINITIONS:

A. ~~["Commission" means the New Mexico commission on higher education.]~~ "Department" means the New Mexico higher education department.

B. ~~["Success] Legislative~~

lottery scholarship means a scholarship awarded from proceeds of the New Mexico lottery tuition fund, to defray all or part of the cost of tuition.

C. **"Academic year"** means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year.

D. **"Award recipient"** means a student awarded a ~~success~~ legislative lottery scholarship.

E. **"Eligible institution"** means any New Mexico public postsecondary institution ~~and~~.

F. **"Satisfactory academic progress"** means, for continuing eligibility following establishment of first year eligibility, maintenance of a cumulative grade point average of a minimum of 2.50 or higher on a scale of 4.0, to be determined at the end of each semester (to include summer session).

G. **"Graduate equivalent diploma"** means:

(1) a diploma earned from a New Mexico public high school no earlier than May 1996;

(2) a diploma earned from an accredited New Mexico private high school no earlier than May 1996;

~~(3) a diploma earned no earlier than May 1996, from an accredited home school program operating in New Mexico. Students are still subject to New Mexico residency requirements as provided for in 5.7.18 NMAC; or~~

~~(4)~~ (3) a diploma earned from an out-of-state high school in which the state superintendent made supplemental distributions to pay the secondary out-of state tuition of the student because school facilities were not reasonably available in the New Mexico school district of their residence, pursuant to Section 22-8-30, NMSA 1978;

~~(5)~~ (4) in the event that the student has not received a diploma as described in ~~Paragraph 1 through 4~~ Paragraphs (1) through (3) of Subsection G ~~of 5.7.20.7 NMAC~~, a New Mexico general educational development (GED) diploma earned no earlier than May 1996; for GED students, the GED certification date shall be considered the graduation date.

H. **"Full-time"** means:

(1) in the case of first year eligibility, satisfactory completion of at least twelve (12) student credit hours during the student's first regular session/semester of enrollment; "regular session/semester" excludes summer session;

(2) in the case of continuing eligibility, satisfactory completion of at least twelve (12) student credit hours during semester enrollment;

(3) due to the limited duration of this scholarship, it is the intention of this program that the student earn sufficient credit to obtain a certificate/degree within the time prescribed by law therefore:

(a) the student credit hour calculation shall include:

(i) earned student credit hours which count towards certificate/degree (for example, grades of "A", "B", "C", "D", or "CR" for credit).

(ii) a passing grade for developmental/remedial/skills courses (for example, a passing grade noted as a "P" for pass, "S" for satisfactory, or "CR" for credit) needed for admission to college credit courses contributing to a degree program;

(b) the student credit hour calculation shall exclude: grades of "F" for failure, "N/C" for no credit, "I" for incomplete, "R/R" for re-register, "PR" for progress, "U/S" for unsatisfactory, "W" for withdrawal, "WP" for withdrawal pass, "WF" for withdrawal fail; even if an institution provides credit for courses in which a student earns these, or comparable grades, the credit hour calculation for the purpose of the ~~success~~ legislative lottery scholarship program shall exclude them.

I. **"Probation"** means:

(1) any period of time of enrollment that students, which fail to meet the continuing eligibility requirements, can re-establish eligibility for the program;

(2) the cumulative GPA and/or full-time requirements shall be determined upon completion of each semester;

(3) the student is not eligible to receive the scholarship during the probationary period;

(4) if the student is unsuccessful in re-establishing eligibility during the probationary period, their scholarship will not be reinstated; and

(5) under no circumstances shall the student receive program awards in excess of those prescribed in Subsections A and B ~~of 5.7.20.9 NMAC~~ less the regular semester(s) of probation.

[5/31/97, 9/30/98, 12/31/99; 5.7.20.7 NMAC - Rn & A, 5 NMAC 7.20.7, 8/14/2000; A, 6/30/2003; A, 11/15/2007]

5.7.20.8 STUDENT ELIGIBILITY:

A. **First year eligibility.**

To be eligible, a student must meet the requirements which follow. Upon satisfaction of the first year eligibility requirements, the scholarship will be awarded to the student beginning with their second semester of enrollment. A scholarship may be awarded to a New Mexico resident who:

(1) ~~is a citizen of the United States or a permanent resident alien and resident of New Mexico; as used herein, New~~

~~Mexico residency is as defined in 5.7.18 NMAC and excludes the exception categories detailed in 5.7.18 NMAC with the exception of "Navajo;" Navajo students are eligible if they have a graduate equivalent diploma as defined in Subsection G in 5.7.20.7 NMAC;~~ has established New Mexico residency as defined in 5.7.18.9 NMAC or is eligible for a Navajo nation waiver as defined in Subsection B of 5.7.18.10 NMAC or an SB 582 waiver as defined in Subsection L of 5.7.18.10 NMAC, provided a student has received a graduate equivalent diploma as defined in Subsection G of 5.7.20.7 NMAC;

(2) has a graduate equivalent diploma;

(3) has met the admission requirements and is accepted for enrollment as an undergraduate student at an eligible institution;

(4) has obtained at least a 2.5 GPA during their first college semester;

(5) has been enrolled full time in a certificate or degree-seeking program at a New Mexico postsecondary institution during the first regular semester immediately following the students' receipt of a graduate equivalent diploma as defined in Subsection G ~~of 5.7.20.7 NMAC~~.

(a) Mid-year high school graduates. Students in receipt of a graduate equivalent diploma which is dated after the eligible institution's admissions deadline for degree status in the first regular semester shall be permitted to enroll and establish eligibility in the next immediate regular semester (excluding summer session).

(b) Active duty military. Students who, within one hundred twenty (120) days of completion of a graduate equivalent diploma, begin service in the United States armed forces can establish eligibility for the scholarship during their first college semester if within one hundred twenty (120) days of completion of honorable service or medical discharge from the service are accepted for entrance to and attend one of the state educational institutions. Said students are subject to the remaining provisions of 5.7.20 NMAC.

(6) has not been awarded a New Mexico scholars' scholarship or other scholarship which provides for one hundred percent of the cost of tuition; and

(7) has complied with all the rules and regulations adopted by the ~~commission~~ department for award of the ~~success~~ legislative lottery scholarship;

(8) students who are incapable of meeting the requirements specified in Paragraph 5 of Subsection A ~~of 5.7.20.8 NMAC~~ due to a documented medical condition do not forfeit eligibility for the ~~success~~ legislative lottery scholarship; however, the following requirements shall apply.

(a) The student shall provide documents certifying the nature of this medical condition to the financial aid officer at the institution at which the student is enrolling or will enroll. The financial aid officer shall exercise professional judgment to determine whether the medical condition is beyond the student's control and precludes the student from meeting the requirements specified in Paragraph 5 of Subsection A ~~[in]~~ of 5.7.20.8 NMAC.

(b) If, in the professional judgment of the financial aid officer, the student's documented medical condition is recognized as a valid reason for the student's inability to meet the requirements of Paragraph 5 of Section A of 5.7.20.8 NMAC the student's initial eligibility for the ~~[success]~~ legislative lottery scholarship shall be suspended or tolled unless and until such time that the student is capable of meeting the requirements of Paragraph 5 of Subsection A ~~[in]~~ of 5.7.20.8 NMAC.

(c) The student with a recognized documented medical condition shall not be eligible to receive the ~~[success]~~ legislative lottery scholarship until such time that all requirements of Subsection A ~~[in]~~ of 5.7.20.8 NMAC have been met.

B. Continuing eligibility. A student's continuing eligibility shall be determined on a semester basis.

(1) A ~~[success]~~ legislative lottery scholarship award may be re-awarded to a student who:

(a) maintains satisfactory academic progress; and

(b) remains enrolled for at least full time status for consecutive semesters or as provided in Subsection D ~~[in]~~ of 5.7.20.9 NMAC.

(2) Students failing to meet continuing eligibility requirements shall defer to the eligible institution for probation consideration as defined in Subsection I ~~[in]~~ of 5.7.20.7 NMAC.

[5/31/97, 9/30/98, 12/31/99; 5.7.20.8 NMAC - Rn & A, 5 NMAC 7.20.8, 8/14/2000; A, 11/15/2007]

5.7.20.9 DURATION OF SCHOLARSHIP:

A. The initial scholarship shall begin with the second semester of enrollment and continue for that academic year. Thereafter, each scholarship is for a period of one semester subject to revocation for failure to maintain eligibility. The scholarship may be renewed on a semester basis until the award recipient has received eight (8) semesters of scholarship awards, or until the student graduates with a bachelor's degree from an eligible institution, whichever is sooner.

B. An award recipient may use the award at an eligible two-year institution until he/she receives four semesters

of scholarship awards or an associate's degree and may receive four (4) semesters of additional awards if he/she transfers in the following semester to an eligible New Mexico four-year institution. In no case shall a student receive more than eight semesters of awards.

C. A student may transfer from a four-year institution to a two-year institution but, in no case shall a student receive more than four (4) semesters of awards (including those awarded at the prior institution) or until the student graduates with an associate's degree, whichever is sooner.

D. A student participating in cooperative education, military, or other approved commitments may participate as long as the student has met the first year eligibility requirements before entering into said obligations.

(1) Cooperative education. Students may maintain continuing eligibility for this program if the student provides sufficient documentation to the financial aid officer, with certification from the institution's cooperative education office, that the "part-time enrollment" and/or "non-enrollment" was due to a legitimate cooperative education placement. The financial aid officer shall, in turn, ensure that the student does not receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.9 NMAC and shall exclude the semesters of "part-time enrollment" and/or "non-enrollment" from the determination of remaining eligible award semesters.

(2) Military commitments. Students may maintain continuing eligibility for this program for a period of up to one (1) year of "non-enrollment" if the student provides sufficient documentation to the aid officer, such as copies of authorized orders, that demonstrates the military obligation. The financial aid officer shall, in turn, ensure that the student does not receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.9 NMAC and shall exclude the semesters of "non-enrollment" from the determination of eligible award semesters.

(3) Other approved leave of absence for a period of up to one (1) year of "non-enrollment." Students may obtain an approved leave of absence if the student provides sufficient documentation to the aid officer to justify the leave of absence. The documentation may include approval for authorized leave by the institution's academic vice president, registrar, financial aid director, or other appropriate official. The financial aid director shall, in turn, ensure that the student does not receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.9 NMAC and shall exclude the semesters of "non-enrollment" from the determination of eligible

award semesters.

E. Student ineligibility for other aid. If a student becomes ineligible for a different scholarship that covers tuition, but does satisfy the first year eligibility requirements of this program, the student may begin receiving the ~~[success]~~ legislative lottery scholarship for the remaining number of semesters of enrollment, not to exceed those prescribed in Subsections A and B of 5.7.20.9 NMAC. For example, at a four-year institution, if a student received a tuition scholarship that required a 3.0 GPA for two semesters and that student's GPA subsequently dropped to a 2.5, the student could begin receiving the ~~[success]~~ legislative lottery scholarship for 7 semesters (9 - 2 = 7) provided they meet the continuing eligibility criteria.

[5/31/97, 9/30/98; 5.7.20.9 NMAC - Rn & A, 5 NMAC 7.20.9, 8/14/2000; A, 11/15/2007]

5.7.20.10 AMOUNT OF SCHOLARSHIP: The amount of the award may vary dependent upon the amount of funds received from the lottery tuition fund and the number of eligible recipients. Scholarships shall only apply to tuition costs. ~~[Commission]~~ Department staff will, in May annually, notify all eligible institutions of the percentage of tuition each scholarship shall provide for the following academic year.

[5/31/97, 9/30/98; 5.7.20.10 NMAC- Rn, 5 NMAC 7.20.10, 8/14/2000; A, 11/15/2007]

5.7.20.11 ADMINISTRATION OF THE ~~[SUCCESS]~~ LEGISLATIVE LOTTERY SCHOLARSHIP:

A. Eligible institutions of higher education shall:

(1) develop a method to notify students of their possible eligibility, during their first regular semester of enrollment;

(2) designate an officer responsible for the scholarship program; the officer designated by the institution shall be responsible for determining initial and continuing student eligibility for the ~~[success]~~ legislative lottery scholarship program under the terms of these rules and regulations; the responsible officer shall maintain a listing of each participating student to include but not be limited to:

(a) social security number;

(b) semester and cumulative GPA;

(c) proof of initial and continuing enrollment;

(d) proof of receipt of a graduate equivalent diploma.

(3) draw-down funds from the ~~[commission]~~ department on a per semester basis on behalf of eligible students; all fiscal year draw-downs shall be for eligible students enrolled during the same fiscal

year;

(4) for students that satisfied the first year eligibility requirements and seek continuing eligibility consideration, use professional judgment to determine that circumstances beyond the students control, for which documentation exists in the student's file, warrant flexibility to make the program responsive to the students needs within the guidelines of the program; the institutions shall defer to their institutional satisfactory academic progress policy when considering circumstances which include, but are not limited to, consideration for falling below the cumulative GPA requirement or being enrolled in less than full-time status;

(5) provide an annual report to the ~~[commission]~~ department to include the number of awards granted, amount of funds awarded, number of awards renewed, and ethnicity and gender of students receiving the ~~[success]~~ legislative lottery scholarship;

(6) publish the probation policy as defined in Subsection I ~~[in]~~ of 5.7.20.7 NMAC.

(7) may enter into consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, in order to greater facilitate the enrollment of students and to facilitate the student's participation in this program;

(8) eligible four-year institutions and their branch institutions, independent community colleges, and area vocational institutions shall ensure that all available three percent scholarships are awarded before granting ~~[success]~~ legislative lottery scholarships; the intent of this provision is that tuition costs shall be paid first for those students eligible for merit-based aid packages funded by three percent scholarships; in those instances when tuition is not fully covered by the merit-based aid package, said student is eligible for the tuition cost differential to be funded by the ~~[success]~~ legislative lottery scholarship program; nothing in this section requires as institution to award a scholarship inconsistent with the criteria established or such scholarship; refer to Subsection E ~~[in]~~ of 5.7.20.9 NMAC for additional provisions.

B. ~~[Commission on higher education]~~ The department shall:

(1) invest, through the state ~~[treasurers]~~ treasurer's office, the proceeds deposited into the lottery tuition fund; earnings from investment of the fund shall accrue to the credit of the fund; any balance in the fund at the end of any fiscal year shall remain in the fund for appropriation;

(2) in May annually, notify all eligible institutions of the percentage of tuition each scholarship shall provide for the following academic year;

(3) convene an annual meeting with the financial aid directors of eligible

institutions to review the program; and,

(4) conduct audits to ascertain compliance with rules and regulations; at least a random audit of each participating institution's records shall take place on at least an annual basis by members of the ~~[commission]~~ staff; if, during the audit process, evidence indicates that a student should not have received a ~~[success]~~ legislative lottery scholarship, the institution will be held harmless for a semester payment, if the students file is appropriately documented; the institution must notify the student of termination of their award, subject to continuing eligibility requirements.

[5/31/97, 9/30/98; 5.7.20.11 NMAC - Rn & A, 5 NMAC 7.20.11, 8/14/2000; A, 6/30/2003; A, 11/15/2007]

5.7.20.12 TERMINATION OF SCHOLARSHIPS: A scholarship is terminated upon noncompliance by the award recipient with the ~~[success]~~ legislative lottery scholarship program rules, regulations or procedures as promulgated by the ~~[commission]~~ department.

[5/31/97, 9/30/98; 5.7.20.12 NMAC - Rn, 5 NMAC 7.20.12, 8/14/2000; A, 11/15/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.110 NMAC, Sections 3, 6, 8, 9, 10, 11, and 12, effective 11/15/2007.

8.102.110.3 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 ~~[financial]~~ 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.

[8.102.110.3 NMAC - Rp 8.102.110.3 NMAC, 07/01/2001; A, 11/15/2007]

8.102.110.6 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, ~~[assisting parents to develop the discipline necessary for self-sufficiency and to improve their self-esteem]~~ resources and support. The further purpose of the program is to increase family income through family employment and child support and by ~~[viewing financial]~~ utilizing cash assistance as a support service to enable and assist parents to participate in employment.

~~[B. The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program like NMW or the federal program of supplemental security income (SSI).]~~

~~C. The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.~~

~~D. The objective of the burial assistance program is to assist in payment of burial expenses for deceased, low-income individuals.]~~

B. The objective of 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.

[8.102.110.6 NMAC - Rp 8.102.110.6 NMAC, 07/01/2001; A, 11/15/2007]

8.102.110.8 GENERAL

A. **Project area:** The application for cash assistance or services shall be made to the human services department in the project area in which the applicant resides. ~~[The project area is the geographic area designated to a county office]~~

~~that is responsible for the administration of the Department's programs.]~~

B. Application form:

The application shall be in writing on a form designated by the department and is made under oath by an applicant with whom a dependent child resides. The department shall assist an applicant in completing the application for cash assistance or services. The application must contain a statement of the age of the child; residence; a statement of property in which the applicant has an interest; a statement of the income that the applicant or other benefit group members have at the time the application is filed; a signature under penalty of perjury from the applicant; and other information required by the department.

C. Interview:

(1) A face-to-face interview with the applicant shall be required in order to obtain information needed to determine eligibility [~~to ascertain~~], verify, and record the facts supporting the application; and to give the applicant information about [~~the~~] department programs and program requirements.

(2) The applicant must identify all individuals living in the residence, [~~and of those individuals everyone~~] The applicant and the department shall identify all individuals who must be included in the benefit group.

(3) A home visit may be made to conduct the interview and obtain the information needed, as long as the [~~Income Support Division (ISD)~~] department gives adequate prior notice of the visit.

(4) Other information [~~and~~], documents, [~~as well as~~] and collateral contacts may be required to determine eligibility. Requests for verification are made in accordance with provisions set forth in 8.100.130 NMAC.

D. Resource planning session:

The applicant shall be provided a resource planning session no later than 30 days after an application is filed. The [~~office~~] department shall attempt to provide a resource planning session prior to approving the application, but it is not mandatory. Failure to provide a resource planning session shall not impede [~~acceptance~~] registration or processing of the application. The focus of the resource planning session is to ascertain the applicant's immediate needs, assess the applicant's financial and non-financial options, and to provide general information about departmental assistance programs. The caseworker shall assist the applicant in exploring and accessing any other financial or non-financial options that may meet the benefit group's needs. If there is any indication that the applicant might be eligible for SSI, the relative advantages of the SSI program shall be explained and the applicant shall be referred to the local social

security office.

E. EBT orientation:

NMW cash assistance benefits shall be authorized and available through an electronic benefit transfer (EBT) account. [~~An applicant must attend an EBT orientation session~~] The department shall provide EBT training to an applicant in order to be able to access cash assistance benefits.

F. Application processing time limit:

[~~(4)~~] An application for NMW cash assistance shall be processed no later than 30 days after an application is filed.

[~~(2)~~] No later than five days after the application is approved, a reimbursement for childcare shall be provided. [~~Upon approval of a NMW cash assistance case, action shall be taken to authorize payment of \$10.00 to the benefit group to cover immediate childcare expenses.~~]

[8.102.110.8 NMAC - Rp 8.102.110.8 NMAC, 07/01/2001; A, 11/15/2007]

8.102.110.9 RIGHT TO APPLY

A. An individual has the right to make a formal application for any cash, food or medical assistance program administered by the department, regardless of whether the individual appears to meet the conditions of eligibility. Any individual requesting information or assistance, who wishes to apply for assistance, shall be encouraged to complete the application that same day. The individual shall be informed:

(1) of the right to apply, whether or not it appears the individual [~~will~~] may be found eligible; and

(2) that the date of application affects the benefits.

B. Availability of applications: Application forms for cash assistance shall be readily available to anyone requesting an application, and to local agencies and organizations that have regular contact with the public. Each county office is responsible for providing program applications to local agencies and organizations. If an individual contacts the office by phone or mail and does not wish to come to the office to pick up an application, the individual shall be sent an application the same day the office is contacted.

[8.102.110.9 NMAC - Rp 8.102.110.9 NMAC, 07/01/2001; A, 11/15/2007]

8.102.110.10 SUBMISSION OF THE APPLICATION FORM

A. Items completed: To be accepted and registered, the cash assistance application, at a minimum, must identify the benefit group member applying, the program applied for, and have a signature of a responsible benefit group member or authorized representative.

B. Who completes the application: The application form must be

completed by the applicant, the authorized representative, guardian, or another appropriate individual.

(1) Authorized representatives must be:

(a) designated in writing by the applicant/ head of household; and

(b) be an adult who has sufficient knowledge about the [~~applicant/ benefit group's~~] applicant's circumstances to complete the application form correctly.

(2) If an authorized representative or another appropriate individual completes an application form, the applicant must review and approve the completed form. The applicant is liable for improper payments resulting from erroneous information given by the authorized representative or another appropriate individual.

(3) The caseworker may assist in completing the form if there is no one else to help the applicant.

(4) Application for minor children: Application for cash assistance for minor children, including unemancipated minor parents, must be made by the adult with whom the child resides and who is assuming responsibility for the support and care of the child.

(a) If a minor parent is living in a second-chance home, maternity home, or other adult-supervised supportive living arrangement, the application must be made by the supervising adult as the authorized representative for the minor parent.

(b) An emancipated minor may file an application in the emancipated minor's own right.

C. Signature:

(1) The application form must be signed by the applicant and authorized representative if one is designated.

(2) If an applicant receives help from someone other than a caseworker in completing the form, that individual must also sign at the bottom of the form.

(3) An individual who cannot sign the individual's own name must sign the application with a mark and have it witnessed. A mark, which is not witnessed, shall not be accepted as a valid signature. A caseworker may not witness signatures on an application the caseworker will be processing.

(4) If the application is made on behalf of a child, the form shall be signed by the relative or caretaker with whom the child is living, or by the authorized representative.

(5) If the individual, relative, or caretaker has a legally appointed guardian, the guardian must complete and sign the form.

D. Where filed: An application may be filed either in person or by mail with the ISD office in the project area serving the community or county where the

applicant lives. ~~[H]~~ An applicant ~~that~~ files the application with the incorrect project area, ~~[the applicant]~~ shall be referred to the correct project area. ~~[If the applicant wishes to complete]~~ If an applicant that completes an application that day, ~~[the]~~ or has mailed an application to the incorrect project area, that project area shall accept the completed application, register it, and immediately transfer the form to the correct project area. ~~[If an application is mailed to the incorrect project area, that office shall register the application and immediately transfer the form to the correct project area.]~~

E. Incomplete applications: If an application is incomplete, prompt action shall be taken to notify the applicant. The individual who completed the application form must add the missing or incorrect information and initial and date the entries. All reasonable action shall be taken by ~~[ISD]~~ the department to avoid any unnecessary delay of the applicant's eligibility determination.

F. Out-of-state applicants: An application mailed in from out of state shall be accepted, but shall not be registered until the applicant contacts ISD to confirm presence in the state. If the applicant does not contact the ISD within 30 days, the application shall be returned to the applicant.

G. Application registration: Completed and signed in-state applications shall be registered effective the date on which the application is received.

H. Tribal TANF programs: An application for NMW benefits received from an applicant residing in a tribal TANF service delivery area shall be accepted by ISD and registered as of the date the application was received.

(1) Effective upon implementation of a tribal TANF program, the applicant shall be required to apply for the tribal TANF program in the service delivery area in which the applicant resides.

(2) Prior to finalizing an application for NMW benefits received from an applicant residing in a tribal TANF service delivery area, the applicant shall be informed he or she must apply for tribal TANF.

(a) The applicant shall be informed in writing that the applicant must provide verification of the disposition of the applicant's tribal TANF application.

(b) The applicant shall be referred to the appropriate tribal TANF project area serving the community or county in which the benefit group lives.

[8.102.110.10 NMAC - Rp 8.102.110.10 NMAC, 07/01/2001; A, 02/14/2002; A, 11/15/2007]

8.102.110.11 INTERVIEWS

A. Application interview: All applicants shall be interviewed in person at the local office or, when circumstances warrant, at another place reasonably accessible and agreeable to both the applicant and the caseworker. The applicant may bring any individual to the interview.

B. Office interview waivers: Waiver of the requirement that the interview be conducted in the ISD office shall be determined on a case-by-case basis for any individual who is unable to appoint an authorized representative, has no one able to come to the office because of transportation difficulties, or similar hardships which the county office manager decides warrant a waiver of the office interview. These hardship conditions include, but are not limited to: illness, care of benefit group member, prolonged severe weather, or work hours which prevent an in-office interview during work hours.

C. Alternatives to office interviews: If an office interview is waived, the caseworker shall conduct a telephone interview or a home visit. Home visits shall be scheduled in advance with the benefit group as provided for at 8.100.180.17 NMAC. Waiver of the office interview ~~[in and of itself]~~ shall not be justification for extending the eligibility determination deadlines.

D. Scheduling interviews: An interview shall be scheduled upon receipt of the application. The interview shall take place within 10 working days of the date an application is filed and, to the extent possible, at a time that is convenient for the applicant.

E. Missed interviews: ~~[If an applicant fails to appear for the first interview, the applicant shall be notified of the missed interview.]~~ The applicant shall be responsible for scheduling a second appointment. If the applicant does not contact the office or does not appear for the rescheduled interview, the application shall not be denied until the 30th day (or the next workday if the 30th is not a workday) after the application was filed.

F. Purpose and scope of interview

(1) Prior to approval there shall be ~~[a face to face]~~ an interview with the applicant. The purpose and scope of the interview shall be explained to the applicant. The interview is an official and confidential discussion of benefit group circumstances between the applicant and the caseworker. ~~[H]~~ The interview allows the caseworker to explore and clarify unclear or incomplete information reported on the application and is intended to provide the applicant with information regarding the work program, child support benefits and requirements, the temporary nature of the program, eligibility

requirements, and to provide the caseworker with the necessary facts to make an accurate eligibility determination. ~~[In addition, the interview allows the caseworker to explore and clarify unclear or incomplete information reported on the application.]~~

(2) For cash assistance cases, at initial application, a brief history shall be required in the case narrative explaining the circumstances, which led to the application. The narrative shall include information clearly describing the child's situation with respect to child support from a non-custodial parent or parents.

G. Applicant information: During the course of the interview all reasonable steps shall be taken to make the applicant feel at ease and protect the applicant's right to privacy. The interviewer shall tell the applicant about the following:

(1) services available and requirements which must be met under the cash assistance program and the child support enforcement programs;

(2) school attendance and reporting requirements;

(3) complaint and hearing procedures;

(4) work program procedures;

(5) work requirements;

(6) application processing standards;

(7) procedures in cases of overpayment or underpayment;

(8) responsibility to report changes;

(9) non-discrimination policy and procedures;

(10) timeliness standards; and

(11) semiannual reporting requirements.

[8.102.110.11 NMAC - Rp 8.102.110.11 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 11/15/2007]

8.102.110.12 APPLICATION PROCESSING TIME LIMITS

A. Timeliness: The caseworker shall explain time limits and the applicant's right to request an administrative hearing if the application is not processed within the applicable time limits.

B. Processing time limit: Cash assistance applications ~~[other than GA Disability]~~ shall be completed within 30 days from the date of application. ~~[A GA Disability application requires a disability determination by the Incapacity Review Unit, and must be completed within 60 days from the date of application.]~~

C. "Clocking" of time limits: "Clocking" of time limits begins on the day after the completed and signed application is received.

D. Delayed assistance: If an eligibility determination is not made

within the required time limits, the applicant shall be notified in writing of the reason for the delay. The notice shall also inform the applicant of the applicant's right to request an administrative hearing regarding the issue of ISD's failure to act within the time limits.

[8.102.110.12 NMAC - Rp 8.102.110.12 NMAC, 07/01/2001; A, 11/15/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.120 NMAC, Sections 3, 6, 9, 10 and 11, effective 11/15/2007.

8.102.120.3 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 ~~financial~~ 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.

[8.102.120.3 NMAC - Rp 8.102.120.3 NMAC, 07/01/2001; A, 11/15/2007]

8.102.120.6 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, ~~assisting parents to develop the discipline necessary for self sufficiency and to improve their self esteem~~ resources and support. The further purpose of the program is to increase family income through family employment and child support and by ~~viewing financial~~ utilizing cash assistance as a support service to enable and assist parents to participate in employment.

~~**B.** The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program like NMW or the federal program of supplemental security income (SSI).~~

~~**C.** The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.~~

~~**D.** The objective of the burial assistance program is to assist in payment of burial expenses for deceased, low income individuals.]~~

B. The objective of 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.

[8.102.120.6 NMAC - Rp 8.102.120.6 NMAC, 07/01/2001; A, 11/15/2007]

8.102.120.9 ELIGIBILITY REVIEWS

A. Follow-up reviews:

(1) A follow-up review shall be scheduled during a certification period whenever information becomes known to the county office indicating a possible change in a benefit group's circumstances that may affect eligibility or payment amount.

(2) Review of a specific condition may be made by home visit, office visit, third party contacts or correspondence as needed.

(3) Circumstances which may require follow-up review include, but are not limited to:

(a) in NMW, exemption from work requirements;

(b) school attendance of children age 6 or older;

(c) any other anticipated change in circumstances which will require a change of grant during a certification period.

B. Recertification:

(1) Cash assistance shall be

approved for a fixed certification period at the end of which the assistance shall be terminated.

(2) The recertification shall consist of a complete review of all conditions of eligibility; determination of eligibility for an additional period of time and redetermination of the amount of assistance payment. The recertification requires a redetermination of eligibility on those conditions that are subject to change. There shall be a prospective determination beginning the month following the month the certification expires.

(3) The caseworker shall ensure that CSED has been notified of all pertinent information regarding any non-custodial parent who has a child in the benefit group, including but not limited to the current address and work place of the non-custodial parent.

(4) Conditions not subject to change: The caseworker reviews documentation of conditions not subject to change. If the record does not contain satisfactory evidence, additional verification shall be obtained.

(5) Work program: The caseworker shall give information to the NMW ~~recipients~~ participants about earned income incentives, assistance through the transitional child care program, medicaid transitional benefits, and work program requirements, opportunities and services. Work program participation shall be reviewed.

(6) Need and payment determination: The caseworker shall obtain current information about family and benefit group income, resources, and circumstances, to determine financial need and amount of payment.

(7) Change reporting: The caseworker shall review with the client the possible changes in circumstances which must be reported if they occur.

C. Certification scheduling:

(1) Each case must have eligibility and payment reviewed at least once during the period specified for that category. Cash assistance cases, which also receive food stamps, shall be recertified at the same time the food stamp certification is completed.

(2) The certification period shall not exceed the following standards:

(a) Regular reporting benefit groups: A benefit group not subject to semiannual reporting requirements shall be certified:

(i) every six months or less for: 002 - NMW, 002 education works program;

(ii) every 12 months for: 010 - state supplement for SSI recipients in residential care;

(iii) eight months for:
019 - RRP

(b) Semiannual reporting benefit groups: Certification provisions that apply to a NMW benefit group subject to semiannual reporting are set forth at Subsection A of 8.102.120.11 NMAC.

(3) Except for cases assigned to semiannual reporting, the caseworker shall have full discretion to make the certification period less than the maximum time interval if changes in circumstances affecting eligibility are probable, family circumstances are questionable, when it is necessary in the interest of good caseload management, or to coincide with a food stamp certification.

D. Interview:

(1) A face to face interview between the caseworker and the specified relative/caretaker shall take place at least once a year in connection with a recertification, with the exception of medicaid categories.

(2) The interview must be with the client himself, unless the client's physical or mental condition makes the interview impossible or inadvisable. See 8.100.130 NMAC for instructions on obtaining information.

(3) To help a client report changes that may affect the client's eligibility or amount of payment, the caseworker shall make available a change report form upon request, which the client may use to notify the county office of changes in circumstance.

E. Scheduling recertification reviews: The certification period end date shall be scheduled for the appropriate interval indicated in Subsection C of 8.102.120.9 NMAC, starting with the initial month of eligibility, or the month following the month in which previous certification expired.

F. Exchange of information with SSA:

(1) If information received during any eligibility review indicates that a [recipient of] participant in NMW or GA may be eligible for supplemental security income (SSI) benefits, (this includes children and adults who appear disabled, and needy adults over 65), the caseworker shall promptly refer the [recipient] participant to the social security administration district office for application. An individual found eligible for SSI must participate in that program.

(2) During the review process, the caseworker will sometimes learn information relevant to the eligibility of a family member who is a SSI recipient. If there is a clear indication that a SSI recipient's countable income exceeds the maximum allowable under the SSI program, the discrepancy shall be reported to the social security

administration (SSA) district office. SSA shall also be notified when it appears that the resources of an SSI recipient exceed SSI program standards.

[8.102.120.9 NMAC - Rp 8.102.120.9 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 7/17/2006; A, 11/15/2007]

8.102.120.10 HANDLING BENEFIT GROUP AND RESIDENCE STATUS CHANGES

A. Change of name or payee: Whenever there is a change in a [recipient's] participant's name or the payee for cash assistance, the caseworker shall immediately make the appropriate changes.

