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

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New Mexico Register

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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.

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Notices of Rulemaking and Proposed Rules

NEW MEXICO LIVESTOCK BOARD

NEW MEXICO LIVESTOCK BOARD

NOTICE OF RULEMAKING AND ADOPTION OF RULE HEARING AND REGULAR BOARD MEETING

NOTICE IS HEREBY GIVEN that a rulemaking and adoption of rule hearing and a regular board meeting will be held on Thursday, December 3, 2009, in the Santa Fe Room at the Marriott Pyramid North Hotel on I-25 and Paseo Del Norte, Albuquerque, New Mexico at 9:00 a.m. The Board will adopt rules regarding telephonic meetings, bovine trichomoniasis, health requirements for exhibition swine and other livestock and will update existing rules pertaining to livestock markets and facilities and discuss other matters of general business.

Copies of the rule can be obtained by contacting Myles C. Culbertson, Executive Director, New Mexico Livestock Board, 300 San Mateo NE Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161. Copies of the agenda may be obtained at New Mexico Livestock Board office or by calling (505) 841-6161.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs at least five days prior to the meeting.

NEW MEXICO STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Santa Fe, New Mexico on Friday, January 22, 2010. The hearing will be held during the Board's regular business meeting beginning at 8:00 a.m., at the State Personnel Office, Willie Ortiz Building at 2600 Cerrillos Road, Santa Fe, New Mexico 87505.

The purpose of the Rule Hearing is to consider repealing existing SPB Rule and Regulation 1.7.8 NMAC Drug and Alcohol Abuse and replace it with a proposed new 1.7.8 NMAC Drug and Alcohol Abuse rule.

A final agenda for the board meeting will be available at the Board office on January 8, 2010.

Persons desiring to present their views on the proposed changes may appear in person at said time and place or may submit written comments no later than 5:00 p.m. December 30, 2009, to the Board office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico, 87505, attention, Ken Giles. A copy of the proposed rule is available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at www.spo.state.nm.us/ beginning December 1, 2009.

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 the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Director if a summary or other type of accessible format is needed.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, December 8, 2009, at 9:30 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. Pursuant to the New Mexico Open Meetings Act, Section 10-15-1(H)(2) NMSA 1978, a portion of the meeting may be closed to discuss a limited personnel matter. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette Solano at 476-7902 by November 30, 2009. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

The Commission of Public Records may consider the following items of rulemaking at the meeting:

Amendments
1.17.244 NMAC J R R D S , Bernalillo County Metropolitan Court
1.18.631 NMAC E R R D S , Department Of Workforce Solutions
1.18.690 NMAC E R R D S , Children, Youth and Families Department

Repeal
1.18.765 NMAC E R R D S , Juvenile Parole Board

New-Replacement
1.18.765 NMAC E R R D S , Juvenile Public Safety Advisory Board

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:

Gross Receipts and Compensating Tax Act
3.2.201.13 NMAC Section 7-9-43 NMSA 1978
(Multijurisdictional Uniform Sales and Use Tax Certificates)
3.2.201.19 NMAC Section 7-9-43 NMSA 1978
(Border States Uniform Sale for Resale Certificate)

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

Gross Receipts and Compensating Tax Act
3.2.212.27 NMAC Section 7-9-54 NMSA 1978
(Sale of Gases)
3.2.218.13 NMAC Section 7-9-60 NMSA 1978
(Sale of Gases)

These proposals were placed on file in the Office of the Secretary on November 16, 2009. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about January 29, 2010.

A public hearing will be held on these proposals on Wednesday, January 6, 2010, 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 January 6, 2010.

3.2.201.13 **MULTIJURISDICTIONAL UNIFORM SALES AND USE TAX CERTIFICATES:**

A. The department deems the uniform sales and use tax certificate issued by the multistate tax commission or by any member state other than New Mexico to a taxpayer not required to be registered in New Mexico to be a nontaxable transaction certificate (nttc) equivalent to [~~a type 1 or a type 2 nttc, as appropriate, issued by the department~~] those nttc types issued by the department to support the deductions under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978. [~~The department will accept~~] As evidence of the deductibility of a specific transaction authorized under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978 the department will accept the multistate tax commission uniform sales and use tax certificate only in those situations in which possession of a properly executed [~~type 1 or type 2~~] nttc is acceptable evidence of the deductibility of the transaction. [~~and the~~] The uniform sales and use tax certificate is issued by the multistate tax commission or a member state other than New Mexico to a taxpayer not required to be registered in New Mexico.

B. No certificate or other document from any other state or taxing jurisdiction is acceptable evidence under 3.2.201.13 NMAC.

[~~C. This version of Section 3.2.201.13 NMAC applies to transactions occurring on or after July 1, 1998.~~]

[3/10/87, 11/26/90, 3/15/96, 9/30/98, 4/30/99; 3.2.201.13 NMAC – Rn, 3 NMAC 2.43.1.13 & A, 5/31/01; A, XXX]

3.2.201.19 **BORDER STATES UNIFORM SALE FOR RESALE CERTIFICATE:**

A. For transactions specified below, the department deems a border states uniform sale for resale certificate issued by a border state other than New Mexico to a taxpayer not required to be registered in New Mexico to be a nontaxable transaction certificate (nttc) equivalent to [~~a type 1 or type 2 nttc, as appropriate, issued by the department~~] those nttc types issued by the department that support the deductions under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978. The department will accept the border states uniform sale for resale certificate as evidence of the deductibility of a specific transaction [~~, the border states uniform sale for resale certificate~~] authorized under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978, only when the following conditions exist:

(1) the buyer is purchasing tangible personal property for resale or incorporation as an ingredient or component part into a manufactured product in the ordinary course of the buyer's business or the buyer is purchasing a manufacturing service on a manufactured product or ingredient or component part thereof;

(2) the tangible personal property purchased or the product, or ingredient or component part thereof, upon which the manufacturing service is performed is to be transported across state or national boundaries; and

(3) the buyer is located in the northern border region or in a border state other than New Mexico.

B. No other certificate or document from any other state or taxing jurisdiction is acceptable evidence under Section 3.2.201.19 NMAC.

C. For the purposes of Section 3.2.201.19 NMAC:

(1) "border state" means Arizona, California, New Mexico and Texas and any other state joining the border states caucus subsequent to January 1, 1996; and

(2) "northern border region" means:

(a) the border strip of 20 kilometers parallel, north and south, to the international dividing line between the United Mexican States and the United States of America;

(b) all territory of the lower California states, south lower California and Quintana Roo, the municipality of Cananea, Sonora and part of the state of Sonora as delimited by the border states caucus; and

(c) any additional territory of the United Mexican States incorporated into the definition by the border states caucus subsequent to January 1, 1996.

D. Section 3.2.201.19 NMAC is retroactively applicable to taxable events occurring on or after January 1, 1996.

[3/15/96, 9/30/98, 12/15/99; 3.2.201.19 NMAC - Rn, 3 NMAC 2.43.1.19 & A, 5/31/01; A, XXX]

3.2.212.27 **SALE OF GASES:** Gases, such as natural gas, nitrogen, carbon dioxide, helium, propane, oxygen, acetylene and nitrous oxide, are tangible personal property. Therefore receipts from selling gases to a governmental agency may be deducted from gross receipts under Section 7-9-54 NMSA 1978.

[3.2.212.27 NMAC - N, XXX]

3.2.218.13 **SALE OF GASES:** Gases, such as natural gas, nitrogen, carbon dioxide, helium, oxygen, propane, acetylene and nitrous oxide, are tangible personal property. Therefore receipts from selling gases to a 501(c)(3) organization may be deducted from gross receipts under Section 7-9-60 NMSA 1978 if the organization delivers a properly executed nttc to the seller.

[3.2.218.13 NMAC - N, XXX]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

NOTICE OF RULEMAKING AND REQUEST FOR PUBLIC COMMENT

Notice is hereby given that the Workers' Compensation Administration (WCA) will amend Part 4 of the WCA Rules to amend the process by which lump sum settlements are requested. Public comment will also be accepted on three proposed lump sum settlement forms and an amended application to WCJ. The WCA will also amend Part 3 of the WCA Rules to increase the mileage reimbursement rate to $.40. Notice is further given that the pilot project bringing the Uninsured Employers' Fund eligibility determination into the mediation process governed by NMSA 1978, §52-5-5, is hereby made permanent. A public hearing will not be held. The proposed rule change will be available on November 3, 2009. Written comments will be accepted until the close of business on December 3, 2009. The rule and forms will become effective December 31, 2009. Please submit written comments to: Director Glenn R. Smith, Workers' Compensation Administration, c/o General Counsel Office, Post Office Box 27198, Albuquerque, New Mexico 87125-7198.

For further information call (505) 841-6083. For copies of the proposed rule and forms, please refer to the WCA website at: www.workerscomp.state.nm.us.

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 7.6.2 NMAC, Sections 7 and 8, addition of new material in Section 16 and renumber of material from 16 to 17, effective January 1, 2010.

7.6.2.7 DEFINITIONS:

A. "Approved" means acceptable to the Secretary based on determinations of conformance with appropriate standards and good public health practices and applicable state and federal laws.

B. "Bed and breakfast establishment" means a lodging facility that offers a breakfast, which is included in the room rate, and the owner or manager is a permanent resident of the facility. The total number of people regularly served breakfast shall not exceed twenty-four, including overnight guests, residents and staff. For permitting purposes, the two types of bed and breakfast establishments are continental-menu and expanded-menu.

C. "Caterer" means a food establishment, other than a mobile unit, which may prepare or serve food at locations other than on the premises of the permitted food establishment. Catering does not include operations that only deliver foods such as pizza delivery.

D. "Closed" means fitted together snugly leaving no openings larger than 1/16 inch.

E. "Commissary" means a permitted catering establishment, restaurant, or any food establishment in which food, food containers or food supplies are kept, handled, prepared, packaged or stored from which meals are catered and mobile food service units or pushcarts are serviced.

F. "Continental-menu bed and breakfast" means a bed and breakfast establishment that serves only a continental-style breakfast. An afternoon snack consisting only of commercially-prepared, non-potentially hazardous foods is also allowed.

G. "Corrosion-resistant material" means a material that maintains its original surface characteristics under prolonged influence of the food, cleaning compounds, and sanitizing solutions that may contact it.

H. "Critical control point" means any point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

I. "Cross-contamination" means the contamination or potential contamination of food by contact with potentially hazardous foods or substances (such as blood from raw meat), or by contact with unsanitized surfaces or unwashed hands.

J. "Easily cleanable" means readily accessible and of such material and finish, and so fabricated that residue may be effectively removed by normal cleaning methods.

K. "Employee" means any individual who works in a food establishment and who:

(1) transports food or food containers;

(2) handles food during storage, preparation or serving;

(3) comes in contact with any utensils;

(4) works in a room in which food is stored, prepared or served; or

(5) is responsible for directing food handling operations or supervises other employees.

L. "Embargo" means an order of prohibition issued by the secretary to prevent the movement and/or sale of food products which are suspected or known to be adulterated or do not meet appropriate health or legal standards.

M. "Equipment" means all stoves, ranges, hoods, meat blocks, tables, counters, refrigerators, sinks, dishwashing machines, steam tables, and similar items, other than utensils, used in the operation of a food establishment.

N. "Expanded-menu bed and breakfast" means a bed and breakfast establishment that is inspected and permitted to prepare and serve potentially hazardous foods to the clientele for breakfast and light foods or snacks in the afternoon for guest self-service.

O. "Food" means any solid or liquid substance intended for human consumption by eating or drinking.

P. "Food-contact surfaces" means those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces with which food may come in contact and drain back onto surfaces normally in contact with food.

Q. "Food establishment" means a food processing establishment, <u>home-based food processing operation,</u> or a food service establishment.

R. "Food processing establishment" means any food establishment (other than a "dairy establishment" as defined in the New Mexico Food Act) where food is processed in a sealed original package for human consumption and is not provided directly to the consumer.

S. "Food service establishment" means:

(1) any fixed or mobile place where food is served or sold for consumption on the premises;

(2) any fixed or mobile place where food is prepared for sale to or consumption by the general public either on or off the premises, including any place (other than a "dairy establishment" as defined in the New Mexico Food Act) where food is processed for ultimate sale in a sealed original package; but "prepared" as used in this paragraph does not include the preparation of raw fruits, vegetables or pure honey for display and sale in a grocery store or similar operations or reheating of packaged food for sale in a retail store, and for purposes of this paragraph, "pure honey" means natural liquid or solid honey, extracted from the combs or in the comb, taken from beehives, with no processing or additional ingredients; or

(3) any meat market, whether or not operated in conjunction with a grocery store.

T. "Frozen food" means food that is in a frozen state.

U. "General public" means all individuals who have access to facilities that sell or serve food, including, but not limited to, beneficiaries of governmental or private charitable feeding programs and residents and employees of institutions that provide meals to their residents or employees either with or without direct payment to the institution by the residents or employees, **but does not include**:

(1) residents of private homes or home environments where residents take part in preparing or serving their own meals;

(2) non-paying guests in private homes;

(3) clients of facilities operated in private homes that are licensed by or registered with the department of health, or the department of children, youth and families; or

(4) participants in a pot-luck dinner, covered dish supper, or similar event in which the food is prepared and/or contributed by the participants and for which no fee is charged.

V. "HACCP" means hazard analysis critical control point.

W. "Hazard" means the unacceptable contamination of foods by any foreign materials, chemical agents, or the growth or survival of pathogenic or spoilage microorganisms in processed or prepared foods and/or the unacceptable production or persistence in foods of toxins produced by such microorganisms.

X. "Hazard analysis" means an evaluation of all procedures concerned with the production, distribution, and use of raw materials and food products to:

(1) identify potentially hazardous raw materials and foods that may contain poisonous substances, foreign materials, pathogens, or large numbers of food spoilage microorganisms, and/or that can support microbial growth;

(2) find sources and specific points of contamination by observing each step in the food preparation process; and

(3) determine the potential for microorganisms to survive or multiply during production, processing, distribution, storage, or preparation of food for consumption.

Y. "Hazard analysis critical control point" means an inspectional or quality assurance method that consists of:

(1) an assessment of hazards associated with growing, harvesting, processing/manufacturing, marketing, preparation and/or use of a given raw material or food product;

(2) determination of critical control points required to control any identified hazard(s); and

(3) establishment of procedures to evaluate, monitor and record critical control points.

Z. "Health authority" means the New Mexico environment department.

AA. "Highly susceptible population" means a group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day care center.

BB. "Home prepared foods" means foods that have not been processed in a commercial food establishment and are not prepared by a permitted home-based food processing operation.

CC. "Home-based food processing operation" means any business in which a residential kitchen is permitted to be used to process food not classified as potentially hazardous in a sealed original package for human consumption and is offered directly to the consumer.

[~~CC~~]DD. "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation.

[~~DD~~]EE. "Mobile food service unit" means a motor vehicle department-licensed vehicle-mounted food service establishment designed to be readily movable and which serves multiple locations on a daily basis for not more than two (2) hours at each location and not less than one thousand (1000) feet apart, except for single, temporary events or celebrations.

[~~EE~~]FF. "Monitoring" means the checking or verifying that the processing or handling procedures at the critical control points are properly carried out.

[~~FF~~]GG. "Perishable food" means any food of such type or in such condition as may spoil and become unwholesome.

[~~GG~~]HH. "Permittee" means the person responsible for the operation of the food establishment for which the permit is issued.

[~~HH~~]II. "Person" means an individual or any other legal entity.

[~~II~~]JJ. "pH" refers to the hydrogen ion concentration within any solid or liquid medium and is a measurement of the degree of acidity or alkalinity of a food or food product.

[~~JJ~~]**KK. "Potentially hazardous food"** means:

(1) any food or food ingredient, natural or synthetic, that is capable of supporting:

(a) the rapid and progressive growth of infectious or toxicogenic microorganisms; or

(b) the growth and toxin production of "clostridium botulinum"; or

(2) all raw or heat-treated foods of animal origin, heat-treated foods of plant origin, and raw seed sprouts, unless they:

(a) have a water activity (a_w)value of 0.85 or below; or

(b) have a pH of 4.60 or below; or

(c) have been commercially processed by an approved method and remain in their unopened hermetically sealed containers.

[~~KK~~]LL. "Premises" means all areas either indoors or outdoors used in conjunction with the operation of a food establishment.

[~~LL~~]MM. "Product thermometer" means a thermometer, thermocouple, thermistor, or other device that, when the sensor is inserted into food, indicates the internal temperature of the food, but does not include non-product or ambient temperature sensing devices.

[~~MM~~]NN. "Pushcart" means a human propelled, self-contained food service establishment that operates at approved locations for no more than two (2) hours, except for single temporary events or celebrations. It is limited to the preparation and serving of hot dogs or commercially prepared, prepackaged, potentially hazardous foods such as burritos and tamales, served in their original packaging, maintained at safe temperatures, or limited to serving non-potentially hazardous foods.

[~~NN~~]OO. "Recall" means a return of food products that are either known or suspected to be adulterated, misbranded, or otherwise unsafe for human consumption to the manufacturer or distributor, or are disposed of onsite by approved methods.

[~~OO~~]PP. "Refuse containers" means any type of receptacle that is used inside the food establishment to store refuse, including but not limited to trash, garbage and food waste.

[~~PP~~]QQ. "Refuse bins" means any type of receptacle that is used outside the food establishment to store refuse for later removal.

[~~QQ~~]RR. "Remodeled" means any changes involving structure or location of walls, openings, floors or counters, or replacement or modification of plumbing, mechanical or electrical components other than fixtures.

[~~RR~~]SS. "Revocation" means the permanent removal of a permit to operate a food establishment after a hearing has been held.

[~~SS~~]TT. "Safe temperatures" as applied to potentially hazardous food, means temperatures of 41 degrees F or below and 140 degrees F or above.

[~~TT~~]UU. "Sanitize" means effective treatment of clean, food-contact surfaces of equipment and utensils by a process which has been either specified by this part or approved by the secretary as being effective in destroying microorganisms, including pathogens.

[~~UU~~]VV. "Sealed" means free of cracks or other openings which permit the entry or passage of moisture.

[~~VV~~]WW. "Seasonal food establishment" means any food establishment that operates for more than thirty (30) days, but not more than nine (9) months during any twelve (12) consecutive months.

[~~WW~~]XX. "Secretary" means the secretary of environment or a designated representative.

[~~XX~~]YY. "Self-contained mobile food service unit" means a mobile food service establishment that meets all equipment requirements of this part with the exception of **7.6.2.10.B(1) NMAC.**

[~~YY~~]ZZ. "Single-service articles" means cups, chopsticks, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-person use and then discarded.

[~~ZZ~~]AAA. "Sulfiting agents" means sulfur dioxide or any chemical that produces sulfur dioxide when used to treat foods, including:

(1) sodium sulfite;

(2) sodium bisulfite;

(3) potassium bisulfite;

(4) sodium metabisulfite; and

(5) potassium metabisulfite.

[~~A A A~~] B B B .

"Suspension" means the temporary removal of a permit to operate a food establishment.

[~~BBB~~]CCC. "Temporary food service establishment" means a food service establishment operating at a fixed location in conjunction with a single event or celebration for a period not exceeding the length of the event or celebration, or thirty days, whichever is shorter.

[~~CCC~~]DDD. "Toxic material" means any substance or product that can cause a deleterious effect when ingested or contacted, including, but not limited to, cleaning compounds, bactericides, and insecticides.

[~~DDD~~]EEE. "Utensil" means any implement used in the storage, processing, preparation, transportation, service or consumption of food.

[~~E E E~~] F F F .

"Warewashing" means the cleaning and sanitizing of utensils and food-contact surfaces of equipment.

[~~FFF~~]GGG. "Water activity (aw)" refers to the amount of free moisture present in a food or food product.

[~~GGG~~]HHH. "Wet storage of food" refers to food which may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, container or its positioning in ice or water.

[~~H H H~~] I I I .

"Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

[7.6.2.7 NMAC - Rp, 7 NMAC 6.1.103, 08/12/2000; A, 01/01/2010]

7.6.2.8 GENERAL PROVISIONS AND PROCEDURES:

A. Plan Review:

(1) The plan review applicant for a new or remodeled food establishment shall submit plans and specifications for evaluation and approval by the health authority thirty (30) days prior to start of construction. Plans and specifications shall be submitted thirty (30) days prior to the opening of an existing facility by a new permittee where current plans and specifications are not on file with the health authority.

(2) Plans and specifications shall include, but are not limited to, major menu items, anticipated volume of food to be prepared, served or sold and detailed information on refrigeration, cooking, hot-holding and warewashing equipment to determine adequacy of such equipment to meet requirements outlined in **7.6.2.9 NMAC**. If for any reason, the plans and specifications as originally specified are to be altered or changed, the health authority shall be contacted prior to making any changes or alterations. Plans and specifications for food processing establishments shall include all information required by **7.6.2.12.G NMAC**.

B. Permits: Issuance, Expiration And Renewal:

(1) No person shall operate a food establishment without a current permit. Permits are not transferable from person to person or from location to location.

(2) Prior to the issuance of any permit or the renewal of an annual permit, the health authority shall make inspections of the food establishment as it deems necessary, and the person in charge should be able to demonstrate knowledge of food operations as contained in this part (**7.6.2 NMAC**). For a new establishment, a permit fee submittal form with the fee required by **7.6.2.8.K NMAC** shall be provided to the health authority at the time of the final pre-opening inspection when approval-to-open is granted.

(3) Any person seeking an initial permit or applying for a new permit after a permit revocation shall file a written application with the health authority. The application shall:

(a) be made on forms furnished by the health authority;

(b) state the applicant's name, mailing address, and telephone number;

(c) state the date of the application and anticipated opening date;

(d) state the name and location of the food establishment;

(e) state that a copy of this part (**7.6.2 NMAC**) has been received from the health authority;

(f) contain the health authority's evaluations of all plans and specifications as required in **7.6.2.8.A NMAC;**

(g) include any variances or grandfathered equipment which does not meet the requirements of **7.6.2.10.A(8) NMAC**;

(h) include the vehicle identification number (VIN), New Mexico license plate numbers and approved commissary locations for mobile food service units; and

(i) be signed by the applicant or the applicant's representative.

(4) The health authority shall either grant the permit, grant the permit subject to conditions, deny the permit, or restrict the permit to menu items or process as specified within:

(a) thirty (30) days after final facility inspection has been completed, for an annual permit; or

(b) ten (10) days after the filing of a permit application, for a temporary permit.

(5) The health authority may deny any application for a permit if it deems that the operation of the food establishment will not comply with:

(a) the Food Service Sanitation Act, Chapter 25, Article 1 NMSA 1978;

(b) the New Mexico Food Act, Chapter 25, Article 2 NMSA 1978; or

(c) any applicable provision of this part (**7.6.2 NMAC**).

(6) If the health authority denies a permit, grants a permit subject to conditions, or restricts a permit, the health authority shall notify the applicant by certified mail of the action taken and the reasons for that action.

(7) Each permit issued by the health authority shall include an expiration date.

(a) The expiration date for an annual permit shall be:

(i) June 30 of each year, for any permit issued or renewed prior to January 1, 1993, provided the permit is renewed annually as provided in **7.6.2.8.B(10) NMAC** and has not been revoked; or

(ii) the last day of the anniversary month of the date of original issue, provided the permit is renewed annually as provided in **7.6.2.8.B(10)**, for any permit issued on or after January 1, 1993.

(b) The expiration date for a temporary permit shall be the earlier of:

(i) the last day of the event in conjunction with which the temporary food service establishment is operated; or

(ii) thirty (30) days after the date of issue.

(8) If the applicant is dissatisfied with the action taken by the health authority, the applicant may request a hearing before the secretary. The request must be made in writing to the secretary within fifteen (15) working days after the applicant has received notice of the health authority's action. Unless a timely request for a hearing is made, the decision of the health authority shall be final.

(9) Hearings before the secretary shall be conducted in accordance with **7.6.2.8.E NMAC** of this part. In the hearing the burden of proof shall be upon the applicant. Hearings shall be held within fifteen (15) working days after receipt of the request. The secretary shall notify the applicant by certified mail of the date, time and place of the hearing.

(10) Annual permits may be renewed upon submission of a renewal form provided by the health authority and payment of:

(a) the annual permit fee specified in **7.6.2.8.K NMAC**, if applicable, prior to the expiration date of the permit; or

(b) the annual permit fee specified in **7.6.2.8.K NMAC**, if applicable, plus

a penalty of twenty-five dollars ($25.00), regardless of whether a permit fee is required, within thirty (30) days after expiration of the permit.

(11) After expiration of an annual permit, the food establishment shall not be operated until a new permit is issued, unless the renewal form and annual permit fee, if applicable, were received by the health authority on or before the expiration date of the permit.

(12) If a permit is not renewed as provided in **7.6.2.8.B(10)** **NMAC**, no new permit shall be issued except upon submission of a new permit application and the applicant's compliance with all applicable provisions of **7.6.2.8.A&B NMAC** for a new food establishment.