(1) New caretaker:

(a) If a new caretaker assumes responsibility for a dependent child in a case, the case shall be closed and a new application processed.

(b) If the new caretaker is already payee for other dependent children, the cash assistance case of the children being transferred to the new payee shall be closed, an add-on application shall be processed, and the children added to the existing benefit group.

(2) Payee change after benefits are issued:

(a) Warrants: If there is a change of payee after warrants have already been mailed and the original payee is not available to endorse the warrant, the caseworker shall request that the warrant be returned to the county office to effect the change. The caseworker shall write "VOID" on the face of the original warrant and send it to the accounting section in central office. A replacement warrant shall be issued in the name of the new payee.

(b) EBT: In an EBT case, the EBT account shall be made accessible to another family member by authorization of a new PIN under the old account.

(3) Changes in name or payee are indicated when:

(a) a payee legally changes his name and the change has been processed through the social security administration;

(b) a legal guardian is appointed or dismissed;

(c) the parent of an incompetent adult client begins to serve as natural guardian; or

(d) there is a change of payee for an NMW grant.

B. Change in benefit group composition: A request for assistance for a new benefit group member shall be treated as add-on an application. An add-on application shall be processed using the timeliness and verification standards applicable to regular applications.

C. Move to another state: If a [recipient] participant advises the coun-

ty office in advance of the [recipient's] participant's departure from the state, the [recipient] participant shall be contacted to determine whether the [recipient] participant intends to:

(1) be out of the state for a temporary period with a plan to return once the purpose of the visit has been accomplished; or

(2) abandon residence in New Mexico;

(3) the caseworker shall cover the following points:

(a) whether the client wishes to continue receiving assistance out-of-state during a temporary absence;

(b) whether the client intends to apply for assistance in another state;

(c) how long the [recipient] participant intends to be out-of-state;

(d) the purpose of the visit;

(e) whether a place of residence in New Mexico is being maintained in the [recipient's] participant's absence.

(4) If it appears on the basis of this information that New Mexico residence is being abandoned, assistance shall be terminated. If absence is temporary, cash assistance shall be continued and the client must keep the department informed of the client's address and circumstances.

D. Illness: If a [recipient] participant who is temporarily visiting outside New Mexico is unable to return to New Mexico because of illness, cash assistance may continue until such time as the [recipient] participant is able to return. In this situation, the [recipient's] participant's inability to return to New Mexico because of illness must be verified by medical report.

E. DVR training: If plans are made in conjunction with DVR for a [recipient's] participant's participation in a training course in another state, cash assistance may be continued for the duration of the training course for the [recipient] participant and the [recipient's] participant's dependents, if they accompany the [recipient] participant, provided that the benefit group intends to return to New Mexico when training is completed.

[8.102.120.10 NMAC - Rp 8.102.120.10 NMAC, 07/01/2001; A, 11/15/2007]

8.102.120.11 SEMI ANNUAL REPORTING: Semiannual reporting is a periodic reporting requirement for certain benefit groups that receive NMW cash assistance. A benefit group that is assigned to semiannual reporting must file a report of changes in the sixth month of a twelve-month certification period.

A. Certification period:

(1) Initial application: A benefit group that is applying for both food stamps and NMW, shall be assigned a NMW certi-

fication period that ends in the same month as the food stamp certification period.

(2) An initial applicant for NMW that is already participating and assigned to semiannual reporting in the food stamp program:

(a) if approved for NMW, shall be assigned a NMW certification period that will end the same month as the food stamp certification period; and

(b) must file a semiannual report in the same month that one is due in the food stamp program;

(c) if NMW is approved in the same month a semiannual report is due in the food stamp program, the requirement in Subparagraph (b), above, is waived for NMW.

(3) A benefit group that is approved for NMW, but does not receive food stamps shall be assigned a twelve-month certification period:

(a) beginning the first month of eligibility; and

(b) shall have a semiannual report due in the sixth month of the NMW certification period.

(4) A benefit group that is receiving NMW and applies for food stamps shall have NMW eligibility re-determined at the same time that the food stamp eligibility is determined.

(a) If NMW benefits increase, the increase shall be effective the month following the first month of approval for food stamps and NMW shall be assigned a certification period that ends in the month the semiannual reporting food stamp certification ends.

(b) If approved for food stamps and the NMW benefit decreases, the decrease shall be effective the month following the month the NOAA expires, and the NMW benefit group shall be assigned a certification period that ends in the same month the food stamp certification ends.

(c) If approved for food stamps and the NMW benefit is terminated, the termination shall be effective the month following the month the NOAA expires, and the food stamp case shall be transitioned to TFS.

(5) **Recertification:** A benefit group that is recertifying and is approved and assigned to semiannual reporting shall be assigned a certification period that:

(a) is twelve months long;

(b) begins the month after the current certification ends; ~~and/or~~ or

(c) is set to end in the same month as a food stamp case with a common member.

B. Excluded from semiannual reporting: The semiannual reporting requirement shall be assigned to all NMW benefit groups with the following exceptions:

(1) a benefit group in which all members are migrant or seasonal farm workers;

(2) a benefit group in which all members are homeless;

(3) a benefit group in which all adult members:

(a) receive unearned income from a source other than TANF, GA and UCB; and

(b) have no history of earned income in the last six months.

(4) a benefit group determined by the county director to have sufficient instability to warrant alternative reporting arrangements; this type of benefit group includes but is not limited to:

(a) a benefit group that reports an imminent change in residence to another state;

(b) a benefit group that reports income insufficient to meet ongoing debt obligations;

(5) a benefit group assigned to semiannual reporting which the county director has assigned to alternative reporting requirements shall be certified for no longer than three months.

C. Transition to semiannual reporting:

(1) A benefit group on quarterly reporting on December 31, 2003 shall be transitioned to semiannual reporting in the following manner.

(a) An active NMW benefit group whose first quarterly report is due in January, February or March 2004 shall not be required to file a quarterly report form and shall be required to file a semiannual report form in April, May, and June 2004, respectively.

(b) An active NMW benefit group whose second quarterly report is due in January, February, or March 2004 shall be required to file a semiannual report form in January, February, or March of 2004, respectively.

(c) An active NMW benefit group that has its third quarterly report due in January, February, or March 2004 shall not be required to file a form for quarterly reporting or semiannual reporting. The benefit group shall be required to file an application for recertification at the end of the ongoing certification period.

(2) A NMW benefit group that files an application prior to January 1, 2004, is approved for NMW benefits on or after January 1, 2004, and assigned semiannual reporting shall be assigned a 12-month certification period that begins in the first month of eligibility and shall have a semiannual report due in the sixth month of the certification period.

D. Applicant benefit group: A benefit group that is approved for NMW on or after January 1, 2004 and is

assigned to semiannual reporting shall be assigned a 12-month certification period beginning in the month of application.

E. Participating benefit group: A benefit group not assigned semiannual reporting that subsequently is required to be on semiannual reporting because of a reported change:

(1) shall be transitioned at the end of the certification period in effect when the report occurred; or

(2) shall be transitioned to semiannual reporting if the reported change results in application, approval, and assignment to semiannual reporting in the food stamp program.

F. Semiannual reporting requirements: A benefit group assigned to semiannual reporting shall be required to file a semiannual report no later than the tenth day of the sixth month of the 12-month certification period, or in compliance with the food stamp semiannual report, whichever is appropriate. The benefit group must include the following information along with verification:

(1) any change in benefit group composition, whether a member has moved in or out of the home along with the date, the change took place;

(2) the amount of money received from employment by each benefit group member;

(3) the amount of unearned income received by each benefit group member;

(4) changes in countable resources if the total of all countable resources for the benefit group exceed the \$1500 liquid or \$2000 non-liquid resource limit, such as but not limited to:

(a) the account number and balance for a new checking or savings account belonging to any household member; or

(b) the amount of any new stocks or bonds or other financial instruments belonging to any household member.

(5) dependent care expenses;

(6) verification for residence, only if, there has been a change in residence since the last certification;

(7) changes in child support receipt; and

(8) changes in alien status for a benefit group member.

G. Budgeting methodology for semiannual reporting at initial application and recertification:

(1) Prospective budgeting shall be used for an applicant benefit group at initial application and at recertification as set forth at 8.102.500.9 NMAC.

(2) At initial application, eligibility and amount of payment for the applicant benefit group shall be determined prospectively for the each of the first six months of the certification.

(3) At recertification, eligibility and amount of payment shall be determined prospectively for six months following last month benefit group's certification period.

H. Budgeting methodology for semiannual reporting:

(1) At processing the semiannual report, eligibility and amount of payment shall be determined prospectively for the six months following the month the semiannual report is due.

(2) In determining a benefit group's eligibility and payment amount, the income already received shall be used to prospectively anticipate income the benefit group expects to receive during the certification period according to the following schedule:

(a) **Weekly:** For income received weekly the [recipient] participant benefit group must submit and the department shall accept as verification of income pay data for any consecutive four week pay periods that fall within the month prior to the month the report is due and the month the report is due.

(b) **Bi-weekly:** For income received bi-weekly the [recipient] participant benefit group must submit and the department shall accept as verification of income pay data for any two consecutive pay periods within the month prior to the month the report is due and the month the report is due.

(c) **Semi-monthly:** For income received semi-monthly the [recipient] participant benefit group must submit and the department shall accept as verification pay data from any two consecutive pay periods within the month prior to the month the report is due and the month the report is due.

(d) **Monthly:** For income received monthly the [recipient] participant benefit group must submit and the department shall accept as verification of income pay data for any one pay date within the month prior to the month the report is due and the month the report is due.

(e) **Income received more frequently than weekly:** For benefit groups with income received more frequently than weekly, exact income, rather than averaged and converted income shall be used to determine benefits. For income received more frequently than weekly the [recipient] participant benefit group must submit and the department shall accept as verification of income pay data in any consecutive 30-day period within the month prior to the month the semiannual report and the month the report is due.

(f) If a determination is made that the use of the pay data for the methods described in (a) through (e), above, does not give the most accurate estimate of monthly

earnings due to unique circumstances; the caseworker shall use whatever method gives the most accurate estimate of earnings.

(g) **Income received less frequently than monthly:** The amount of monthly gross income that is received less frequently than monthly shall be determined by dividing the total income by the number of months the income is intended to cover. This includes, but is not limited to, income from sharecropping, farming, and self-employment. It also includes contract income and income for a tenured teacher who may not have a contract.

(3) Self-employment:

(a) Requirements for determination of self-employment income are set forth at Subsection E of 8.139.520.10 NMAC, and the verification standards for business and self-employment income are set forth at Subsection B of 8.100.130.14 NMAC.

(b) A benefit group assigned semiannual reporting that has had self-employment income annualized by the department shall be required to report changes in self-employment income only if the benefit group has filed a tax return subsequent to its last approval or recertification for NMW.

(c) A benefit group assigned semiannual reporting that does not have the self-employment income annualized must report self-employment income on the semiannual report. The income reported on the semiannual report will be calculated in the following manner.

(i) If a self-employment enterprise has been in existence for less than one year, the income from self-employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the duration of the certification period.

(ii) **Seasonal income:** Self-employment income that is intended to meet a benefit group's needs for only part of the year shall be averaged over the time the income is intended to cover.

(d) A benefit group required to report semiannual self-employment income that fails to provide verification of an allowable deduction at the semiannual or during the month the semiannual report is due shall not be allowed the deduction. The caseworker shall process the report if all other mandatory verification has been provided.

(4) **Use of conversion factors:** Conversion factors shall be used to adjust the monthly income amounts. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to a monthly amount by multiplying weekly averaged amounts by 4.3 and biweekly amounts by

2.15. Use of the conversion factors shall negate the necessity to adjust the monthly income amounts for those months in which an extra weekly or biweekly paycheck is received. Instead, the amount of the extra paycheck is averaged over the certification period.

(5) **Rounding of income when using conversion factors:** Averaged income shall be rounded prior to the application of the conversion factor. If the cents are \$.49 or below, the cents are dropped. If the cents are \$.50 or more, the amount shall be rounded up to the next higher dollar.

I. Time limits for submission and processing a semiannual report.

(1) A semiannual report form shall be mailed to a benefit group in the month prior to the month the report is due.

(2) A benefit group assigned to semiannual reporting shall be required to submit a semiannual report form by the tenth calendar day of the month the semiannual report is due.

(3) The semiannual report shall be reviewed for completeness within ten days of receipt.

(a) If the form is complete and all verifications are provided, a caseworker shall complete the processing of the form within ten days of receipt.

(b) If the form is complete and all verifications are provided except for verification of an allowable deduction, the report shall not be processed. The household shall be:

(i) notified that verification is lacking; and

(ii) shall be given ten days to provide verification of an allowable deduction;

(iii) a deduction that is verified within the month the semiannual report is due shall be processed as part of the semiannual report;

(iv) a deduction that is verified in the month after the semiannual report is due shall be processed as a change reported by the household;

(v) a deduction that does not have the required verification shall not be allowed until verification of the expense is provided.

(4) A semiannual report form that is incomplete or not signed shall be returned to the benefit group for completion.

(5) The benefit group must return the completed semiannual report form and all required verification within ten calendar days or by the end of the month to avoid a break in benefits. A benefit group that fails to submit a semiannual report by the end of the month in which it is due, shall be issued an adequate notice of closure.

J. Information require-

ments for semiannual reporting: The semiannual report form shall specify:

(1) the date by which a benefit group must submit the form for uninterrupted benefits;

(2) the consequences of submitting a late or incomplete form;

(3) that verification must be submitted with the semiannual report;

(4) where to call for help in completing the form;

(5) the consequences of providing incorrect information; and

(6) notice of rights.

K. Requirement to report certain changes between reporting periods: A benefit group assigned to semiannual reporting must report in between reporting periods the following changes:

(1) within ten days of occurrence, the benefit group must report when a social security number is assigned to a benefit group member; or

(2) within fourteen days of occurrence, a parent must report when a dependent child, age six years or older, drops out of school or has three unexcused absences from school.

L. Non-reporting sanctions: A benefit group assigned to semiannual reporting shall be subject to a non-reporting sanction in accordance with regulations at 8.102.620.11 NMAC for failure to provide accurate change information on the semiannual report form or for failure to report by the tenth day of the month following the month that household income exceeds eighty-five percent of federal poverty guidelines for the size of the benefit group.

M. Action on changes reported between reporting periods for benefit groups assigned to semiannual reporting:

(1) The department shall not act on reported changes between reporting periods that would result in a decrease in benefits with the following exceptions:

(a) a benefit group reports income in excess of eighty-five percent of federal poverty guidelines for size of the benefit group;

(b) a benefit group reports, or the department receives documented evidence that the benefit group has moved from the state or intends to move from the state on a specific date;

(c) a benefit group requests closure; or

(d) the department receives documented evidence that the head of benefit group has died.

(2) A newborn shall be added to the benefit group effective the month following the month the report is received, if the addition is reported to the agency by the benefit group or by the hospital for medi-

caid purposes.

(3) The loss of earned income shall be considered for eligibility in the second month after the loss and ongoing until the next scheduled semiannual report or end of certification whichever is first, provided that:

(a) the loss of income was reported to the agency, and verified by the benefit group; and

(b) the loss of income was not due to voluntary quit; and

(c) the ~~[individual]~~ participant who lost the job is likely to remain unemployed in the second month after the loss of income;

(d) the ~~[individual]~~ participant who lost the job cannot reasonably anticipate a replacement source of income by the end of the second month after the loss, including but not limited to, UCB, other earned income, social security (OASDI) or supplemental security income (SSI);

(e) if the loss of income has been replaced with another source of income, or can reasonably be expected by the end of the second month after the loss, the replacement income shall be considered for eligibility and benefit amount in the second month after the loss and for the remainder of the certification period.

(4) The loss of unearned income shall be considered for eligibility in the second month after the loss and ongoing until the next scheduled semiannual report or end of certification whichever is first, provided that:

(a) the loss of income was reported to the agency, and verified by the benefit group; and

(b) the ~~[individual]~~ participant who lost the unearned income cannot reasonably anticipate having the income reinstated or receiving another type of unearned income or earned income prior to the next scheduled semiannual report or end of certification which ever is first;

(c) if the loss of income has been replaced with another source of income, or can reasonably be expected by the end of the second month after the loss, the replacement income shall be considered for eligibility and benefit amount in the second month after the loss and for the remainder of the certification period.

[8.102.120.11 NMAC - N, 02/14/2002; A, 01/01/2004; A, 11/15/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.400 NMAC, Sections 3, 6, 8, 9, 10, 11, 12, 14 and 15, effective 11/15/2007.

8.102.400.3 S T A T U T O R Y 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 ~~[financial]~~ 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]

8.102.400.6 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, ~~[assisting parents to develop the discipline necessary for self sufficiency and to improve their self esteem.]~~ resources and support. The further purpose of the program is to increase family income through family employment and child support and by ~~[viewing financial]~~ utilizing cash assistance as a support service to enable and assist parents to participate in employment.

~~B.~~ The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program like NMW or the federal program of supplemental security income (SSI).

~~C.~~ The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.

~~D.~~ The objective of the burial assistance program is to assist in payment of burial expenses for deceased, low-income individuals.]

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]

8.102.400.8 WHO CAN BE A RECIPIENT: To be a recipient of [financial] 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. [The request for assistance is the first step in determining which individuals must be included in the benefit group. Within the constraints of law and policy, the decision as to which individuals are included in the benefit group is made by the head of household. A decision to request assistance for a specific individual may require the inclusion of other individuals as well.] 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. [The head of household may, subject to certain limitations, request the addition or deletion of an individual

included in the benefit group. ISD shall consider adding or deleting members to the benefit group when the head of household requests it. ISD shall delete a person from the benefit group upon request of the head of household, except when the individual is a mandatory benefit group member.] 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. The head of household is required to apply for any person who is a mandatory benefit group member. Failure to file an application for a mandatory benefit group member shall result in ineligibility for the entire benefit group.

D. Changes in family circumstances may affect who must be included in the benefit group. Any change in family circumstances shall be reviewed to ensure that all mandatory members are included in the benefit group.

E. Unborn children are not eligible for inclusion in the benefit group. The needs of an unborn shall be taken into consideration in determining eligibility but not for payment to the benefit group.

F. Special provisions apply concerning eligibility and payment to pregnant women with no dependent children.

G. There may be more than one benefit group in a residence.

H.] C. Benefit groups containing dependent children:

~~[(1) NMW cash assistance benefit group:]~~ 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.

~~[(2) Constructing the NMW dependent child benefit group:-~~

~~(a) Dependent children: Include the natural children, adopted children, or stepchildren who are 17 years of age or younger or who are 18 years of age and enrolled in high school.~~

~~(b) Parents: The natural or adoptive parent(s), stepparent, or legal guardian of any child for whom assistance has been requested who lives in the home with the child must be included.~~

~~(c) Spouse: Include the spouse of any adult or minor head of household who is included in the benefit group.~~

~~(d) Optional member:~~

~~(i) any unrelated dependent child living in the home;~~

~~(ii) the specified relative who is the 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.]~~

~~[H.] 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.~~ Certain individuals must be included in the dependent child assistance group, provided they meet eligibility requirements. Those persons are:

- ~~(1) the dependent child; and~~
- ~~(2) all of that dependent child's full, half, step- or adopted siblings living with the dependent child; and~~
- ~~(3) the natural parent, adoptive parent, stepparent or legal guardian of the dependent child;~~

B. Construct the dependent child benefit group by:

- ~~(1) identifying the dependent child for whom assistance is requested based on the application filed by the client;~~
- ~~(2) include in the benefit group all siblings of any child listed on the application as identified in Paragraph 2 of Subsection A of 8.102.400.10 NMAC;~~
- ~~(3) 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.]~~

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, stepparent or legal guardian 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]

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.

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

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 ~~[ISD's deputy director for programs, and the deputy director shall base a decision on the caseworker's memo]~~ 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(ren)]~~ 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(ren)]~~ 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]

8.102.400.14 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 ~~[individual]~~ 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 par-

ent or caretaker relative remains responsible for providing care and support to the child and retains parental control over the child.

~~C. Standards used to determine whether an individual is within the specified degree of relationship are set forth in 8.102.400.16 NMAC.~~

~~D. Standards used to determine whether a child lives in the home is set forth in 8.102.400.15 NMAC.]~~

[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 ~~[an individual]~~ a participant when: ~~[the individual's home is the primary place of residence for the child, as evidenced by the child's customary physical presence in the home. The individual may or may not be the child's parent or caretaker. The following sections refer to caretaker. For the purposes of these provisions, 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 the household.]~~

(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 ~~[individual]~~ participant functions as the ~~[parent/caretaker]~~ parent or caretaker relative for NMW purposes shall be made by the client unless other information known to the ~~[worker]~~ 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/caretaker]~~ 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 medicated 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 ~~[financial]~~ 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 ~~[financial]~~ 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 emo-

tional needs. This includes children receiving treatment in acute care hospitals, free-standing 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. ~~[However,]~~ 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]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.102.410 NMAC, Sections 3, 6, 8, 9, 10, 11, 12, 13, 15, 17 and 18, effective 11/15/2007.

8.102.410.3 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 ~~[financial]~~ 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.

[8.102.410.3 NMAC - Rp 8.102.410.3 NMAC, 07/01/2001; A, 11/15/2007]

8.102.410.6 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, ~~[assisting parents to develop the discipline necessary for self sufficiency and to improve their self esteem]~~ resources and support. The further purpose of the program is to increase family income through family employment and child support and by ~~[viewing financial]~~ utilizing cash assistance as a support service to enable and assist parents to participate in employment.

~~[B. The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program like NMW or the federal program of supplemental security income (SSI).~~

~~C. The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.~~

~~D. The objective of the burial assistance program is to assist in payment of burial expenses for deceased, low-income individuals.]~~

B. The objective of 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.

[8.102.410.6 NMAC - Rp 8.102.410.6 NMAC, 07/01/2001; A, 11/15/2007]

8.102.410.8 REQUIREMENTS:

This section describes eligibility requirements which each recipient of ~~[financial]~~ cash assistance must meet in order to be included in the benefit group.

[8.102.410.8 NMAC - Rp 8.102.410.8 NMAC, 07/01/2001; A, 11/15/2007]

8.102.410.9 ENUMERATION:

~~[To be eligible for inclusion in the benefit group, the individual]~~ The participant, or the specified relative on behalf of a dependent child, must report the ~~[individual]~~ participant's social security number (SSN) within 60 days of approval for the cash assistance program. Failure to meet this requirement shall result in ineligibility for the benefit group member without a reported or verified SSN.

[8.102.410.9 NMAC - Rp 8.102.410.9 NMAC, 07/01/2001; A, 11/15/2007]

8.102.410.10 CITIZENSHIP AND ALIEN STATUS:

A. Eligibility for TANF funded cash assistance:

(1) Participation in the NMW cash assistance program is limited to a U.S. citizen, a naturalized citizen or a non-citizen U.S. national.

(2) A non-citizen, other than a non-citizen U.S. national, must be both a qualified and eligible alien in order to participate in the NMW cash assistance program.

B. Definitions:

(1) **Continuously lived in the U.S.:** means that a non-citizen has lived in the U.S. without a single absence of more than 30 days or has lived in the U.S. without a total of aggregated absences of more than 90 days.

(2) **Federal means-tested public benefit:** means benefits from the food stamp program; the food assistance block grant programs in Puerto Rico, American Samoa, and the commonwealth of the Northern Mariana Islands; supplemental security income (SSI); and the TANF block grant program under title IV of the Social Security Act; medicaid, and SCHIP.

(3) **Five-year bar:** means the federally imposed prohibition on receiving federal means-tested public benefits for certain qualified aliens who entered the United States on or after August 22, 1996, until they have continuously lived in the U.S for five years. If an alien enters the U.S. on or after August 22, 1996, but does not meet the definition of a qualified alien, the five-year bar begins on the date the non-citizen

attains qualified alien status.

(4) Immigrant: means a non-citizen or an alien within the meaning found in title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(5) Non-citizen U.S. national: means a person who is not a U.S. citizen but was born in an outlying possession of the United States on or after the date the U.S. acquired the possession, or a person whose parents are non-citizen U.S. nationals. A person who resides on one of the following U.S. island territories is a non-citizen U.S. national: American Samoa, Swains Island or the Northern Mariana Islands.

(6) Permanently residing under color of law (PRUCOL): means a person whose presence in the US is known by the department of homeland security (DHS) and the DHS does not intend to deport the person. Persons classified as PRUCOL may or may not also be qualified aliens.

(7) C. Qualified alien: ~~means a non-citizen.~~ A qualified alien is any of the following types of non-citizens:

(1) who is lawfully admitted for permanent residence under the Immigration and Nationality Act (an LPR);

(2) who is granted asylum under Section 208 of the INA (an asylee);

(3) who is a refugee admitted to the U.S. under Section 207 of the INA (a refugee);

(4) who is paroled into the U.S. under Section 212(d)(5) of the INA for at least one year (a parolee);

(5) whose deportation is being withheld under Section 241(b)(3) or 243(h) of the INA;

(6) who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(7) who is a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;

(8) who is a victim of a severe form of trafficking, regardless of immigration status, under the Trafficking Victims Protection Act of 2000.

D. Qualified alien due to battery or extreme cruelty: means a non-citizen, regardless of alien status, who has been battered or subjected to extreme cruelty, as long as the following elements are met:

(1) there is a substantial connection between such battery or cruelty and the need for the cash benefits; and

(2) the abused non-citizen is not currently living with the abuser; and

(3) the INS or executive office of immigration review (EOIR) has:

(a) approved a self-petition seeking permanent residency,

or

(b) approved a petition for a family based immigrant visa; or

(c) approved an application for cancellation of removal or suspension of deportation; or

(d) found that a pending petition or application establishes "prima facie" (true and valid) case for approval; and

(4) the non-citizen has been battered or subjected to extreme cruelty in the US by a spouse or parent, or by a member of the spouse or parent's family residing in the same household as the abused non-citizen and the spouse or parent of the abused non-citizen consented to, or acquiesced in such battery or cruelty; or

(5) the non-citizen has a child who has been battered or subjected to extreme cruelty in the US by the non-citizen's spouse or parent, as long as the non-citizen does not actively participate in the battery or cruelty; or ~~an~~ a non-citizen whose child is battered or subjected to extreme cruelty by a member of the non-citizen's spouse or parent's family residing in the same household and the non-citizen's spouse or parent consented or acquiesced to such battery or cruelty; or

(6) the non-citizen is a child who resides in the same household as a parent who has been battered or subjected to extreme cruelty in the US by the parent's spouse or by a member of the spouse's family residing the same household and the non-citizen's spouse consented or acquiesced to such battery or cruelty.

(7) U.S. citizen: means, but may not be limited to:

(a) a person born in the United States;

(b) a person born in Puerto Rico, Guam, U.S. Virgin Islands or northern Mariana Islands who has not renounced or otherwise lost his or her citizenship;

(c) a person born outside the U.S. to at least one U.S. citizen parent; or

(d) a person who is a naturalized citizen.

E. Aliens who are eligible to participate: An alien who meets the definition of a qualified alien shall be eligible to participate in the NMW cash assistance program if the alien:

(1) physically entered the U.S. prior to August 22, 1996 and obtained qualified alien status before August 22, 1996;

(2) physically entered the U.S. prior to August 22, 1996, obtained qualified alien status on or after August 22, 1996 and has continuously lived in the U.S. from the latest date of entry prior to August 22, 1996 until the date the ~~individual~~ participant or applicant obtained qualified alien status;

(3) physically entered the U.S. on or after August 22, 1996, meets the definition of a qualified alien and has been in qualified alien status for at least five years (five year bar);

(4) physically entered the U.S. before August 22, 1996 and did not continuously live in the U.S. from the latest date of entry prior to August 22, 1996 until obtaining qualified alien status, but has been in qualified alien status for at least five years;

(5) is a lawfully admitted permanent resident alien under the INA, who has worked or can be credited with 40 qualifying quarters; or

(6) is a veteran of the military with an honorable discharge that is not based on alien status who has fulfilled the minimum active duty requirements; or the non-citizen who is on active duty military service; or the person is the spouse, surviving spouse who has not remarried, or an unmarried dependent child of a veteran or active duty service member; and

(7) an alien is eligible for a period of five years from the date an alien:

(a) is granted status as an asylee under Section 208 of the INA;

(b) is admitted as a refugee to the U.S. under Section 207 of the INA;

(c) has had his or her deportation ~~is~~ withheld under Section 241(b)(3) or 243(h) of the INA;

(d) is admitted as an Amerasian immigrant under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988; or

(e) is admitted as a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980.

F. Victim of severe form of trafficking: A victim of a severe form of trafficking, regardless of immigration status, who has been certified by the U.S. department of health and human services (DHHS), office of refugee resettlement (ORR), is eligible to the same extent as a refugee.

(1) The date of entry for a victim of trafficking is the date of certification by ORR (which appears in the body of the eligibility letter from the ORR).

(2) A victim of a severe form of trafficking:

(a) must have and present a certification of eligibility letter from ORR for adults or letter for children (similar to but not necessarily a certification letter) as proof of status; and

(b) is not required to provide any immigration documents, but may have such documents and may present such documents.

(3) Determining eligibility for a

victim of trafficking must include a call to the trafficking verification line at 1-866-401-5510.

(4) The caseworker must inform ORR of the benefits for which the victim of trafficking has applied.

[E.] G. Quarters of coverage:

(1) SSA reports quarters of coverage through the quarters of coverage history system (QCHS).

(2) The number of qualifying quarters is determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, and is based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(a) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of eligibility.

(b) If eligibility of an alien is based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, the caseworker shall determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.

(3) **Disputing quarters:** If ~~an individual~~ a participant or applicant disputes the SSA determination of quarters of coverage, the ~~individual~~ participant may not participate based on having 40 qualifying quarters until a determination is made that the ~~individual~~ participant or applicant can be credited with 40 qualifying quarters. The ~~individual~~ participant or applicant may participate as a state-funded benefit group member, if otherwise eligible.

(4) **Federal means-tested benefit:** After December 31, 1996, a quarter in which an alien received any federal means-tested public benefit, as defined by the agency providing the benefit shall not be credited toward the 40-quarter total. A parent's or spouse's quarter is not creditable if the parent or spouse actually received any federal means-tested public benefit. If the alien earns the 40th quarter of coverage prior to applying for a federal means-tested public benefit in that same quarter, the caseworker shall allow that quarter toward the 40 qualifying quarters total.

[F.] H. Verification of citizenship/eligible alien status: U.S. citizenship is verified only when client statement of citizenship is inconsistent with statements made by the applicant or with other information on the application, previous applications, or other documented information

known to HSD.

(1) **Questionable U.S. citizenship:** Any mandatory benefit group member whose U.S. citizenship is questionable is ineligible to participate until proof of U.S. citizenship is obtained. The member whose citizenship is questionable shall have all of his resources and a pro rata share of income considered available to any remaining benefit group members.

(2) **Eligible alien status:** Verification of eligible alien status is mandatory at initial certification. Only those benefit group members identified as aliens with qualified and eligible alien status are eligible to participate in the NMW program.

(3) **Ineligible or questionable alien status:** Any household member identified as an ineligible alien, or whose alien status is questionable cannot participate in the NMW program.

[G.] I. Need for documentation:

(1) Benefit group members identified as aliens must present documentation, such as but not limited to, a letter, notice of eligibility, or identification card which clearly establishes that the alien has been granted legal status.

(2) A caseworker shall allow an alien a reasonable time to submit acceptable documentation of eligible alien status. A reasonable time shall be ~~ten~~ 10 days after the date the caseworker requests an acceptable document, or until the 30th day after application, whichever is longer.

(3) If verification of an ~~individual's~~ participant's eligible status is not provided by the deadline, the eligibility of the remaining benefit group members shall be determined. Verification of eligible alien status provided at a later date shall be treated as a reported change in benefit group membership.

(4) During the application process, if an individual has been determined to be a qualified alien and either the individual or HSD submits a request to a federal agency for documentation to verify eligible alien status, HSD must certify the individual in the TANF benefit group as a state-funded participant until a determination is made that the individual is eligible for TANF funded cash assistance.

(5) **Inability to obtain INS documentation:** If a benefit group indicates an inability to provide documentation of alien status for any mandatory member of the benefit group, that member shall be considered an ineligible alien. The caseworker shall not continue efforts to contact INS when the alien does not provide any documentation from INS.

[H.] J. Failure to cooperate: If a benefit group or a benefit group member indicates an unwillingness to provide

documentation of alien status for any member, that member shall be considered an ineligible alien. The caseworker shall not continue efforts to get documentation.

[I.] K. Reporting undocumented (illegal) non-citizens: ~~Reporting undocumented non-citizens is a requirement in the TANF program only if the department knows that non-citizen is not lawfully present in the U.S.]~~

(1) HSD ~~must~~ shall inform the local INS office immediately when a determination is made that any mandatory member of a benefit group is present in the U.S. in violation of the INA. A determination that a non-citizen is in the US in violation of the INA is made when:

(a) there has been a finding or conclusion of law through a formal determination process by the INS or the executive office of immigration review (EOIR) that the non-citizen is unlawfully residing in the US; or

(b) the immigrant states to the department that he or she is in the US in violation of the INA, and the statement is supported by an INS or EOIR finding.

(2) An non-citizen who resides in the US in violation of the INA shall be considered an ineligible benefit group member until there is a finding or conclusion of law through a formal determination process by the INS or EOIR.

(3) Illegal non-citizen status is considered reported when the caseworker enters relevant information about the non-citizen on the benefit group's computer file.

[J.] L. Income and resources of ineligible aliens: All the resources and a prorated share of income of an ineligible alien, or of an alien whose alien status is unverified, shall be considered in determining eligibility and the cash assistance benefit amount for the remaining eligible benefit group members.

[8.102.410.10 NMAC - Rp 8.102.410.10 NMAC, 07/01/2001; A, 07/01/2004; A, 11/15/2007]

8.102.410.11 [RESIDENCY:] RESIDENCE:

A. To be eligible for inclusion in a benefit group, the individual must be living in ~~the state of New Mexico, and have demonstrated an intention to stay]~~ New Mexico (NM) and demonstrate an intention to stay. ~~[For applicants]~~ At application, the residency determination shall be made ~~[with respect]~~ prior to the date cash assistance is authorized. Once established, ~~[state]~~ NM residency continues until the individual takes action to end it.

B. Residence shall not be considered to exist if the person is just passing through or is present in ~~the state]~~ NM for purposes such as vacation, family visits, medical care, temporary employment, or

other similar short-term stays where the person does not intend to remain. Residence shall not exist if an individual claims residence in another state.

C. Establishing residence: Residence in New Mexico shall be established by being present in the state on an ongoing basis and carrying out the types of activities associated with normal day-to-day living, such as occupying a house [~~(paying rent or mortgage, utilities, receiving mail at that address, etc.), enrolling children~~], enrolling a child in school, renting a post office box, obtaining a state driver's license, joining a church or other local organization, obtaining or seeking a job in the state, registering to vote in the state, etc.

D. Homeless persons: [~~Homeless persons~~] A homeless person must meet the residence requirement; however, their personal situations may prevent them from establishing the types of residence indicators listed above. [~~In such cases, as~~] As much information as possible shall be obtained and entered into the record, but absence of the more common types of verifications shall not be a barrier to eligibility.

E. Assistance from another state: [~~An individual who is~~] An individual receiving assistance from another state shall be considered a resident of that state, until that state is notified of the individual's intention to abandon residence. An individual who received TANF from another state shall be considered to be in receipt of concurrent assistance for that month, as set forth in 8.102.410.12 NMAC.

F. Temporary absence from the state:

(1) A temporary absence from the state shall not be considered an interruption of residence. Temporary absence occurs when an individual leaves the state for a specific, time-limited purpose. After the temporary absence, the individual must intend to return to the state. [~~Absences~~] An absence related to the following purposes shall be considered temporary:

- (a) short-term visits with family or friends[?] for 30 days or less;
- (b) out-of-state stays for medical treatment;
- (c) attendance at an out-of-state school, with returns to the state during vacations.

(2) A statement by a [~~recipient~~] participant of intent to return to the state will be accepted, provided that the [~~recipient~~] participant does not take action in another state to establish permanent residence.

G. Residency abandonment: Residence shall be considered to have been abandoned when:

- (1) an individual leaves the state

and indicates that [~~he intends~~] an intent to establish residence in the other state; or

(2) an individual leaves the state for no specific purpose and with no clear intention to return;

(3) an individual leaves the state and applies for food, financial or medical assistance from another state, which makes residence in that state a condition of eligibility; or

(4) an individual has been absent from the state for a period of more than 30 days and has not notified the [~~eligibility worker~~] caseworker of the absence or of any intention to return.

H. Residence of children:

A dependent child shall be considered to be a resident of the same state as the specified relative or caretaker adult with whom the child is living.

[8.102.410.11 NMAC - Rp 8.102.410.11 NMAC, 07/01/2001; A, 11/15/2007]

8.102.410.12 NONCONCURRENT RECEIPT OF ASSISTANCE:

A. To be eligible for inclusion in a NMW benefit group, the individual cannot already be included in or receiving benefits from:

- (1) another department cash assistance benefit group;
- (2) an SSI grant;
- (3) a tribal TANF program or BIA-GA program;
- (4) a government-funded adoption subsidy program;
- (5) a TANF program in another state.

B. An individual may not be the payee for more than one NMW cash assistance payment.

C. Supplemental security income:

(1) **Ongoing SSI eligibility:** A person eligible for SSI on an ongoing basis is not eligible for NMW or refugee assistance benefits on the basis of concurrent receipt of assistance. The SSI recipient is not included in the benefit group for purposes of financial assistance eligibility and benefit calculation. The income, resources, and needs of the SSI recipient are excluded in determining benefit group eligibility and payment.

(2) **SSI applicants:** An individual receiving cash assistance benefits from the department may apply for and receive SSI benefits for the same months for which the department has already issued benefits. Cash assistance benefits issued by the department are considered in determining the amount of retroactive SSI benefits. NMW ineligibility or overpayments shall not be established for any month for which SSI issues a retroactive benefit. When [~~notice~~] verification is received that a bene-

fit group member is approved for SSI on an ongoing basis, that member shall be immediately removed from the benefit group.

D. Subsidized adoptions:

Children in receipt of state or federal adoption subsidy payments are included as benefit group members, and their income is counted in determining eligibility and payment.

E. Other department programs:

Non-concurrent receipt of assistance limitations apply to departmental programs authorized in 8.102 NMAC, 8.106 NMAC, 8.119 NMAC, tribal TANF programs, and SSI. The food stamp program, medicaid, LIHEAP and other similar programs are not considered concurrent assistance and shall not make an individual ineligible for cash assistance and tribal TANF programs.

[8.102.410.12 NMAC - Rp 8.102.410.12 NMAC, 07/01/2001; A, 11/15/2007]

8.102.410.13 WORK PROGRAMS:

[~~The NMW work program is designed to help families become self supporting through work. Work and activities related to preparing a person to go to work are the primary focus and goal of the work program.~~] The NMW work program is designed to improve the participant's capacity to improve income and strengthen family support. If an individual who is required to meet work program requirements fails to do so, the benefit group may be subject to the payment sanctions described in 8.102.620.10 NMAC.

[8.102.410.13 NMAC - Rp 8.102.410.13 NMAC, 07/01/2001; A, 10/01/2001; A, 11/15/2007]

8.102.410.15 PROGRAM DISQUALIFICATIONS:

A. Dual state benefits: [~~Any~~] An individual who has been convicted of fraud for receiving TANF, food stamps, medicaid, or SSI in more than one state at the same time shall not be eligible for inclusion in the cash assistance benefit group for a period of 10 years following such conviction. The conviction must have occurred on or after August 22, 1996.

B. Fugitive and probation and parole violators: An individual who is a fugitive felon or who has been determined to be in violation of conditions of probation or parole shall not be eligible for inclusion in the cash assistance benefit group.

[8.102.410.15 NMAC - Rp 8.102.410.15 NMAC, 07/01/2001; A, 05/15/2002; A, 11/15/2007]

8.102.410.17 [TERM] LIFETIME LIMITS:

A. [TANF cash assis-

term: NMW/TANF:

(1) [TANF] NMW/TANF cash assistance shall not be provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime. The benefit group shall be ineligible if the benefit group contains at least one adult, minor head of household or spouse of the minor head of household who has received 60 or more months of [TANF] NMW/TANF cash assistance, unless the [term] lifetime limit has been waived pursuant to Subsection E of 8.102.410.17 NMAC.

(2) For purposes of determining the 60-month [term] lifetime limit, the count of months of [TANF] NMW/TANF cash assistance begins on July 1, 1997 and thereafter, and includes assistance received under PROGRESS, or the court-ordered AFDC program in effect until March 31, 1998, or NMW.

(3) Any month in which an adult, a minor head of household, or the spouse of a minor head of household, has received full, partial, prorated, or retroactive [TANF] NMW/TANF cash assistance shall be considered a month of receipt and shall be counted towards the 60-month [term] lifetime limit for the benefit group in which that individual resides.

(4) The count of months of [TANF] NMW/TANF assistance shall include cash benefits, supportive services reimbursements, or other forms of benefits designed to meet a family's ongoing basic needs (for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). [TANF] NMW/TANF cash assistance shall include supportive services such as transportation and childcare provided to a family who is unemployed.

(5) Receipt of TANF assistance from another state after July 1997, or from a tribal entity [~~that does not meet the exclusion criteria as described below~~] that does meet the criteria at Subsection C of 8.102.410.17 NMAC is counted as a month of receipt of TANF assistance for purposes of the term limit regulation.

B. Non-countable assistance:

(1) The department shall not count a month of receipt of [TANF] NMW/TANF cash assistance or services toward the 60-month [term] lifetime limit if the [recipient] participant was a minor who was not the head of household or the spouse of the head of household.

(2) Support services, transportation reimbursements, or child care assistance received by a benefit group with earned income shall not be considered as a month of [TANF] NMW/TANF assistance against the 60-month term limit, as long as the benefit group does not also receive

[TANF] NMW/TANF cash assistance to meet ongoing basic needs.

(3) Assistance shall not be considered a month of [TANF] NMW/TANF cash assistance if the assistance is a:

(a) non-recurrent short term benefit that will not extend beyond four months, is not intended to meet ongoing basic needs, and is designed to meet a specific crisis situation or episode of need;

(b) work subsidy to an employer to cover the cost of employee wages, benefits, supervision and training and does not use TANF funds;

(c) refundable earned income tax credit;

(d) contribution to or distribution from an individual development account;

(e) service such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, or other employment related services that do not provide basic income support; and

(f) transportation benefit provided under a job access or reverse commute project to an individual who is not receiving [TANF] NMW/TANF cash assistance.

(4) Under federal law, TANF funds may be transferred into the social services block grant and the child care development block grant. Benefits provided to individuals from these transferred funds are no longer characterized as TANF funds and do not count against the [term] lifetime limits.

C. Excluded from the term limit count: Any month in which an adult or minor head of household receives NMW or tribal TANF cash assistance or services while residing in Indian country, as the term is defined in 18 U.S.C. subsection 1151, and where at least 50[%] percent of the adults are not working, shall not be counted toward the [term] lifetime limit.

D. Extension of the term limit due to hardship: Up to twenty percent [~~(20%)~~] of the population of TANF [recipients] participants to whom the term limit applies may be waived from the 60-month term limit based on hardship or being battered or subjected to extreme cruelty.

(1) An extension of [TANF] NMW/TANF cash assistance shall not be granted to a benefit group prior to exhausting the 60-month [term] lifetime limit.

(2) The term limit extension will end if the condition or situation allowing the extension ceases to exist.

E. Hardship extension types: For purposes of establishing a hardship and eligibility for an extension of [TANF] NMW/TANF cash assistance, an individual to whom the [term] lifetime limit applies must demonstrate through reliable medical, psychological or mental reports, social security administration (SSA)

records, court orders, department records or police reports that the individual:

(1) is barred from engaging in a work activity because of a temporary or complete disability;

(2) is the sole provider of home care to an ill or disabled family member;

(3) does not have the ability to be gainfully employed because the individual is affected by domestic violence;

(4) has been battered or subjected to extreme cruelty;

(5) has an application for supplemental security income (SSI) pending in the application or appeals process and:

(a) is currently fully waived from NMW work requirements because of a temporary or complete disability; or

(b) was granted a waiver of the work requirement because of a temporary or complete disability in the previous twenty-four months;

(6) has reached the age of 60 by the end of the last month of his or her term limit.

F. Determining hardship and eligibility for an extension:

(1) The incapacity review unit shall make a determination of hardship based on a temporary or complete disability or being the sole provider of home care to an ill or disabled family member based on criteria set forth at 8.102.420.11, 8.102.420.12 and 8.102.420.13 NMAC.

(2) The incapacity review unit may determine contingency requirements or conditions for continued participation of the individual under the applicable hardship type(s).

(3) **Hardship based on domestic violence, battery, or extreme cruelty:** A certification that an individual cannot be gainfully employed due to domestic violence, or has been battered or subject to extreme cruelty shall be made by a trained domestic violence counselor and shall be part of the case record.

(a) Supporting documentation shall be provided to the department and made part of the individual's case record. For purposes of determining a hardship, an individual has been battered or subjected to extreme cruelty if the individual can demonstrate by reliable medical, psychological or mental reports, court orders, department records or police reports that the individual has been subjected to and currently is affected by:

(i) physical acts that result in physical injury;

(ii) sexual abuse;

(iii) being forced to engage in non-consensual sex acts;

(iv) threats or attempts at physical or sexual abuse;

(v) mental abuse; or

(vi) neglect or depriva-

tion of medical care except when the deprivation is based by mutual consent on religious grounds.

(b) The incapacity review unit shall review the documentation provided to demonstrate a hardship type related to domestic violence, battery, or extreme cruelty, shall ensure that the documentation supports a finding of hardship, and shall determine review periods and contingency requirements if applicable.

(4) The department shall determine the eligibility of the individual for a hardship extension based on age or whether an application for SSI is pending or in the appeals process by reviewing department records or SSA files.

G. Participating benefit group:

(1) A NMW benefit group in active status at the time the benefit group reaches the 60-month term limit may ask for an extension of ~~TANF~~ NMW/TANF cash assistance under hardship provisions. The benefit group must provide supporting documentation by the 15th day of the 60th month. If otherwise eligible and a hardship type is determined, the benefit group shall be authorized cash assistance from the first day of the 61st month.

(2) A NMW benefit group whose certification period expires in the 60th month of the term limit may be recertified, if otherwise eligible, under hardship provisions, but must provide supporting documentation by the end of the benefit group's certification period.

H. Closed benefit group:

A benefit group shall be required to file an application for NMW cash assistance based on hardship under the following conditions:

(1) a NMW benefit group in active status does not submit supporting documentation by the 15th day of the 60th month of receipt of cash assistance; or

(2) a NMW case closes upon reaching the term limit;

(3) a benefit group may file an application on the first day of the 61st month, or at anytime after, and if eligible, benefits shall be approved effective the date of authorization or 30 days from the date of application, whichever is earlier.

I. **Automatic extension of cash assistance:** A NMW benefit group shall be automatically extended ~~TANF~~ NMW/TANF cash assistance based on hardship when the benefit group member who has received 60 months of cash assistance is:

(1) an adult age 60 or over; or

(2) an adult or minor head of household with an application for SSI pending or in the appeals process; or based on verification in the case record that is not

older than three months, the benefit group member is:

(3) waived from participation in work activities due to a complete disability, either permanently or temporarily; or

(4) the sole provider of home care to an ill or disabled family member; or

(5) unable to be gainfully employed because the benefit group member has been battered or subjected to extreme cruelty, or affected by domestic violence.

[8.102.410.17 NMAC - Rp 8.102.410.17 NMAC, 07/01/2001, A, 01/01/2003, A, 05/15/2003; A, 11/15/2007]

8.102.410.18 REQUIREMENTS FOR TANF HARDSHIP EXTENSIONS:

A. **Benefit group:** NMW cash assistance regulations at 8.102 NMAC continue to apply to a ~~TANF~~ NMW/TANF benefit group that receives a cash assistance based on a hardship determination. A benefit group may be sanctioned at the appropriate level in compliance with regulations at 8.102.620.10 NMAC when a benefit group member fails to comply with the requirements at set forth in at 8.102.410.17 NMAC and 8.102.410.18 NMAC.

B. **Certification period:** In most cases the certification period for the case will be set at six (6) months, beginning with the 61st month of cash assistance. The incapacity review unit may set the certification period for a benefit group that is shorter or longer than six months when the condition for the hardship type warrants such a determination.

C. Waived individual:

(1) An individual granted a waiver of the 60-month term limit due to a hardship determination shall be required to meet with the work program contractor. An individual determined to be waived due to hardship shall be referred by the department to the work program contractor:

(a) no later than the first day of the 61st month for a case in active status in the 60th month; or

(b) by the end of the first month of the benefit group's hardship extension period for a benefit group whose certification period expires in the 60th month; or

(c) upon approval of a hardship extension period for a benefit group whose case is closed.

(2) The waived individual shall be required to comply with any contingency for eligibility determined by the incapacity review unit under hardship, including but not limited to, counseling; substance abuse treatment; speech or physical therapy, continuing or follow up medical treatment; keeping doctor's appointments; family counseling; or engaging in programs or

activities to address the hardship type.

D. **Other benefit group members:** Any other individual included in the NMW benefit group who is determined to be a mandatory work participant must comply with work program requirements set forth at 8.102.460 NMAC.

E. Case management:

(1) The individual and the work program contractor shall develop a case management plan that includes specific provisions for assessing barriers and determining actions or behaviors that will enhance the ability of the benefit group to become economically independent.

(2) Case management includes, but is not limited to:

(a) making referrals to appropriate agencies and providing any follow up necessary to obtain the assistance needed by the benefit group;

(b) completing an in-depth assessment and identifying individual and family barriers, such as but not limited to, learning disabilities, cognitive disabilities, substance abuse, criminal history, transportation issues, child care, school attendance for dependent children, limited English proficiency; or limited work ability;

(c) making appropriate referrals and seeking the assistance needed to address the barriers;

(d) identifying support services needs; or

(e) placement in appropriate and realistic work activities and follow up on work activity progress.

[8.102.410.18 NMAC - N, 01/01/2003; A, 11/15/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.420 NMAC, Sections 3, 6, 8, 9, 11, 12, 13 and 14, effective 11/15/2007.

8.102.420.3 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 ~~[financial]~~ 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.

[8.102.420.3 NMAC - Rp 8.102.420.3 NMAC, 07/01/2001; A, 11/15/2007]

8.102.420.6 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, ~~[assisting parents to develop the discipline necessary for self sufficiency and to improve their self esteem]~~ resources and support. The further purpose of the program is to increase family income through family employment and child support and by ~~[viewing financial]~~ utilizing cash assistance as a support service to enable and assist parents to participate in employment.

~~**B.** The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program like NMW or the federal program of supplemental security income (SSI).~~

~~**C.** The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.~~

~~**D.** The objective of the burial assistance program is to assist in payment of burial expenses for deceased, low-income individuals.]~~

B. The objective of 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.

[8.102.420.6 NMAC - Rp 8.102.420.6 NMAC, 07/01/2001; A, 11/15/2007]

8.102.420.8 AGE - NMW [~~AND REFUGEE RESETTLEMENT~~]: To be eligible for inclusion in the benefit group, a dependent child is a natural child, adopted child or stepchild or ward who is:

~~**A.** NMW definition of a dependent child: A natural child, adopted child, stepchild or ward who is:]~~

~~**(1)** **A.** [seventeen] 17 years of age or younger;~~

~~**(2)** **B.** [eighteen] 18 years of age and is enrolled in high school; or~~

~~**(3)** **C.** between [eighteen and twenty two] 18 and 22 years of age and is receiving special education services regulated by the New Mexico public education department (PED).~~

~~**B.** Refugee resettlement assistance: An individual who is seventeen years of age or younger.]~~

[8.102.420.8 NMAC - Rp 8.102.420.8 NMAC, 07/01/2001, A, 05/15/2003; A, 7/17/2006; A, 11/15/2007]

8.102.420.9 SCHOOL ATTENDANCE:

A. Requirement:

(1) Children:

(a) A dependent child of school age [6 through age 17 years of age] must be a full-time student at a certified educational facility or participating and fully complying with a home-schooling program approved by the New Mexico ~~[state department of education]~~ PED. School age is any dependent child who turns six years of age prior to September first and is under 18 years of age.

(b) ~~[An individual]~~ A participant who is age 18 years of age may be included in the NMW benefit group if the individual is enrolled in high school, or the high school equivalent level of vocational or technical training. Such an individual may be eligible to be included in the NMW benefit group until the end of the month in which the individual graduates or until the end of the month in which the individual turns 19 years of age, whichever occurs first.

(c) A student who is age 18 years of age and under age 22 years of age may be included in the NMW benefit group as long as the student is enrolled in high school and is receiving special education services regulated by the ~~[SDE]~~ PED. There must be a current valid individual education plan (IEP) for the student to verify the special education services.

(d) A dependent child age 17 years of age or younger who has graduated from high school or has obtained a GED shall be deemed to be a full-time student and to be fulfilling attendance requirements.

(e) The parent or specified relative of a dependent child who is participat-

ing in a home-schooling program must provide a certification from the public school system that a home-schooling curriculum has been approved for the dependent child. The certification must be submitted at the beginning of each school year or when a home schooling program begins.

(2) Minor parent: To be eligible for inclusion in the NMW benefit group, a minor unmarried parent, who does not have a child under the age of 12 weeks, must attend school ~~[full-time]~~ full-time to obtain a high school diploma, or must participate in a GED program ~~[full-time]~~ full-time or participate in approved alternate schooling unless the minor unmarried parent has already graduated from high school or obtained a GED.

(3) Full-time attendance: ~~[Whether a]~~ A child is considered a full-time student and meeting full-time attendance requirements is based on the standards of the educational facility or program in which the child is enrolled.

(4) Vacations and other interruptions: A child enrolled in and attending classes is considered in attendance during:

(a) regularly scheduled vacations and breaks, including summer vacation, provided:

(i) the child has not been removed for non attendance; and

(ii) that the child resumes attendance when classes start again;

(b) periods of personal illness or convalescence;

(c) family emergencies, for a period not to exceed 30 days;

(d) participation in or attendance at cultural and religious activities as long as the child has parental consent.

B. Determining whether the requirement is met:

(1) The school attendance requirement is not applicable during the initial application process. For purposes of the school attendance requirement, an initial application is defined as a new application for assistance, when:

(a) an applicant has been never known to ISD;

(b) an application to add a new member to the benefit group never known to ISD; or

(c) an application for an individual or case which has been closed for six months or more.

(2) A child has failed to comply with school attendance requirements, and the child's needs shall be removed from the benefit group's standard of need, if the child:

(a) is not enrolled in school; or

(b) has accumulated three unexcused absences in a grading period, but not on the same day; or

(c) has dropped out of school during the current grading period; or

(d) has completed a school attendance plan and has one or more unexcused absences during the time period covered by the plan.

(3) School attendance verification: The caseworker shall verify school attendance for school days occurring:

(a) after the NMW initial application has been approved; [~~School attendance verification is mandatory~~]

(b) at each certification[;]; or

(c) when the caseworker becomes aware that the child may not be in compliance with school attendance requirements.

(4) Responsibility to report: Within 14 days of the date it becomes known, the parent, specified relative, or caretaker must report to ISD if a child is not enrolled in school, has accumulated three unexcused absences during the current grading period, or has dropped out of school. Failure to report that a child has not met school attendance requirements shall not result in a non-reporting sanction for the parent, or the specified relative or caretaker if included in the benefit group.

(5) Failure to comply with school attendance requirements:

(a) Conciliation: Prior to removing the child's needs from the benefit group's standard of need, the parent, specified relative or caretaker shall have a 10 working day [~~compliance~~] conciliation period to address school non-attendance.

(i) The [~~compliance~~] conciliation period is [~~ten~~] a 10 working day period affording an opportunity for the parent, child, and the school to develop a plan to ensure regular attendance by the child and comply with NMW requirements.

(ii) [~~If the school confirms that satisfactory arrangements have been made to ensure regular attendance by the child, the child shall remain eligible.~~]

(b) Conciliation process:

(i) Within 10 days of determining that a child has not met school attendance requirements, the caseworker shall take action to initiate a [~~compliance~~] conciliation period[;] by

(ii) A [~~compliance~~] period is initiated by the caseworker issuing a notice of action.

(iii) (ii) The benefit group shall have 10 working days from the date of issuance of the notice to provide a school attendance plan indicating the school's confirmation of satisfactory arrangements.

(iv) (iii) If a benefit group fails to provide a school attendance plan, a notice of adverse action shall be sent on the next working day.

(v) If the school con-

firm[s] that satisfactory arrangements have been made to ensure regular attendance by the child, the child shall remain eligible.

(c) Benefit reduction:

(i) The child shall be removed from the benefit group effective the month following the month the notice of adverse action expires.

(ii) If there is one [~~or more~~] or more unexcused absence following successful submission of a school attendance plan (the school's confirmation of satisfactory arrangements), [~~ISD~~] the caseworker shall remove the child from the benefit group the month following the month the adverse action notice expires.

(d) Case closure: If the child is the only child included in the benefit group, the cash assistance case shall be closed.

(6) Regaining eligibility:

(a) Once a child has been removed from the benefit group due to failure to comply with school attendance requirements, the child cannot be considered a member of the benefit group until the child has attended school with no unexcused absences for a period of 30 calendar days. The child shall regain eligibility effective the month following the month the 30-day attendance requirement is verified.

(b) (a) A child may regain eligibility by attending summer school or its equivalent.

(c) (b) A child may not regain eligibility by moving from one benefit group to another.

[8.102.420.9 NMAC - Rp 8.102.420.9 NMAC, 07/01/2001, A, 05/15/2003; A, 11/15/2007]

8.102.420.11 DISABILITY - NMW WORK PARTICIPATION [~~DISABILITY~~] WAIVER REQUIREMENTS:

A. To be eligible for a [~~NMW work~~] NMW/TANF participation waiver [~~based upon~~] due to disability [~~or caring for an incapacitated household member~~], a person must[;]

(1) have a physical or mental impairment which is expected to [~~last 30 days or more which prevents participation in approved work program activities, or~~] last at least 30 days. Severity of condition must prevent the participant from participating in any approved work program activities and from meeting applicable work program participation standards.

(2) be the necessary primary caretaker for a person who is completely disabled, either temporarily or permanently, as determined by IRU in accordance with 8.102.460.11 NMAC.

B. A person may qualify for a modified NMW work participation requirements in accordance with 8.102.460 NMAC.

B. To be eligible for a hardship extension of the NMW/TANF life-time limit due to disability, a person must demonstrate through reliable evidence that they are barred from a work activity due to temporary or complete disability; subject to extreme cruelty; or battery, or meets other criteria as indicated at 8.102.420 NMAC.

C. To be eligible for a NMW participation waiver, or hardship extension of the NMW/TANF time limit, as a caretaker a person must be the sole provider for an ill or incapacitated family member living in the home who does not attend school on a full time basis.

[8.102.420.11 NMAC - Rp 8.102.420.11 NMAC, 07/01/2001; A, 7/17/2006; A, 11/15/2007]

8.102.420.12 DETERMINING DISABILITY

A. **Process:**

(1) Total disability is a condition existing when an individual has a physical and/or mental impairment which prevents the individual from approved work participation activities within the individual's capacity.

(2) (1) Determination of disability requires a finding by the IRU that [~~an individual, because of an impairment,~~] a participant does not have the capacity for meeting approved work participation activities.

(3) (2) [~~Once it has been determined~~] IRU shall determine that an [individual] participant has a physical, mental or psychological impairment. [~~determination of capacity takes into consideration an individual's~~] IRU shall consider the following for each participant:

(a) "non-work related factors" including a participant's age, education, work experience, vocational training, ability to speak English, and similar matters; [~~these non-medical factors are generically referred to as "other work related factors."~~]

(b) [~~other~~] work-related factors are considered in deciding whether employment exists which could be performed by the [~~individual~~] participant, given the [~~individual's~~] participant's physical [~~and/or~~] or mental impairment(s); and

(c) medical findings are evaluated to determine the level of activity the [~~individual~~] participant can perform.

(4) (3) The [~~NMW~~] NMW/TANF disability determination is made independently of and using differing standards from those used for determining OASDI or SSI eligibility, general assistance, workman's compensation, veteran's compensation or in Americans with Disability Act (ADA) determinations. Medical and social information used by disability reviewers may differ between deter-

minations, and an ~~[individual's]~~ participant's condition may improve or worsen over time. As a result, an ~~[individual]~~ participant may be classified disabled by one program but not by another. A disability determination made for another program or purpose is immaterial to the ~~[NMW]~~ NMW/TANF disability determination. ~~[NMW]~~ NMW/TANF determinations shall be made considering only ~~[NMW]~~ NMW/TANF policy and medical and non-medical information known to ISD.

B. Impairment:

Impairment is a condition resulting from anatomical, physiological, or psychological abnormalities evidenced by medically acceptable clinical and laboratory diagnostic techniques. Impairment has to do only with the medical, ~~[and/or]~~ psychiatric process or both. To evaluate physical ~~[and/or]~~ or mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.

(1) Obtaining medical information:

(a) Record or narrative reports resulting from examination, ~~[and/or]~~ diagnostic or both procedures shall be used to evaluate an impairment.

(b) Existing medical information or knowledge shall be used. Copies of relevant existing medical reports shall be obtained and used in making a disability determination.

(c) Current medical information, dated within six months of the waiver request, is required for a disability determination. Reports over six months old may be useful in ~~[a disability determination or to support a pattern of recurring impairment if they contain information regarding a chronic condition. Such reports are supporting documentation.]~~ providing a history of the impairment, but must be accompanied by current medical information.

(2) Contents of reports:

(a) ~~[For maximum usefulness, medical]~~ Medical reports should include medical history~~[s]~~, clinical findings~~[s]~~, laboratory findings~~[s]~~, diagnosis~~[s]~~, prescribed treatment and prognosis~~[s]~~, and the practitioner's medical assessment. The medical report must be complete and detailed enough to allow a determination of the limiting effects of the impairment; probable duration of the impairment; and capacity to perform work-related activities.

(b) Medical assessments should discuss abilities such as sitting, standing, moving, lifting, carrying, handling objects, hearing, speaking and traveling.

(c) Psychiatric assessments should discuss the ~~[individual's]~~ participant's judgment and occupational, personal, and social adjustments.

(3) Assessing medical reports:

(a) Symptoms shall be the first

item to be evaluated. These are a description by the practitioner of the mental or physical impairment. Obvious impairments such as recent fractures do not require extensive reporting. Chronic or complex ailments require more extensive reporting. Symptoms alone shall not be used to make a determination of impairment.

(i) Symptoms/signs:

Signs are the observations made by the practitioner regarding anatomical, physiological, or psychological abnormalities through medically acceptable clinical techniques. In psychiatric impairments, signs are medically demonstrable abnormalities of behavior, affect, thought, memory, orientation and contact with reality.

(ii) **Laboratory findings:** Laboratory findings are objective demonstrations of anatomical, physiological or psychological abnormalities. They include X-rays, blood tests, and psychological tests.

(b) The physical ability of the ~~[individual]~~ participant to do work at a certain level shall be assessed. Below are categories of work as defined in the "dictionary of occupational titles". Many physicians use these definitions in medical reports.

(i) Sedentary work:

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one that involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and sedentary standards are met.

(ii) **Light work:** Light work involves lifting no more than 20 pounds at a time, with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category if it requires a good deal of walking or standing, or if it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, ~~[an individual]~~ a participant must have the ability to do substantially all of these activities. If an ~~[individual]~~ participant can do light work, it is assumed that he can also do sedentary work, unless there are additional limiting factors, such as loss of fine dexterity or inability to sit for long periods of time.

(iii) Medium work:

Medium work involves lifting no more than 50 pounds at a time, with frequent lifting or carrying of objects weighing up to 25 pounds. If ~~[an individual]~~ a participant can do medium work, it is assumed that the ~~[individual]~~ participant can also do seden-

tary and light work.

(iv) Heavy work:

Heavy work involves lifting no more than 100 pounds at a time, with frequent lifting or carrying of objects weighing up to 50 pounds. If ~~[an individual]~~ a participant can do heavy work, it is assumed that the ~~[individual]~~ participant can also do medium, light, and sedentary work.

(v) Very heavy work:

Very heavy work involves lifting objects weighing more than 100 pounds at a time, with frequent lifting or carrying of objects weighing 50 pounds or more. If ~~[an individual]~~ a participant can do very heavy work, it is assumed that the individual can also do heavy, medium, light and sedentary work.

C. Psychological impairment:

If psychological impairment is being assessed, an ~~[an individual's]~~ a participant's mental ability to function at one of the above-mentioned levels shall be evaluated in the following areas:

(1) **Judgment:** ~~[Individual's]~~ A participant's ability to exercise appropriate decision-making processes in a work situation consistent with the ~~[individual's]~~ participant's abilities.

(2) **Stress reaction:** ~~[Individual's]~~ Participant's ability to handle stress consistent with the level of employment.

(3) **Cognitive function:** ~~[Individual's]~~ Participant's awareness, memory, intellectual capacity and other cognitive functions.

D. Determining duration of NMW work participation waiver: The duration of the ~~[NMW]~~ NMW/TANF work participation waiver shall be determined based on the nature of the impairment.