(13) Permits for temporary food establishments shall be for use at a fixed location in conjunction with a single event or celebration for a period not exceeding the event or celebration, or thirty (30) days, whichever is shorter, and may not be renewed.

(14) Self-contained mobile food service units shall notify the health authority office of jurisdiction at least twenty four (24) hours before operating in any jurisdictional area of New Mexico other than that of the permitted address.

(15) The permit shall be posted in a conspicuous place within the food establishment where the general public can readily see it.

(16) Any food establishment that caters or otherwise serves food at locations other than on the primary premises of the permitted establishment shall do so only in compliance with this part (**7.6.2 NMAC**) The fact that catering or remote service operations will be conducted shall be indicated fully on the permit and the application for the food establishment. When a food establishment has an adjunct/ additional food catering business, each such business shall be permitted separately.

(17) A permittee shall be responsible for all food service operations conducted on the premises for which the permit is issued, except for any such operations conducted by another permittee who holds a valid permit for the same premises. Each permittee shall be responsible for any shared facilities or equipment.

(18) The issuance of a permit does not relieve any person operating a food establishment from the responsibility of complying with other laws, ordinances and regulations.

C. Permit Suspension And Revocation:

(1) Except as otherwise provided in **7.6.2.8.D** **NMAC**, the health authority may suspend or revoke a permit for a food establishment for repeated violations of:

(a) the Food Service Sanitation Act, Chapter 25, Article 1 NMSA 1978;

(b) the New Mexico Food Act, Chapter 25, Article 2 NMSA 1978; or

(c) any applicable provision of this part (**7.6.2 NMAC**).

(2) Not less than seven (7) working days prior to the suspension or revocation of a food service or food processor permit, the health authority shall notify the permittee by certified mail of the impending suspension or revocation and the reasons for suspension or revocation. The notice shall state the date, time and place where a hearing on the suspension or revocation will take place. Failure to appear shall result in immediate suspension/revocation as appropriate. The permittee of any temporary food service establishment may be notified of the impending suspension or revocation hearing immediately after the repeated violations are noted. Hearings for temporary food service establishments may be held as soon as practicable after such notification.

(3) Hearings shall be conducted by the secretary in accordance with **7.6.2.8.E** **NMAC**. In the hearing, the burden of establishing the violations shall rest upon the health authority. The permittee must then show why the permit should not be suspended or revoked.

(4) The suspension of a permit following a hearing shall not continue beyond the time that the conditions leading to the suspension cease to exist as determined by the health authority. The inspection to determine whether such conditions have been corrected must be at the request of the food establishment permittee. Training of staff and/or implementation of operating procedures to address those conditions that led to the suspension may be considered satisfactory evidence of compliance.

(5) Except as provided by **7.6.2.8.E(6) & 7.6.2.8.G(3) & 7.6.2.8.I(2)** **NMAC** revocation proceedings pursuant to **7.6.2.8.C(2)** **NMAC** shall not be undertaken unless a permittee's permit has previously been suspended for violations of a similar nature for which the health authority now proposes revocation. In all instances the revocation of a permit under this section shall require prior notice and hearing to the permittee.

(6) The health authority shall not consider the reapplication for a permit from a permittee whose permit has been revoked until:

(a) the permittee has successfully completed a course in Food Protection and Sanitation approved by the health authority;

(b) the permittee has demonstrated to the satisfaction of the health authority that the food establishment will comply with all requirements of this part; and specifically,

(c) all applicable conditions of **7.6.2.8.B(3)** **NMAC** have been met.

D. Immediate Suspension:

(1) Notwithstanding the provisions of **7.6.2.8.C** **NMAC**, the health authority may suspend a permit without prior notice to the permittee if the health authority determines, after inspection, that conditions within a food establishment covered by this part (**7.6.2 NMAC**), present a substantial danger of illness, serious physical harm, or death to persons who might patronize or be employed at the food establishment. Communication to the permittee or the permittee's designated agent, or in the absence of either, to any employee on the premises, is sufficient to make the suspension effective.

(2) No suspension taken under **7.6.2.8.D** **NMAC** shall continue beyond the time that the conditions causing the suspension cease to exist, as determined by an inspection by the health authority upon request of the permittee. The health authority shall conduct a requested inspection within three (3) working days of a verbal or written request.

(3) When suspension is ordered pursuant to **7.6.2.8.D** **NMAC**, the health authority shall inform the permittee that the health authority shall afford a hearing within seven (7) working days, upon request of the permittee. If such a request is received, the health authority shall notify the permittee, within two (2) working days after receipt of the request, of the date, time, and place of the hearing.

E. Hearings:

(1) Hearings shall be before the secretary.

(2) A record shall be made of each hearing, the cost of which shall be borne by the health authority. Those persons requesting transcripts shall pay transcript costs.

(3) In hearings, the Rules of Civil Procedure and the Rules of Evidence shall not apply, but the hearings shall be conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue repetition.

(4) The secretary shall allow the health authority and the affected food establishment permittee to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits and to cross-examine persons who testify.

(5) Action taken by the secretary shall be by written order within five (5) working days following the hearing. A copy of the order shall be sent by certified mail to the affected food establishment permittee. The order of the secretary shall state:

(a) the name and location of the affected food establishment;

(b) the date the order is made;

(c) the decision of the secretary;

(d) the reasons for the secretary's

decision;

(e) conditions, if any, under which the permittee may be allowed to continue operating; and

(f) failure of the permittee to adhere to conditions shall be grounds for suspension/revocation.

(6) Failure of the permittee or the permittee's designee to appear for the hearing shall result in immediate permit revocation and establishment closure.

F. Timeliness:

(1) When the last day for performing an act falls on Saturday, Sunday, or a legal state or national holiday, the performance of the act is timely if performed on the next day that is not a Saturday, Sunday, or a legal state or national holiday.

(2) All matters required to be filed or mailed in this part (**7.6.2 NMAC**) are timely if deposited in the United States mail on or before the required date.

G. Compliance With Regulations:

(1) An "approved" emblem shall be posted by the health authority at a food establishment that is operated in compliance with this part (**7.6.2 NMAC**).

(2) An "unsatisfactory" emblem may be posted by the health authority at a food establishment when:

(a) any of the following portions of this part (**7.6.2 NMAC**) are violated on any inspection:

(i) 7.6.2.9.A(1), (2), (3), (4), (6), (7), (8), (9), (10) NMAC;

(ii) 7.6.2.9.B(1), (3), (4), (5), (6), (7), (8), (9) NMAC;

(iii) 7.6.2.9.C(3), (4), (9), (11), (12), (14), (17) NMAC;

(iv) 7.6.2.9.D(3), (6), (13), (14), (17) NMAC;

(v) 7.6.2.9.F(1), (2), (3), (4), (5) NMAC;

(vi) 7.6.2.9.G(1), (4), (5), (6) NMAC;

(vii) 7.6.2.9.H(1), (2), (5) NMAC;

(viii) 7.6.2.9.I(1), (2), (3), (4) NMAC;

(ix) 7.6.2.9.J NMAC;

(x) 7.6.2.9.K(4) NMAC;

(xi) 7.6.2.10.B(1) NMAC; or

(b) any portion of this part (**7.6.2 NMAC**) is violated on a repeated basis.

(3) An emblem shall be posted in a conspicuous place at each entry to the food establishment where it can be readily seen by the general public and shall be posted or removed only by an authorized agent of the health authority. Removal, defacing, or obstruction of an emblem by any person other than an authorized agent of the health authority shall result in immediate permit suspension or revocation. Temporary food service establishments and food processing establishments shall be exempt from **7.6.2.8.G(3)** NMAC.

H. Procedures When Infection Is Suspected:

(1) When the health authority has reasonable cause to suspect possibility of disease transmission from any food establishment employee, the secretary shall secure the morbidity history of the suspected employee, or make other investigations as may be indicated, and take appropriate action including immediate permit suspension.

(2) No person who is infected with a disease in a communicable form that can be spread through food shall work in a food establishment. Such diseases would include but are not limited to salmonella, shigella, E. coli, or hepatitis A. Also excluded from working in a food establishment is anyone suffering symptoms of acute gastrointestinal illness. Such an individual shall not return to work until certified by a physician, in writing, to be infection-free and no longer considered a significant health risk.

(3) Employees engaged in food processing, preparation or service who have communicable forms of skin infections to include but not restricted to cuts, burns, abrasions, boils or bandages on the hands, forearms or face shall be temporarily excluded from work activities in which there is a likelihood of contaminating food or food contact surfaces, unless plastic or surgical gloves are utilized. Other moisture-proof barriers may be approved by the secretary.

(4) Refusal to comply with any provisions of **7.6.2.8.H** NMAC shall be grounds for immediate suspension of the permit.

I. Inspection By Health Authority:

(1) The health authority shall inspect food establishments at least annually to determine compliance with the Food Service Sanitation Act, the New Mexico Food Act if applicable, and this part (**7.6.2 NMAC**). Upon request by, and after proper identification of, the health authority official, the permittee shall allow the health authority official to enter and inspect all areas of the premises unhindered. Inspection may be done at any time, based upon health risk, and as often as deemed necessary by the health authority, to insure the safety of the public health. The health authority official shall be allowed to copy any records pertaining to food service and purchases by the food establishment. Proprietary documents shall not be released, and confidentiality will be protected by the health authority, as provided by law.

(2) The permittee or an authorized agent shall be given an opportunity to accompany the health authority official on inspection of the establishment and a report shall be furnished to the permittee or other employee as soon as possible after the inspection and prior to any enforcement action(s). Refusal to allow an inspection is grounds for immediate permit suspension or revocation.

(3) During an inspection, the health authority may take samples of food and other substances found on the premises for the purpose of determining compliance with provisions of the Food Service Sanitation Act, the New Mexico Food Act and this part (**7.6.2 NMAC**)

J. Variances:

(1) Any person seeking a variance from any provisions of this part shall do so by filing a written petition with the health authority. Petitions shall:

(a) be made on forms obtained from the health authority;

(b) state the petitioner's name and mailing address;

(c) state the name and location of the food establishment;

(d) state the date of the petition;

(e) state the portion of this part (**7.6.2 NMAC**) from which the variance is sought;

(f) state the period of time for which the variance is sought;

(g) state why the petitioner believes the variance is justified;

(h) be accompanied by any relevant documents or material that the petitioner believes would support the petition; and

(i) contain such other relevant information as the health authority may reasonably require, based upon widely recognized scientific information or technological advances.

(2) The health authority may grant a petitioner a variance from any requirement prescribed under this part when it is found, upon presentation of adequate proof, that the granting of the variance will not result in exposing employees, consumers, or the general public to adverse health and safety conditions arising from the operation of the food establishment. Any variance granted shall be for specific time periods and under conditions consistent with the reasons for the variance.

(3) Within ten (10) working days following receipt of the variance petition, the health authority shall grant the variance, grant the variance subject to conditions, or deny the variance. The action taken by the health authority shall be by written order, a copy of which shall be sent by certified mail to the petitioner. The order shall:

(a) state the petitioner's name and address;

(b) state the date the order is made;

(c) state the name and location of the food establishment;

(d) state the decision of the health authority;

(e) if a variance is granted, state the period of time for which it is granted and any conditions that apply; and

(f) state the reasons for the decision of the health authority.

(4) The health authority shall maintain a file of all orders issued. The file shall be open for public inspection in accordance with the provisions of law.

(5) Any person who is dissatisfied with the action taken by the health authority may request a hearing before the secretary.

(a) A request for hearing shall be filed with the secretary:

(i) by the petitioner within ten (10) working days after receipt of written notification of the action taken by the health authority; and

(ii) by any other person within ten (10) working days after the health authority's action.

(b) Unless a timely request for hearing is made, the decision of the health authority shall be final.

(6) If a timely request for hearing is made, the secretary shall hold a hearing within fifteen (15) working days after receipt of the request. The health authority shall notify the person requesting a hearing, by certified mail, of the date, time and place of the hearing. In the hearing, the burden of proof shall be upon the person requesting the hearing.

(7) In hearings, the Rules of Civil Procedure and the Rules of Evidence shall not apply, but the hearings shall be conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue repetition. The secretary shall allow the health authority, the petitioner and designated representatives to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits and to cross-examine persons who testify.

(8) Based upon the evidence presented at the hearing, the secretary shall sustain, modify or reverse the action of the health authority. The action taken shall be by written order within ten (10) working days following the hearing. The order shall contain the same information as that required for the health authority in **7.6.2.8.J(3) NMAC**. A copy of the order shall be sent to the petitioner.