E. Other work-related factors:

(1) Other factors which may affect the ~~[individual's]~~ participant's work participation shall be taken into consideration only if an impairment materially affecting the ~~[individual's]~~ participant's work participation has been determined to exist. The caseworker shall develop and submit a summary describing the ~~[individual's]~~ participant's health history, appearance, work and personal situation. For a finding of disability, a significant impairment must exist; a finding of disability cannot be made based solely on other work-related factors. Other work-related factors shall be used to evaluate the ability of the ~~[individual]~~ participant to engage in work participation with respect to the impairment. Such factors as age, education, training, work experience, language ability, appearance, marital status, living situation, and relevant social history shall be considered. Different evaluations of disability may be made for two ~~[individuals]~~ participants with the same impairment,

based on the other work factors affecting the ~~[individuals i.e.] participants; such as, one participant~~ may be found to be disabled by the program definition and the other participant may not.

(2) In determining complete disability with respect to work program participation, partial disabilities and other work-related factors, such as education and educational achievements, work history, job experiences, and language ability, shall not be considered. While these may present an impediment to obtaining employment, they are problems which can be overcome through work program participation. Where such impediments exist, the ~~[individual]~~ participant shall be expected to participate in activities which will overcome these barriers.

(a) **Age:** Age is a factor in the determination process. The older an ~~[individual]~~ participant is, the less potential there is for overcoming an impairment. Recovery is more difficult and, often, total recovery may not be achieved. There may be very little chance that the ~~[individual]~~ participant will ever return to functioning effectively in the ~~[individual's]~~ participant's previous job duties.

(b) **Education:** ~~[An individual's]~~ A participant's educational level is a factor in the determination process. ~~[An individual]~~ A participant who lacks a high school degree or GED may be hampered in an ability to get a job that does not require strenuous effort. Education is defined at four levels:

(i) **Illiteracy:** Inability to read or write English. Illiterate ~~[individuals]~~ participants are considered suitable for the general labor work force.

(ii) **Marginal:** Eight years of education or less. Marginally educated ~~[individuals]~~ participants are considered suitable for the semi-skilled work force.

(iii) **Limited:** Lack of a high school diploma but more than eight years of education. ~~[Individuals]~~ Participants with limited education are considered suitable for the semi-skilled to skilled work force.

(iv) **High school, GED and above:** Indicates ~~[an individual's]~~ a participant's ability to compete in all levels of the job market.

~~(e)~~ (v) **Training:** Completion of training in a particular field of employment indicates an ~~[individual]~~ participant is capable of doing the job if the ~~[individual]~~ participant is not hindered in the performance of it by the impairment(s). Completion of a training course may offset the education factor in some instances.

~~(e)~~ (c) **Job experience:** Experience in a job field can overcome a

lack of education ~~[and/or]~~ or training. Jobs held in the last ten years shall be considered. Work experience shall be evaluated on the type of work previously performed, the length of employment and the potential for the experience to be transferred to other types of employment. Inability to continue working in one's prior field of work does not constitute a disability. Jobs and job experience are classified into the following categories:

(i) **General labor:**

Does not require the ability to read or write. Such work includes, but is not limited to, field labor, construction labor, housework, and motel cleaning.

(ii) **Semiskilled labor:**

Requires a minimal ability to read, write and do simple calculations. Such work includes, but is not limited to, security guard, taxi driver, cashier and janitor.

(iii) **Skilled labor:**

Ability to do work where the ability to read, write and do calculations of a complex nature is needed. Specialized training in the area is also considered. Such work includes, but is not limited to, that of an accountant, mechanic, plumber, and other areas requiring some degree of skill.

~~(e)~~ (d) **Language ability:**

Inability to speak, read and write English limits an ~~[individual's]~~ participant's choice of jobs.

~~(e)~~ (e) **Appearance:** ~~[An individual's]~~ A participant's appearance may be a factor in a disability determination. On rare occasions, an impairment is disfiguring and may interfere with employment. For example, an ~~[individual]~~ participant with psoriasis covering the face, arms and hands might have a problem getting a job working with the public, such as cashier or waitress.

F. **Assessing the disability:**

(1) Disability shall be determined by evaluating the impairment and other work-related factors. An impairment must exist for there to be a finding that ~~[an individual]~~ a participant is disabled. If an impairment does not exist, a person shall not be found disabled.

(2) When an impairment is substantiated, the other work-related factors shall be considered. Existence of an impairment does not necessarily result in a finding of disability. Many ~~[individuals]~~ participants with impairments are able to work and thus cannot be considered disabled according to the disability standards set forth in the NMW program. Impairments, together with a combination of other work-related factors which prevent working, shall be considered in determining a work participation waiver.

~~(3) There can be no set formula~~

~~for a disability determination, since the combinations of impairment and other work related factors are as varied as the number of individuals for whom disability determinations are made. It is essential that a disability determination be objective and substantiated by the findings, for the impairment and the other work related factors be objective and substantiated by the findings, for both the impairment and the other work related factors.]~~

G. **Modified work and limited participation:** IRU shall make the final determination when placing a recipient into limited or modified work participation in accordance with 8.102.460.12 NMAC.

[8.102.420.12 NMAC - Rp 8.102.420.12 NMAC, 07/01/2001; A, 7/17/2006; A, 11/15/2007]

8.102.420.13 **RESPONSIBILITY FOR DETERMINATION OF DISABILITY:**

A. **Caseworker responsibility:** The caseworker shall be responsible for obtaining medical reports and social information, and for preparing the medical social summary. This packet shall be submitted to the IRU for all work program participation waiver requests. After the IRU decision concerning the work participation waiver, the caseworker shall inform the NMW participant of the IRU determination.

B. **IRU responsibility:** The responsibility for deciding that a disability exists or a modified work requirement. Based upon the medical reports and social summary, and according to the guidelines in 8.102.420.11, 8.102.420.12 and 8.102.420.13 NMAC, IRU shall decide whether a disability exists.

C. **Reevaluation of disability:** ~~[An individual's]~~ A participant's disability shall be reevaluated on a periodic basis, as specified by IRU. At the time of reevaluation, it shall be necessary to get an update of the medical condition, as well as any changes in other work-related factors. IRU shall remain responsible for deciding whether a disability still exists, and the date, if applicable of the next reevaluation.

[8.102.420.13 NMAC - Rp 8.102.420.13 NMAC, 07/01/2001; A, 7/17/2006; A, 11/15/2007]

8.102.420.14 **CHILD SUPPORT:**

A. **Assignment:** By state statute, Section 27-2-28(F), NMSA 1978, any ~~[individual]~~ participant who signs an application automatically assigns the ~~[individual's]~~ participant's child support rights to the department. The assignment shall be made with respect to the child for whom NMW is provided and shall be valid as long as the ~~[individual]~~ participant receives NMW payments on the child's behalf. The

assignment shall also include any spousal support for which the applicant is or may become eligible.

B. Cooperation:

(1) The adult responsible for each child included in the benefit group must cooperate with the child support enforcement division (CSED) in obtaining child support for any dependent child included in the NMW benefit group. Failure to do so will result in payment sanctions. The adult shall be required to cooperate regardless of whether the adult is included in the benefit group.

(2) Failure to cooperate shall result in the personal ineligibility of the ~~individual~~ participant refusing to cooperate and in a payment sanction against the benefit group, as described in 8.102.620.10 NMAC.

(3) The determination as to whether the ~~individual~~ participant has cooperated with CSED shall be made by CSED based on CSED requirements. The cooperation requirement may be partially or fully waived by CSED upon demonstration of good cause by the specified relative as indicated in Subsection E of 8.102.420.14 NMAC.

(4) The caretaker relative must transmit to CSED any child support, spousal or medical support payment which the caretaker relative receives directly.

C. Determining that cooperation exists: A caretaker relative who, on the application and certification forms, indicates a willingness to cooperate and who provides basic information determined by CSED as necessary to establish and pursue support shall be considered to have met the cooperation requirement until such time as CSED reports to the caseworker that the ~~individual~~ participant is failing to cooperate.

D. Action upon receiving notice of noncompliance: On notification by CSED of failure to cooperate, the caseworker shall take immediate action to issue a conciliation notice or to impose a non-compliance sanction.

E. Good cause:

(1) In some situations, it is not in the best interests of the child or parent to pursue support or to require that the caretaker relative cooperate with CSED in pursuing such support. Caretaker relatives therefore must be:

(a) notified that the requirement to cooperate may be waived;

(b) informed of the requirements involved in the waiver; and

(c) given an opportunity to request a waiver that would exempt them from the cooperation requirement.

(2) If a caretaker relative requests a waiver of the cooperation requirement, assistance shall not be delayed pending

determination of good cause, nor may enforcement of support begin or continue while the waiver of the requirement is under consideration. An applicant who makes a waiver request shall not be included in the benefit group until the necessary corroborative information and documents are provided to ISD.

(3) **Granting a good cause exemption:** The decision whether to grant a good cause exemption shall be made according to the following methods.

(a) **Domestic violence exemption:** Exemption status shall be reviewed based on the following criteria.

(i) The New Mexico family violence option in the NM TANF state plan allows for exemption from cooperation with CSED requirements due to a domestic violence environment. The ISD caseworker shall exempt an ~~individual~~ participant from cooperation requirements with CSED where a trained domestic violence counselor has certified that cooperation would make it more difficult to escape the domestic violence or would unfairly ~~penalizes the individual~~ penalize the participant in light of current experiences.

(ii) CSED shall exempt a participant from cooperation requirements with CSED when the participant has demonstrated by reliable medical, psychological or mental reports, court orders or police reports that they are subject to or at risk to domestic violence.

(iii) Upon approval of exemption the caseworker shall submit a memo regarding exemption status to CSED and ISD central office.

(b) **Other good cause exemptions:** All other good cause exemptions, including but not limited to and exemption due to a domestic violence environment that is not certified by a trained domestic violence counselor, from cooperation with CSED requirements shall be made by the director of the CSED or designee.

(4) Notification:

(a) **Approval:** The caseworker shall send a written notice to the client whether the waiver has been granted and when it will be reviewed. The letter shall also tell the client whether CSED has determined that support can be pursued without danger or risk to the client or child. ~~If pursuit is planned, the client shall be notified that a client must cooperate to the extent of providing necessary information and documents and that, if the client does not, non-compliance sanctions will be imposed. The client shall also be notified of the right to an administrative hearing, and that the client has 60 days in which to file a request.~~

(b) **Denial:** If CSED decides that good cause does not exist, the caseworker shall notify the client that the request has been denied and that the client is expected

to cooperate fully in pursuing support, within 10 working days of the day the notice was issued. The notification shall also inform the client that a client has 60 days in which to request an administrative hearing, but that the client is expected to begin cooperating within 10 days after the date of the letter.

[8.102.420.14 NMAC - Rp 8.102.420.14 NMAC, 07/01/2001; A, 11/15/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.102.460 NMAC, Sections 10, 11, 13, 14, 19 and 29 through 32, effective 11/15/2007.

8.102.460.10 WORK PARTICIPATION:

A. Requirement: A participant that is required to participate in various work program activities shall be expected to attend and complete all required activities, such as the assessment, individual responsibility plan (IRP), work participation agreement (WPA) and monthly participation requirements. ~~[A participant who fails to complete any requirement or participation falls below program requirements in any month, the benefit group shall be subject to a sanction for failure to participate as required.]~~

B. Conciliation: Each participant shall be entitled to a single conciliation process the first time that the participant fails to meet participation requirements. See 8.102.620 NMAC for provisions concerning the conciliation process.

C. Sanction: A participant who fails to complete any requirement or participation falls below program requirements in any month, the benefit group shall be subject to a sanction for failure to participate as required.

[8.102.460.10 NMAC - Rp/E, 8.102.460.10 NMAC, 07/16/2007; A, 11/15/2007]

8.102.460.11 PARTICIPATION WAIVER:

Based on request and verification of existing condition, a participant may be qualified for a waiver from the work requirement.

A. Categories of waivers: ~~[Work program participation shall be waived for a participant.]~~ Based on one of the following conditions a waiver be granted for an applicant or participant.

~~(2)~~ (1) Who is 60 years of age or older ~~[-or].~~

~~(40)~~ (2) A participant may demonstrate good cause ~~[of]~~ for the need for the ~~[exemption]~~ waiver. A good cause waiver may exist and shall be determined by IRU based on ~~[clients]~~ the participant's

existing condition(s). Good cause is not considered to exist for failure to meet any of the above criteria.

~~(4)~~ **(3)** A single parent, not living with the other parent of a child in the home, or caretaker relative with no spouse, with a child under the age of 12 months. This waiver shall not exceed 12 months during a participant's lifetime. No more than one such waiver is granted to a benefit group at a time.

~~(5)~~ **(4)** A single custodial parent caring for a child who has not attained 6 years of age or who is a medically fragile child if the parent is unable to obtain child care for one or more of the following reasons and children youth and families department (CYFD) certifies as to the unavailability or unsuitability of child care:

(a) the unavailability of appropriate child care within a reasonable distance from the participant's home or work site; or

(b) the unavailability or unsuitability of informal child care by a relative or under other arrangements; or

(c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

~~(6)~~ **(5)** A woman in her third trimester of pregnancy. The waiver is extended for six weeks beyond the termination of the pregnancy when the participant's work requirement cannot be waived by another participation waiver.

~~(7)~~ **(6)** A participant whose personal circumstances preclude participation for a period not to exceed one month. This includes persons who are temporarily ill, who are pending a domestic violence determination, or who have requested a waiver related to disability but for which the disability waiver has not been determined.

~~(8)~~ **(7)** A participant who demonstrates by reliable medical, psychological or mental reports, court orders, police reports, or personal affidavits if no other evidence is available, that family violence or threat of family violence effectively bars the participant from employment. IRU shall make the determination whether a waiver should be granted.

~~(4)~~ **(8)** Who is completely disabled, either temporarily or permanently, as determined by ~~HSB~~ IRU in accordance with 8.102.420.11, 8.102.420.12, and 8.102.420.13 NMAC [~~IRU shall make the determination whether a waiver should be granted~~].

(9) A participant may be entitled to the family violence option [~~DVO~~] **(FVO)**. This option allows for a participant in a domestic violence environment and unable to meet work program requirements to have all work requirements waived for the length of time certified by a trained domestic violence counselor. The certifica-

tion that waives work requirements shall be made, on the basis that the environment where the participant resides would make it more difficult to escape the domestic violence or would unfairly penalize the participant in light of past or current experiences. The certification shall indicate that the participant is in a domestic violence environment which precludes compliance with work program requirements.

(a) A participant's DVO waiver shall be reviewed every six months and shall be determined by IRU based on the domestic violence counselor's certification. The participant shall be temporarily waived from work program requirements pending the determination from IRU.

(b) A participant who can continue to comply with work requirements as certified by a trained domestic violence counselor, may participate in a temporary alternative work activity for 24 weeks as described in 8.102.460.24 NMAC.

~~(3)~~ **(10)** Who provides the sole care for a disabled household member as defined in 8.102.420.11 NMAC.

(a) In order to show that the participant is ~~a necessary primary caretaker for the participant requesting the waiver~~ must demonstrate the sole caretaker for a disabled household member, it must be demonstrated that the participant cannot be out of the home for the number of hours necessary to meet program participation requirements.

(b) Only those care activities around which work program activities cannot be scheduled are taken into consideration.

(c) Transportation to medical appointments, food purchase and preparation activities, home maintenance chores, etc. are activities which may be scheduled and performed at times other than work program participation hours and so would not be taken into consideration.

(d) A requirement to be on call for the medical emergencies of a medically fragile participant is taken into consideration in determining whether a waiver is granted.

B. Waiver determination: The determinations required under Paragraphs (1) - (6) of Subsection A of 8.102.460.11 NMAC shall be made by the caseworker based on information provided by the participant requesting the waiver. The determinations required under Paragraphs (7) - (9) of Subsection A of 8.102.460.11 NMAC shall be made by IRU based upon information provided by the participant requesting the waiver.

(1) It shall be the responsibility of the participant requesting a waiver to provide all information necessary to the caseworker. A waiver shall not be granted until

the participant provides all the information needed to make the waiver determination.

(2) A participant who has not provided all the necessary information to make a determination shall be subject to meeting work program participation requirements.

~~(C)~~ **(3) Temporary waiver:** A person who has provided all information necessary to make the determination shall be temporarily granted the waiver pending final determination by IRU.

~~(D)~~ **C. Complete disability and special needs and considerations:** The caseworker shall be responsible for explaining work program requirements and waivers of work program participation, including possible accommodations for special needs or considerations.

(1) Special needs or considerations may include a physical, mental, neurological or sensory impairment that limits the ability to work; functional impairments that limit mobility, such as lifting, bending, walking, sitting for a prolonged period of time and climbing stairs; learning disabilities; or substance abuse problems.

(2) A participant who requests a waiver of work program participation based on disability must submit medical reports to the county office within thirty days of requesting a waiver. The caseworker shall submit for review a completed medical social summary, request for disability determination and all medical reports to the IRU.

(3) Incapacity review unit (IRU) responsibility: The IRU shall have sole responsibility for reviewing all medical reports and making a determination that a participant is waived due to disability, that there are limitations requiring special needs or considerations, or that full participation is possible.

(4) Complete disability: A participant may be considered completely disabled and waived from meeting work program participation requirements if the participant:

(a) has a physical or mental impairment that is expected to last at least thirty days; and

(b) cannot reasonably be expected to participate in any of the approved work program activities for the NMW program due to the severity of the physical or mental impairment; and

(c) cannot be expected to meet applicable work program participation standards.

~~(E)~~ **D. Modified work participation agreement**

(1) Factors limiting full participation: Where a participant is found to be capable of engaging in work activities, and IRU has documented limiting factors in the participant's capacity to work:

(a) the caseworker shall inform

the participant and work program contractor of the IRU determination;

(b) the participant shall enter into a modified work participation agreement and individual responsibility plan;

(c) the work program contractor and the participant shall develop a plan for participation in work activities that takes into account the participant's limitations;

(d) the participation in services, activities or programs designed to enhance the participant's capacity to work shall meet the requirements for participation in secondary activities.

(2) Modified work participation agreement: The modified work participation agreement shall include at least twenty hours in qualified primary work activities, unless the participant is temporarily exempted from full participation. The balance of the hours in the participation standard shall be considered as secondary activities.

(a) Secondary activities may include all those activities identified as qualified secondary activities.

(b) Secondary activities must include participation in services, activities or programs that are intended to enhance the participant's capabilities and capacity to fully participate in work program activities based upon the participant's applicable participation standard.

(c) Required secondary activities may include, but are not limited to, additional screening and assessment to assist the participant in identifying barriers to work; a family assessment; referrals to treatment or counseling facilities; requiring the participant to schedule and attend doctor's appointments, mental health counseling, speech and physical therapy; substance abuse treatment; or continuing participation in services already being provided.

(3) Temporary exemption: The IRU may temporarily exempt a participant from meeting applicable hours in the participation standard in work activities as long as the participant develops, with the work program contractor, and implements a modified work participation agreement and individual responsibility plan.

(a) For purposes of work registration, the participant shall be considered as a volunteer, except that the participant shall be eligible for support services during the time the participant works with the work program contractor to develop and implement the modified work participation agreement and ~~participant~~ individual responsibility plan.

(b) The duration of the temporary exemption shall be determined by the IRU based on the participant's identified limitations.

(c) The participant shall be required to work with the work program

contractor to develop and implement work activities identified in the modified work participation agreement.

(d) The participant's modified work participation agreement may include participation in qualified work activities and may or may not meet the participant's weekly participation standard.

(e) The participant must participate in any services, activities, or programs that are identified in the modified work participation agreement and intended to enhance the participant's ability to work and participate fully in work activities that will lead to self-sufficiency.

(4) Work program contractor:

(a) A work program contractor may identify a work program participant with special needs or considerations related to the participant's ability to fully participate in work activities. The contractor shall:

(i) inform the participant of the special needs or considerations provision and the possibility of a modified work participation agreement;

(ii) immediately refer the participant back to the caseworker;

(iii) assist the participant, if necessary, in gathering all medical documentation for forwarding to the caseworker; and

(iv) inform the participant that the day after the day the work program contractor refers the participant back to the caseworker begins the thirty day time period for providing medical documentation to the caseworker.

(b) Upon receiving notification that the IRU has determined that a participant is unable to fully participate in work activities, the work program contractor shall work with the participant to develop a modified work participation agreement that takes into account the participant's limitations and emphasizes the participant's capabilities.

(c) The work program contractor shall work with the participant to develop an individual responsibility plan whose ultimate goal is the successful and full participation in work program qualified work activities that will lead to self-sufficiency.

(d) In developing the modified work participation agreement and individual responsibility plan, the work program contractor and participant should consider all available resources in the community, referral to other agencies, and other services that will enhance the participant's capabilities and capacity to work.

(e) The work program contractor shall monitor the requirements and activities in the modified work participation agreement and individual responsibility plan, including increasing interaction with the participant if necessary.

[F.] E. Waived participation limited requirements

(1) Requirements: ~~The department~~ IRU may establish work participation requirements specific to the participant's circumstances and conditions. Participation requirements shall be based on medical social summary, medical documentation, mental health documentation and other related information in regards to the participant's situation. Work requirements shall meet the purposes of improving the participant's income and strengthen family support.

(2) Component activities: For those participants who have been determined to have a limited work capacity the following activities, but not limited to, may be allowable as the ~~primary participation requirements~~ participant's primary activities through the duration of the waiver such as:

(a) substance abuse services;

(b) mental health services;

(c) pursuit of disability benefits;

(d) job readiness or education directly related to employment;

(e) ESL courses for those participants who do not speak English; or

(f) residence in a domestic violence shelter or receiving counseling or treatment or participating in a criminal justice activity directed at prosecution of the domestic violence perpetrator for no longer than 24 weeks.

(3) Review and documentation:

At time of waiver review documentation of a participant's compliance with prescribed limited participation activity requirements shall be provided to establish on going requirements and to evaluate further conditions or circumstances that department shall consider to determine continued waiver status.

[8.102.460.11 NMAC - Rp/E, 8.102.460.11 NMAC, 07/16/2007; A, 08/15/2007; A, 11/15/2007]

8.102.460.13 PARTICIPATION STANDARDS:

A. General: Participation standards are divided into primary, secondary and total activity requirements. Participation activities may be met only through those activities listed in Subsection A of 8.102.460.19 NMAC.

(1) Total activity requirements are met using primary activities or using a mix of primary and secondary activities, as described at 8.102.460.19 NMAC. Activity hours used to meet primary work activity requirements are also counted in determining whether total hour requirements have been met. Unless good cause exists, failure to meet these standards results in payment sanction.

(2) A participant subject to partic-

ipation shall maintain and provide verification of participation at a rate at least equaling the applicable participation standard to avoid being sanctioned.

B. Calculating hours:

(1) Hours per week represent the weekly average over the month.

(2) Time spent traveling to and from the work-site, location where child care is provided, or both, do not count as hours of participation.

(3) For paid work activities:

(a) paid leave and holiday time count as actual hours;

(b) hours shall be anticipated prospectively and verification provided no ~~less~~ more than every six months.

(4) For non-paid activities allowable excused absences count as actual hours when:

(a) the absence occurs on a day that the participant is scheduled to participate in an activity; and

(b) is considered excused by the institution or sponsoring agency.

(5) For non-paid activities allowable holiday absences count as actual hours when:

(a) the absence scheduled holiday occurs on a day that the participant would have been scheduled to participate in an activity; and

(b) the absence is a scheduled holiday as recognized by the department and determined at the beginning of each federal fiscal year.

(6) A participant may be granted no more than 10 excused absences during a ~~[one year]~~ twelve month period and no more than two in any month. Only the prescheduled hours of participation for the day of absence shall be ~~[included in the participation requirement]~~ credited on the participant attendance report.

(7) Non-paid work experience and community service participation hours are limited to the Fair Labor Standards Act (FLSA) rules. The Fair Labor Standards Act (FLSA) standards are used to determine the maximum number of hours the department can require a participant to meet. When the participant meets the maximum number of hours required by the FLSA calculation and number is less than the primary work hour requirement the remaining hours may be deemed up. The maximum amount of weekly hours required by the FLSA are calculated as follows:

(a) Single parent: Add the monthly TANF cash assistance benefit to the monthly food stamp benefit and divide by the federal or state minimum wage, whichever is higher, and divide by 4.3.

(b) Two-parent: The initial calculation of participation requirement hours is the same as a single parent, in order to

calculate hours for each parent divide by two.

C. Defining single-parent and two-parent benefit group:

(1) For the purpose of this determination, a two-parent benefit group shall be considered to exist when both parents of any child included in the benefit group live in the home with the child and are included in the benefit group.

(2) For the purpose of this determination, a single-parent benefit group is any benefit group which does not include both parents of a child in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

D. Two-parent families:

The participation standard for a two-parent family is based on the availability of federal funding for child care. The provisions in this rule do not apply to a two-parent family in which the youngest child is 13 years of age or older, unless the child would qualify as a special needs child under CYFD child care policies.

(1) Two-parent participation standards:

(a) Where both parents are mandatory work program participants, and federally funded child care is available, the total participation standard shall be 59 hours per week. No fewer than 50 hours per week shall be spent in primary work activities. One parent shall participate at least 30 hours per week in primary work activities, and the other parent shall participate at least 20 hours per week in primary work activities, with the remaining amount apportioned between them as they see fit.

(b) Where both parents are mandatory and federally funded child care is not available, the total participation standard shall be 40 hours per week in primary work activities. Each parent must participate at least 20 hours a week in primary work activities.

(2) Where one parent in a two-parent benefit group has been granted a participation waiver based on disability, the mandatory parent shall be subject to the participation standard for a single parent with a child age six or older.

(3) Where one parent in a two-parent benefit group is a recipient of SSI, the benefit group shall be considered as a single-parent benefit group, and the mandatory parent shall be subject to the appropriate participation standard for the single-parent benefit group.

(4) Where one parent in a two-parent benefit group has been granted a participation waiver for reasons other than disability, the participation standard for the mandatory parent shall be 39 hours a week, and at least 30 hours shall be spent in pri-

mary work activities.

(5) Where one parent is ineligible, disqualified or sanctioned; the other parent shall be subject to a participation standard of 39 hours a week, and at least 30 hours shall be spent in primary work activities.

(6) Where a two-parent benefit group includes an adult who does not meet the definition of a parent, that adult shall be subject to the participation standard for a single parent with a child age six or older.

(7) Where both parents in the benefit group are under age 20, the participation standard shall be met for each parent if the parent is maintaining satisfactory attendance in secondary school or its equivalent during the month. Satisfactory attendance shall be based on the requirements of the school and on enrollment in sufficient course work to assure completion of secondary education before turning age 20.

E. Single-parent benefit group:

(1) Single parent with a child age six or older: Each mandatory participant in a single-parent or caretaker relative benefit group shall participate in primary work activities at least ~~[20 hours a week]~~ 34 hours a week at all times, and of that amount, 30 hours shall be spent in a primary activity or activities.

(2) Single parent with a child under age six: The total participation standard for a single parent with a child under age six shall be 24 hours a week at all times, and of that amount, 20 hours shall be spent in a primary activity or activities.

(3) Single parent under age 20: A single parent under age 20 shall be considered to meet the single parent's total program participation standard, as outlined above when the participant:

(a) reports on a bi-weekly basis satisfactory attendance at a secondary school or in a GED program; the single head of household must be enrolled in enough hours to ensure graduation prior to turning age 20 for attendance to be deemed to be meeting the participation standard as specified above based on the child's age; or

(b) participates in education directly related to employment for at least the average number of hours per week specified above based on the child's age.

[8.102.460.13 NMAC - Rp/E, 8.102.460.13 NMAC, 07/16/2007; A, 08/15/2007; A, 11/15/2007]

8.102.460.14 ASSESSMENT:

A. Requirements: No later than 15 calendar days after an application is approved, ISD shall assess the education, skills, prior work experience and employability of the participant. The assessment is a necessary pre-cursor to the IRP and ~~[participation choice]~~ development

of WPA and is a crucial and necessary element in meeting work program requirements. Failure on the part of the participant to participate in or to complete the assessment may result in work program noncompliance and payment sanctioning.

B. Elements: The assessment includes the following elements:

(1) a referral by the caseworker to a local agency or agencies who, acting on behalf of the department, carry out the assessment;

(2) a face-to-face meeting between the participant and the agency, no later than 15 calendar days following approval of assistance to the participant, in which the assessment is carried out; there are a variety of assessment tools and forms in existence; any of these may be used, provided that they address the participant's education, skills, prior work experience and employability;

(3) provision to ISD of a copy of the assessment or a certification as to the completion of the assessment; the copy of the assessment or certification must be provided to ISD by the expiration of the 15-day assessment period.

C. Good cause:

(1) A participant may not be sanctioned for failure to provide ISD with a certification that the assessment has been completed if:

(a) the participant demonstrates that the participant is unable to obtain a timely assessment and

(b) the participant informs ISD of that fact by the 15th day after approval for benefits; or

(c) department has not demonstrated timely assistance to a participant to complete the assessment or IRP.

(2) Upon being informed that a participant is unable to receive a timely assessment, ISD shall:

(a) determine whether the participant was unable to obtain a timely assessment by any reasonable means; and

(b) arrange for an assessment.

(3) If it is determined that the participant was unable to obtain a timely assessment by any reasonable means, ISD shall extend the time for the participant to provide a certificate of completion of the assessment to three working days from the date of the rescheduled appointment date.

[8.102.460.14 NMAC - Rp/E, 8.102.460.15 NMAC, 07/16/2007; A, 11/15/2007]

8.102.460.19 QUALIFIED WORK ACTIVITIES:

A. Primary work activities:

For purposes of meeting the participant's participation standard primary work activities are defined in sections 8.102.460.20 NMAC thru 8.106.420.29 NMAC.

B. Secondary work activities:

A secondary activity shall include any primary activity that is not already being credited toward the participant's participation standard as a primary work activity or an activity as defined in [section ~~8.102.460.30 NMAC thru 8.102.460.32 NMAC~~] 8.102.460.29 NMAC thru 8.102.460.31 NMAC.

C. Single head of household:

A participant who is a single head of household and under age 20 shall be deemed to be meeting the single head of household's participation standard for the month if:

(1) the single parent maintains satisfactory attendance in a secondary school or its equivalent during the month, satisfactory attendance shall be based on the requirements of the school and on enrollment in sufficient course work to assure completion of secondary education before turning age 20; or

(2) participates in education directly related to employment for at least the average number of hours per week specified in 8.102.460.13 NMAC.

D. Limited work requirement:

Based on participant circumstances and in order to address barriers a limited participation requirement shall be determined as the best placement as per Subsection E of 8.102.460.11 NMAC.

[8.102.460.19 NMAC - Rp/E, 8.102.460.14 NMAC, 07/16/2007; A, 08/15/2007; A, 11/15/2007]

~~[8.102.460.30]~~ **8.102.460.29**

JOB SKILLS TRAINING:

A. Education or job skills required by an employer to provide a participant with the ability to obtain employment or to advance within the workplace is considered job skills training.

B. General: Secondary work activities are countable towards the total work participation standard for a participant who has completed the primary work activity hours.

C. Component activities: Participation in the following is considered as meeting work participation requirement hours when combined with a primary work activity:

(1) full-time training for adult basic education (ABE), English as a second language (ESL);

(2) post-secondary education; or

(3) any other job related training that can not be considered vocational education as outlined in 8.102.460.26 NMAC.

D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has satisfactorily completed the hours by participating in one or several of the com-

ponent criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a bi-weekly timesheet.

(3) Job skills training directly related to employment must be supervised on at least a daily ongoing basis.

(4) Countable work participation hours shall be determined by actual hours spent in class time and completion of supervised study hours to include holidays and excused absences.

[8.102.460.29 NMAC - Rp/E, 8.102.460.19 NMAC, 07/16/2007; 8.102.460.29 NMAC - Rn, 8.102.460.30 NMAC, 11/15/2007]

~~[8.102.460.31]~~ **8.102.460.30**

EDUCATION RELATED TO EMPLOYMENT:

A. Any organized activity which is designed to improve the participant's knowledge or skills for the specific purpose of increasing the participant's ability to perform in the workplace is considered to be education directly related to employment.

B. General: NMW participants may engage in this activity if they have not received a high school diploma or a certificate of high school equivalency or needs specific education related to current employment or job offer. Secondary work activities are countable towards the total work participation standard for a participant who has completed the primary work activity hours.

C. Component activities:

Participation in the following is considered as meeting work participation requirement hours when combined with a primary work activity:

(1) English as a second language (ESL) for [to] participants who are unable to or uncomfortable with their ability to communicate in English, either spoken or written; or

(2) literacy training for participants who have trouble understanding written English and is based on a demonstrated or acknowledged difficulty in reading comprehension, regardless of the level of education completed; or

(3) adult basic education (ABE) to assist participants who need classes providing basic educational training before working on a general equivalency degree (GED); or

(4) GED classes for participants who have completed a general equivalency diploma pre-test and the results indicate the participant is ready; or

(5) high school attendance for participants who are attending an accredited high school, participant who has recently dropped out of high school shall be encouraged to re-enroll or required to pursue a

GED; or

(6) post-secondary institution for participants who are enrolled in advanced educational training activity through colleges, technical institutes or universities and who are attending classes in order to complete a two- or four-year college degree; or

(7) education directly related to employment shall include any other job related class provided by a facility or organization.

D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has satisfactorily completed the hours by participating in one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a bi-weekly timesheet.

[8.102.460.30 NMAC - N, 07/16/2007; 8.102.460.30 NMAC - Rn, 8.102.460.31 NMAC, 11/15/2007]

~~[8.102.460.32]~~ **8.102.460.31**

SECONDARY SCHOOL/GED:

A. The secondary school/GED work program activity serves participants who are age 18 or older. This may be a qualified activity for a participant who is under age 18 but cannot enroll in high school if the participant has:

(1) successfully completed a previous education work program activity - English as a second language or adult basic education; or

(2) completed a general equivalency diploma pre-test and the results indicate the participant is ready for GED classes.

B. Participation must be supervised on no less than a daily basis. Participants in this activity must maintain satisfactory progress as defined by the school. Secondary work activities are countable towards the total work participation standard for a participant who has completed the primary work activity hours.

C. **Component activities:** Participation in the following is considered as meeting work participation requirement hours when combined with a primary work activity:

(1) ABE or ESL; or

(2) GED or high school shall only be included when they are prerequisites for employment.

D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has satisfactorily completed the hours by participating in one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a bi-weekly timesheet.

(3) Countable hours shall be determined by actual hours spent in class time and completion of supervised study hours to include holidays and excused absences.

[8.102.460.31 NMAC - N, 07/16/2007; 8.102.460.31 NMAC - Rn, 8.102.460.32 NMAC, 11/15/2007]

~~[8.102.460.29]~~ **8.102.460.32 NEW MEXICO WAGE SUBSIDY PROGRAM:**

A. The New Mexico wage subsidy program is a subsidized employment opportunity where a TANF cash assistance participant is hired into full-time employment.

B. The employer is reimbursed a portion of the wages paid to the TANF cash assistance participant for up to 12 months, depending on availability of funds. Payments to employers are made from TANF block grant funds. This subsidy will be a 50-50 match.

C. **Requirements for participating employers:** Participating employers shall:

(1) hire NMW participants for subsidized positions and offer a reasonable possibility of unsubsidized employment after the subsidy period;

(2) not require participants to work in excess of forty hours per week;

(3) pay a wage that is equal to the wage paid to permanent employees performing the same job duties; and will not be less than the federal minimum wage;

(4) ensure that the subsidized employment does not impair an existing contract or collective bargaining agreement;

(5) ensure that the subsidized employment does not displace currently employed persons or fill positions that are vacant due to a layoff;

(6) maintain health, safety and work conditions at or above levels generally acceptable in the industry and not less than those of comparable jobs offered by the employer;

(7) provide on-the-job training necessary for subsidized participants to perform their duties;

(8) sign an agreement for each placement outlining the specific job offered to a subsidized employee and agreeing to abide by all of the requirements of the wage subsidy program;

(9) provide workers' compensation coverage for each subsidized employee; and

(10) provide other benefits (includes but is not limited to, health care coverage, paid sick leave, holiday and vaca-

tion pay) equal to those for new employees, or as required by state and federal law, whichever is greater.

D. Department requirements: The department shall determine whether a TANF cash assistance participant is eligible to participate in the program. In order to be eligible the participant must:

(1) have sufficient work experience;

(2) be registered as a participant with work programs;

(3) be in "good standing" with the department;

(4) must have citizenship documentation and a social security number.

E. Department procedures for implementing wage subsidy: The department shall:

(1) suspend regular TANF cash assistance payments to the benefit group for the calendar month in which an employer makes the first subsidized wage payment to a participant in the benefit group;

(2) pay employers each month, from the TANF block grant, an amount that equals fifty percent of the wages paid by the employer to program participants;

(3) issue a supplemental TANF cash assistance payment if the net monthly full-time wage paid to the participant is less than the TANF cash assistance amount for which the participant would otherwise be eligible;

(4) reimburse the participating employer each month through current invoice procedures;

(5) assist the work program contractor by making participant referrals.

F. Effects on TANF cash assistance:

(1) The participant is ineligible for TANF cash assistance while participating in the wage subsidy program.

(2) The months of participation in the wage subsidy program will count against a participant's 60 month term limit.

(3) The participant remains eligible for medicaid.

(4) The participant's wages count against his or her food stamp benefits.

(5) The participant may be eligible for a supplemental cash assistance payment if the wage subsidy employment is lost during the month, or if the net monthly full-time wage paid to the participant is less than the TANF cash assistance to which the participant would otherwise be eligible.

(6) The participant's earnings are exempt from HUD housing determinations.

(7) The participant is considered to be in active case status while in subsidized employment and, therefore, must comply with all eligibility requirements of the NMW cash assistance program.

G. Contractor proce-

dures for wage subsidy: The department's work program contractor shall:

- (1) offer a one-day work readiness session for all participants who are accepted into the wage subsidy program;
- (2) develop a list of referrals and submit them to potential employers;
- (3) submit a list of referrals to the local ISD office to verify eligibility for NMW cash assistance;
- (4) assist the TANF cash assistance participant in submitting an employment application to the state personnel office;
- (5) provide case management by monitoring employees' work efforts and production to ensure job retention.

H. Voluntary quit provision:

- (1) If a wage subsidy participant voluntarily quits a job without good cause the participant will no longer be considered for participation in the wage subsidy program.
- (2) The TANF cash assistance participant will then have 10 days to notify the work program contractor and renew his or her work participation activities.
- (3) If the TANF cash assistance participant fails to complete this process, the department will follow the policy and procedures for imposing sanctions for non-cooperation with the work program. [8.102.460.32 NMAC - N/E, 07/16/2007; A; 08/15/2007; 8.102.460.32 NMAC - Rn, 8.102.460.29 NMAC, 11/15/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.500 NMAC, Sections 3, 6, 8, 9, and 10, effective 11/15/2007.

8.102.500.3 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 ~~financial~~ 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. [8.102.500.3 NMAC - Rp 8.102.500.3 NMAC, 07/01/2001; A, 11/15/2007]

8.102.500.6 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, ~~[assisting parents to develop the discipline necessary for self sufficiency and to improve their self esteem]~~ resources and support. The further purpose of the program is to increase family income through family employment and child support and by ~~[viewing financial]~~ utilizing cash assistance as a support service to enable and assist parents to participate in employment.

~~**B.** The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program like NMW or the federal program of supplemental security income (SSI).~~

~~**C.** The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.~~

~~**D.** The objective of the burial assistance program is to assist in payment of burial expenses for deceased, low-income individuals.]~~

B. The objective of 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 participating benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

[8.102.500.6 NMAC - Rp 8.102.500.6 NMAC, 07/01/2001; A, 11/15/2007]

8.102.500.8 GENERAL REQUIREMENTS:

A. Need determination process: Eligibility for NMW ~~(or refugee)~~ and EWP cash assistance based on need requires a finding that:

- (1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;
- (2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;
- (3) the countable resources owned by and available to the benefit group do not exceed the \$1500 liquid and \$2000 non-liquid resource limits;
- (4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

B. Gross income limits: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

- (1) Income eligibility limits are revised and adjusted each year in October.
- (2) The gross income limit for the size of the benefit group is as follows:
 - (a) one person \$ 723
 - (b) two persons \$ 970
 - (c) three persons \$1,216
 - (d) four persons \$1,463
 - (e) five persons \$1,709
 - (f) six persons \$1,956
 - (g) seven persons \$2,202
 - (h) eight persons \$2,449
 - (i) add \$247 for each additional person.

C. Eligibility for support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than 100% of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

- (1) one person \$ 851
- (2) two persons \$1,141
- (3) three persons \$1,431
- (4) four persons \$1,721
- (5) five persons \$2,011
- (6) six persons \$2,301
- (7) seven persons \$2,591
- (8) eight persons \$2,881
- (9) add \$290 for each additional person.

D. Standard of need: (1) The standard of need is based on the number of ~~individuals~~ participants included in the benefit group and allows for

a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the [individual's] participant's share of benefit group supplies.

(3) The financial standard includes approximately \$79 per month for each [individual] participant in the benefit group.

(4) The standard of need for the NMW, and [refugee] EWP cash assistance benefit group is:

- (a) one person \$ 231
- (b) two persons \$ 310
- (c) three persons \$ 389
- (d) four persons \$ 469
- (e) five persons \$ 548
- (f) six persons \$ 627
- (g) seven persons \$ 706
- (h) eight persons \$ 802
- (i) add \$79 for each additional

person.

E. Special needs:

(1) Special clothing allowance:

In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$100 for the month of August only.

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, or [refugee] EWP cash assistance benefit group for the month of August.

(c) The clothing allowance is not allowed in determining eligibility for NMW, or [refugee] EWP cash assistance.

(2) **Layette:** A one-time layette allowance of \$25 is allowed upon the birth of a child who is [or will be] included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) Special circumstance:

Dependent upon the availability of funds and in accordance with the federal act, the HSD secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

[8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007]

BUDGETING:

A. Eligibility for cash assistance programs shall be determined prospectively. The benefit group must meet all eligibility criteria in the month following the month of disposition. Eligibility and amount of payment shall be determined prospectively for each month in the certification period.

B. Semiannual reporting: A benefit group subject to semiannual reporting shall be subject to income methodology as specified in Subsection H of 8.102.120.11 NMAC.

C. Changes in benefit group composition: A person added to the benefit group shall have eligibility determined prospectively beginning in the month following the month the report is made.

D. Anticipating income: In determining the benefit group's eligibility and benefit amount, the income already received and any income the benefit group expects to receive during the certification period shall be used.

(1) Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

(2) Actual income shall be calculated by using the income already received and any other income that can reasonably be anticipated in the calendar month.

(3) If the amount of income or date of receipt is uncertain, the portion of the income that is uncertain shall not be counted.

(4) In cases where the receipt of income is reasonably certain but the amount may fluctuate, the income shall be averaged.

(5) Averaging is used to determine a monthly calculation when there is fluctuating income within the weekly, biweekly, or monthly pay period and to achieve a uniform amount for projecting.

E. Income received less frequently than monthly: The amount of monthly gross income that is received less frequently than monthly is determined by dividing the total income by the number of months the income is intended to cover. This includes, but is not limited to, income from sharecropping, farming, and self-employment. It includes contract income as well as income for a tenured teacher who may not actually have a contract.

F. Contract income: A benefit group that derives its annual income in a period of less than one year shall have that income averaged over a 12-month period, provided that the income is not received on an hourly or piecework basis.

G. Using exact income: Exact income, rather than averaged income, shall be used if:

(1) the benefit group has chosen not to average income;

(2) income is from a source terminated in the month of application;

(3) employment began in the application month and the income represents only a partial month;

(4) income is received more frequently than weekly.

H. Income projection [earned income]: Earned income shall be anticipated as described below.

~~[(1) Income from the four week period prior to the date of interview is used to project monthly income, provided that the income is expected to continue. If a determination is made that the prior income is not indicative of income anticipated to be received during the certification period, then income from a longer period of past time may be used. If the longer period is not indicative of income anticipated to be received, then verification of anticipated income shall be obtained from the income source.~~

~~(2) None of the methods described above may give the most accurate estimate of monthly earnings due to unique circumstances which may occur. In such cases, use whatever method gives the most accurate estimate of earnings.~~

~~(3) An income projection shall be considered valid for the certification period.]~~

(1) Earned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and the caseworker are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification; and

(b) the anticipated income is based on income received from any consecutive 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and the caseworker determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and the caseworker are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

I. Unearned income: [For purposes of anticipating future income, unearned income from the four week period prior to the date of interview shall be used, provided that the income is expected to con-

time.]

(1) Unearned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and the caseworker are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification; and

(b) the anticipated income is based on income received from any consecutive 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and the caseworker determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and the caseworker are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

J. Use of conversion factors: Conversion factors are used to adjust the monthly income amounts. For those months in which an extra weekly or biweekly pay check is received, conversion factors are used to distribute the pay periods equally for the months in the certification period.

(1) Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to a monthly amount.

(2) Income received weekly is multiplied by 4.3.

(3) Income received biweekly is multiplied by 2.15.

K. Rounding of income when using conversion factors: Averaged income is rounded prior to application of the conversion factor. If the cents are \$.49 or below, the cents are dropped. If the cents are \$.50 or more, the amount is rounded up to the next higher dollar.

[8.102.500.9 NMAC - Rp 8.102.500.9 NMAC, 07/01/2001; A 02/14/2002; A, 01/01/2004; A, 11/15/2007]

8.102.500.10 DIVERSION PAYMENTS TO A NMW BENEFIT GROUP:

A. Purpose: The diversion payment is a one time cash assistance payment, that is intended to assist the benefit group alleviate a specific short-term need: to accept a bona fide offer of employment, retain employment, remedy an emergency situation or an unexpected short-term need.

B. Eligibility criteria:

(1) **Applicant:** Eligibility for a

diversion payment shall be limited to an applicant making an initial application for cash assistance. Initial application shall not include a NMW cash assistance case which is within a six-month mandatory closure because of a third sanction. For the purposes of diversion payments, an initial applicant is one who has never received cash assistance, or one whose cash assistance case has been closed for one or more calendar months.

(a) An applicant for NMW cash assistance who meets all NMW eligibility criteria may volunteer to accept a NMW diversion payment in lieu of monthly cash assistance payments if there is no need for long-term cash assistance to meet basic needs.

(b) The caseworker shall explain the diversion program is not a supplement to other assistance but is in place of it and screen the applicant for eligibility for a diversion payment.

(c) Final approval for all diversion payments shall be made by the county director and documentation submitted to income support division central office.

(2) NMW eligibility is established:

(a) The applicant must be otherwise eligible for NMW cash assistance, except that the applicant demonstrates that monthly cash assistance to meet basic needs is not required by the benefit group because there is a means of on-going financial support, and the applicant chooses to accept a diversion payment in lieu of cash assistance to meet ongoing needs.

(b) An applicant who cannot demonstrate that monthly cash assistance to meet basic needs is not needed shall not be eligible for a diversion payment.

(3) **Specific need:** The applicant must make an informed choice whether cash assistance is needed to meet a specific short term need. The applicant may demonstrate a need for a specific item or type of assistance which will allow the applicant to keep a job or accept a bona fide offer of employment, remedy and emergency situation or alleviate a short term need. Such assistance may include, cash, support services, housing, transportation, car repairs, and uniforms.

(4) **Eligibility for support services:** A recipient of a diversion payment shall remain eligible for support services such as child care and transportation until the end of the 12-month lock-out period, until closure of the case is requested or the participant moves out of state. A referral to the NMW work program service provider and to CYFD shall be made after the applicant signs the agreement to accept a diversion payment and payment is authorized

(5) Verification and documentation:

(a) The applicant shall be required to provide verification of the specific item or type of assistance which will allow the applicant to meet the basic short-term need.

(b) Documentation shall be required to establish that a diversion payment may be authorized in lieu of cash assistance to meet ongoing needs. An agreement signed by the applicant shall include a description of a diversion payment, terms and conditions, lifetime limitations, availability of work program services, reason for accepting a diversion payment, any prior assistance received in or out of the state.

C. Amounts: Diversion assistance is a one time, lump sum payment. The amount of the diversion payment is as follows:

(1) **three benefit group members:** may be entitled to an amount of up to \$1,500 non-recurring payment; or

(2) **four or more benefit group members:** may be entitled to an amount of up to \$2,500 non-recurring payment.

D. Countable assistance: The effects a diversion payment on other categories of assistance is as follows:

(1) the receipt of a diversion payment shall be excluded from income considerations in the medicaid program; and

(2) categorical eligibility is extended to the food stamp benefit group for the lockout period, unless the benefit group requests closure or moves out of New Mexico; and

(3) an applicant who accepts a diversion payment shall be eligible for TANF funded child care assistance for the lockout period, unless the benefit group requests closure or moves out of New Mexico.

E. Limitations and conditions: An applicant may receive a diversion payment a maximum of two times during a participant's 60-month term limit.

(1) Receipt of a diversion payment does not count toward the NMW 60-month term limit for any adult included in the benefit group, unless the benefit group also receives monthly NMW cash assistance during the period covered by the diversion payment.

(2) The acceptance of a diversion payment does not reduce the number of months in a participant's 60-month lifetime limit; however, a diversion payment can only be authorized a maximum of two times during the 60-month lifetime limit. The 60-month lifetime limit began on July 1, 1997 for any adult or minor head of the benefit group, or spouse of the minor, who received TANF since July 1997.

(3) A participant who has reached the 60-month lifetime limit is not eligible for a diversion payment. A participant who

has never received a month of TANF is eligible for a diversion payment.

(4) Cash assistance lockout period:

(a) Acceptance of a diversion payment: An applicant who accepts a diversion payment shall be prohibited from participating in the NMW cash assistance program for a period of 12 months beginning in the month the diversion payment is authorized. A written agreement that defines the terms and expectations of the diversion grant; documents the reason why cash assistance to meet basic needs is not required; identifies the need for a specific type of short-term assistance; and describes the support services available to diversion participants must be signed by the participant.

(b) Receipt of a diversion payment from another state: An applicant who has accepted a diversion payment in any other state shall be prohibited from receiving NMW cash assistance or a diversion payment in New Mexico for a period of 12 months, beginning in the month the diversion payment in the other state was authorized, or for the length of the lockout period in the other state, whichever is shorter.

(5) A participant of a diversion payment is not required to comply with work program or child support enforcement requirements.

E. Re-application: A participant may apply for cash assistance during the lockout period based on the following criteria.

(1) Applying during lock-out period: An applicant who determines an inability to adhere to the terms and conditions for receipt of a diversion payment may apply for cash assistance to meet ongoing basic needs.

(a) An applicant is ineligible for cash assistance payment regardless of good cause within the first four months of receiving a diversion payment.

(b) An applicant is eligible for cash assistance payment if good cause is met at least five months after receipt of diversion payment.

(2) Good cause: Good cause must apply in order for an applicant to re-apply for cash assistance during the lockout period. Good cause can only be considered for applicants applying at least five months after initial receipt of a diversion payment. Good cause is not considered to exist for the first four months from initial receipt of a diversion payment. Good cause must be approved by IRU and may include, loss of employment, but not a voluntary quit; catastrophic illness or accident of a family member which requires an employed participant to leave employment; a victim of

domestic violence; or another situation or emergency that renders an employed family member unable to care for the basic needs of the family.

G. Claims:

(1) A benefit group that receives monthly cash assistance within the 12-month lock out period shall not be subject to an overpayment if the household meets good cause.

(2) A benefit group may be subject to an overpayment if the diversion payment was issued in error and subject to recoupment as specified in 8.102.640 NMAC.

[8.102.500.10 NMAC - Rp 8.102.500.10 NMAC, 07/01/2001; Repealed, 7/17/2006; 8.102.500.10 NMAC - N, 11/15/2007]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.102.520 NMAC, Sections 3, 6, 8, 9, 10, 12, 13 and 15, effective 11/15/2007.

8.102.520.3 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 ~~financial~~ 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.

[8.102.520.3 NMAC - Rp 8.102.520.3 NMAC, 07/01/2001; A, 11/15/2007]

8.102.520.6 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, ~~[assisting parents to develop the discipline necessary for self sufficiency and to improve their self esteem]~~ resources and support. The further purpose of the program is to increase family income through family employment and child support and by ~~[viewing financial]~~ utilizing cash assistance as a support service to enable and assist parents to participate in employment.

~~**B.** The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program like NMW or the federal program of supplemental security income (SSI).~~

~~**C.** The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.~~

~~**D.** The objective of the burial assistance program is to assist in payment of burial expenses for deceased, low-income individuals.]~~

B. The objective of 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 participating benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

[8.102.520.6 NMAC - Rp 8.102.520.6 NMAC, 07/01/2001; A, 11/15/2007]

8.102.520.8 GENERAL:

A. Income eligibility: To be eligible for cash assistance based on income eligibility factors:

(1) the countable gross income available to the benefit group cannot equal or exceed the maximum gross income limit for the size of the benefit group;

(2) the net countable income available to the benefit group cannot equal or exceed the standard of need applicable to the size of the benefit group;

(3) all income exempted or deducted in the gross income test shall be

exempted or deducted in the net income test;

(4) all income considered available in the net income test shall be considered in determining the amount of payment to the benefit group.

B. Gross income test (85 [%] percent test): For the benefit group to be eligible, the countable gross income available to the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

C. Net income test: For the benefit group to be eligible, the countable net income must be less than the standard of need applicable to the size of the benefit group.

D. Eligibility for support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than 100[%] percent of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services.

E. Counting income [in] during the certification period:

(1) For the purposes of cash assistance eligibility and payment determination, income is money received by or available to the benefit group in each month of the certification period.

(2) Only income which is actually received, or can reasonably be expected to be received, is counted for financial eligibility and payment calculation.

(3) The benefit group must take appropriate steps to apply for and receive income from any other source to which the group may potentially be eligible. A benefit group may be found ineligible for failing or refusing to apply for or pursue potential benefits from other sources.

(4) A benefit group member who is 62 years of age or older must apply for and take all necessary steps to receive a reduced OASDI benefit in order to comply with this eligibility criterion.

F. Income availability:

(1) The availability of income to the benefit group is determined by who must be included in the benefit group, and whether income must be deemed available to the benefit group.

(2) Income belongs to the person who gains it, either through the person's own efforts, as in the case of earnings, or as a benefit, as in the case of a beneficiary of social security administration income.

(3) ~~Unearned income such as child support or social security survivor's benefits and other similar payments~~ Any unearned income, benefits, or payments, such as but not limited to: child support or social security benefits, for a child are considered as belonging to the benefit group in

which the child is included.

(4) Alien sponsors: The gross income and resources belonging to an individual who is the sponsor of an alien included in the cash assistance benefit group, and the income belonging to the sponsor's spouse, shall be counted in its entirety to determine the eligibility and payment amount if the sponsor has executed an affidavit of support pursuant to Subsection 213-A of the Immigration and Nationality Act. The income and resources of the alien sponsor, and spouse, shall be counted until the sponsored alien achieves citizenship or can be credited with 40 qualifying quarters under title II of the federal Social Security Act.

G. Unavailable income: In some situations, individuals who are included in the benefit group, either [in] an applicant or [recipient] participant status, have a legal right to income but do not have access to it. Such income is not counted as available income for purposes of cash assistance eligibility and benefit calculation. A benefit group may be found ineligible for failing or refusing to immediately take all steps necessary to obtain access to the income.

H. Ineligible alien: The countable income belonging to an ineligible alien is deemed available to the benefit group and is prorated according to the size of the benefit group to determine the eligibility and payment amount for the benefit group.

[8.102.520.8 NMAC - Rp 8.102.520.8 NMAC, 07/01/2001; A, 11/15/2007]

8.102.520.9 EXEMPT INCOME: The following income sources are not considered available for the gross income test, the net income test, and the cash payment calculation:

- A. medicaid;
- B. food stamp benefits;
- C. government-subsidized foster care, if the child for whom the payment is received is not included in the benefit group;
- D. SSI;
- E. government-subsidized housing or a housing payment; government includes any federal, state, local or tribal government or a private non-profit or for profit entity operating housing programs or using governmental funds to provide subsidized housing or to make housing payments;
- F. income excluded by federal law (described in 8.139.527 NMAC);
- G. educational payments made directly to an educational institution;
- H. government-subsidized child care;
- I. earned income that

belongs to a child 17 years of age or younger who is not the head of household; only earned income paid directly to the child is considered as belonging to the child;

J. up to fifty dollars (\$50.00) of collected child support passed through to the benefit group by the CSED;

K. an emergency one-time only payment made by other agencies or programs;

L. reimbursements for past or future identified expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the benefit group, such as expenses for job or job training related activities, travel, per diem, uniforms, transportation costs to and from the job or training site, and medical or dependent care reimbursements and any reimbursement for expenses incurred while participating in NMW work program activities; reimbursements for normal living expenses, such as rent, mortgage, clothing or food eaten at home are not excluded;

M. utility assistance payments such as from low-income home energy assistance program (LIHEAP), low-income assistance program (LITAP), or similar assistance programs.

[8.102.520.9 NMAC - Rp 8.102.520.8.I NMAC, 07/01/2001; A, 11/15/2007]

8.102.520.10 EARNED INCOME DEFINITION:

A. Earned income means cash or payment in kind that is received as wages from employment, payment in lieu of wages, earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.

B. Earnings include gross profit from self-employment, which requires substantial effort on a continuous basis by the [individual] participant who is receiving the income.

(1) Income from rental property is considered earnings if the [individual] participant regularly does painting, plumbing, carpentry, maintenance, cleaning, or repair work on the property; or if substantial time is spent each month in bookkeeping, collecting rent, or paying bills on the property.

(2) Income from livestock is considered earnings if the [individual] participant raises livestock for the purpose of making cash sales. Net income received from the sale of livestock shall be considered in determining amount of the cash assistance grant.

(a) The income received from this operation may be prorated on a semiannual period if it is reasonable to expect that the client will realize the same amount during the next budgetary period.

(b) Domestic pets (cats, dogs, etc.) are not considered livestock, and their value is not considered in determining resource eligibility except where they are bred and raised for sale.

C. The use of property, such as inhabiting a home or apartment, is considered as earnings if it is received in exchange for services provided to the person owning or controlling the property. [8.102.520.10 NMAC - Rp 8.102.520.9 NMAC 07/01/2001; A, 11/15/2007]

8.102.520.12 EARNED INCOME DEDUCTIONS:

A. Earnings deductions:

Deductions from gross earned income shall be made in determining the net countable earned income of benefit group members.

(1) Earned income deductions may not exceed the amount of ~~[an individual's]~~ a participant's gross earned income.

(2) The earned income deductions may not be used to reduce unearned income, nor may deductions that are not used by one benefit group member be allocated against the earnings of another benefit group member.

(3) An allowable deduction that is not verified at the time of certification or processing of the semiannual report shall not be allowed as a deduction. A deduction verified after certification shall be processed as a change.

(4) An allowable deduction that is verified after a semiannual report is processed shall be handled as set forth at Subsection I of 8.102.120.11 NMAC.

B. **Business expenses and self-employment costs:** Business expenses and self-employment costs shall be deducted from the gross earnings of a self-employed benefit group member. The income after all allowable business expenses and self-employment costs shall be counted as the gross income of the benefit group member. To be eligible for this expense a tax ID shall be required.

(1) **Allowable expenses and costs:** Allowable costs of producing self-employment income include, but are not limited to:

(a) costs of materials and supplies;

(b) business travel, but not personal commuting expenses, calculated at \$.25 per mile, unless the self-employed individual can prove that the actual expense is greater;

(c) business taxes, including occupational taxes, gross receipts taxes, property taxes on a place of business other than the home, and business licenses.

(d) rental of equipment, tools, and machinery;

(e) rent expense for the place of

business, except for the place of business when the individual operates the business out of the individual's residence, unless the individual can demonstrate that the expense has been allowed under federal income tax guidelines;

(f) payments on the principal of the purchase price of income producing real estate and capital assets, machinery, equipment and other durable goods;

(g) interest paid to purchase income producing property.

(2) **Expenses and costs not allowed:**

(a) Costs for depreciation, personal business, entertainment expenses, personal transportation to and from work.

(b) Expenses or costs of self-employment that are reimbursed by other agencies cannot also be claimed as costs of self-employment, such as but not limited to, reimbursements made through USDA to individuals who provide home child care.

(3) Expenses or costs that exceed self-employment income shall not be deducted from other income.

C. **Excess hours work deduction:**

(1) To qualify for the excess hours work deduction the benefit group member must be a parent of a dependent child included in the benefit group or the caretaker relative of a dependent child included in the benefit group whose parent does not live in the home, or the legal spouse of such parent or caretaker relative.

(2) **Time limit for allowing the deduction:** The excess hours work deduction is allowed for the first 24 months of receipt of NMW cash assistance. The 24 month period begins with and includes April 1998 and includes each month thereafter in which the individual is a member of a NMW benefit group receiving cash assistance or services. Months in which an individual is not a member of an NMW benefit group receiving cash assistance or services shall not add to the count of months for this deduction.

(3) For the excess hours deduction only, in determining the number of hours worked, only those hours spent in paid employment are counted.

(4) To determine the number of hours worked when the person is self-employed, the monthly gross earnings are divided by the minimum wage. The amount of the excess hours work deduction shall be calculated using minimum wage.

(5) **Single-parent benefit group:** For the first 24 months of receiving cash assistance or services, if ~~[an individual]~~ a participant works over the participation standard set by the department pursuant to the New Mexico Works Act, all the income earned by the ~~[individual]~~ participant

beyond the participation standard shall be excluded.

(6) **Two-parent benefit group:** For the first two years of receiving cash assistance or services, for a two-parent benefit group in which one parent works over 35 hours per week and the other parent works over 24 hours per week, all the income earned by each parent beyond the participation standard set by the department shall be excluded.

(a) In determining the number of excess hours, the 35-hour per week requirement shall be applied to the person with the larger number of hours of work and the 24-hour per week requirement shall be applied to the person with the smaller number of hours.

(b) With respect to a two-parent benefit group in which only one parent is subject to work program participation and is employed, the excess hours deduction shall be allowed for work hours in excess of 35 hours per week.

(7) Other adults included in a single-parent or two-parent benefit group shall be allowed the excess hours work deduction based on single parent provisions.

D. **Work incentive deduction:**

(1) To qualify for the work incentive deduction the benefit group member must be a parent of a dependent child included in the benefit group or the caretaker relative of a dependent child included in the benefit group whose parent does not live in the home, or the legal spouse of such parent or caretaker relative.

(2) **Allowing the deduction:** The work incentive deduction is allowed with no time limit as follows:

(a) \$125 and one-half of the remainder for the parent in a single-parent benefit group;

(b) \$225 and one-half of the remainder for each parent in a two-parent group;

(c) \$125 and one-half of the remainder for a benefit group member in a single-parent or two-parent benefit group who is not a parent; and

(d) \$125 for a non-benefit group members whose income is deemed available.

E. **Child care costs:** Out of pocket expenses for child care that is necessary due to employment of a benefit group member shall be allowed.

(1) From earnings remaining after allowing the excess hours and work incentive deductions, deduct an amount not to exceed \$200 per month for a child under age two and \$175 per month for a child age two or older.

(2) If more than one parent is working, costs of child care shall be allocat-

ed to maximize the available deduction to the benefit group.

(3) The total amount deducted per child, regardless of the number of benefit group members who are employed, shall not exceed the applicable limits set forth above.

F. Contributions made into approved individual development accounts: The actual amount contributed into an approved IDA from an employed benefit group member's earnings shall be an allowable deduction from earned income. [8.102.520.12 NMAC - Rp 8.102.520.11 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 11/15/2007]

8.102.520.13 DEEMED INCOME DETERMINATION:

A. The earned and unearned income of certain non-benefit group members shall be deemed available to the eligible benefit group members. The income shall be deemed from the following:

- (1) the parent of a minor parent;
- ~~(2) spouse of a general assistance applicant or recipient;~~

~~(3) (2) [an individual] a participant or applicant~~ who has been disqualified from participation because of a failure or refusal to provide a social security number;

- ~~(4) (3) an ineligible alien[;~~
- ~~(5) an unrelated adult caretaker of a dependent child].~~

B. Earned income deductions: An employed ~~[non-benefit]~~ ineligible group member's earned income shall be allowed an earned income deduction of \$125. The remainder is the net countable earned income of the non-benefit group member.

C. Unearned income: No deductions are allowed from the unearned income of a ~~[non-benefit]~~ ineligible group member whose income is deemed available to the benefit group.

D. Deeming of income:
(1) The net countable earned income and all of the unearned income of a non-benefit group member shall be divided by the total number of benefit group and ~~[non-benefit]~~ ineligible group members. The result is the prorated income amount.

(2) The deemed income to the eligible benefit group members shall be determined by multiplying the prorated income amount by the number of eligible benefit group members. The non-benefit group member's share of the prorated income shall be excluded from consideration. [8.102.520.13 NMAC - N, 07/01/2001; A, 11/15/2007]

8.102.520.15 U N E A R N E D INCOME:

A. Definition of

unearned income: Unearned income means old age, survivors, and disability insurance payments (social security), railroad retirement benefits, veterans administration compensation or pension payments, military retirement and allotments, pensions, annuities and retirement benefits; lodge or fraternal benefits, any other public or private disability or retirement benefit or pension, shared shelter payments, individual Indian money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income. Unearned income is not subject to deductions.

B. Special conditions:

(1) Direct receipt of child support: Child support payments directly received and retained by the benefit group are considered available to the benefit group in their entirety.

(2) Real property income: Income from real property is considered as unearned income when the benefit group engages in the management of the property less than 20 hours a week. The benefit group shall take all appropriate steps to utilize real property in a manner that will produce maximum benefits for the benefit group's maintenance. Costs associated for maintenance of the property or the production of income for which the benefit group is responsible are deducted from the income received for the use of the property.