K. Permit Fees:

(1) Except as provided in **Paragraph (2) of Subsection K of 7.6.2.8 NMAC**, permit fees shall be:

(a) twenty-five dollars ($25.00) for a temporary food service establishment; [~~and~~]

(b) one hundred twenty five dollars ($125.00) per year as of December 1, 2005 for all other food establishments except home-based food processing operations:

(i) effective December 1, 2006 $150.00

(ii) effective December 1, 2007 $175.00

(iii) effective December 1, 2008 $200.00; and

(c) one hundred dollars ($100.00) per year as of January 1, 2010 for home-based food processing operations.

(2) The fee established by **Paragraph (1) of Subsection K of 7.6.2.8 NMAC** shall be waived for:

(a) any temporary food establishment:

(i) serving only non-potentially hazardous food; or

(ii) operating no more than two (2) consecutive calendar days at an event;

(b) any food establishment that provides food to the general public at no charge.

(3) No discount or refund shall be made for partial years or for permit suspension, revocation or denial in accordance with **Subsections B, C, or D of 7.6.2.8 NMAC**. After permit revocation, the full fee must be paid for a new permit.

(4) For new food establishments and temporary food service establishments, including permits for new permittees, new locations, or new events, permit fees shall be paid when the application for permit is submitted and shall be verified by the health authority before the permit is issued.

(5) Payments shall be accompanied by submittal forms available from the health authority.

L. Current Food And Drug Administration Food Code Applicability: The current United States public health service, food and drug administration Food Code is hereby adopted as a technical reference and interpretation guide.

M. Procedures For Embargo, Recall, And Condemnation:

(1) Whenever the secretary finds, or has probable cause to believe, that any food product fails to meet health standards or is adulterated with any substance, or is found to be misbranded, such that it may be injurious to human health, the suspected lot shall be embargoed or detained, if not yet distributed to consumers or any retail outlet.

(2) If the suspected lot has been distributed, the food processor, including home-based food processing operations, shall be given the opportunity to recall the product voluntarily or the suspected lot may be disposed of onsite by methods approved by the health authority.

(3) If a voluntary recall is refused, the secretary may order a mandatory recall of the suspected lot.

(4) When any food product is found, by examination or laboratory analysis, to be in violation of safe health standards, the secretary may order condemnation and disposal of the product lot, at the expense of the food processor.

[7.6.2.8 NMAC - Rp, 7 NMAC 6.1.104 to 114, 08/12/2000; A, 12/01/05; A, 01/01/2010]

7.6.2.16 HOME-BASED FOOD PROCESSING:

A. Plan Review, Permitting, Inspection, and Training Requirements:

(1) No person shall operate a home-based food processing operation without a permit issued by the health authority under **7.6.2.8 NMAC** and **Subsection G** of **7.6.2.12 NMAC**, except as specified in **7.6.2.16 NMAC**.

(2) During the initial plan review, proof of attendance of a health authority-approved food safety course within the last five (5) years must be provided.

(3) Changes made to a home-based food processing operation from the initial plan review must be submitted to the health authority for review and approval.

(4) The health authority may renew an annual permit for a home-based food processing operation if the applicant adheres to **7.6.2.8 NMAC** and submits proof of attendance of a health authority-approved food safety course within the last five (5) years.

(5) The permit issued shall be displayed at the home-based food processing operation. A copy of the permit shall be displayed at places at which the operator sells food at times when the operator is selling the home-based processed food.

B. Food Protection Requirements:

(1) All home-based food processing operations shall comply with **7.6.2.9 NMAC**, **7.6.2.10 NMAC** and **7.6.2.12 NMAC**, except as specified in **7.6.2.16 NMAC**.

(2) Products processed by home-based food processing operations shall be packaged in food grade material.

(3) Home-based processed food products and components shall be stored separate and apart from residential foods and protected from contamination, insects, rodents, pests, water leaks, dust, dirt and other contaminants.

(4) Home-based food processing operations must keep a sample of each processed food batch for fourteen (14) days. The samples shall be labeled with the production date and time.

(5) Vehicles used in transporting home-based processed food products shall be maintained in a safe and sanitary manner. Vehicle compartments used to transport animals shall not be used for transporting home-based processed foods.

C. Exceptions and

Limitations:

(1) The following provisions shall not apply to home-based food processing operations:

(a) Subsection G of 7.6.2.8 NMAC;

(b) Paragraph (8) of Subsection D of 7.6.2.9 NMAC;

(c) Paragraph (11) of Subsection F of 7.6.2.9 NMAC;

(d) Paragraphs (2), (3), (8) and (9) of Subsection K of 7.6.2.9 NMAC;

(e) Paragraphs (5), (6), (7), (8), (9) and (10) of Subsection A of 7.6.2.10 NMAC;

(f) Paragraph (3) of Subsection B of 7.6.2.10 NMAC (self-closing door requirement only)**;**

(g) Paragraph (9) of Subsection B of 7.6.2.10 NMAC;

(h) Paragraphs (3) and (5) of Subsection C of 7.6.2.10 NMAC;

(i) Subparagraph (c) of Paragraph (2) of Subsection E of 7.6.2.10 NMAC.

(2) Food products processed by a home-based food processing operation shall not be potentially hazardous foods. The health authority shall review the home-based food products to determine the hazard category and may approve the products for home-based processing.

(3) A home-based food processing operation shall only sell its products at farmer's markets, roadside stands, festivals, or other venues in which the producer sells directly to the consumer.

(4) Products processed by a home-based food processing operation shall not be sold, used, or offered for consumption in retail food establishments including, but not limited to, grocery stores and convenience stores, by internet sales, or sold in interstate commerce.

(5) Pets shall not be permitted in the kitchen and shall be kept out of food preparation areas during home-based food processing related activities.

(6) Non-employees shall not be allowed entry into the kitchen during home-based food processing related activities.

(7) A home-based food processing operation shall not wash out or clean pet cages, pans or similar items in the kitchen.

(8) Household cooking may not occur in the kitchen during home-based food processing related activities.

(9) The following provisions are applicable to home-based food processing operations only during home-based food processing related activities:

(a) Paragraphs (1) and (18) of Subsection D of 7.6.2.9 NMAC;

(b) Paragraph (1) of Subsection G of 7.6.2.9 NMAC (handwashing usage only)**;**

(c) Paragraph (4) of Subsection G of 7.6.2.9 NMAC;

(d) Paragraph (2) of Subsection H of 7.6.2.9 NMAC;

(e) Paragraph (5) of Subsection K of 7.6.2.9 NMAC;

(f) Paragraph (7) of Subsection B of 7.6.2.10 NMAC (emptying requirements only)**.**

(10) A home-based food processing operation shall submit in its operational plan required by **Subsection G** of **7.6.2.12 NMAC** a detailed procedure to be used to clean and sanitize the kitchen sink before and during home-based food processing related activities.

(11) A home-based food processing operation shall comply with **Paragraph (4)** of **Subsection F** of **7.6.2.9 NMAC** unless an alternative method is approved by the health authority. Submittal of an alternative method shall comply with the variance procedures found in **Subsection J** of **7.6.2.8 NMAC**.

(12) A home-based food processing operation shall comply with **Subsection G** of **7.6.2.9 NMAC** unless an alternative method is approved by the health authority. Submittal of an alternative method shall comply with the variance procedures found in **Subsection J** of **7.6.2.8 NMAC**.

D. Home-Based Food Labeling:

(1) A home-based food processing operation shall properly label all foods in accordance with state and federal law, including **Subsection D** of **7.6.2.12 NMAC**.

(2) Label information shall also include the words "Home Produced" in bold conspicuous 12 point type on the principal display panel.

[7.6.2.16 NMAC - Rp, 7 NMAC 6.1.901 to 905, 08/12/2000; 7.6.2.16 NMAC - N, 01/01/2010]

[~~7.6.2.16~~]7.6.2.17 MISCELLANEOUS:

A. Severability: If any portion or application of this part (**7.6.2 NMAC**) is held invalid for any reason, the remainder of this part or application to other persons or situations shall not be affected.

B. Amendment And Supersession Of Prior Regulations; References In Other Regulations: This part shall be construed as amending and superseding the Food Service and Food Processing Regulations, EIB FQM 2, filed October 27, 1995, as amended. Any reference to the Food Service and Food Processing Regulations or to any prior version of the Food Service Regulations in any other rule shall be construed as a reference to this part.

C. Savings Clause: Supersession of the Food Service and Food Processor Regulations shall not affect any permit issued pursuant to, nor any administrative or judicial action for the enforcement of, those regulations.

D. Collateral Requirements: Compliance with this part does not relieve any person from the responsibility of meeting more stringent municipal regulations or ordinances or other requirements of state or federal laws governing food service establishments or food processing establishments.

E. Limitation Of Defense: The existence of a valid permit for operation of a food establishment shall not constitute a defense to any action for violation of this part except for the requirement to obtain a permit.

[7.6.2.17 NMAC - Rn, 7.6.2.16 NMAC, 01/01/2010]

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

BOARD OF FINANCE

This is an amendment to 2.60.4 NMAC, Sections 1, 3 and 6 through 15, effective December 1, 2009.

TITLE 2 PUBLIC FINANCE
CHAPTER 60 INVESTMENT AND DEPOSITS OF PUBLIC FUNDS
PART 4 DEPOSITORY BANK REQUIREMENTS, COLLATERAL LEVEL REQUIREMENTS, AND CUSTODIAL BANK REQUIREMENTS

2.60.4.1 ISSUING AGENCY: State Board of Finance, 181 Bataan Memorial Building, Santa Fe, NM [~~87503~~] 87501.

[4-30-97; 2.60.4.1 NMAC - Rn, 2 NMAC 60.4.1, 11-15-2001; A, 12-1-2009]

2.60.4.2 SCOPE: State treasurer and financial institutions holding deposits of public money or collateral pledged to secure those deposits under the state board of finance authority.

[4-30-97; 2.60.4.2 NMAC - Rn, 2 NMAC 60.4.2, 11-15-2001; A, 2-1-2007]

2.60.4.3 STATUTORY AUTHORITY:

A. Section 6-1-1 Part E NMSA 1978 states that the state board of finance has general supervision of the fiscal affairs of the state and of the safekeeping and depositing of all money and securities belonging to or in custody of the state.

B. Section 6-10-10 Part C NMSA 1978 provides that the state treasurer may deposit money in one or more accounts with any bank, savings and loan association, or credit union whose deposits are insured by an agency of the United States to receive public money or deposits.

C. [~~Section~~] Sections 6-10-16 and [~~Section~~] 6-10-16.1 NMSA 1978

provide for the type of securities of the United States and the state of New Mexico, including surety bonds as provided in Section 6-10-15, to be used as collateral for deposits of public funds.

D. Section 6-10-17 NMSA 1978 provides that any financial institution designated as a depository of public money shall deliver securities having an aggregate value of at least one-half the amount of public money to be deposited to a custodial bank and shall deliver a joint safekeeping receipt issued by the custodial bank to the public official from whom the public money is received for deposit.

E. Section 6-10-17.1 NMSA 1978 provides that when a depository bank has not maintained qualifying securities as collateral for deposits of public money, the state treasurer or board shall request the depository bank to provide additional qualifying securities to meet those requirements within ten (10) calendar days. If the [~~financial institution~~] depository bank does not comply, the board or state treasurer shall withdraw all deposits of public money within the next ten (10) calendar days without penalty to the public depositor.

F. Section 6-10-18 NMSA 1978, requires any financial institution designated as a depository of public money to enter into a written agreement to assure that collateral it pledges as security remains secure throughout the term of the designation.

G. Section 6-10-20 NMSA 1978 provides that the board may at any time within its discretion require any depository financial institution to furnish additional security for deposit of the kind specified in Section 6-10-16 NMSA 1978.

H. Section 6-10-21 NMSA 1978, authorizes and directs the board to regulate the safekeeping of securities pledged as collateral by depository banks and requires the board to designate the third-party custodial banks charged with safekeeping that collateral pursuant to contracts between the two financial institutions and the state.

I. Section 6-10-24.1 NMSA 1978, bars the state treasurer from depositing public money in a financial institution in an amount that exceeds [~~four hundred~~] 400 percent of the total equity capital in the case of banks or [~~four hundred~~] 400 percent of the net worth in case of savings and loan associations, or [~~twenty-five~~] 25 percent of the total of the financial institution's deposits, whichever is less.

[4-30-97; 2.60.4.3 NMAC - Rn & A, 2 NMAC 60.4.3, 11-15-2001; A, 8-1-2006; A, 2-1-2007; A, 12-1-2009]

2.60.4.4 DURATION: Permanent.

[4-30-97; 2.60.4.4 NMAC - Rn, 2 NMAC 60.4.4, 11-15-2001]

2.60.4.5 EFFECTIVE DATE: April 30, 1998, unless a later date is cited at the end of a section.

[4-30-97, 4-30-98; 2.60.4.5 NMAC - Rn & A, 2 NMAC 60.4.5, 11-15-2001]

2.60.4.6 OBJECTIVE: This rule provides general guidance regarding the financial and legal requirements to be followed by the state treasurer to minimize risks to existing and future deposits of public money under the authority of the [~~state board of finance~~] board.

[4-30-97; 2.60.4.6 NMAC - Rn & A, 2 NMAC 60.4.6, 11-15-2001; A, 12-1-2009]

2.60.4.7 DEFINITIONS:

A. "Board" means state board of finance.

B. [~~"Custodian bank"~~] "Custodial bank" means a federal reserve bank or branch thereof or any bank designated by the board as described in this rule.

[~~C. "Financial institution" means any certified or designated bank, savings and loan association or credit union whose deposits are insured by an agency for the United States to receive public money.~~]

C. "Deposit" means the amount of state funds held by the financial institution in an account owned by the state, or any funds deposited (including CD deposits) by the state with that financial institution. For purposes of computing the deposit ratio or the amount of collateral to be posted, the amount insured by the federal deposit insurance company, the federal savings and loan insurance corporation or the national credit union administration shall not be included.

D. "Deposit ratio" means the amount of state funds on deposit or invested with a financial institution [~~relative to~~] divided by the total amount of deposits at the financial institution, excluding, however, funds held by the fiscal agent bank, as the state's fiscal agent bank, and demand deposits held by state checking depository banks when determining the amount of state funds.

E. "Depository bank" means a financial institution certified or designated by the state treasurer to hold deposits of public money.

[~~E.~~] F. "Equity ratio" means the amount of state funds on deposit or invested with a financial institution [~~relative to~~] divided by the total equity capital of the financial institution, excluding, however, funds held by the fiscal agent bank, as the state's fiscal agent bank, and demand deposits held by state checking depository banks when determining the amount of state funds.

G. "FDIC" means federal deposit insurance corporation.

H. "Financial institution" means any bank, savings and loan association or credit union whose deposits are insured by an agency of the United States.

[~~F.~~] I. "Letters of credit" means those letters of credit that are eligible to be pledged to the state to secure state funds pursuant to Section 6-10-16, NMSA 1978, as it may be amended from time to time.

J. "Non-performing loans" means loans that are at least 90 days past due and accruing or non-accruing.

[~~G.~~] K. "Securities" means those securities eligible as collateral for public funds under Section 6-10-16 NMSA 1978.

[~~H.~~] L. "Surety bond" means a bond substantially in the form prescribed in 6-10-15 NMSA 1978, issued by a surety company that is continually rated in the highest category by at least one nationally recognized statistical rating agency and licensed to do business in New Mexico.

[2.60.4.7 NMAC - N, 11-15-2001; A, 2-1-2007; A, 12-1-2009]

2.60.4.8 DESIGNATION [~~OF AND REPORTING REQUIREMENTS FOR~~] AS A DEPOSITORY BANK:

A. [~~Financial institutions~~] A financial institution requesting to become a depository bank must submit the following information to the state treasurer:

(1) a letter from the financial institution requesting to become a depository bank;

(2) copy of [~~federal deposit insurance corporation (FDIC)~~] FDIC certification or the national credit union administration certification;

(3) financial reports for the preceding four quarters; a newly chartered financial [~~institutions~~] institution must provide [~~their~~] its most recent financial report; and

(4) other public information requested by the state treasurer.

B. Initial and continued appointment of financial institutions to serve as depository banks for the state of New Mexico is determined by the financial institution's risk assessment ratios and required collateral levels as specified in [~~Section~~] 2.60.4.9 below, and entry into and maintenance of a depository agreement consistent with Section 6-10-18 NMSA 1978.

[4-30-97, 4-30-98; 2.60.4.8 NMAC - Rn & A, 2NMAC 60.4.8, 11-15-2001; A, 8-1-2006; A, 2-1-2007; A, 12-1-2009]

2.60.4.9 COLLATERAL REQUIREMENTS FOR DEPOSITORY BANK SERVICES [~~AS DETEMINED BY~~] AND RISK ASSESSMENT RATIOS:

A. The board directs the

state treasurer to conduct risk assessment analysis of [~~financial institutions~~] depository banks holding deposits of public money under the board's authority. The risk assessment will include a determination of each [~~financial institution's~~] depository bank's primary capital-to-asset ratio, net operating income to total average asset ratio and non-performing loans to primary capital ratio for the past four (4) consecutive quarters. These risk assessment ratios will determine collateral level requirements for financial institutions holding deposits of public money as listed below.

(1) If a [~~financial institution's~~] depository bank's primary capital-to-asset ratio [~~(~~]as defined by the [~~federal deposit insurance corporation (FDIC))~~] FDIC is:

(a) 6.1 percent or greater, the[~~financial institution~~] depository bank shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;

(b) 5.0 percent to 6.0 percent, the [~~financial institution~~] depository bank shall be required to maintain collateral with an aggregate market value equal to 75 percent of the amount of the deposit;

(c) less than 5.0 percent, the [~~financial institution~~] depository bank shall be required to maintain collateral with an aggregate market value equal to [~~100~~] 102 percent of the amount of the deposit.

(2) If the [~~financial institution's~~] ratio of a depository bank's net operating income after taxes to its total average [~~asset ratio~~] assets is:

(a) .61 percent or greater, the [~~financial institution~~] depository bank shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;

(b) .51 percent to .60 percent, the [~~financial institution~~] depository bank shall be required to maintain collateral with an aggregate market value equal to 75 percent of the amount of the deposit;

(c) less than .51 percent, the [~~financial institution~~] depository bank shall be required to maintain collateral with an aggregate market value equal to [~~100~~] 102 percent of the amount of the deposit;

(d) a newly chartered [~~financial institution~~] depository bank is exempt from this ratio requirement for [~~the~~] its first year of its operation; for [~~the~~] its second year of operations, the [~~financial institution~~] depository bank shall annualize its net operating income beginning with the first quarter of the second year; if this ratio is less than .61 percent, the state treasurer shall review the [~~financial institution~~] depository bank's financial condition and may request additional collateral.

(3) If the [~~financial institution~~] depository bank's non-performing loans [~~(defined as loans which are at least 90 days past due and accruing or non-accruing) to the financial institution's~~] to primary capital ratio; is:

(a) 34.9 percent or less, the [~~financial institution~~] depository bank shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;

(b) 35.0 percent to 49.9 percent, the [~~financial institution~~] depository bank shall be required to maintain collateral with an aggregate market value equal to 75 percent of the amount of the deposit;

(c) greater than 49.9 percent, the[~~financial institution~~] depository bank shall be required to maintain collateral with an aggregate market value equal to [~~100~~] 102 percent of the amount of the deposit.

(4) If a [~~financial institution's~~] depository bank's deposit ratio is:

(a) less than 10 percent, the [~~financial institution~~] depository bank shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;

(b) 10 percent or greater, the [~~financial institution~~] depository bank shall be required to maintain collateral with an aggregate market value equal to [~~100~~] 102 percent of the amount of the deposit.

(5) If a [~~financial institution's~~] depository bank's equity ratio is:

(a) less than 200 percent, the [~~financial institution~~] depository bank shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;

(b) 200 percent or greater, the [~~financial institution~~] depository bank shall be required to maintain collateral with an aggregate market value equal to [~~100~~] 102 percent of the amount of the deposit.

B. Should the risk assessment ratios established in this section result in different levels of collateral for a [~~financial institution~~] depository bank, the state treasurer shall request the highest collateral level required by any ratio.

C. Collateral levels shall be required until the risk assessment ratios of the [~~financial institution~~] depository bank return to a level which allows collateral to be kept at a lower level or at statutory minimum level as appropriate.

D. State funds shall not be deposited or invested in a [~~financial institution~~] depository bank in an amount that, when added to state funds already on deposit [~~and invested~~] in that [~~financial institution~~] depository bank, exceeds [~~two hundred~~] 200 percent of the total equity capital in case of banks or [~~two hundred~~] 200 percent of the net worth in the case of savings and loan associations or [~~ten~~] 10 percent of the total of the bank's or the saving and loan association's deposits, whichever is less, unless and until the bank or savings and loan association has pledged and maintains collateral with an aggregate market value equal to [~~one hundred~~] 102 percent of the aggregate amount on deposit. **In no event** shall state funds be deposited or invested in any amount that, when added to state funds already on deposit and invested in that [~~financial institution~~] depository bank, exceeds [~~four hundred~~] 400 percent of the total equity capital in case of banks or [~~four hundred~~] 400 percent of the depository bank's net worth in case of savings and loan associations or [~~twenty-five~~] 25 percent of the total of the bank's or the savings and loan association's deposits, whichever is less, provided, however, the [~~twenty-five~~] 25 percent of total deposits limitation shall not apply during the first year of operation of a newly chartered bank or savings and loan association. In the event state funds in a bank or savings and loan association exceed the [~~four hundred percent/twenty-five percent~~] 400 percent/25 percent limitations set out herein, the state treasurer shall not renew any maturing certificates of deposit and shall provide for the staged withdrawal of the amount in excess of these limitations over a reasonable period of time to avoid causing failure of the [~~institution~~] depository bank unless immediate withdrawal is necessary to prevent loss of funds pursuant to 2.60.4.12 NMAC. Further, the state treasurer shall not deposit state funds in credit unions in excess of the amount insured by an agency of the United States. The amount of state funds deposited and invested as described above shall exclude funds held by the state's fiscal agent bank, as the fiscal agent bank, and demand deposits held by state checking depository banks.

[4-30-97, 4-30-98; 2.60.4.9 NMAC - Rn & A, 2 NMAC 60.4.8, 11-15-2001; A, 8-1-2006; A, 2-1-2007; A, 12-1-2009]

2.60.4.10 REQUIRED TYPES OF COLLATERAL:

A. Deposits of public money shall be secured by the following.

(1) Securities of the United States, its agencies or instrumentalities [~~. These~~], which shall be accepted [~~as security~~] at market value.

(2) Securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions [~~. These~~], which shall be accepted at par value.

(3) Securities, including student loans, [~~that are~~] guaranteed by the United States or the state of New Mexico [~~. These~~], which shall be accepted [~~as security~~] at market value.

(4) Revenue bonds that are underwritten by a member of the national association of securities dealers, known as "N.A.S.D.", and are rated "BAA" or above by a nationally recognized bond rating

service [~~. These~~], which shall be accepted as security at market value.

(5) Bonds of the New Mexico mortgage finance authority, a state instrumentality.

(6) Farmers' home administration loans, which are fully guaranteed by the federal government.

(7) Letters of credit issued by a federal home loan bank in the same amount that would be required if securities were being posted as collateral pursuant to Subsection A of 2.60.4.9 NMAC [~~. These~~], which shall be accepted at par value.

(8) Surety bonds in the same amount that would be required if securities were being posted as collateral pursuant to Subsection A of 2.60.4.9 NMAC, which shall be accepted at par value. Additionally, each surety bond must receive prior approval from the board and a district judge of the first judicial district. [~~These shall be accepted at par value.~~]

B. Mutual funds may not be pledged as collateral for deposits of public funds.

[2.60.4.10 NMAC - N, 11-15-2001; A, 2-1-2007; A, 12-1-2009]

2.60.4.11 DEPOSITORY BANK REPORTING TO THE STATE TREASURER:

A. The figures to be used by the state treasurer in completing the risk assessment analysis for [~~the~~] a depository bank shall be calculated from the quarterly call statements, thrift reports, or national credit union administration reports of the financial institution and [~~from~~] on the state treasurer's generated report "New Mexico financial institution quarterly report". Both reports shall be furnished by the financial institution to the state treasurer no later than on the tenth day of the second month following the end of each calendar quarter. If the tenth day falls on a weekend or a legal holiday, the figures shall be submitted on the next business day.

B. By the tenth day, a depository [~~banks~~] bank shall submit a monthly collateral (including surety bonds and letters of credit) level report to the state treasurer on the state treasurer's generated [~~report~~] form "state treasurer collateral compliance monthly report". If the tenth falls on a weekend or a legal holiday, the figures shall be submitted on the next business day.

C. The [~~figures~~] reports provided to the state treasurer by the [~~financial institution~~] depository bank shall be certified in writing by the president, an executive officer, or a person authorized by a corporate resolution certifying the information of the financial institution.

D. The state treasurer may, at any time between quarterly reporting periods, request any additional certified public information from the [~~financial institution~~] depository bank as needed to assess [~~the~~] its risk level [~~of that financial institution~~].