(3) Alien sponsor income: All of the income of the alien sponsor and sponsor's spouse is counted as unearned income to the benefit group.

[8.102.520.15 NMAC - N, 07/01/2001; A, 11/15/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.610 NMAC, Sections 3, 6, 8, 10, 11, and 12, effective 11/15/2007.

8.102.610.3 S T A T U T O R Y 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 ~~[financial]~~ 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.

[8.102.610.3 NMAC - Rp 8.102.610.3 NMAC, 07/01/2001; A, 11/15/2007]

8.102.610.6 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, ~~[assisting parents to develop the discipline necessary for self sufficiency and to improve their self-esteem]~~ resources and support. The further purpose of the program is to increase family income through family employment and child support and by ~~[viewing financial]~~ utilizing cash assistance as a support service to enable and assist parents to participate in employment.

~~[B. The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program like NMW or the federal program of supplemental security income (SSI).~~

~~C. The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.~~

~~D. The objective of the burial assistance program is to assist in payment of burial expenses for deceased, low-income individuals.]~~

B. The objective of 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 participating benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

[8.102.610.6 NMAC - Rp 8.102.610.6 NMAC, 07/01/2001; A, 11/15/2007]

8.102.610.8 CASH ASSISTANCE:

A. Method of payment:

Cash assistance benefits are paid by issuing funds into an EBT transfer account.

B. Initial issuance: The EBT card is issued to the payee or designated authorized representative during the application process prior to the application being approved. The applicant or ~~recipient~~ participant shall receive training on the use of the EBT card prior to activation of the EBT card.

C. Replacement card: The caseworker, the HSD EBT help desk or the contractor customer service help desk shall have the card deactivated once reported by participant that the card is lost, stolen, or destroyed. The card will be deactivated immediately and a replacement card provided to the participant. Once the card is deactivated, it cannot be reactivated for any reason.

D. Authorizing payments:

(1) Cash assistance benefits are authorized, changed, and terminated through the automated benefit delivery system.

(2) Initial payments are issued on the first mailing day following authorization. In the case of EBT, the transfer of funds takes place on the first working day after the day of authorization.

E. Initiation of payment:

(1) Payment is initiated and prorated from the date of authorization or from the 30th day after the day of application, whichever is earlier.

(2) If the case was eligible in a month prior to the month of approval, but is not eligible for payment in the month following the month of disposition, the benefit group is not eligible for payment in any of these months.

(3) **Payments effective in the current month:** A payment that is issued during the month is deposited into the EBT account no later than the business day after payment is approved.

(4) Payments effective in the ongoing month:

(a) When authorized, the payment amount remains the same from month to month until changed.

(b) EBT issuances are transmitted to the fiscal agent so that the funds are

available on the first working day of the month. Payments authorized after the monthly transmission to the fiscal agent are issued as part of the next nightly benefit batch.

F. Change in amount of payment:

(1) Following approval, there is a continuing responsibility on the part of both the ~~recipient~~ participant and the caseworker to make sure that eligibility and benefit amount are correctly determined. Failure on either side to recognize and carry out this responsibility can result in overpayment to the ~~recipient~~ participant. Overpayments are charged to the ~~recipient~~ participant regardless of fault.

(2) A ~~recipient's~~ participant's assistance grant shall be increased or decreased after receipt of information indicating that changes in a ~~recipient's~~ participant's circumstances may affect the amount of assistance to which the ~~recipient~~ participant is entitled.

(3) Changes in the payment amount shall be made in accordance with changes in program policy.

G. Regular changes: A change in the benefit group circumstance may change the amount for which the group is eligible.

H. Other changes: If a change occurs which cannot be processed before the benefits issuance run, an overpayment or underpayment may occur. If an underpayment occurs, it shall be corrected by issuing a supplemental payment. In case of an overpayment, an overpayment claim shall be filed and appropriate efforts shall be made to recover the overpayment.

I. Whereabouts unknown: Benefits shall be terminated if the whereabouts of the benefit group are unknown to the department. A benefit group's whereabouts shall be considered to be unknown if:

(1) mail sent to the last known address is returned to the department indicating that the benefit group no longer lives at that address and at least 30 days have passed since the caseworker sent the mail; or

(2) the ~~recipient~~ participant does not make any withdrawals from the ~~recipient's~~ participant's EBT account for 60 days or more.

J. Death of client:

(1) **Payment:** Payment may be made on behalf of a client who has been approved for cash benefits but has died before an EBT withdrawal was made. If the client was alive on the first day of the month for which cash assistance benefits were issued and all eligibility conditions were met at the time of death, then another person may be authorized to use the deceased

recipient's benefits. A person authorized to use the deceased recipient's benefits must be the surviving spouse, next of kin, or a person with responsibility for the deceased recipient's affairs.

(2) Withdrawing EBT benefits:

When payment is made in accordance with these circumstances, the county office shall not restrict or dictate the use of the money paid.

(3) ISD may authorize the issuance of a replacement EBT card to the person authorized to use the deceased recipient's benefits.

[8.102.610.8 NMAC - Rp 8.102.610.8 NMAC, 07/01/2001; A, 02/28/2007; A, 11/15/2007]

8.102.610.10 SUPPORTIVE SERVICES:

A. The NMW work program provides supportive services on an ongoing basis, provided that the participant is eligible to receive the services during the month provided.

~~**B.** Participants must meet minimum participation requirements in order to receive supportive services reimbursements. Reimbursement for supportive services is made in the form of warrants issued in the name of either the:~~

~~(1) participant for travel, education and child care reimbursement (lasting 30 days or less); or~~

~~(2) provider (ongoing child care reimbursement).]~~

B. Participants must meet minimum participation requirements in order to receive supportive services reimbursements. Reimbursement for supportive services is issued by EBT payment to the benefit group in accordance with 8.102.620.14 NMAC thru 8.102.620.17 NMAC.

[8.102.610.10 NMAC - Rp 8.102.610.10 NMAC, 07/01/2001; 8.102.610.10 NMAC - Rn, 8.102.610.9 NMAC, 02/28/2007; A, 11/15/2007]

8.102.610.11 [DIRECT PAYMENTS: A direct payment may be made by direct warrant issued in the name of the participant or through EBT.

A. Child care:

~~(1) A participant who needs child care assistance for less than 30 days may request the child care reimbursement be issued to the participant. The participant must submit a bill or proof of child care costs to the caseworker before such reimbursement is authorized.~~

~~(2) Reimbursement for child care services expected to last more than 30 days must be issued to registered providers by the child care worker of the CYFD.~~

B. Transportation:

Reimbursements for travel expenses shall be issued in the name of the participant. The reimbursement warrant shall be mailed to the participant's home or mailing address.

C. Education: All reimbursement warrants for educational expenses shall be issued in the name of the participant. The reimbursement warrant shall be mailed to the participant. It is the responsibility of the participant to make sure that any money owed to the institution is paid.] [RESERVED]

[8.102.610.11 NMAC - Rp 8.102.610.11 NMAC, 07/01/2001; A, 07/01/2004; 8.102.610.11 NMAC - Rn, 8.102.610.10 NMAC, 02/28/2007; Repealed, 11/15/2007]

8.102.610.12 DIVERSION PAYMENTS TO A NMW BENEFIT GROUP:

[A.] The diversion payment is a non-recurring lump sum payment, [which will alleviate a specific need and enable the applicant to keep job or to accept a bona fide offer of employment] issued to the recipient's EBT account in accordance to eligibility and amount specified at 8.102.500.10 NMAC.

(1) An applicant for NMW cash assistance who meets all NMW eligibility criteria may volunteer to accept a NMW diversion payment for a specific need in lieu of monthly cash assistance payments meant to meet basic needs.

(2) The caseworker shall explain the diversion program and screen the applicant for eligibility for a diversion payment.

(3) The caseworker must ensure that monthly cash assistance is not needed to meet the ongoing needs of the benefit group, either because there is a bona fide job offer or employment.

B. Limitations and amount of a diversion payment:

(1) An applicant may receive a diversion payment a maximum of two times during an individual's 60 month term limit.

(2) The 60 month term limit began on July 1, 1997 for any adult or minor head of the benefit group, or spouse of the minor, who received TANF funded cash assistance on July 1, 1997, or began or will begin in any month after July 30, 1997. The acceptance of a diversion payment does not reduce the number of months in an individual's 60 month term limit; however, a diversion payment may be authorized only two times once the 60 month term limit begins.

(3) The amount of the diversion payment in all cases shall be \$1,000.00.

(4) The authorization and issuance of a diversion payment for a benefit group that has never received TANF cash assistance begins the 60 month term limit for purposes of the two time maximum diversion payment allowance, not for pur-

poses of counting months of eligibility against the TANF 60 month term limit.

C. Eligibility criteria:

(1) Initial application: Eligibility for a diversion payment shall be limited to an applicant making an initial application for cash assistance. Initial application shall not include a NMW cash assistance case which is within a six month mandatory closure because of a third sanction. For the purposes of diversion payments, an initial applicant is one who has never received cash assistance, or one whose cash assistance case has been closed for one or more calendar months.

(2) NMW eligibility is established: Eligibility for a diversion payment shall be based on all eligibility criteria for the NMW cash assistance program.

(a) The applicant must be otherwise eligible for NMW cash assistance, except that the applicant demonstrates that monthly cash assistance to meet basic needs is not required by the benefit group because there is a means of financial support, and the applicant chooses to accept a diversion payment in lieu of cash assistance to meet ongoing needs.

(b) An applicant who cannot demonstrate that monthly cash assistance to meet basic needs is not needed shall not be eligible for a diversion payment.

(3) Specific need: The applicant must make an informed choice whether cash assistance is needed to meet a specific need or basic needs based on information provided by the caseworker. The applicant may demonstrate a need for a specific item or type of assistance which will allow the applicant to keep a job or accept a bona fide offer of employment. Such assistance includes, but is not limited to, cash, support services, housing, transportation, car repairs, and uniforms.

(4) Eligibility for support services: A recipient of a diversion payment shall remain eligible for support services such as child care and transportation. A referral to the NMW work program service provider and to CYFD shall be made after the applicant signs the agreement to accept a diversion payment and payment is authorized. The applicant shall remain eligible for support services until the end of the 12-month lockout period, until case closure is requested, or the applicant moves out of the state.

(5) Verification and documentation:

(a) The applicant shall be required to provide verification of the specific item or type of assistance which will allow the applicant to keep a job or accept a bona fide offer of employment.

(b) The caseworker shall be required to determine whether the verification provided of the need for a specific item

or type of assistance will allow the applicant to keep a job or accept bona fide offer of employment, and must ensure that the amount of the required assistance does not exceed \$1,000.00.

(c) Documentation shall be required to establish that a diversion payment may be authorized in lieu of cash assistance to meet ongoing needs.

D. Cash assistance lockout period:

(1) Acceptance of a diversion payment: An applicant who accepts a diversion payment shall be prohibited from participating in the NMW cash assistance program for a period of 12 months beginning in the month the diversion payment is authorized.

(2) Receipt of a diversion payment from another state: An applicant who has accepted a diversion payment in any other state shall be prohibited from receiving NMW cash assistance or a diversion payment in New Mexico for a period of 12 months, beginning in the month the diversion payment in the other state was authorized, or for the length of the lockout period in the other state, whichever is shorter.

E. Terms and conditions for receipt of a diversion payment:

(1) An applicant may accept a diversion payment under the following conditions:

(a) does not need long term cash assistance to meet basic needs, which can be shown by verification of a bona fide offer of employment or employment itself;

(b) demonstrates the need for and verifies a specific item or type of assistance;

(c) enters into a written agreement that defines the terms and expectations of the diversion grant; documents the reason why cash assistance to meet basic needs is not required; identifies the need for a specific type of short term assistance; and describes the support services available to diversion recipients.

(2) An applicant shall agree not to apply for further cash assistance in New Mexico for a period of 12 months, beginning with the month in which the diversion payment is authorized, or for the length of the lockout period in another state, whichever is shorter.

(3) If the amount needed to meet the specific need is more than the diversion payment, a determination shall be made whether the diversion payment alone will alleviate the specific need. If not, then the diversion payment cannot be authorized, unless the applicant can provide documentation that demonstrates there is another financial source that, when combined with the diversion payment, will alleviate the specific need.

(4) A recipient of a diversion pay-

ment is not required to comply with work program or child support enforcement requirements.

(5) Receipt of a diversion payment does not count toward the TANF 60-month term limit for any adult included in the benefit group, unless the benefit group also receives monthly TANF cash assistance during the period covered by the diversion payment.

F. Applying for cash assistance during the lockout period:

(1) An applicant who determines that he is unable to adhere to the terms and conditions for receipt of a diversion payment may apply for cash assistance to meet ongoing basic needs.

(2) A pro rata share of the diversion payment is considered an overpayment. The diversion payment shall be divided over the lockout period and an overpayment calculated beginning from the date of approval of NMW cash assistance until the end of the lockout period.

(3) An overpayment shall not be calculated if it is determined that there is good cause for an application for cash assistance during the lockout period. Good cause includes, but is not limited to, loss of employment, but not a voluntary quit; catastrophic illness or accident of a family member which requires an employed individual to leave employment; a victim of domestic violence; or another situation or emergency that renders an employed family member unable to care for the basic needs of the family. The waiver of the overpayment shall be made on an individual basis and shall be verified and documented.

G. Effect of diversion on other programs:

(1) The receipt of a diversion payment shall be excluded from both income and resource considerations in the medicaid program.

(2) Categorical eligibility is extended to the food stamp benefit group for the lockout period, unless the benefit group requests closure or moves out of New Mexico.

(3) An applicant who accepts a diversion payment shall be eligible for TANF funded child care assistance for the lockout period, unless the benefit group requests closure or moves out of New Mexico.]

[8.102.610.12 NMAC - Rp 8.102.610.12 NMAC, 07/01/2001; A, 12/15/2005; 8.102.610.12 NMAC - Rn, 8.102.610.11 NMAC, 02/28/2007; A, 11/15/2007]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.102.620 NMAC, Sections 3, 6, 9, 10, 11, 12, 13, 14, 16 and 17, effective 11/15/2007.

8.102.620.3 S T A T U T O R Y 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 [financial] 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.

[8.102.620.3 NMAC - Rp 8.102.620.3 NMAC, 07/01/2001; A, 11/15/2007]

8.102.620.6 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, [assisting parents to develop the discipline necessary for self sufficiency and to improve their self esteem] resources and support. The further purpose of the program is to increase family income through family employment and child support and by [viewing financial] utilizing cash assistance as a support service to enable and

assist parents to participate in employment.

[B. The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program like NMW or the federal program of supplemental security income (SSI).

C. The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.

D. The objective of the burial assistance program is to assist in payment of burial expenses for deceased, low-income individuals.]

B. The objective of 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 participating benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

[8.102.620.6 NMAC - Rp 8.102.620.6 NMAC, 07/01/2001; A, 11/15/2007]

8.102.620.9 GRANT DETERMINATION:

A. **Determining the payment standard:** The payment standard shall be determined based on the eligibility standards and requirements forth in 8.102.500.8 NMAC. The payment standard also includes the special clothing allowance.

B. **Determining benefit group income:** The benefit group's net countable income considered in the payment determination shall be the sum of:

(1) gross alien sponsor income;
(2) [net] countable earnings after allowable deductions and disregards of benefit group members; and

(3) gross unearned income of benefit group members.

C. **Determining the grant:** The grant amount shall be determined by subtracting the benefit group's net countable income from the standard of need applicable to the benefit group. A benefit groups whose [net] countable income after allowed deductions and disregards equals or exceeds the standard of need applicable to the benefit group shall not be eligible for payment.

[8.102.620.9 NMAC - Rp 8.102.620.9 NMAC, 07/01/2001; A, 11/15/2007]

8.102.620.10 CHILD SUPPORT AND WORK PROGRAM NON-COOP-

ERATION 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 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 sta-~~

~~tus 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.]~~

~~(1) The benefit group shall be subject to a non-cooperation payment sanction under either or both of the following circumstances:~~

~~(a) failure by a benefit group member to meet work program participation requirements; or~~

~~(b) failure by the adult responsible for children included in a benefit group to meet child support enforcement division (CSED) cooperation requirements or both.~~

(2) Occurrence of non-cooperation:**(a) Child support:**

~~(i) A benefit group shall be subject to a payment sanction for failure to comply with CSED cooperation requirements, even if the adult required to cooperate with child support requirements is not included in the benefit group.~~

~~(ii) Each benefit group member that fails to cooperate with the work program requirement is subject to a sanction and shall affect the benefit group.~~

~~(iii) An occurrence of non-cooperation shall be applied when a sanction progresses to the next sanction level as a result of the noncompliance continuing for three consecutive months without the sanctioned participant reestablishing compliance. Progression to the next sanction level shall be effective in the fourth month.~~

~~(iv) A first or second level sanction is considered to be cured upon full cooperation by the sanctioned participant or a sanction shall be reversed based on a hearing decision when the sanc-~~

~~tion imposed is determined to be invalid.~~

(b) Work programs:

~~(i) A benefit group is subject to a payment sanction when a participant in the benefit group fails to cooperate with the work program requirement.~~

~~(ii) In a two-parent benefit group, each mandatory benefit group member that fails to cooperate with the work program requirement is subject to a sanction that affects the benefit group's sanction level and payment.~~

~~(iii) A participant shall not be sanctioned for more than one work program element at one time. A participant may be sanctioned for the same or a different work program requirement element only after the original sanction element is cured or reversed. A first or second level sanction may be cured upon full cooperation by the sanction participant and a sanction shall be reversed based on a hearing decision when the sanction imposed is determined to be invalid.~~

~~(iv) An occurrence of non-cooperation shall be applied when a sanction progresses to the next sanction level as a result of the noncompliance continuing for three consecutive months without the sanctioned participant reestablishing compliance. Progression to the next sanction level shall be effective in the fourth month.~~

(3) Cumulative sanctions:

~~(a) Non-cooperation sanctions are cumulative within the benefit group and shall occur when:~~

~~(i) the participant fails to comply with the work program and child support enforcement requirements for a one-parent benefit group;~~

~~(ii) more than one participant in the benefit group have failed to comply with either the work program and/or child support enforcement requirement.~~

~~(b) Cumulative sanctions, whether or not cured, shall remain the property of that benefit group participant who caused the sanction.~~

~~(i) A participant with a sanction who leaves a benefit group relieves the benefit group of that participant's sanction status.~~

~~(ii) A participant with a sanction who joins another benefit group subjects the new benefit group to any sanction or sanction level that has not been cured prior to joining the benefit group.~~

~~(c) The benefit group's cumulative sanctions and benefit level shall be reevaluated when a sanction is cured or reversed.~~

(4) Progressive sanctions:

~~(a) Non-cooperation sanctions are progressive to the participant, the benefit group and shall progress to the next level for the benefit group in which the sanc-~~

tioned participant resides when:

(i) a participant fails to establish compliance in three-month increments; or

(ii) a participant fails to comply with work program or CSED requirements as a separate occurrence.

(b) A sanction that is not cured for three consecutive months shall progress until compliance is established by the participant or there is a waiver of the requirement.

(c) A participant's compliance cannot reverse the sanction level attributed to the benefit group. 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~~ a participant or applicant once during an occurrence of assistance. There must be a period of at least 12 months between occurrences of cash 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) Determining that noncompliance has occurred:

(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~~ participant or applicant has failed to cooperate. Under Subsection B of 8.102.420.14 NMAC, the non-cooperative ~~individual~~ participant or applicant shall be individually disqualified from participation in the benefit group.

(b) The determination of noncompliance with work program requirements shall be made by the caseworker. A finding of noncompliance shall be made if:

(i) ISD has not received a certification of assessment;

(ii) the ~~individual~~ participant fails or refuses to complete an IRP;

(iii) the participant fails or refuses to submit an approvable WPA;

(iv) the participant's monthly attendance report shows fewer than the minimum required hours of participation in primary and total work activities and no other allowable hours of activity can be reasonably attributed by the caseworker towards the monthly participation requirement.

(3) Initiating conciliation: Within 10 days of determining that non-compliance exists, the caseworker shall take action to initiate a conciliation, if the ~~individual's~~ participant's conciliation has not

been used. A conciliation is initiated by the caseworker issuing a conciliation notice. CSED shall determine noncompliance and notify the caseworker who shall initiate the conciliation process.

(4) Conciliation period:

~~(a) Conciliation is a 30-day period during which the individual has the opportunity to correct whatever failure has generated the noncompliance determination. 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 gives a participant a 30-calendar day period to correct the current non-compliance for either a work program participation or CSED requirement.

(a) The conciliation process is 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~~ and shall occur only once prior to the imposition of the sanction.

(i) 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.

(ii) 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) ~~With child support cooperation requirements,~~ **Non-cooperation with CSED 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~~ participant 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~~ the benefit group shall be subject to payment sanctioning.

(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~~ participant is subject to sanctioning.

(d) Good cause is considered to exist when:

(i) the department has failed to submit notice or assist in providing necessary support services to the participant that would adversely affect the participant's ability to timely meet work participation requirements; or

(ii) the total primary work participation hours reported are within four hours of the requirements as outlined in 8.102.460.13 NMAC.

C. Sanctioning:

(1) Within 10 days of determining that ~~an individual~~ a participant 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 with the first payment following expiration of the notice of adverse action.

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

(3) ~~An individual~~ A participant who corrects the failure of compliance with work program or child support enforcement requirements during the notice of adverse action ~~12-day~~ 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~~ A participant 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~~ participant has complied with requirements.

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

(c) A work program sanction shall be removed after the caseworker receives verification that the ~~individual~~ participant 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)~~ 30 days; or has good cause to waive work participation requirements.

(d) Good cause is considered to exist when:

(i) the department has failed to submit notice to the participant or provide necessary support services that would adversely affect the participant's ability to timely meet work participation requirements; or

(ii) the total primary work participation hours reported are no more than four hours less than required as outlined in 8.102.460.13 NMAC.

D. Sanction levels:

(1) First-level sanction:

(a) The first ~~failure to comply, or first step~~ level sanction for failure to comply, shall result in a sanction of 25[%] percent 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~~ first level lasts for more than three months, or ~~an individual~~ a participant has a second ~~incident~~ occurrence of failure to comply with work program or CSED requirements, the sanction shall advance to ~~step two or 50%~~ a second level 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[%] percent of the standard of need. The second level ~~is~~ shall be initiated by:

(i) failure to comply with work program participation or child support enforcement requirements for more than three months; or

(ii) a second ~~instance~~ occurrence of noncompliance with a work program or CSED requirement by ~~the benefit group~~ a participant; or

(iii) failure of a participant to comply with ~~two requirements: such as, failure to comply with~~ both CSED and work program participation requirements simultaneously. 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.] If the second level lasts for more than three consecutive months, the sanction shall advance to level three 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~~ a participant is sanctioned at the third level, any subsequent ~~incident~~ occurrence of failure to comply with work program or CSED requirements shall immediately result in ~~the~~ a third level ~~of~~ sanction, and case ineligibility for six months.

E. Sanctions by other states or other programs: ~~Individuals~~ Participants 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.

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; A, 11/15/2007]

8.102.620.11 NON-REPORTING SANCTIONS:

A. General: The eligibility determination and payment calculation process relies upon applicants and ~~recipients~~ participants 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~~ beginning with 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~~ participant who fails to report information or reports incorrect information which results in an overpayment of ~~financial~~ cash assistance benefits for which the ~~individual~~ participant is at fault.

(3) Amount of sanction:

(a) Reporting sanctions shall be calculated at 25[%] percent 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[%] percent 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~~ caseworker shall document and establish an overpayment claim using ~~ISD2~~ the department overpayment claims procedures. The ~~worker~~ caseworker shall also determine whether the ~~recipient~~ participant was at fault for the overpayment.

(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 the participant was at fault for the overpayment. Upon determining that ~~all is in order~~ a non-reporting sanction is appropriate, the county director, or designated supervisor shall ~~cause~~ issue a notice of intent to sanction to be issued to the ~~recipient~~ participant. Failure by the ~~recipient~~ participant to contact the person issuing the notice within ~~the~~ 10 working days allowed shall constitute waiver of conciliation rights.

(c) If the ~~recipient~~ participant requests conciliation within the 10 working days of issuance of the 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~~ participant at fault for the overpayment.

(ii) The ~~recipient~~ participant 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~~ participant may represent himself or be represented by someone else. If the ~~recipient~~ participant wishes to be represented by another individual, the ~~recipient~~ participant 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 in the month following expiration of the notice of adverse action.

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

C. Semiannual reporting: A benefit group subject to semiannual reporting shall be subject to non-reporting sanctions as specified in Subsection L of 8.102.120.11 NMAC.

[8.102.620.11 NMAC - Rp 8.102.620.11 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 11/15/2007]

8.102.620.12 RECOUPMENT: ~~[Individuals against whom there are outstanding claims for an overpayment of financial assistance benefits shall be required to repay those claims. In many cases the overpayment recovery is accomplished by recoupment. Recoupment procedures are detailed at 8.102.640.12 NMAC. Recoupment amounts are deducted from the grant amount after sanctions are deducted.] Participants and applicants with an outstanding claim for overpayment of cash assistance benefits shall be required to repay the claim. Claim and recoupment situations and procedures are detailed at 8.102.640.12 NMAC.~~

[8.102.620.12 NMAC - Rp 8.102.620.12 NMAC, 07/01/2001; A, 11/15/2007]

8.102.620.13 PAYMENT:

A. The grant amount remaining after deduction of sanction and recoupment amounts, if any, shall be the amount issued as payment. Any month for which a payment is issued shall be a month counted against the ~~[term]~~ 60-month lifetime limit of each adult or minor head of household included in the benefit group.

B. Payment issuance: The payment for the benefit group shall be issued to the head of household, unless a protective payee has been ~~[selected]~~ designated by the head of household. ~~[The head of household selects the protective payee.]~~ In the event the head of household is unable or unwilling to select a protective payee, ISD shall ~~[do so on the head of household's]~~ designate the protective payee on the benefits group's behalf.

[8.102.620.13 NMAC - Rp 8.102.620.13 NMAC, 07/01/2001; A, 11/15/2007]

8.102.620.14 SUPPORTIVE SERVICES:

A. An explanation of the

supportive services available through the NMW work program, provided funding is available, shall be given to NMW ~~[and/or food stamp recipients]~~ participants during orientation. Participants who need supportive services to participate in the program are eligible for such services.

B. [NMW:] NMW work program participants are eligible to receive ~~[an advance]~~ an initial supportive services payment ~~[in order to attend orientation and/or assessment appointments]~~ in accordance with Subsection B of 8.102.620.15 NMAC. The ~~[advance]~~ support services payment may be used by the participant to cover travel ~~[and/or]~~, child care costs incurred or both.

~~[C. E&T: (1) Recipients who receive only food stamps are eligible to receive E&T supportive services after actively participating in an approved component assignment.~~

~~(2) E&T participants shall not be eligible for supportive services during orientation and/or assessment.~~

~~D.] C. Ongoing supportive services:~~

~~(1) Necessary ongoing supportive services are identified on the WPA, which identifies the services needed and the start and end dates for the services. [The support services may be approved by the ISD worker.]~~

~~(2) If additional supportive services are needed after the initial assessment, the WPA shall be modified to reflect the changes.~~

[8.102.620.14 NMAC - Rp 8.102.620.14 NMAC, 07/01/2001; A, 11/15/2007]

8.102.620.16 SUPPORTIVE SERVICES BENEFITS:

A. Issuance schedule:

(1) Participants assigned to a work program activity ~~[expected to take more than 30 days to complete]~~ receive reimbursement on a monthly basis. Participants must submit participation reports to ~~[be received no later than the fifth calendar day, or the first following work day if the fifth calendar day is a weekend or holiday, after a participation month's end]~~ receive the standard month's reimbursement. timely submission is required to receive additional reimbursement amount. Reimbursement shall be authorized within five working days after receipt of all required verification. ~~[Warrants]~~ Support services shall be issued within 10 working days after authorization.

(2) Participants must submit the monthly participation report to be received no later than the fifth calendar day after a participation month's end. Reports received on the first workday after the fifth shall be considered timely if the fifth occurred on a

weekend or holiday. Participants shall not be eligible to receive reimbursement if the report verifying participation is received 30 days or more following the end of the month for which participation is being reported.

B. Retroactive benefit coverage:

(1) Benefit coverage which provides supportive services may be issued retroactively to a participant if, upon individual case review, it is determined that:

(a) the participant was eligible to receive supportive services;

(b) the participant requested supportive services timely; and

(c) work program staff inadvertently failed to process the reimbursements in a timely manner.

(2) Work program participants must have signed a WPA, which has been approved by the caseworker, which identifies the supportive services. Under no circumstances shall work program participants be eligible to receive supportive service reimbursement for costs incurred prior to enrollment in the work program.

[8.102.620.16 NMAC - Rp 8.102.620.16 NMAC, 07/01/2001; A, 10/01/2004; A, 11/15/2007]

8.102.620.17 [SELECTING THE] SUPPORT SERVICES PAYEE:

Supportive services reimbursements shall be made payable to the head of household for all travel and educational reimbursement. ~~[Child care reimbursement for less than 30 days shall be issued to the participant.]~~

[8.102.620.17 NMAC - Rp 8.102.620.17 NMAC, 07/01/2001; A, 11/15/2007]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.102.630 NMAC, Sections 3, 6, 8, and 11, effective 11/15/2007.

8.102.630.3 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 ~~[financial]~~ 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.

[8.102.630.3 NMAC - Rp 8.102.630.3 NMAC 3, 07/01/2001; A, 11/15/2007]

8.102.630.6 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, ~~[assisting parents to develop the discipline necessary for self sufficiency and to improve their self-esteem]~~ resources and support. The further purpose of the program is to increase family income through family employment and child support and by ~~[viewing financial]~~ utilizing cash assistance as a support service to enable and assist parents to participate in employment.

~~[B. The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program like NMW or the federal program of supplemental security income (SSI).~~

~~C. The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.~~

~~D. The objective of the burial assistance program is to assist in payment of burial expenses for deceased, low-income individuals.]~~

~~B. The objective of 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 participant benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.~~

[8.102.630.6 NMAC - Rp 8.102.630.6 NMAC, 07/01/2001; A, 11/15/2007]

8.102.630.8 PROCESSING

STANDARDS: There is a continuing responsibility on the part of both the ~~[recipient]~~ participant and the caseworker to make sure that benefits paid to the benefit group correctly reflect the benefit group's circumstances for the month for which payment is being made.

A. **Client reporting timeliness:** The benefit group must report any of the changes specified below within 10 calendar days of the date the change becomes known to the benefit group.

B. **Who is responsible for reporting:** The ~~[individual]~~ participant designated as the head of household is responsible for reporting changes. If a protective payee has been named because of mismanagement, part of the protective payee's responsibilities include making sure that changes are reported, either by the specified relative or the protective payee.

C. **Department action on reported changes:** Reported changes are evaluated and eligibility/payment changes made within 10 days of receiving notice of a change. The change is made as soon as possible but must be effected no later than the end of the month following the month in which the change is reported.

D. **What must be reported:** ~~[Recipients]~~ Participants shall be required to report any change in benefit group composition and circumstances. This includes:

(1) **An individual moving into or out of the home:** A benefit group must report when ~~[an individual]~~ a participant moves into or out of the home so that the impact of the person on the benefit group's eligibility and payment can be evaluated.

(2) **Social security number:** A benefit group must report when one of its members is assigned a social security number.

(3) **Residence:** A benefit group is required to report whenever the benefit group or any member of it is leaving New Mexico.

(4) **School attendance:** A benefit group must report whenever a dependent child age six or older drops out of school or has three unexcused absences. This information must be reported within 14 days.

(5) **Address:** A benefit group must report moving to another place of domicile, regardless of whether mail is being sent to that address, or whether the place of domicile is the place of residence.

(6) **Income:** A benefit group must report any change in benefit group

income and any change in the employment status of any benefit group member.

(7) **Resources:** A benefit group must report any change in resources which places the benefit group over the resource limit standards of \$1500 in liquid resources or \$2000 in non-liquid resources.

E. **Semiannual reporting:** A benefit group subject to semiannual reporting shall be subject to reporting requirements as specified at 8.102.120.11 NMAC.

[8.102.630.8 NMAC - Rp 8.102.630.8 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 11/15/2007]

8.102.630.11 LATE CHANGES

A. Failure to report any change in a timely manner may result in an underpayment or an overpayment to the benefit group.

B. **Good cause for failure to report a required change:**

(1) If a required change is not reported timely, good cause for not reporting on time is considered to exist if the ~~[recipient]~~ participant can show, with appropriate documentation, that the ~~[recipient]~~ participant was prevented from reporting by a health problem, including death, of a specified relative during the time period allowed to report. The health problem must have been of such severity and duration as to effectively prevent reporting by the ~~[recipient]~~ participant. The ~~[recipient]~~ participant must provide proof of the existence of the health problem and explain exactly how it prevented the ~~[recipient]~~ participant from reporting the information to the ISD office.

(2) The determination of good cause shall be made by the caseworker, subject to the review and approval of the county director or the county director's designee. [8.102.630.11 NMAC - Rp 8.102.630.10 NMAC, 07/01/01; A, 11/15/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.640 NMAC, Sections 3, 6, 8, 10, 12, and 13, effective 11/15/2007.

8.102.640.3 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 con-

tained 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 ~~financial~~ 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.

[8.102.640.3 NMAC - Rp 8.102.640.3 NMAC, 07/01/2001; A, 11/15/2007]

8.102.640.6 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, ~~[assisting parents to develop the discipline necessary for self sufficiency and to improve their self esteem]~~ resources and support. The further purpose of the program is to increase family income through family employment and child support and by ~~[viewing financial]~~ utilizing cash assistance as a support service to enable and assist parents to participate in employment.

~~**B.** The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program like NMW or the federal program of supplemental security income (SSI).~~

~~**C.** The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.~~

~~**D.** The objective of the burial assistance program is to assist in payment of burial expenses for deceased, low-income individuals.]~~

B. The objective of 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 participant benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

[8.102.640.6 NMAC - Rp 8.102.640.6 NMAC, 07/01/2001; A, 11/15/2007]

8.102.640.8 ERRONEOUS PAYMENT PROVISIONS:

An erroneous payment exists when an error is made by the client or the department which, if it had not occurred, would have resulted in a benefit amount different than actually issued. The difference between what was issued and what should have been issued is the amount of the payment error.

A. Underpayments:

(1) Underpayment occurs if the department issues less than it should. An underpayment of cash assistance shall be corrected if the underpaid benefit group:

(a) is currently eligible under the program of assistance in which the error occurred; or

(b) would be eligible except for the error causing the underpayment.

(2) An underpayment to a denied applicant or to a former ~~[recipient]~~ participant who is not eligible at the time the error is discovered shall be corrected if the ~~[applicant/recipient]~~ applicant or participant becomes eligible at a later date.

(3) Before issuing a benefit correcting an underpayment, the department subtracts from the amount owed to the ~~[recipient]~~ participant any outstanding claim against the ~~[recipient]~~ participant in the program for which the underpayment is being corrected.

B. Overpayments: An overpayment occurs if the department issues more than it should have. The department recovers all cash assistance overpayments, including overpayments resulting from administrative errors, and assistance paid pending an administrative hearing decision.

C. Benefit group responsibility for repayment: The department shall pursue recovery of an overpayment from:

(1) the benefit group which was overpaid; or

(2) any benefit group of which a member of the overpaid benefit group later becomes a member; or

(3) ~~[individual]~~ participant members of the overpaid benefit group, whether or not currently receiving assistance.

D. Overpayments to sponsored aliens:

(1) Aliens and sponsors are joint-

ly liable for overpayments caused by failure of the sponsor to provide correct information, unless the sponsor is without fault or has good cause. "Without fault" or "good cause" exists when:

(a) the agency failed to request information from the sponsor; or

(b) the sponsor can show that the sponsor provided all information available to the sponsor at the time the information was provided;

(c) the alien provided incorrect information without the knowledge of the sponsor; or

(d) the sponsor can show that the giving of incorrect information was not intentional on the part of the sponsor.

(2) If good cause is found to exist, the alien has sole responsibility for repayment.

[8.102.640.8 NMAC - Rp 8.102.640.8 NMAC, 07/01/2001; A, 11/15/2007]

8.102.640.10 CALCULATING AMOUNT OF ERROR:

A. For each month eligibility and grant determination is made using the standard of need, case information, and policy in effect for that month. The payment error is the difference between the benefit which was issued and the benefit which would have been issued if the error had not been made.

B. Underpayments: If a change occurs which makes the benefit group eligible for a higher payment for a month, the department is responsible for making the difference available to the benefit group. The benefit group must have made a timely report of the change.

C. Overpayments:

(1) If a change occurs which makes the benefit group eligible for a lower payment for a month, the benefit group is responsible for paying the difference back to the department.

(2) If a change occurs which lowers the standard of need for which the benefit group is eligible, the benefit group shall be allowed the amount for which they were eligible on the first day of the month.

D. Developing substantiating information:

(1) On receiving indication that a possible error exists, the caseworker shall investigate whether an erroneous payment has occurred. Pertinent information shall be requested from the ~~[recipient]~~ participant. Because this information may be used to prosecute the ~~[recipient]~~ participant for fraud, the ~~[recipient]~~ participant shall not be required to provide such information; however, if the ~~[recipient]~~ participant declines to provide information crucial to the determination of overpayment, the ~~[recipient]~~ participant shall be ineligible for the period in

question because of failure to provide information.

(2) The same standards shall be used in determining erroneous payments as are used to determine initial and ongoing eligibility and payment.

(3) The [recipient] participant must be periodically reminded of the [recipient's] reporting responsibilities and must indicate, no less frequently than at every certification, that the participant understands these requirements. This requirement is met by the use of a department form which reminds [recipients] participants at each certification of their reporting responsibilities. This form also serves as the [recipient's] participant's statement that the [recipient] participant understands the reporting responsibilities. If it is determined that a [recipient] participant may have difficulty understanding the reporting responsibilities because of language, literacy, or mental or emotional problems, the caseworker shall supplement the written notice with an oral explanation. All such oral explanations must be documented in the case record.

(4) The [recipient] participant shall become ineligible on a continuing basis if there is a continuing failure to provide information affecting the [recipient's] participant's current eligibility.

[8.102.640.10 NMAC - Rp 8.102.640.10 NMAC, 07/01/2001; A, 11/15/2007]

8.102.640.12 CORRECTING BENEFITS: The benefit delivery system automatically calculates the amount of an erroneous payment when the caseworker performs historical updates.

A. Underpayments:

(1) Underpayments shall be corrected by issuance of supplemental benefits.

(2) Underpayments to current [recipients] participants shall be corrected upon their discovery.

(3) Underpayments to persons who are not currently eligible shall be calculated and recorded in the case record.

B. Overpayments:

Overpayments shall be recovered through recoupment or repayment. All overpayments are subject to recovery. Overpayments shall be promptly reported, and the appropriate recovery mechanism initiated.

C. Restitution unit: The restitution unit is responsible for managing the department's claims system, particularly the portion dealing with recoupment and repayment.

D. Repayments:

(1) Repayment:

(a) A repayment is a cash payment made to the department by the overpaid [recipient] participant. Repayments are used to recover cash assistance overpay-

ments from cases no longer receiving cash assistance, or where recovery of an overpayment from an open cash assistance case cannot be made within 20 months by recoupment alone.

(b) The amount the department tries to recover monthly through repayment is based on the following schedule, or, if a court order for repayment exists, in accordance with the court order. If the level of payment sought would work an extreme hardship on the [recipient] participant, the restitution unit may agree to accept a lesser amount. Arrangements for repayments are made by the restitution unit in all cases, except those where the [recipient] participant is willing to repay the entire overpayment in a single payment.

(2) Repayment schedule:

Overpayment Amount	Monthly Repayment Payment
\$ 35 - \$100	\$ 5
\$101 - \$200	\$10
\$201 - \$300	\$15
\$301 - \$400	\$20
\$401 - \$500	\$25
\$501 - \$600	\$30
\$601 - \$700	\$35
\$701 - \$800	\$40
\$801 - \$900	\$45
\$901 or more	\$50

E. Recoupment: Recoupment shall be used to recover cash assistance overpayments from open cash assistance cases. The amount is automatically recouped from a [recipient's] participant's benefit before it is issued to the [recipient] participant. The amount recouped is equal to 15% of the benefit group's payment standard. Recoupment is the last step in the calculation prior to determining the amount appearing on the warrant or transmitted to the [individual's] participant's EBT account.

[8.102.640.12 NMAC - Rp 8.102.640.12 NMAC, 07/01/2001; A, 11/15/2007]

8.102.640.13 REPORTING ERRONEOUS PAYMENTS:

A. Underpayments: Underpayments are reported and corrected by making changes to historical months in the automated benefit delivery system. A historical change which produces a higher payment than was originally issued results in issuance of a supplemental payment correcting the error.

B. Overpayments: Overpayments shall be determined by making changes to historical months, in the automated benefit delivery system. A historical change, which produces a lower payment than was originally issued results in the creation of a overpayment claim. This generates an automated report to the department's claims system where a receivable account is established in the amount of the claim.

C. Notice:

(1) Written notice of an overpayment shall be sent to the [recipient] participant before any attempt to recover the overpayment is made.

(2) Advance notice requirements and administrative hearing policies and procedures shall apply to payment reductions resulting from recoupment. No action to reduce the grant shall be taken during the advance notice period.

(3) The notice informs the [recipient] participant:

(a) that an overpayment report has been filed;

(b) what action the department intends to take with regard to the overpayment;

(c) that the [recipient] participant may request a fair hearing on the issue of the overpayment; and

(d) that the [recipient] participant need not give testimony at the hearing.

D. Hearings: The department grants a fair hearing request regarding an overpayment in accordance with fair hearings provisions set forth at 8.100.970 NMAC. The client may contest the department's findings of fact, decision, or application of policy regarding the amount of overpayment, or the determination of the amount to be recouped from the grant.

E. Fraud exception: Notice of overpayment and administrative hearings rights shall not be given if the department has decided to pursue criminal prosecution for fraud. In such cases the [recipient] participant's notice rights are limited to those afforded by state criminal statutes. No attempt shall be made by ISD staff to recover overpayments in such cases, nor shall any offers to refund the overpayment be accepted by the county office.

F. Recovery action:

(1) Overpayments of less than \$1,000: Overpayments of less than \$1,000 to currently eligible cases shall be immediately processed by the caseworker for recoupment.

(2) Overpayments over \$1,000: Overpayments of more than \$1,000 to currently eligible cases shall be referred to the restitutions unit for a fraud action decision.

(3) Overpayments to closed cases: Overpayments of \$35 or more to closed cases shall be referred to the restitution unit for collection [and/or], fraud investigation or both.

(4) Response to referral:

(a) The caseworker shall be notified by the office of inspector general within 30 days whether fraud action has or will be taken on an open case. If no fraud action is contemplated, the case shall be immediately processed for either recoupment or cash recovery.

(b) If a response is not received from the OIG within 30 days of referral, the county may initiate recoupment from currently eligible cases.

G. Fraud referral:

(1) Fraud elements:

(a) By state statute, Section 30-16-6, NMSA 1978, fraud is the intentional misappropriation or taking of anything of value which belongs to another by means of fraudulent conduct, practices or representations.

(b) Fraud exists when:

(i) a person, by words or conduct misrepresents facts to the department with the intention to deceive the department; and

(ii) because of the misrepresentation and the department's reliance upon it, the person has obtained cash benefits from the department to which they were not entitled.

(2) Referral for investigation: If a caseworker decides that fraud may exist, the case is referred to the office of inspector general for further investigation or possible prosecution.

[8.102.640.13 NMAC - Rp 8.102.640.13 NMAC, 07/01/2001; A, 11/15/2007]

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
FIRE MARSHAL DIVISION**

Repealer: The New Mexico Public Regulation repeals 10.25.4 NMAC, "Portable Fire Extinguishers" (filed 05-09-1997). Effective 11-15-07.

Repealer: The New Mexico Public Regulation repeals 10.25.5 NMAC, "Fire Prevention" (filed 05-09-1997). Effective 11-15-07.

Repealer: The New Mexico Public Regulation repeals 10.25.6 NMAC, "Safe Handling and Sale of Fireworks" (filed 05-09-1997). Effective 11-15-07.

Repealer: The New Mexico Public Regulation repeals 10.25.7 NMAC, "Flammable and Combustible Liquids" (filed 05-09-1997). Effective 11-15-07.

Repealer: The New Mexico Public Regulation repeals 10.25.8 NMAC, "Storage of Flammable and Combustible Liquids at Farms and Isolated Sites" (filed 05-09-1997). Effective 11-15-07.

Repealer: The New Mexico Public Regulation repeals 10.25.9 NMAC, "Use of Public Occupancies" (filed 05-09-1997). Effective 11-15-07.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
FIRE MARSHAL DIVISION**

**TITLE 10 PUBLIC SAFETY
AND LAW ENFORCEMENT
CHAPTER 25 STATE FIRE MARSHAL
PART 1 GENERAL PROVISIONS**

10.25.1.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[10.25.1.1 NMAC - N, 11-15-07]

10.25.1.2 SCOPE: This rule applies to any person whose activities are regulated by the provisions of Sections 59A-52-1 through 59A-52-25 NMSA 1978 or the Fireworks Licensing and Safety Act, Section 60-2C-1 through 60-2C-11 NMSA 1978.
[10.25.1.2 NMAC - N, 11-15-07]

10.25.1.3 STATUTORY AUTHORITY: Sections 8-8-21, 59A-52-2, 59A-52-15, 59A-52-16, and 60-2C-3 NMSA 1978.
[10.25.1.3 NMAC - N, 11-15-07]

10.25.1.4 DURATION: Permanent.
[10.25.1.4 NMAC - N, 11-15-07]

10.25.1.5 EFFECTIVE DATE: November 15, 2007, unless a later date is cited at the end of a section.
[10.25.1.5 NMAC - N, 11-15-07]

10.25.1.6 OBJECTIVE: The purpose of this rule is to set forth general

provisions governing fire prevention, control of fires, and safe egress from and use of public occupancies.

[10.25.1.6 NMAC - N, 11-15-07]

10.25.1.7 DEFINITIONS: In addition to the definitions in Chapter 59A, Article 52 NMSA 1978; Sections 60-2C-2 and 60-2C-2.1 NMSA 1978; 10.25.1 NMAC; 10.25.5 NMAC; and the code adopted in 10.25.5 NMAC; as used in these rules:

A. AHJ means an authority having jurisdiction; this may refer to the fire marshal or to other authorities with concurrent jurisdiction such as a municipality or county that has enacted an ordinance concerning fire protection;

B. certificate of fitness means the fire marshal's approval of a fire protection installation, maintenance and inspection company obtained pursuant to 10.25.2 NMAC;

C. CID means the construction industries division of the regulation and licensing department;

D. commission means the New Mexico public regulation commission;

E. fire marshal means the state fire marshal as established under the State Fire Marshal Act, Section 59A-52-1 et seq. NMSA 1978, or his designee; and

F. these rules means the rules adopted by the commission in Title 10, Chapter 25 NMAC.

[10.25.1.7 NMAC - N, 11-15-07]

10.25.1.8 REQUIREMENTS FOR FILED DOCUMENTS: In addition to the requirements stated here, particular rules may include other filing requirements. All documents required by these rules to be filed with the fire marshal, including applications referenced in 10.25.6 NMAC, shall be filed as follows.

A. Address for filing documents.

(1) Documents filed by mail shall be addressed to the New Mexico Fire Marshal's Office, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) Documents filed in person or by delivery service shall be delivered to the New Mexico Fire Marshal's Office located on the second floor of 142 West Palace Avenue in Santa Fe, New Mexico.

B. Required format. All reports, articles, applications and other documents filed with the fire marshal shall be typewritten, clearly legible, on good quality white paper 8 1/2 x 11 inches in size, have a 1 inch margin on each side and at least a one-inch margin at the top and bottom of each page, and be signed or executed in black or blue-black ink.

C. Facsimile filing pro-

hibited. The fire marshal will not accept documents for filing or applications submitted by facsimile.

D. Date of filing. The fire marshal shall consider any document filed pursuant to this rule as filed on the date it was received and stamped by the fire marshal's office, unless the document is returned pursuant to 12.3.1.11 NMAC, except that if the fire marshal receives a document after regular business hours, the fire marshal shall stamp and consider it received on the next regular business day. [10.25.1.8 NMAC - N, 11-15-07]

10.25.1.9 APPLICATIONS, FORMS AND GUIDELINES:

A. Mandatory applications. For ease and consistency of data entry, the fire marshal has prepared mandatory permit and license applications for compliance with 10.25.2 and 10.25.6 NMAC.

B. Optional permit application and guidelines. The fire marshal provides an optional permit application for display fireworks, described in Subsection E of 10.25.6.8 NMAC, and other guidelines to aid in fire prevention and safety, and to assist in carrying out certain requirements of these rules.

C. How to obtain. Interested persons may obtain copies of mandatory and optional applications, forms, and guidelines:

(1) by calling the fire marshal's office at 505-827-3550 or 1-800-244-6702;

(2) at the fire marshal's office located on the second floor of 142 West Palace avenue in Santa Fe;

(3) by writing to the fire marshal's office, P.O. Box 1269, Santa Fe, New Mexico 87504-1269; or

(4) from the fire marshal's website: <http://www.nmprc.state.nm.us/sfm.htm>.

[10.25.1.9 NMAC - N, 11-15-07]

10.25.1.10 INCOMPLETE FILINGS:

A. A filing will be considered incomplete if:

(1) it is unsigned;

(2) it omits any information required by law or fire marshal rule or order;

(3) it is not accompanied by the appropriate filing fee, paid as required by 12.3.1.14 NMAC; or

(4) the fire marshal determines the filing is otherwise insufficient.

B. Return of incomplete filings. Any application returned by the fire marshal shall be deemed denied. The fire marshal shall return an incomplete filing with a statement indicating the nature of the insufficiency to:

(1) the address on any cover letter included with the form or document;

(2) if no cover letter was included, then to the return address on the envelope in which the document or form was received;

(3) if no cover letter or envelope with return address were included, then to the address on any check delivered with the form or document for filing; or

(4) if none of the above were included, then to any other address in the applicant's file.

[10.25.1.10 NMAC - N, 11-15-07]

10.25.1.11 INSPECTION OF DOCUMENTS:

Any person who wishes to inspect public records or other documents relating to fires shall file a written request to the fire marshal. The request shall meet the requirements of the Inspection of Public Records Act, Section 14-2-8 NMSA 1978, and shall follow the procedure required by that law.

[10.25.1.11 NMAC - N, 11-15-07]

10.25.1.12 REQUESTS FOR COPIES:

A. Filing of request. A person shall make a request in writing for copies of a document or report and shall list all documents or information requested. A request may be mailed or delivered as provided in 12.3.1.9 NMAC, or sent by facsimile to (505) 827-3778. If a person cancels a request within twenty-four (24) hours, the fire marshal shall not assess any fees.

B. Estimate of fees. When the fire marshal receives a request for copies, the fire marshal's office shall issue an informal estimate of fees. The fire marshal shall copy five (5) pages at no charge, and shall charge ten cents (\$0.10) for each additional page.

C. Completion of request.

(1) If the person approves the estimate, the fire marshal shall prepare the copies within the time periods provided in the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978.

(2) When the requested documents are ready, the fire marshal shall provide a written statement of fees due and shall release the copies electronically upon payment of all fees due.

[10.25.1.12 NMAC - N, 11-15-07]

10.25.1.13 PAYMENT OF FEES:

A person shall pay fees charged by the commission or the fire marshal by cashier's or company check or money order from funds on deposit with a United States financial institution, made payable to the New Mexico public regulation commission. The fire marshal will not accept personal checks or cash.

[10.25.1.13 NMAC - N, 11-15-07]

10.25.1.14 RULES OF PROCEDURE: In all matters before the commission involving the fire marshal, the commission shall follow the commission's rules of procedure. A specific provision in these rules shall control over a conflicting general provision in the commission's rules of procedure.

[10.25.1.14 NMAC - N, 11-15-07]

10.25.1.15 APPEALS: A person aggrieved by any order of the fire marshal may appeal the decision:

A. to the commission in accordance with Section 59A-52-21 NMSA 1978, by filing an appeal with the New Mexico Public Regulation Commission Docketing Office by mail to P.O. Box 1269, Santa Fe, New Mexico 87504-1269 or by delivery to the P.E.R.A. Building, Room 406, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501; or

B. to district court in accordance with Section 59A-52-22 NMSA 1978.

[10.25.1.15 NMAC - N, 11-15-07]

HISTORY OF 10.25.1 NMAC:
[RESERVED]

NEW MEXICO PUBLIC REGULATION COMMISSION FIRE MARSHAL DIVISION

**TITLE 10 PUBLIC SAFETY
AND LAW ENFORCEMENT
CHAPTER 25 STATE FIRE MARSHAL
PART 2 CERTIFICATES OF
FITNESS**

10.25.2.1 ISSUING AGENCY: New Mexico Public Regulation Commission.

[10.25.2.1 NMAC - N, 11-15-07]

10.25.2.2 SCOPE: This rule applies to all fire protection installation, maintenance and inspection companies that operate in the state of New Mexico.

[10.25.2.2 NMAC - N, 11-15-07]

10.25.2.3 STATUTORY AUTHORITY: Sections 8-8-21, 59A-52-2, and 59A-52-15 NMSA 1978.

[10.25.2.3 NMAC - N, 11-15-07]

10.25.2.4 DURATION: Permanent.

[10.25.2.4 NMAC - N, 11-15-07]

10.25.2.5 EFFECTIVE DATE: November 15, 2007, unless a later date is cited at the end of a section.
[10.25.2.5 NMAC - N, 11-15-07]

10.25.2.6 OBJECTIVE: The purpose of this rule is to assure a minimum level of quality in the installation, inspection, maintenance and repair of fire protection equipment and to encourage fire prevention and control of fires.
[10.25.2.6 NMAC - N, 11-15-07]

10.25.2.7 DEFINITIONS: In addition to the definitions in 10.25.1 NMAC, "qualified party" means a person holding a license from CID to install or repair fire protection systems.
[10.25.2.7 NMAC - N, 11-15-07]

10.25.2.8 TYPES OF CERTIFICATES REQUIRED:

A. When required. No person shall install, inspect, maintain, service, tag or repair fire protection equipment or systems unless he has obtained a certificate of fitness from the fire marshal in compliance with these rules. Any person holding a certificate of fitness shall have a copy of it available in all service vehicles and offices for review if requested during inspection by the fire marshal or AHJ. Certificates of fitness are not transferable.

B. Types of certificates. The fire marshal or AHJ may issue certificates of fitness for installation, inspection, maintenance, repair, recharging or tagging in the following disciplines:

- (1) automatic fire suppression systems and fire pumps;
 - (2) automatic fire detection and alarm systems;
 - (3) chemical fire suppression systems; and
 - (4) portable fire extinguishers.
- [10.25.2.8 NMAC - N, 11-15-07]

10.25.2.9 APPLICATION PROCEDURE: Any person may apply for a certificate of fitness by submitting the required application to the fire marshal as provided in 10.25.1.9 NMAC or to an AHJ. The mandatory applications described in 10.25.1.9 NMAC are available as indicated in 10.25.1.9 NMAC.

A. Information required for initial application. Each application for a certificate of fitness shall include:

- (1) the applicant's name, mailing address, telephone number and signature of authorized representative;
- (2) the disciplines for which certification is requested, listed in 10.25.2.8 NMAC;
- (3) a statement that the applicant agrees to be inspected by the fire marshal,

his designees or an AHJ at any time during normal business hours;

(4) for certification for automatic fire suppression systems and fire pumps: the name of the qualified party, the type and number of his CID license and a copy of his license;

(5) for certification for automatic fire detection and alarm systems: the name of the qualified party, the type and number of his CID license and a copy of his license;

(6) for certification for chemical fire suppression systems: the name of the qualified party, the type and number of his CID license and a copy of his license;

(7) for certification for portable fire extinguishers, a statement indicating that the applicant:

(a) operates from a fixed location, provides mobile recharging service, or both;

(b) agrees to allow only trained personnel to maintain, service and recharge portable fire extinguishers; and

(c) agrees to provide its personnel with all service manuals and documentation, proper tools, recharging materials, lubricants and manufacturers' recommended replacement parts or parts specifically listed for use in fire extinguishers.

B. Requirements for renewal. Any person seeking to renew a certificate of fitness shall apply following the process provided, and submit all information required, for an initial application.
[10.25.2.9 NMAC - N, 11-15-07]

10.25.2.10 REVIEW OF APPLICATION:

A. Review. The fire marshal shall review each application and return it pursuant to 10.25.1.10 NMAC if incomplete. An application returned by the fire marshal shall be deemed denied. An AHJ shall follow the review process provided in its applicable ordinance.

B. Denial. The fire marshal or AHJ shall deny an application if:

(1) the application is incomplete or does not include documentation required by these rules;

(2) the applicant does not have required licenses or qualifications for the disciplines requested;

(3) the application is not properly signed; or

(4) the fire marshal determines that the application contains any falsification or misrepresentation.

C. Approval. If the fire marshal approves the application, he shall issue a certificate valid for up to two years, expiring on December 31 of the second year.
[10.25.2.10 NMAC - N, 11-15-07]

10.25.2.11 CHANGES TO

INFORMATION ON APPLICATION OR CERTIFICATE: An applicant or certificate holder shall notify the fire marshal or AHJ of any change of information in the application or on the certificate, such as a change of address, within ten (10) days after such change.
[10.25.2.11 NMAC - N, 11-15-07]

10.25.2.12 EXPIRATION AND REVOCATION OF CERTIFICATE:

A. Expiration. A certificate of fitness automatically expires at the conclusion of the time period for which it was issued.

B. Revocation. The fire marshal or AHJ may revoke a certificate if:

(1) any of the required licenses or qualifications of the applicant expire, are canceled or are revoked;

(2) during an inspection, the fire marshal or AHJ finds a substantial violation of these rules or applicable codes for a discipline for which the certificate has been issued;

(3) the applicant made false statements or misrepresentations of material fact in the application or documentation submitted with the application; or

(4) the certificate was issued in error or in violation of an applicable statute or these rules.

C. Rules of procedure. In all matters before the commission involving the fire marshal, the commission shall follow the commission's rules of procedure. A specific provision in these rules shall control over a conflicting general provision in the commission's rules of procedure.

D. Appeals. A person whose certificate of fitness is revoked by the fire marshal may appeal the revocation using the procedures enumerated in 10.25.1.15 NMAC.
[10.25.2.12 NMAC - N, 11-15-07]

HISTORY OF 10.25.2 NMAC:
[RESERVED]

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
FIRE MARSHAL DIVISION**

**TITLE 10 PUBLIC SAFETY
AND LAW ENFORCEMENT
CHAPTER 25 STATE FIRE MARSHAL
PART 5 FIRE PREVENTION
AND PUBLIC OCCUPANCY**

10.25.5.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission.
[10.25.5.1 NMAC - N, 11-15-07]

10.25.5.2 SCOPE:

A. This rule applies to structures, processes, premises and safeguards regarding:

(1) the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices;

(2) conditions hazardous to life, property or public welfare in the occupancy of structures or premises;

(3) fire hazards in the structure or on the premises from occupancy or operation; and

(4) matters related to the construction, extension, repair, alteration or removal of fire protection, suppression or alarm systems.

B. Other agencies have adopted rules that may apply and that are not affected by these rules.

(1) CID has adopted rules for housing and construction that include provisions on fire prevention in Title 14, Chapters 5 through 10 NMAC.

(2) The environmental improvement board has adopted rules for above-ground and underground storage tanks containing petroleum or hazardous substances and rules governing hazardous waste administered by the environment department in Title 20, Chapter 5 NMAC.

(3) The board of licensure for professional engineers and surveyors has adopted rules for the design of fire protection and alarm systems in Title 16, Chapter 39 NMAC.

C. AHJs may adopt fire protection requirements that are more stringent or comprehensive than 10.25.5 NMAC, as long as the requirements do not conflict with these rules.

[10.25.5.2 NMAC - N, 11-15-07]

10.25.5.3 STATUTORY AUTHORITY: Sections 8-8-21, 59A-52-15, and 59A-52-16 NMSA 1978.

[10.25.5.3 NMAC - N, 11-15-07]

10.25.5.4 DURATION: Permanent.

[10.25.5.4 NMAC - N, 11-15-07]

10.25.5.5 EFFECTIVE DATE: November 15, 2007, unless a later date is cited at the end of a section.

[10.25.5.5 NMAC - N, 11-15-07]

10.25.5.6 OBJECTIVE: The purpose of this rule is to prescribe minimum requirements for the operation and maintenance of buildings and structures necessary to reasonably protect life and property from the hazards created by fire, explosion, and similar emergencies.

[10.25.5.6 NMAC - N, 11-15-07]

10.25.5.7 DEFINITIONS: In addition to the definitions in 10.25.1 NMAC:

A. fire code official shall have the meaning provided in Section 202 of the IFC;

B. IBC means the international building code, 2003 edition, published by the international code council, inc. and available by contacting: Publications, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795 or 800-214-4321;

C. IEBC means the international existing building code, 2003 edition, published by the international code council, inc. and available by contacting: Publications, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795 or 800-214-4321;

D. IFC means the international fire code, 2003 edition, published by the international code council, inc. and available by contacting: Publications, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795 or 800-214-4321;

E. NFPA 1 means the fire prevention code, 1997 edition, published by the national fire protection association and available by contacting: Secretary, Standards Council, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101 or 800-344-3555;

F. NFPA 101 means the life safety code, 1997 edition, published by the national fire protection association and available by contacting: Secretary, Standards Council, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101 or 800-344-3555; and

G. UBC means the uniform building code, 1997 edition, published by the international conference of building officials and available by contacting: Publications, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795 or 800-214-4321.

[10.25.5.7 NMAC - N, 11-15-07]

10.25.5.8 ADOPTION OF NATIONAL STANDARD: The fire marshal adopts and incorporates by reference IFC as revised in this rule. In this rule, revisions are numbered to correspond with the numbering of the IFC.

[10.25.5.8 NMAC - N, 11-15-07]

10.25.5.9 CHAPTER 1 ADMINISTRATION:

A. Section 101 General.
(1) **101.1 Title.** Insert in brackets: New Mexico.

(2) **101.2 Scope.** This section of the IFC shall not apply. 10.25.5.2 NMAC defines the scope of this rule.

(3) **101.2.1 Appendices.** The appendices of the IFC shall not apply, except where adopted by an AHJ.

B. Section 104 General authority and responsibilities. If Section 104.6 (official records) or any other provision of the IFC conflicts with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978, the provisions of the Inspection of Public Records Act shall control.

C. Section 105 permits. This section of the IFC shall not apply. These rules do not affect the requirements imposed by those counties and municipalities with concurrent jurisdiction that require permits relating to fire protection. The fire marshal issues only the following permits with the following exceptions.

(1) **Permits and licenses for fireworks.** The fire marshal requires permits and licenses for fireworks as provided in 10.25.6 NMAC.

(2) **Certificates of fitness.** The fire marshal requires certificates of fitness for the installation, inspection, maintenance and repair of fire protection systems as provided in 10.25.2 NMAC.

(3) **105.4.1 Construction documents:** submittals.

(a) Two (2) sets of construction documents shall be required.

(b) All construction documents shall be submitted with the applicant's certificate of fitness number and shall comply with the approval process provided in 10.25.5.16 NMAC.

D. Section 108 Board of appeals. This section of the IFC shall not apply. The appeal processes provided in Sections 59A-52-21 and 59A-52-22 NMSA 1978 shall apply and may be initiated by filing an appeal as provided in 10.25.1.NMAC.

E. Section 109 Violations. The penalties in this section of the IFC shall not apply in New Mexico. The penalties authorized in Sections 59A-52-24 and 59A-52-25 NMSA 1978 shall apply.

F. Section 111 Stop work order. The penalties in this section of the IFC shall not apply. The penalties authorized in Sections 59A-52-24 and 59A-52-25 NMSA 1978 shall apply.

[10.25.5.9 NMAC - N, 11-15-07]

10.25.5.10 CHAPTER 2 DEFINITIONS: Unless defined by the fire marshal in Title 10 NMAC or by CID in Title 14 NMAC, terms used herein shall have the definition provided in Chapter 2 of the IFC. Where a term is defined by the fire marshal, the fire marshal's definition shall supersede all other definitions. Where a term is not defined by the fire marshal, but is defined by CID in Title 14 NMAC, the CID definition shall apply.

[10.25.5.10 NMAC - N, 11-15-07]

10.25.5.11 CHAPTER 4 EMERGENCY PLANNING AND PREPAREDNESS

A. Amend section 404.2 by adding a numbered paragraph 12 that states: "12. Class B occupancies housing state employees, except that buildings not owned or leased by a state government agency are required to comply with this section only to the extent that the occupants are state employees".

B. Amend section 405.2 by adding the following language to Table 405.2 as a new row between group A and group E:

GROUP B as limited by 10.25.11 NMAC	SEMI-ANNUAL	As per 404.2.12
-------------------------------------	-------------	-----------------

[10.25.5.11 NMAC - N, 11-15-07]

10.25.5.12 CHAPTER 6 BUILDING SERVICES AND SYSTEMS:

Amend section 603.9 to add "if required by the fire code official" at the end of the section.

[10.25.5.12 NMAC - N, 11-15-07]

10.25.5.13 CHAPTER 9 FIRE PROTECTION SYSTEMS:

A. Section 903 Automatic Sprinkler Systems. This section of the IFC shall apply with the following changes.

(1) The exception described in Section 903.2 of the IFC shall not apply.