E. The state treasurer is directed to require each [~~financial institution to advise the state treasurer of any adverse event having a potential material impact on the financial ratios required of it by its respective regulatory agencies or by this rule as well as final administrative enforcement action imposed upon it. If deposits are secured by a surety bond, an adverse event would include any downgrade in rating of the surety company.~~] depository bank to provide a copy of any regulatory enforcement decisions or orders issued by a state or federal regulatory agency having authority to issue such enforcement decisions or orders that have a material impact on the depository bank or on financial ratios required of it by its respective regulatory agencies or this rule to the state treasurer within ten (10) business days of any such document becoming public.

[2.60.4.11 NMAC - N, 11-15-2001; A, 8-1-2006; A, 2-1-2007; A, 12-1-2009]

2.60.4.12 COLLATERAL LEVEL NON-COMPLIANCE AND APPROPRIATE ADJUSTMENTS:

A. If a [~~financial institution that has been designated as a depository of public money~~] depository bank is unable to meet the risk assessment qualifications for a minimum level of collateral required, the state treasurer is directed to cease making any additional deposits of public money into the [~~financial institution~~] depository bank and to withdraw deposits in the order they would otherwise mature to an amount which can be collateralized at an appropriate level of collateral in accordance with the risk assessment ratios.

B. If a [~~financial institution that has been designated as a depository of public money~~] depository bank has not maintained qualifying securities as collateral, the state treasurer shall request the [~~financial institution~~] depository bank to substitute or provide additional qualifying securities to meet [~~those~~] collateral requirements within ten (10) calendar days. If the [~~financial institution~~] depository bank does not comply with the request within ten (10) calendar days, the state treasurer shall withdraw from that [~~financial institution~~] depository bank within the next ten (10) calendar days all deposits of public money under the state treasurer's control without penalty.

C. Upon receipt of notice by a [~~financial institution~~] depository bank of an adverse event or final administrative enforcement action imposed upon it.

(1) If the state treasurer believes such action indicates a high level of risk in maintaining public deposits in that [~~financial institution~~] depository bank, the state treasurer shall report to the board and the board shall decide whether additional collateral shall be required.

(2) The state treasurer may require the pledging of additional collateral or make an emergency withdrawal of state deposits prior to maturity and prior to obtaining board direction when such action is necessary in [~~his~~] the state treasurer's judgment in the exercise of reasonable care to protect state funds.

(3) If the [~~financial institution~~] depository bank believes that exceptional circumstances exist which indicate that it [~~is/was~~] is or was not appropriate for the state treasurer to take any action pursuant to this subsection:

(a) the [~~financial institution~~] depository bank shall appear at the next regularly scheduled board meeting and present its position;

(b) the board shall determine what action should be taken [~~and/or~~] or if deposits should be reinstated.

(4) If a surety company that has issued the surety bond ceases to be rated in the highest rating category by at least one nationally recognized statistical rating agency, the surety bond issued by the company shall no longer be valid for use as collateral for state deposits and [~~an~~] alternative [~~surety bond or~~] collateral must be pledged immediately.

D. The withdrawal of state deposits from a depository bank shall not be subject to the assessment of a penalty for early withdrawal except to the extent required to be imposed by federal law and in that event, only the minimum penalty required to be imposed shall be imposed by the [~~financial institution~~] depository bank.

E. Nothing herein shall restrict the state treasurer or the board from the lawful exercise of rights and duties conferred upon them by law.

[2.60.4.12 NMAC - N, 11-15-2001; A, 8-1-2006; A, 2-1-2007; A, 12-1-2009]

2.60.4.13 REQUIREMENTS TO PROVIDE CUSTODIAL BANK SERVICES:

A. [~~Financial institutions~~] A financial institution requesting to become a custodial bank must submit the following information to the state treasurer:

(1) a letter from the federal reserve bank or branch thereof or any bank qualified to perform custodial functions in the state of New Mexico requesting to become a custodial bank;

(2) copy of [~~federal deposit insurance corporation (FDIC)~~] FDIC certification;

(3) financial reports for the preceding four quarters; newly chartered financial institutions must provide their most

recent financial report; [~~and~~]

(4) for banks that are not federal reserve banks or branches thereof, information and documentation demonstrating their qualifications to perform custodial functions in the state; and

(5) other public information requested by the state treasurer.

B. Initial and continued appointment for a [~~custodian to serve as agent~~] financial institution to serve as a custodial bank for the state of New Mexico is determined by the risk assessment ratios of the financial institution. [~~Qualified financial institutions~~] A qualified financial institution requesting initial and continued appointment as a custodial bank must certify that the financial institution has continuously maintained a primary capital-to-asset ratio of greater than 6.0 percent, a net operating income-to-total average asset ratio of .61 percent or higher, and non-performing loans-to-primary capital ratio of 34.9 percent or lower [~~continuously~~] for the preceding four quarters. A newly chartered financial institution, at the time of appointment, must certify that [~~the institution~~] it has maintained a primary capital-to-asset ratio of greater than 6.0 percent, a net operating income-to-total average asset ratio of .61 percent or higher, and non-performing loans-to-primary capital ratio of 34.9 percent or lower for the current quarter.

C. No [~~custodian designated by the state treasurer~~] custodial bank shall be a member of the same holding company as the financial institution whose securities the [~~custodian~~] custodial bank is holding as the state's agent. In addition, any financial institution that owns 5 percent or more of another financial institution may not hold collateral for that financial institution.

D. If the state treasurer seeks and cannot find an adequate number of financial institutions that meet all of the requirements in Subsection B of 2.60.4.13 NMAC to act as custodial banks, the state treasurer may, with the approval of the state treasurer's investment committee, lower any one of, but only one of, the requirements to qualify as a custodial bank to: a primary capital-to-asset ratio of greater than 5.0 percent, a net operating income-to-total average asset ratio of .51 percent or higher, or non-performing loans-to-primary capital ratio of 49.9 percent or lower. The lower requirements would only be honored for a period not to exceed one quarter, and such exception can be revoked at anytime by the state treasurer, at the state treasurer's discretion. After this period, the custodial bank would have to meet the regular requirements set out in 2.60.4.13 NMAC to remain a custodial bank or will become disqualified as a custodial bank.

[2.60.4.13 NMAC - N, 11-15-2001; A, 2-1-2007; A, 12-1-2009]

2.60.4.14 CUSTODIAL BANK REPORTING TO THE STATE TREASURER:

A. The figures to be used by the state treasurer in completing the risk assessment analysis for [~~the~~] a custodial bank shall be calculated from the quarterly call statements of the [~~financial institution~~] custodial bank and from the treasurer's generated report "New Mexico financial institution quarterly report". Both reports shall be furnished by the [~~financial institution~~] custodial bank to the state treasurer no later than on the tenth day of the second month following the end of the calendar quarter. If the tenth day falls on a weekend or a legal holiday, the figures shall be submitted on the next business day.

B. [~~Custodial banks~~] A custodial bank shall report monthly to the state treasurer the collateral amounts held for each depository bank for which it holds collateral.

C. The figures provided to the state treasurer by the [~~financial institution~~] custodial bank shall be certified in writing by the president, an executive officer, or a person authorized by a corporate resolution certifying the information of the [~~financial institution~~] custodial bank.

D. [~~The state treasurer is directed to require each custodial bank to advise the state treasurer of any adverse event having a potential material impact on the financial ratios required of it by its respective regulatory agencies and by this rule as well as any final administrative enforcement action imposed upon it.~~] The state treasurer is directed to require each custodial bank to provide a copy of any regulatory enforcement decisions or orders issued by a state or federal regulatory agency having authority to issue such enforcement decisions or orders that have a material impact on the custodial bank or on financial ratios required of it by its respective regulatory agencies or this rule to the state treasurer within ten (10) business days of any such document becoming public.

E. The state treasurer may, at any time between quarterly reporting periods, request any additional public certified information from [~~the financial institution~~] a custodial bank as needed to assess [~~the~~] its risk level [~~of that financial institution~~].

[2.60.4.14 NMAC - N, 11-15-2001; A, 2-1-2007; A, 12-1-2009]

2.60.4.15 CUSTODIAL BANK NON-COMPLIANCE:

A. Unless a waiver is granted by the state treasurer pursuant to Subsection D of 2.60.4.13.NMAC, a financial institution will be disqualified from serving as [~~custodian~~] custodial bank for state deposits when any one of the following three conditions occur:

(1) [~~When~~] any one of the following risk assessment ratio conditions occur for three consecutive quarters:

(a) primary capital-to-asset ratio falls below 6.1 percent;

(b) net operating income-to-total average asset ratio falls below .61 percent; or

(c) the non-performing loans-to-primary capital ratio [~~is higher than~~] rises above 34.9 percent;

(2) [~~When~~] any two of the following risk assessment ratio conditions occur for two consecutive quarters:

(a) primary capital-to-asset ratio falls below 6.1 percent;

(b) net operating income-to-total average assets ratio falls below .61 percent; or

(c) the non-performing loan-to-primary capital ratio [~~is higher than~~] rises above 34.9 percent; or

(3) [~~When~~] any one of the following risk assessment ratio conditions occur for more than one quarter:

(a) primary capital-to-asset ratio falls below 5.0 percent;

(b) net operating income-to-total average asset ratio falls below .51 percent; or

(c) the non-performing loans-to-primary capital ratio [~~is higher than~~] rises above 49.9 percent.

B. The state treasurer shall notify the [~~custodian~~] custodial bank in writing of revocation of its designation as [~~custodian~~] custodial bank stating the reason for revocation. The [~~custodian~~] financial institution shall notify depository [~~institutions~~] banks of termination of the custodial agreement within three (3) business days and shall cooperate in the expeditious and orderly transfer of collateral.

[2.60.4.15 NMAC - N, 11-15-2001; A, 12-1-2009]

HISTORY OF 2.60.4 NMAC:

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

Directive 86-6, State Board of Finance Collateral Policy-Savings and Loans, filed 9-17-86,

Directive 86-7, State Board of Finance Collateral Policy-Banks, filed 9-17-86.

History of Repealed Material: [RESERVED]

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

BOARD OF FINANCE

This is an amendment to 2.60.7 NMAC, Sections 1 through 9, effective December 1, 2009. This rule was also renumbered and reformatted from Directive 87-4 to comply with current NMAC requirements.

TITLE 2 PUBLIC FINANCE
CHAPTER 60 INVESTMENT AND DEPOSIT OF PUBLIC FUNDS
PART 7 PROCEDURES FOR DESIGNATING A FISCAL AGENT OF NEW MEXICO

2.60.7.1 ISSUING AGENCY: State Board of Finance
[2.60.7.1 NMAC - N, 12-1-2009]

2.60.7.2 SCOPE: Banks, savings and loan associations, and custody banks submitting proposals to be the fiscal agent or custody bank for the state of New Mexico.
[2.60.7.2 NMAC - N, 12-1-2009]

2.60.7.3 STATUTORY AUTHORITY: Section 6-10-35, NMSA, 1978 Comp., provides that the state board of finance may designate a bank or savings and loan association doing business in this state and having an unimpaired capital and surplus of at [~~lease $150,000~~] least $20,000,000 as the fiscal agent of New Mexico. The statute also provides that after designation of the state fiscal agent, the board shall apprise the legislature of its designation and shall include a brief description of the designee's particular qualifications.
[2.60.7.3 NMAC - Rn, Directive 87-4 & A, 12-1-2009]

2.60.7.4 DURATION: Permanent
[2.60.7.4 NMAC - N, 12-1-2009]

2.60.7.5 EFFECTIVE DATE: [~~This policy is effective July 1, 1987 and supersedes and repeals any other policies, either written or implied.~~] July 1, 1987, unless a later date is cited at the end of a section.
[2.60.7.5 NMAC - Rn, Directive 87-4 & A, 12-1-2009]

2.60.7.6 OBJECTIVE: Establishes designation procedures for selecting a fiscal agent bank and custody bank for the state of New Mexico.
[2.60.7.6 NMAC - N, 12-1-2009]

2.60.7.7 DEFINITIONS:

A. "Fiscal agent" is that bank or savings and loan association selected by the board to provide services such as:

(1) collection for the state of all checks or other items received by the state on any account;

(2) handling of the checking account of the state treasurer;

(3) handling of all transfers of money in connection with the sale or retirement of bonds or obligations of the state;

(4) the rate of interest to be paid upon average daily balances of state funds; and

(5) acting as the agent of the state in fiscal matters generally, except as to those matters for which the custody bank provides custodial service to the state, subject always to supervision and approval of the state board of finance.