(2) Section 903.2.7 of the IFC shall not apply to detached one and two family homes.

B. Section 904.11 Commercial cooking systems. The exception described in Section 904.11 of the IFC shall not apply.

C. Section 905.1 Standpipe systems, general. Add the following language at the end of the section, "Unless required by a fire code official, 1.5 inch hoses and hose cabinets are not required for Class II and Class III standpipe systems".

D. Section 906.1 Portable fire extinguishers. Delete the exception in 906.1 and substitute the following: "Exception: In groups A, B and E occupancies equipped throughout with quick-response sprinklers, the fire code official may, in his discretion, permit fire extinguishers to be installed only in special hazard areas".

E. Section 909 Smoke control systems. Section 909 of the IFC shall apply with the following changes.

(1) **Section 909.8.1 Exhaust rate.**

(a) Substitute 6 feet (1829 mm)

for 10 feet (3048 mm) in the first sentence before the phrase "above any walking surface".

(b) Substitute the phrase "shall not increase the smoke production rate beyond the capabilities of the smoke control system" for "shall not exceed 200 feet per minute (60,960 mm per minute) toward the fire" in the second to the last sentence.

(2) **Section 909.8.3 Balcony spill plumes.** This section of the IFC shall not apply.

(3) **Section 909.8.4 Window plumes.** This section of the IFC shall not apply.

(4) **Section 909.9 Design fire.** Revise the first sentence of this section of the IFC to read "The design fire shall be based on a rational analysis performed by a licensed professional engineer".
[10.25.5.13 NMAC - N, 11-15-07]

10.25.5.14 CHAPTER 10 MEANS OF EGRESS:

This chapter of the IFC applies, except Table 1004.1.2 is amended to add the following: "New and existing correctional facilities and detention centers: the occupant load for which the means of egress is calculated by the maximum number of persons intended to occupy the floor or area, shall be no less than 60 square feet of gross floor area per person".

[10.25.5.14 NMAC - N, 11-15-07]

10.25.5.15 CHAPTER 33 EXPLOSIVES AND FIREWORKS:

This chapter of the IFC and 10.25.6 NMAC apply to fireworks. If there is any conflict between this chapter of the IFC and the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978, or these rules, the Fireworks Licensing and Safety Act or these rules shall control.

[10.25.5.15 NMAC - N, 11-15-07]

10.25.5.16 REPEAL OF CODES:

The fire marshal hereby repeals NFPA 1 and NFPA 101 except as provided in 10.25.5.17 NMAC.

[10.25.5.16 NMAC - N, 11-15-07]

10.25.5.17 APPROVAL OF FIRE PROTECTION SYSTEMS:

Prior to beginning construction or occupancy of any building or structure regulated by the IFC, the owner shall apply for approval from the fire marshal or AHJ of a fire protection system for the building or structure. The review and approval of fire protection systems is in addition to any review required by CID in Title 14 of the New Mexico administrative code.

A. Filing drawings for review.

(1) **Documents required.** The

owner shall submit two (2) sets of shop drawings for the building or structure. For his own convenience, an owner may submit additional sets of drawings and an envelope with prepaid postage for the fire marshal's use in returning the drawings after review.

(2) **Where to submit.** The owner shall submit drawings to the code enforcement section of the fire marshal's office in compliance with 10.25.1 NMAC or to an AHJ as provided by the AHJ. The fire marshal shall not accept drawings by facsimile transmission.

(3) **Requirements for drawings.** The drawings shall show the fire protection systems in sufficient detail to allow the fire marshal or AHJ to analyze compliance with applicable codes and standards, and shall provide the signature and seal of the engineer that prepared the drawings. The fire marshal has optional guidelines available to assist in compliance with applicable codes and standards that may be obtained as provided in 10.25.1.9 NMAC.

(4) **Fees.** The fire marshal does not require any fees for review of fire protection systems.

B. Third party review.

The fire marshal, in his sole discretion, may require and arrange for third party review of drawings if specialized expertise or knowledge is needed. If the fire marshal determines third party review is necessary, he shall so notify the owner in writing with an estimate of the cost. If the owner decides to proceed with review, he shall file written approval by the method provided in 10.25.1.8 NMAC and shall pay directly to the third party the cost of such review before the fire marshal returns the drawings.

C. Return of drawings.

If the owner has provided an envelope with prepaid postage, the fire marshal or AHJ shall mail the drawings back to the owner after review. If the owner did not supply a postage-prepaid envelope, the fire marshal or AHJ shall call the owner to pick up the drawings. The fire marshal, or AHJ if so provided in its authorizing legislation, shall keep one (1) set of drawings. If the fire marshal or AHJ approves the drawings, he shall stamp the drawings "approved". If the fire marshal or AHJ rejects the drawings, he shall attach a letter to the drawings explaining the basis for rejection.

D. Rejection. The fire marshal or AHJ may reject drawings for the following reasons:

- (1) the drawings are incomplete;
- (2) the drawings indicate a violation of these rules or applicable codes and standards;
- (3) the engineer that prepared the drawings did not sign, seal or prepare the drawings in accordance with Title 16, Chapter 39 NMAC;
- (4) the drawings or certificate of

fitness documentation contain a misrepresentation or inaccuracy;

(5) third party review indicates that the drawings indicate a violation of these rules, applicable codes or standards, or specialized requirements presented by the drawings; or

(6) any other reason provided in the authorizing legislation of an AHJ.

E. Re-submission. If drawings are rejected, the owner may correct the deficiencies indicated in the rejection letter and re-submit the drawings by the same process for filing original drawings for review.

F. Construction.

(1) After an AHJ has approved and returned drawings, an owner may install or construct the building or structure in compliance with the approved drawings.

(2) After the owner has completed the installation or construction, he may request that the AHJ perform an inspection. The request may be made orally or in writing to the fire marshal at the address or phone number provided in 10.25.1.9 NMAC or as otherwise required by another AHJ.

G. Inspection and testing. The AHJ will inspect the building or structure within a reasonable period of time after the owner's request. The AHJ will not approve the installation or construction if the inspection indicates:

(1) a violation of these rules or applicable codes and standards;

(2) the building or structure was not installed or constructed in compliance with the drawings;

(3) the building or structure was not installed or constructed by a person with an applicable certificate of fitness; or

(4) any other reason provided in the authorizing legislation of an AHJ.

H. Re-inspection. If the AHJ does not approve the installation or construction and the owner corrects the deficiencies noted in the inspection, the owner may re-apply for inspection following the same procedure as for the initial inspection.

[10.25.5.17 NMAC - N, 11-15-07]

10.25.5.18 CODE REQUIREMENTS FOR EXISTING BUILDINGS AND STRUCTURES:

For purposes of this section, "constructed" shall mean that the owner has begun any substantial portion in the design, permitting or building of a building or structure.

A. Existing buildings and structures. An owner is not required to renovate or adapt an existing building or structure to comply with the IFC, but shall comply with the requirements in place when the existing building or structure was constructed, as defined below.

(1) Any building or structure constructed prior to 1989 shall comply with the requirements of the UBC.

(2) Any building or structure constructed between 1989 and the effective date of the fire marshal's adoption of the IFC may comply with either the UBC or the IFC.

B. New construction.

(1) Any building or structure constructed within six months after the effective date of the fire marshal's adoption of the IFC may comply with either the IFC or with NFPA 1 and NFPA 101.

(2) Any building or structure constructed six months or more after the effective date of the fire marshal's adoption of the IFC shall comply with the IFC.

C. Variance. The fire marshal may grant a variance from any of the requirements of this subsection if the applicant demonstrates to the fire marshal's satisfaction that the variance sought does not degrade the overall protection of individuals from fire and similar emergencies.

D. Hazard to life or property. Notwithstanding any other provision of these rules, if the fire marshal or AHJ determines that a nonconforming facility constitutes a hazard to life or property, the fire marshal or AHJ shall so notify the owner of the facility in writing, and shall permit the owner a reasonable period of time to comply with current rules. If the owner does not comply with the notification and its requirements within the time specified, the fire marshal or AHJ may order the owner to take the facility out of service.

[10.25.5.18 NMAC - N, 11-15-07]

HISTORY OF 10.25.5 NMAC:

Pre-NMAC History: none.

History of Repealed Material:

10 NMAC 25.5, Fire Prevention (filed 05/09/1997) repealed 11/15/2007.

NMAC History:

10 NMAC 25.6, Safe Handling and Sale of Fireworks, effective 6/9/1997.

10 NMAC 25.5, Fire Prevention (filed 05/09/1997) was replaced by 10.25.5 NMAC, Fire Prevention and Public Occupancy, effective 11/15/2007.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
FIRE MARSHAL DIVISION**

**TITLE 10 PUBLIC SAFETY
AND LAW ENFORCEMENT
CHAPTER 25 STATE FIRE MARSHAL
PART 6 SAFE HANDLING
AND SALE OF FIREWORKS**

10.25.6.1 ISSUING AGENCY: New Mexico Public Regulation Commission.

[10.25.6.1 NMAC - N, 11-15-07]

10.25.6.2 SCOPE: This rule applies to all persons applying for licenses or permits to sell fireworks in New Mexico and to all persons applying for certification as fireworks safety inspectors. It does not apply to local governing bodies for display fireworks.

[10.25.6.2 NMAC - N, 11-15-07]

10.25.6.3 STATUTORY AUTHORITY: Sections 8-8-21, 59A-52-15, and 60-2C-3 NMSA 1978.

[10.25.6.3 NMAC - N, 11-15-07]

10.25.6.4 DURATION: Permanent.

[10.25.6.4 NMAC - N, 11-15-07]

10.25.6.5 EFFECTIVE DATE: November 15, 2007, unless a later date is cited at the end of a section.

[10.25.6.5 NMAC - N, 11-15-07]

10.25.6.6 OBJECTIVE: The purpose of this rule is to implement the Fireworks Licensing and Safety Act, Chapter 60, Article 2C NMSA 1978, so as to increase the observance of safety precautions in handling fireworks and decrease the number of fireworks related accidents in New Mexico.

[10.25.6.6 NMAC - N, 11-15-07]

10.25.6.7 DEFINITIONS: See the definitions in 10.25.1.7 NMAC.

[10.25.6.7 NMAC - N, 11-15-07]

10.25.6.8 LICENSES AND PERMITS FOR SALE OF FIREWORKS: The fire marshal issues licenses and permits as provided in Section 60-2C-4 NMSA 1978. Local governing bodies may have additional requirements for fireworks sale or use.

A. Application procedures and forms. Any person may apply for a license or permit to sell fireworks as provided in Section 60-2C-4 NMSA 1978 by submitting a required application to the fire marshal as provided in 10.25.1.9 NMAC. The following information shall be included in each application for a permit or license involving fireworks:

(1) the applicant's name and mailing address;

(2) the applicant's telephone number and social security number;

(3) any company or corporate name or name the applicant is using for business purposes;

(4) the type of permit or license requested;

(5) the physical address where applicant proposes to sell fireworks and a description of the type of structure in which applicant proposes to sell fireworks;

(6) name and phone number of a contact person at the location where applicant proposes to sell fireworks;

(7) the name and address of applicant's primary supplier of fireworks; and

(8) the following statement: "All information provided on and with this form is true and correct to the best of my knowledge and belief. I have read, reviewed and understand the New Mexico laws and rules regarding safe packaging, handling and sale of fireworks. I agree to fully comply with these laws and rules as a condition of obtaining and operating pursuant to a fireworks license or permit. I understand that the approval of this application depends upon compliance with Sections 60-2C-1 through 60-2C-11 NMSA 1978 of the Fireworks Licensing and Safety Act. In the event that my license or permit is lost or destroyed, I understand that I shall immediately notify the Fire Marshal's office and that I am not entitled to a refund of the original application fees, but must submit a new application and pay a \$20.00 replacement fee for the type of license or permit required for that location. I understand that Section 60-2C-4 NMSA 1978 does not permit the fire marshal to process applications for a license or permit during any holiday selling periods";

(9) each application shall contain the date and notarized signature of the applicant; and

(10) an applicant shall submit fees required by Section 60-2C-4 NMSA 1978 with each application following the provisions of 10.25.1.13 NMAC.

B. Review of application.

The fire marshal shall review all applications for licenses and permits. Unless otherwise prohibited by law, the fire marshal shall issue licenses and permits within 30 days of receipt of complete applications. The fire marshal shall disapprove and return incomplete applications within 30 days of receipt.

C. Damaged or lost license or permit. The fire marshal will not issue duplicate fireworks licenses or permits. If a license or permit is lost or damaged, the vendor shall immediately notify the fire marshal who shall revoke the license or permit. The fire marshal will not refund any fees for a lost or damaged license or permit. If the vendor wishes to continue to sell fireworks at that location, the vendor shall submit the \$20.00 fee required by section 60-2C-4 NMSA 1978 for a replacement license or permit.

D. Special provisions for

retailer permits. Applicants may obtain retailer permits for the sale of fireworks from the fire marshal or from a licensed manufacturer, distributor or wholesaler.

(1) **Products list.** Any person with a retailer permit shall maintain a complete written list of products for sale, available on inspection by an AHJ, of all fireworks at each retail location.

(2) **Obtaining books of 20 retailer permits.** A licensed manufacturer, distributor or wholesaler may obtain books of 20 retailer permits from the fire marshal by following the process in Subsection A of 10.25.6.8 NMAC.

(3) **Requirements for resale of retailer permits.** A licensed manufacturer, distributor or wholesaler may re-sell retailer permits in books of 20, by requiring the same mandatory application form, fees and other requirements in Subsection A of 10.25.6.8 NMAC. A licensed manufacturer, distributor or wholesaler shall account for all fees collected and permits sold.

(a) **Semi-annual report.** On January 31 and July 31 of each year, a licensed manufacturer, distributor or wholesaler that has purchased any books of 20 retailer permits shall provide a report to the fire marshal detailing the numbers of sold and unsold permits, with all information required by Section 60-2C-3 NMSA 1978. The report shall include a copy of each permit application and permit issued, as well as the name and address of each location permitted for the sale of fireworks.

(b) **Unsold permits.** If a licensed manufacturer, distributor or wholesaler has not sold all permits in books of 20 purchased, it may request in writing that the fire marshal issue to it credit toward new permits. The written request shall contain a list of all unsold permit numbers and shall include the unsold permits.

(c) **Inspection list.** On or before June 15 of each year, each licensed manufacturer, distributor and wholesaler shall provide to the fire marshal a list of locations of sales of fireworks for the retailer permits it has sold to assist the fire marshal in conducting inspections of these locations.

E. Display permit. The fire marshal provides an optional permit application for display fireworks as required by Section 60-2C-9 NMSA 1978, available as provided in 10.25.1 NMAC, for the use of counties and municipalities requiring such display permits.

F. Revocation of license or permit.

(1) Notwithstanding any other provision of these rules, if the fire marshal determines that any licensee's or permittee's actions or facility constitutes:

(a) a hazard to life or property,

the fire marshal shall so notify the licensee or permittee in writing, and shall permit him a reasonable period of time to comply with these rules and to eliminate the hazard; if the licensee or permittee does not comply with the notification and its requirements within the time specified, the fire marshal may revoke the applicable license or permit; for reinstatement, the licensee or permittee must comply with initial application requirements;

(b) an imminent hazard to life or property, the fire marshal shall order the licensee or permittee to eliminate the hazard immediately; if the licensee or permittee fails to eliminate the hazard immediately, the fire marshal shall revoke the applicable license or permit; for reinstatement, the licensee or permittee must comply with initial application requirements and demonstrate that the hazard has been eliminated.

(2) If any retailer possesses fireworks not permitted by Section 60-2C-7 NMSA 1978, the fire marshal shall revoke the retailer's permit and confiscate the impermissible fireworks using the procedure required by 10.25.6.11 NMAC. [10.25.6.8 NMAC - N, 11-15-07]

10.25.6.9 FIREWORKS SAFETY INSPECTIONS.

A. Who may conduct inspections. Fireworks safety inspectors with authority to conduct inspections are:

(1) the state fire marshal and his staff;

(2) any person appointed by the state fire marshal; and

(3) any person authorized by an AHJ.

B. When inspections may be conducted. A fireworks safety inspector may at reasonable hours enter and inspect a licensee's or permittee's premises, buildings, motor vehicles, and mobile, temporary or permanent structures to determine compliance with the Fireworks Licensing and Safety Act and these rules.

C. Inspection procedures. Fireworks safety inspectors shall conduct all inspections using the required form available from the fire marshal as provided in 25.5.1.9 NMAC. Inspectors shall provide completed forms to the fire marshal within 10 working days of the date of inspection.

D. Frequency of inspections. Fireworks safety inspectors shall inspect all retail locations at least twice during each sales period listed in Section 60-2C-8K NMSA 1978 and shall inspect all specialty retail locations within New Mexico semi-annually. [10.25.6.9 NMAC - N, 11-15-07]

FIREWORKS SAFETY VIOLATIONS:

A. A commissioned law enforcement officer shall issue a citation to or file charges in magistrate or municipal court against any person who violates any provision of the Fireworks Licensing and Safety Act or this rule.

B. Within five days of issuing a citation or filing charges, a law enforcement officer shall submit a detailed written report to the fire marshal describing the incident and violation.

[10.25.6.10 NMAC - N, 11-15-07]

10.25.6.11 CONFISCATION OF FIREWORKS:

A. A fireworks safety inspector may confiscate fireworks for either of the following reasons:

(1) the fireworks are not permissible fireworks enumerated in Section 60-2C-7 NMSA 1978; or

(2) the person selling the fireworks does not have an appropriate license or permit.

B. Whenever a fireworks safety inspector confiscates fireworks, he shall issue a written receipt for the fireworks including an inventory of all items confiscated and shall provide an opportunity for the violator to sign the receipt. The fireworks safety inspector shall store all confiscated fireworks as evidence until final disposition of any enforcement case.

[10.25.6.11 NMAC - N, 11-15-07]

10.25.6.12 REQUIRED SAFETY PROVISIONS:

A. Tents and mobile structures used for the sale of fireworks shall comply with these rules, which adopt and incorporate by reference the IFC.

B. Licensees and permittees shall:

(1) maintain fire extinguishers at all sale locations in accordance with these rules, which adopt and incorporate by reference the IFC;

(2) train their employees in the proper use of fire extinguishers;

(3) exhibit the proper use of fire extinguishers when so requested by the AHJ during an inspection; and

(4) provide at least one method of fire alarm and emergency communication that is approved by the AHJ in each tent or other permanent or temporary structure used for selling fireworks.

C. No loose combustible material shall be permitted within any tent or other permanent or temporary structure used for selling fireworks.

D. All fireworks vendors shall provide to all purchasers of fireworks a safety-tips handout containing at a minimum the following information: "In order to ensure that you and your family have a

safe holiday, the state fire board and the fire marshal offer the following safety tips.

(1) ALWAYS read and follow label directions.

(2) ALWAYS have an adult present when handling fireworks.

(3) ALWAYS buy from a reliable fireworks vendor.

(4) ALWAYS ignite fireworks outdoors.

(5) ALWAYS have water handy.

(6) ALWAYS light one fire-

works at a time.

(7) ALWAYS store fireworks in a cool, dry place.

(8) ALWAYS dispose of fireworks properly.

(9) NEVER re-ignite malfunctioning fireworks.

(10) NEVER give fireworks to small children.

(11) NEVER experiment with or attempt to make your own fireworks.

(12) NEVER throw fireworks at another person.

(13) NEVER carry fireworks in your pockets.

(14) NEVER shoot fireworks in metal or glass containers."

[10.25.6.12 NMAC - N, 11-15-07]

HISTORY OF 10.25.6 NMAC:

Pre-NMAC History: The material in this rule was originally filed with the commission of public records, state records center and archives as:

FM 81-1, Handling and Possession of Fireworks Bulletin, filed 6/26/81.

An amended version of the rule may have been adopted by the State Fire Marshal effective 1/1/91, but it was never filed with the state records center in accordance with the State Rules Act.

History of Repealed Material:

10 NMAC 25.6, Safe Handling and Sale of Fireworks (filed 05/09/1997) repealed 11/15/2007.

Other History:

FM 81-1, Handling and Possession of Fireworks Bulletin (filed 6/26/81) was renumbered, reformatted, amended and replaced by 10 NMAC 25.6, Safe Handling and Sale of Fireworks, effective 6/9/1997.

10 NMAC 25.6, Safe Handling and Sale of Fireworks (filed 05/09/1997) was replaced by 10.25.6 NMAC, Safe Handling and Sale of Fireworks, effective 11/15/2007.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

**TITLE 13 INSURANCE
CHAPTER 9 LIFE INSURANCE
AND ANNUITIES
PART 17 MILITARY SALES
PRACTICES**

13.9.17.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission Insurance Division.
[13.9.17.1 NMAC - N, 1/1/08]

13.9.17.2 SCOPE: This rule shall apply to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States armed forces.
[13.9.17.2 NMAC - N, 1/1/08]

13.9.17.3 STATUTORY AUTHORITY: Sections 59A-2-9, 59A-16-3, 59A-16-4, 59A-16-5 and 59A-16-15 NMSA 1978.
[13.9.17.3 NMAC - N, 1/1/08]

13.9.17.4 DURATION:
Permanent.
[13.9.17.4 NMAC - N, 1/1/08]

13.9.17.5 EFFECTIVE DATE:
January 1, 2008 unless a later date is cited at the end of a section.
[13.9.17.5 NMAC - N, 1/1/08]

13.9.17.6 OBJECTIVE: The objective of this rule is to set forth standards to protect active duty service members of the United States armed forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.
[13.9.17.6 NMAC - N, 1/1/08]

13.9.17.7 DEFINITIONS:

A. Active Duty means full-time duty in the active military service of the United States and includes members of the reserve component, national guard and reserve, while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

B. DoD means department of defense.

C. DoD personnel means all active duty service members and all civilian employees, including nonappropriated fund employees and special govern-

ment employees, of the department of defense.

D. **Door to door** means a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.

E. **General advertisement** means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

F. **Insurer** means an insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.

G. **Insurance producer** means a person required to be licensed under the laws of this state to sell, solicit or negotiate life insurance, including annuities.

H. **IRC** means the Internal Revenue Code.

I. **Known or knowingly** means, depending on its use herein, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited is a service member.

J. **Life insurance**, as used in 13.9.17 NMAC, means insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and unless otherwise specifically excluded, includes individually issued annuities.

K. **Military installation** means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

L. **MyPay** means the defense finance and accounting service web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

M. **Service member** means any active duty officer, commissioned and warrant, or enlisted member of the United States armed forces.

N. **SGLI** means service-members' group life insurance.

O. **Side fund** means a fund or reserve that is part of or otherwise attached to a life insurance policy, excluding individually issued annuities, by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means. The term does

not include:

(1) accumulated value or cash value or secondary guarantees provided by a universal life policy;

(2) cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or

(3) a premium deposit fund which:

(a) contains only premiums paid in advance which accumulate at interest;

(b) imposes no penalty for withdrawal;

(c) does not permit funding beyond future required premiums;

(d) is not marketed or intended as an investment; and

(e) does not carry a commission, either paid or calculated.

P. **Specific appointment** means a prearranged appointment agreed upon by both parties and definite as to place and time.

Q. **United States armed forces** means all components of the army, navy, air force, marine corps, and coast guard.

R. **VGLI** means veterans' group life insurance.

[13.9.17.7 NMAC - N, 1/1/08]

13.9.17.8 EXEMPTIONS:

A. This rule shall not apply to solicitations or sales involving:

(1) credit insurance;

(2) group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;

(3) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the superintendent of insurance; or, when a term conversion privilege is exercised among corporate affiliates;

(4) individual stand-alone health policies, including disability income policies;

(5) contracts offered by SGLI or VGLI as authorized by 38 U.S.C. Section 1965 et seq;

(6) life insurance contracts offered through or by a non-profit military association, qualifying under Section 501 (c) (23) of the IRC, and which are not underwritten by an insurer; or

(7) contracts used to fund:

(a) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act;

(b) a plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the IRC, as amended, if established or maintained by an employer;

(c) a government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

(d) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) prearranged funeral contracts.

B. Nothing herein shall be construed to abrogate the ability of nonprofit organizations or other organizations to educate members of the United States Armed forces in accordance with DoD instruction 1344.07 - personal commercial solicitation on DoD installations or successor directive.

C. For purposes of this rule, general advertisements, direct mail and internet marketing shall not constitute "solicitation." Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in Subsection C of 13.9.17.8 NMAC shall be construed to exempt an insurer or insurance producer from 13.9.17 NMAC in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in Subsection C of 13.9.17.8 NMAC.

[13.9.17.8 NMAC - N, 1/1/08]

13.9.17.9 PRACTICES DECLARED FALSE, MISLEADING, DECEPTIVE OR UNFAIR ON A MILITARY INSTALLATION:

A. The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive or unfair:

(1) knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser.

(2) soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary.

(3) knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

(4) making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation.

(5) soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.

(6) posting unauthorized bulletins, notices or advertisements.

(7) failing to present DD form 2885, personal commercial solicitation evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD form 2885.

(8) knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States armed forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the armed forces.

B. The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(1) using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members; or

(2) using an insurance producer to participate in any United States armed forces sponsored education or orientation program.

[13.9.17.9 NMAC - N, 1/1/08]

13.9.17.10 CORRUPT PRACTICES, IMPROPER INFLUENCES OR INDUCEMENTS REGARDLESS OF LOCATION: The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

A. submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States armed forces to direct a service member's pay to a third party for the purchase of life insurance; the foregoing includes, but is not limited to, using or assisting in using a service member's MyPay account or other similar internet or electronic medium for such purposes;

Subsection A of 13.9.17.10 NMAC does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form;

B. knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship; for purposes of 13.9.17.10 NMAC, a formal banking relationship is established when the depository institution:

(1) provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. § 4301 et seq. and the regulations promulgated thereunder; and

(2) permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums;

C. employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's leave and earnings statement or equivalent or successor form as "savings" or "checking" and where the service member has no formal banking relationship as defined in Paragraph (2) of Subsection A of 13.9.17.7 NMAC;

D. entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship;

E. using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel;

F. offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member;

G. knowingly offering or giving anything of value to a service member for his or her attendance to any event where an application for life insurance is solicited; or

H. advising a service member to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

[13.9.17.10 NMAC - N, 1/1/08]

13.9.17.11 ACTS OR PRACTICES THAT LEAD TO CONFUSION REGARDLESS OF LOCATION:

A. The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair:

(1) making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the United States government, the United States armed forces, or any state or federal agency or government entity; examples of prohibited insurance producer titles include, but are not limited to, "battalion insurance counselor," "unit insurance advisor," "service members' group life insurance conversion consultant" or "veteran's benefits counselor;" or

(2) soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the United States government, or the United States armed forces.

B. Nothing in 13.9.17.11 NMAC shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to, chartered life underwriter, chartered financial consultant, certified financial planner, master of science in financial services, or masters of science financial planning.

C. The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair:

(1) using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid; or

(2) excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

[13.9.17.11 NMAC - N, 1/1/08]

13.9.17.12 OTHER ACTS OR PRACTICES REGARDLESS OF LOCATION:

A. The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive or unfair:

(1) making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading or deceptive;

(2) making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading or deceptive; or

(3) suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States armed forces.

B. The following acts or practices by an insurer and or insurance producer regarding disclosure are declared to be false, misleading, deceptive or unfair:

(1) deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance;

(2) failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;

(3) excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;

(4) failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the Military Personnel Financial Services Protection Act, Pub. L. No. 109-290; or

(5) excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

(a) an explanation of any free look period with instructions on how to cancel if a policy is issued; and

(b) either a copy of the application or a written disclosure; the copy of the application or the written disclosure shall

clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost; a basic illustration that meets the requirements of 13.9.5 NMAC, Life Insurance Disclosure and 13.9.14 NMAC, Life Insurance Illustrations shall be deemed sufficient to meet this requirement for a written disclosure.

[13.9.17.12 NMAC - N, 1/1/08]

13.9.17.13 ACTS OR PRACTICES REGARDING DISCLOSURE REGARDLESS OF LOCATION:

The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

A. excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable;

B. offering for sale or selling a life insurance product which includes a side fund to a service member who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance:

(1) "insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents;

(2) "other military survivor benefits" include, but are not limited to: the death gratuity, funeral reimbursement, transition assistance, survivor and dependents' educational assistance, dependency and indemnity compensation, "TRICARE" healthcare benefits, survivor housing benefits and allowances, federal income tax forgiveness, and social security survivor benefits;

C. excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

(1) unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(2) unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product; for this disclosure, the effective rate of return will consider all premi-

ums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage; this schedule will be provided for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

(3) which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due;

D. excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance, Section 59A-20-31 NMSA 1978; or

E. selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, e.g., double indemnity, which may be excluded.

[13.9.17.13 NMAC - N, 1/1/08]

HISTORY OF 13.9.17 NMAC:
[RESERVED]**NEW MEXICO
DEPARTMENT OF PUBLIC
SAFETY****TRAINING AND RECRUITING
DIVISION****Law Enforcement Academy**

This is an amendment to 10.29.7 NMAC Section 8, effective November 15, 2007.

10.29.7.8 2008-2009 IN-SERVICE TRAINING CYCLE FOR LAW ENFORCEMENT OFFICERS

A. All New Mexico certified law enforcement officers shall receive a minimum of forty (40) hours of training bi-annually.

(1) A minimum of four (4) hours shall be in safe pursuit pursuant to Section 29-20-3 NMSA 1978.

(2) A minimum of one (1) hour shall be in domestic abuse incident training pursuant to Section 29-7-4.1 NMSA 1978.

(3) A minimum of two (2) hours shall be in the detection, investigation and reporting of a crime motivated by hate pursuant to Section 31-18B-5 NMSA 1978.

(4) For all officers who may be involved in the arrest of DWI offenders as a normal part of their duties, eight (8) hours shall be in NHTSA approved standardized field sobriety testing (SFST) protocols.

(5) A minimum of four (4) hours shall be in ensuring child safety upon arrest pursuant to the Law Enforcement Training Act and Criminal Procedure Act.

(6) ~~Eight (8)~~ Four (4) hours of academy approved firearms training. This curriculum will include; safety briefing, fundamentals of marksmanship, shooting on the move, shooting from barricade/vehicle positions (standing, kneeling and prone, weak and strong side), malfunction clearances, reloading (tactical and speed), engaging multiple adversaries, decisional shooting, one handed (strong and weak side) malfunction clearances and reloading, weapons retention/disengagement shooting, and shooting with flashlight techniques. This training shall be divided into ~~four (4)~~ two (2) hours of day and ~~four (4)~~ two (2) hours of night training. This training can include the use of simunition, airsoft or other "force-on-force" training equipment that utilizes realistic police weapons firing non-lethal munitions such as marking cartridges or pellets.

(7) Remaining hours may be in maintenance or advanced areas.

B. Required training may be received through the following means.

(1) The advanced training bureau will contract for course instruction at the regional training sites.

(2) Where scheduling will allow, the training and recruiting division will assign staff to instruct the course at the regional training sites.

(3) Curriculum developed by the training and recruiting division will be provided to individual agencies upon request for their own certified instructors to present to their officers, provided the instructor is qualified in the subject matter.

(4) The training and recruiting division will provide instructional video tapes which can be loaned to agencies. Agency instructors or facilitators will conduct the training using the same guidelines for other video training. Facilitator guidelines and exams will accompany the video tape.

(5) Individual agencies develop curriculum for review and approval (accreditation) by the academy which meets the criteria established by the board.

C. This five-pronged approach gives all agencies the flexibility they need to address individual training needs. It also allows the board to implement a planned program of in-service training that is responsive to the changing demands placed upon law enforcement and the opportunity to have statewide consistency in certain critical areas.

D. Implementation is to begin on January 1, 2008.

E. Officers obtaining certification between January 1, 2008 and

December 31, 2008, will be required to obtain one-half of the in-service training requirements. Officers obtaining certification between January 1, 2009, and December 31, 2009, will be required to meet the next two-year requirement which will go into effect on January 1, 2010. This policy will apply in subsequent two-year cycles. Officers transferring from one agency to another will carry with them the responsibility for in-service training.

[1/30/93, 12/15/93, 1/17/94, 12/7/95, 10/1/97, 1/1/98, 1/1/00; 10.29.7.8 NMAC - Rn, 10 NMAC 29.7.8, 7/1/01; A, 1/1/02; A, 6/14/02; A, 01/01/04; A, 04/15/04; A, 12/30/05; A, 12/14/06; A, 10/31/07; A, 11/15/07]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2007

Volume XVIII	Submittal Deadline	Publication Date
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

2008

Volume XIX	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 29
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 16
Issue Number 12	June 17	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 14
Issue Number 16	August 15	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 14
Issue Number 22	November 17	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.