B. "Custody bank" is that bank selected by the board to provide services such as:

(1) executing intructions from the investing agencies as to investments of permanent or other funds of the state, except for certain investments made by the state treasurer through the fiscal agent;

(2) safekeeping of bonds or other securities belonging to or held by the state or any official thereof; and

(3) acting as an agent of the state in matters involving custodial services, except as to those matters for which the fiscal agent provides services to the state, subject always to the supervision and approval of the state board of finance.
[2.60.7.7 NMAC - N, 12-1-2009]

2.60.7.8 DESIGNATION PROCEDURES: FISCAL AGENT: The state board of finance may accept and review proposals from banks and savings and loan associations to be fiscal agent for the state of New Mexico, submitted in response to a request for proposals issued in conformance with the state Procurement Code and the applicable regulations.

A. The board's request for proposals for designation of a fiscal agent shall include the following minimum qualifications and requirements.

(1) The bank or savings and loan association must have an unimpaired capital and surplus, [~~of one million dollars ($1,000,000)~~] tier 1 core capital as defined by federal regulations, of at least twenty million dollars ($20,000,000) and must be doing business in New Mexico.

(2) The bank or savings and loan association must agree that it shall maintain and furnish at its expense throughout the term of the agreement a banker's blanket bond per occurrence coverage in a minimum amount of ten million dollars ($10,000,000) containing terms and conditions acceptable to the state board of finance.

(3) The bank or saving and loan must agree that it will maintain at an approved custodial financial institution throughout the term of the agreement securities of the amount and kind specified by Sections 6-10-35, 6-10-16 and 6-10-17 NMSA 1978, and approved by the board as security for the safekeeping of money of the state of New Mexico and the faithful performance of its duties as the fiscal agent. The amount of securities shall be [~~either one-half (1/2) of the quarterly average of average daily ledger balances in the state account(s), or fifteen million dollars ($15,000,000.00), whichever is greater~~] (a) twenty-five million dollars ($25,000,000), or (b) the amount of collateral as required by the state treasurer to comply with the state board of finance collateral policy, whichever is greater. The board may, by resolution, adjust these security requirements as it deems necessary to protect the interest of the state.

(4) [~~The bank shall wholly indemnify the state for any and all loss, damage, cost, damages, expenses (including, without limitation, counsel fees and expenses) and liability (hereinafter "loss") resulting from errors, omissions, fraud, embezzlement, theft, negligence or neglect by the bank, its employees, officers, agents and directors. It is acknowledged and agreed by the bank that any loss shall, unless such loss can be demonstrated by the bank to have been due to a cause or causes beyond the reasonable control of the bank (such as acts of God, acts of the public enemy, insurrections, riots, fires, explosions, orders or acts of civil or military authority and other cataclysmic events, to the extent all reasonable and diligent precautions by the bank could not have prevented the damage or loss resulting from any such event) be conclusively presumed to be the result of errors, omissions, fraud, embezzlement, theft, negligence or neglect on the part of the bank.~~] The bank or savings and loan association must agree to wholly indemnify the state, for any and all loss, damage, cost, damages, expenses (including, without limitation, legal fees and expenses) and liability to the state (collectively hereinafter "loss") resulting from errors, omissions, fraud, embezzlement, theft, negligence or neglect (collectively hereinafter "actions or omissions") by the bank or savings and loan association, and its employees, officers, agents and directors in performing their duties hereunder or under agreement, as applicable. The bank or savings and loan association must also acknowledge and agree that any loss to the state shall, unless such loss can be demonstrated by the fiscal agent to have been due to a cause or causes beyond its reasonable control (such as acts of God, acts of the public enemy, insurrections, riots, fires, explosions, orders

or acts of civil or military authority and other cataclysmic events, to the extent all reasonable and diligent precautions by the fiscal agent could not have prevented the damage or loss resulting from any such event) be conclusively presumed to be the result of actions or omissions on the part of the fiscal agent. Limited exceptions to this indemnification requirement may be permitted in any agreement entered into by the board with the bank or savings and loan association as to information supplied to the fiscal agent by the state treasurer, pursuant to any funds transfer, ach, safekeeping or other collateral agreement, or any other state agency, or such other exception as may be required in order to enable the provision of a particular service by the bank or savings and loan associaton. Any such limited exception must be included in the fiscal agent agreement and be acceptable to and specifically approved by the board.

(5) The bank or savings and loan association must agree to comply with requirements of the financial institutions Reform, Recovery, and Enforcement Act and any other applicable law to avoid seizure by federal regulators of any assets the fiscal agent pledges to secure state deposits in accordance with Paragraph (3) of Subsection A of 2.60.7.8 NMAC.

B. Designation of the fiscal agent shall be in the form of an agreement with the state board of finance for a term not to exceed four years [~~which is~~] as deemed appropriate by the board.

[2.60.7.8 NMAC - Rn, Directive 87-4 & A, 12-1-2009]

2.60.7.9 DESIGNATION PROCEDURES: CUSTODY BANK: The state board of finance may accept and review proposals from banks to be custody bank for the state of New Mexico, submitted in response to request for proposals issued in conformance with the state procurement code and the applicable requlations.

A. The board's request for proposals for designation of a custody bank shall include the following minimum qualifications and requirements:

(1) The bank must have an unimpaired capital and surplus, tier 1 core capital as defined by federal regulations of at least twenty million dollars ($20,000,000) and must be doing business in New Mexico.

(2) The bank must agree that it shall maintain and furnish at its expense throughout the term of the agreement a banker's blanket bond per occurrence coverage in a minimum amount of fifty million dollars ($50,000,000) and additional coverage for electronic computer crime losses in the minimum amount of twenty-five million dollars ($25,000,000) per occurrence. Each such coverage must contain terms and conditions acceptable to the state board of finance.

(3) The bank must agree to wholly indemnify the state for any and all loss, damage, cost, damages, expenss (including, without limitation, legal fees and expenses) and liability (collectively hereinafter "loss") resulting from errors, omissions, fraud, embezzlement, theft, negligence or neglect by the custody bank, its employees, officers, agents and directors in performing their duties under the custody bank agreement. The custody bank must also acknowledge and agree that any loss shall, unless such loss can be demonstrated by the custody bank to have been due to a cause or causes beyond the reasonable control of the custody bank (such as acts of God, acts of the public enemy, insurrections, riots, fires, explosions, orders or acts of civil or military authority and other cataclysmic events, to the extent all reasonable and diligent precautions by the custody bank could not have prevented the damage or loss resulting from any such event) be conclusively presumed to be the result of errors, omissions, fraud, embezzlement, theft, negligence or neglect on the part of the custody bank. Limited exceptions to this indemnification requirement may be permitted in any agreement entered by the board with the custody bank as to information supplied by the state treasurer or any other investing agency (i.e. public employees retirement associaton, education retirement board, state investment council) pursuant to any safekeeping or other collateral agreement or such other limited exception as may be required to in order to enable the provision of a particular service by the custody bank. Any such limited exception must be included in the custody bank agreement and be acceptable to and specifically approved by the board.

B. Designation of the custody bank shall be in the form of an agreement with the state board of finance for a term not to exceed four years as deemed appropriate by the board.

[2.60.7.9 NMAC - N, 12-1-2009]

HISTORY OF 2.60.7 NMAC:

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

SRC 73-1, Procedures to be Followed by the State Board of Finance in Designating a Fiscal Agent for the State of New Mexico, May 15, 1973, 5/21/73.

SRC 73-1, Amendment No. 1, Procedures to be Followed by the State Board of Finance in Designating a Fiscal Agent for the State of New Mexico, May 11, 1976, 5/18/76.

Directive 87-4, Procedures for Designating a Fiscal Agent of New Mexico, 9/25/87.

History of Repealed Material: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is a repeal and replace of 8.106.100 NMAC, Recipient Policies - Definitions and Acronyms, originally filed June 17, 2004, effective December 1, 2009.

This is a repeal and replace of 8.106.120 NMAC, Eligibility Policy - Case Administration, originally filed June 17, 2004, effective December 1, 2009.

This is a repeal and replace of 8.106.230 NMAC, General Financial - Payables and Disbursement, originally filed June 17, 2004, effective December 1, 2009.

This is a repeal and replace of 8.106.400 NMAC, Recipient Policies - Defining the Benefit Group, originally filed June 17, 2004, effective December 1, 2009.

This is a repeal and replace of 8.106.410 NMAC, Recipient Policies - General Recipient Requirements, originally filed June 17, 2004, effective December 1, 2009.

This is a repeal and replace of 8.106.420 NMAC, Recipient Policies - Requirements for Determining Disability, originally filed June 17, 2004, effective December 1, 2009.

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS
PART 100 RECIPIENT POLICIES - DEFINITIONS AND ACRONYMS

8.106.100.1 ISSUING AGENCY: New Mexico Human Services Department.

[8.106.100.1 NMAC - Rp, 8.106.100.1 NMAC, 12/01/2009]

8.106.100.2 SCOPE: The rule applies to the general public.

[8.106.100.2 NMAC - Rp, 8.106.100.2 NMAC, 12/01/2009]

8.106.100.3 STATUTORY AUTHORITY: 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.

[8.106.100.3 NMAC - Rp, 8.106.100.3 NMAC, 12/01/2009]

8.106.100.4 DURATION: Permanent.
[8.106.100.4 NMAC - Rp, 8.106.100.4 NMAC, 12/01/2009]

8.106.100.5 EFFECTIVE DATE: December 1, 2009, unless a later date is cited at the end of a section.
[8.106.100.5 NMAC - Rp, 8.106.100.5 NMAC, 12/01/2009]

8.106.100.6 OBJECTIVE:

A. The objective of general assistance is to provide cash assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched cash assistance program, such as New Mexico works (NMW) or the federal program of supplemental security income (SSI).

B. 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.

C. The objective of the burial assistance program is to assist in payment of burial expenses for an individual who was a low-income individual at the time of death.
[8.106.100.6 NMAC - Rp, 8.106.100.6 NMAC, 12/01/2009]

8.106.100.7 DEFINITIONS:

A. Definitions A-L:

(1) Adult residential shelter care home: means a shelter care home for adults that is licensed by the department of health.

(2) Alien: means an individual who is not a United States citizen.

(3) Application: means a written request for assistance, on the appropriate ISD form, signed by or on behalf of an individual or family.

(4) Attendant: means an individual needed in the home for medical, housekeeping or child care
reasons.

(5) Authorized beneficiary: means the surviving spouse of a disabled adult or the caretaker of an unrelated child, who has the ability to use a deceased recipient's issued payment.

(6) Authorized representative: means an adult who is designated in writing by the applicant and is sufficiently knowledgeable about the applicant/benefit group's circumstances to complete the application form correctly and represent the benefit group.

(7) Basic needs: means food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.

(8) Benefit group: means an individual or group of individuals authorized to receive cash assistance financed by state or local funds.

(9) Benefit month: means the month for which cash assistance benefits are issued.

(10) Budget month: means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.

(11) Capacity to work: means the affects of impairment(s), work-related factors, functionality on the ability for an individual to engage in gainful employment.

(12) Capital gains: means the proceeds from the sale of capital goods or equipment.

(13) Caretaker: means an adult who has assumed primary responsibility for the care of an unrelated child; outside the fifth degree of relationship.

(14) Cash assistance: means state-funded cash assistance in the general assistance program, the adult residential home care shelter program, or the burial assistance program for the indigent.

(15) Certification: means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.

(16) Certification period: means the time period in calendar months that is assigned to a benefit group that is approved to receive cash assistance benefits.

(17) Collateral contact: means an individual or agency designated to provide information concerning eligibility.

(18) Contingency: means requirement(s) an individual must accept as a condition of eligiblity such as, treatment available outside the GA program, unless a determination is made that good cause exists for the individual's inability to comply.

(19) Date of admission: means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.

(20) Date of authorization: means the date when action is taken to approve a cash payment for a benefit group.

(21) Date of entry: means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.

(22) Day(s): means working days, unless otherwise defined in this chapter.

(23) Department: means the human services department.

(24) Dependent child: means an individual who is seventeen years of age or younger; eighteen years of age and enrolled in high school; or between eighteen and twenty-two years of age and is receiving special education services regulated by the state public education department.

(25) Director: means the director of the income support division.

(26) Disability: means the definitions of disability related to the general assistance program and the disability determination process found at 8.106.420.7 NMAC.

(27) Earned income: means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and 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.

(28) Emancipated: means an individual under the age of 18 who is legally recognized as no longer under parental control due to the individual's marriage, active duty in the armed forces or by a decision of a court.

(29) Encumbrance: means debt owed on property.

(30) Equity value: means the fair market value of property, less any encumbrances owed on the property.

(31) Essential person: means an individual responsible for the care of a disabled general assistance recipient to the extent that placement into institutional care would be required were it not for care provided by this individual.

(32) Expungement: means the permanent deletion of cash benefits from an EBT account that is stale.

(33) Fair hearing: means an administrative proceeding that a claimant or his representative may request if:

(a) an application is not acted on within the application time limits at 8.106.110.12 NMAC; or

(b) an application is denied in whole or in part; or

(c) cash assistance or services are modified, terminated or not provided.

(34) Fair market value (FMV): means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or as a trade-in, not the amount the dealer would sell the vehicle for at retail.

(35) Federal act: means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.

(36) Federal fiscal year: means the time period beginning on October 1 and ending on September 30 of the calendar year.

(37) Federal poverty guidelines: means the level of income defining poverty by family size, published annually in the federal register by the United States department of health and human services.

(38) Gainful employment:

means any job or class of jobs in the state that would provide an income equaling or exceeding 85% of the federal poverty guidelines to the benefit group.

(39) Government entity: means any federal, state, tribal or local unit of government as well as any non-government entity that receives public funds for the purpose of meeting the needs of its clientele.

(40) Gross income: means the total amount of earned or unearned income before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-employment income and income excluded by federal law.

(41) Gross income test: means the income test applied to the maximum income eligibility limit for participation in a particular cash assistance program based on the size of the household or benefit group.

(42) Head of household: means an individual who is the responsible case head for the benefit group. The head of household may be the parent, guardian, sole adult member, specified relative, pregnant woman, a recipient of general assistance, or caretaker.

(43) Immigrant: means an individual who is an alien as defined in title IV of the federal Personal Responsibility and Work Opportunity Reconciliation Act (PROWRA) and within the technical meaning at 8 U.S.C. 1101(a)(15.

(44) Ineligible alien: means an individual who does not meet the eligible alien requirements or has not been admitted for permanent residence.

(45) Initial month: means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one calendar month or longer.

(46) Inquiry: means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application for that program.

(47) Interim assistance reimbursement: means the program within the social security administration that will reimburse the state through HSD for payments made to an individual receiving GA disability during the period the individual's application for SSI was pending.

(48) Institution of higher education: means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

(49) Institutionalized: Living in a facility licensed as an adult residential shelter care facility by the New Mexico department of health.

(50) Irrevocable trust funds: means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

(51) Issuance month: means the calendar month in which cash assistance is issued.

(52) Limited state funds: means that the standard of need for a one person benefit group is calculated at $150.00 per month or less.

B. Definitions M-Z:

(1) Mandatory benefit group member: The income and resources of mandatory members will always be considered to determine need, but not payment. In order to be included in the assistance group, members must individually meet eligibility requirements. Members mandatory for inclusion are: spouses residing in the home with the applicant, a caretaker of the applicant, and the father of an unborn child residing in the home with the applicant.

(2) Medicaid: means medical assistance under title XIX of the Social Security Act, as amended.

(3) Minor unmarried parent: means an unmarried parent who is under the age of 18 years or is age 18 and enrolled in high school.

(4) Month of approval: means the first month in which a benefit group is eligible for cash assistance.

(5) Net income test: means the income test applied to eligibility for a particular program after all allowable deductions are taken from the gross income for the household or benefit group. To be eligible, the benefit group's net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

(6) Net monthly income: means gross non-exempt income minus the allowable deductions. Net monthly income is the figure used to determine eligibility and cash assistance benefit amount.

(7) New Mexico works: means the federally funded temporary cash assistance program for needy families that carries a sixty-month term limit for adults in the state.

(8) Non-benefit group members: means persons residing with a benefit group but who are specifically excluded by regulation from being included in the benefit group certification.

(9) Notice of adverse action (NOAA): means a written notice sent 13 days in advance of an action to reduce, suspend or terminate benefits that includes a statement of the action the department intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for additional information, the availability of continued benefits, and liability of the benefit group for any overpayment received if the hearing decision is adverse to the benefit group.

(10) Overpayment/overissuance: means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

(11) Parent: means a natural parent, adoptive parent, or stepparent.

(12) Payment: means the amount of the cash assistance benefit, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's standard of need, and before any reduction by sanction or recoupment.

(13) Permanently residing under color of law (PRUCOL): means aliens lawfully admitted for permanent residence or permanently residing in the United States under color of law as follows.

(a) The individual may be eligible for medicaid if the individual is an alien residing in the United States with the knowledge and permission of the immigration and naturalization services (INS) and the INS does not contemplate enforcing the alien's departure. The INS does not contemplate enforcing an alien's departure if it is the policy or practice of INS not to enforce the departure of aliens in the same category, or if from all the facts and circumstances in a particular case it appears that INS is otherwise permitting the alien to reside in the United States indefinitely, as determined by verifying the aliens status with INS.

(b) Aliens who are permanently residing in the United States under color of law are listed below. None of the categories include applicants for an immigration and naturalization service status other than those applicants listed in Item (vi) of Subparagraph (b) of Paragraph (2) of Subsection A of 8.200.410.11 NMAC or those covered under Item (xvi) of Subparagraph (b) of Paragraph (2) of Subsection A of 8.200.410.11 NMAC. None of the categories allow medicaid eligibility for non-immigrants; for example, students or visitors. Also listed are the most commonly used documents that the INS provides to aliens in these categories.

(i) aliens admitted to the United States pursuant to 8 U.S.C. 1153(a)(7)(Section 203(a)(7) of the Immigration and Nationality Act); ask for a copy of INS Form I-94 endorsed "refugee-conditional entry";

(ii) aliens, including

Cuban/Haitian entrants, paroled in the United States pursuant to 8 U.S.C. 1182(d)(5) (Section 212(d)(5)) of the Immigration and Nationality Act; for Cuban/Haitian entrant (Status Pending) reviewable January 15, 1981; (although the forms bear this notation, Cuban/Haitian entrants are admitted under section 212(d)(5) of the Immigration and Nationality Act);

(iii) aliens residing in the United States pursuant to an indefinite stay of deportation; ask for an immigration and naturalization services letter with this information or INS Form I-94 clearly stated that voluntary departure has been granted for an indefinite period of time;

(iv) aliens residing in the United States pursuant to an indefinite voluntary departure; ask for an immigration and naturalization services letter or INS Form I-94 showing that voluntary departure has been granted for an indefinite time period;

(v) aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi)) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for a copy of INS Form I-94 or Form I-210 or a letter clearly stating that status;

(vi) aliens who have filed applications for adjustment of status pursuant to Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that the immigration and naturalization services has accepted as properly filed (within the meaning of 8 CFR 245.2(a)(1) or (2) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for a copy of INS Form I-94 or I-181 or a passport appropriately stamped;

(vii) aliens granted stays of deportation by court order, statute, or regulation, or by individual determination of the immigration and naturalization services pursuant to Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105 a) or relevant immigration and naturalization services instructions, whose departure that agency does not contemplate enforcing; ask for a copy of INS Form I-94 or a letter from the immigration and naturalization service, or a copy of a court order establishing the alien's status;

(viii) aliens granted asylum pursuant to Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158); ask for a copy of INS Form I-94 and a letter establishing this status;

(ix) aliens admitted as refugees pursuant to Section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or Section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)); ask for a copy of INS Form I-94 properly endorsed;

(x) aliens granted voluntary departure pursuant to Section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) or 8 CFR 242.5 whose departure the Immigration and Naturalization Service does not contemplate enforcing; ask for a Form I-94 or Form I-210 bearing a departure date;

(xi) aliens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1(a)(ii) prior to June 15, 1984 or 242.1(a)(22) issued June 15, 1984 and later; ask for a copy for INS Form I-210 or a letter showing that departure has been deferred;

(xii) aliens residing in the United States under orders of supervision pursuant to Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252(d)); ask for a copy of Form I-220 B;

(xiii) aliens who have entered and continuously resided in the United States since before January 1, 1972, (or any date established by Section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259); ask for any proof establishing this entry and continuous residence;

(xiv) aliens granted suspension for deportation pursuant to Section 244 of the Immigration and Naturalization Act (8 U.S.C. 1254) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for an order from an immigration judge showing that deportation has been withheld;

(xv) aliens whose deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)); ask for an order from an immigration judge showing that deportation has been withheld;

(xvi) any other aliens living in the United States with the knowledge and permission of the immigration and naturalization service and whose departure the agency does not contemplate enforcing (including permanent non-immigrants as established by Public Law 99-239, and persons granted extended voluntary departure due to conditions in the alien's home country based on a determination by the secretary of state).

(14) Person: means an individual.

(15) Project area: means the geographic area designated to a county office that is responsible for the administration of the department's programs.

(16) Prospective budgeting: means the computation of a benefit group's eligibility and benefit amount based on an estimate of income and circumstances that will exist in the current month and future months.

(17) Qualified alien: includes any of the classes of immigrant status granted by USCIS below:

(a) an alien who is lawfully-admitted for permanent residence (LPR) under the Immigration and Nationality Act (INA);

(b) an alien granted asylum under section 208 of the INA;

(c) an alien admitted into the United States as a refugee under section 207 of the INA;

(d) an alien paroled into the United States for a period of at least one year under section 212(d)(5) of the INA;

(e) an alien whose deportation has been withheld under section 243(h) of the INA as in effect prior to April 1, 1997, who whose removal has been withheld under section 241(b)(3) of the INA;

(f) an alien who has been granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(g) an alien who was a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980;

(h) an alien, an alien parent or alien child, who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent or by a member of the spouse or parent's family residing in the same home as the alien at the time of the abuse and there is a petition pending under 204(a)(1)(A) or (B) or 244(a)(3) of the INA, as long as the alien has begun the process of becoming a lawful permanent resident under the Violence Against Women Act;

(i) an alien who is a victim of a severe form of trafficking, regardless of immigration status, under the Trafficking Victims Protection Act of 2000.

(18) Real property: means land and affixed improvements and structures, which include mobile homes. Grazing permits are also considered real property.

(19) Recertification: means a complete review of all conditions of eligibility and a redetermination of the amount of the cash assistance benefits for an additional period of time.

(20) Recipient: means a person receiving cash assistance benefits.

(21) Reconsideration: means a re-evaluation of disability based on additional medical evidence provided by the client.

(22) Refugee: means a lawfully admitted individual granted conditional entry into the United States.

(23) Resource standard: means the financial standard with respect to an applicant's/recipient's resources and property, which is set at $2,000 for non-liquid resources and $1500 for liquid resources.

(24) Retrospective budgeting:

means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

(25) Secretary: means the secretary of the human services department.

(26) Self-employed: means an individual who engages in a self-managed enterprise for the purpose of providing support and income.

(27) Semiannual reporting: means a requirement for a benefit group to file a report of information in the sixth month of a 12-month certification period to determine if eligibility for benefits can continue.

(28) Set term GA: The certification period shall be for a set length of time dependent upon conditions, beginning from the month of approval and is not subject to review.

(29) Shelter for battered women and children: means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(30) Single-parent benefit group: means a benefit group that does not include both parents of a child who is included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

(31) Sponsor: means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

(32) Sponsored alien: means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a)(15) and 101(a)(2) of the Immigration and Nationality Act.

(33) Spouse: means an individual legally bound by marriage.

(34) Stale: means EBT accounts which have not been accessed (no withdrawal activity) by the household in the last 90 days from the most recent date of withdrawal.

(35) Standard of need: means the amount provided to each GA cash assistance benefit group on a monthly basis and is based on legislative funding, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR case number and expenditures, and number of pending applications.

(36) Supplemental security income (SSI): means monthly cash payments made under the authority of:

(a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;

(b) Section 1616(a) of the Social Security Act; or

(c) Section 1382 of the Social Security Act.

(37) Unavailable state funds: means the funds are not sufficient to provide all GA benefit groups with a one dollar monthly cash payment.

(38) 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; other public or private disability or retirement benefits 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.

(39) Unrelated caretaker: means an individual who is not a specified relative within the fifth degree of relationship of a dependent child and has assumed responsibility for care, support and supervision of an unrelated child and for meeting the child's physical and emotional needs.

(40) Unrelated child: means a minor, under 18 years of age, residing with a caretaker who is not a specified relative within the fifth degree of relationship.

(41) Variable term GA: The certification period shall be set for a length of time, not to exceed 12 months, beginning from the month of approval and is subject to review.

(42) Verification: means the use of third-party information or documentation to establish the accuracy of statements on the application.

(43) Work related factors: means factors taken into account in the disability determination process such as age, education, training, work experience, language ability, appearance, marital status, living situation, as well as relevant social history and minimal employment and activities that would be required in a work setting such as sitting, standing, walking, lifting, carrying, handling, seeing, hearing, communicating and understanding and following directions.

[8.106.100.7 NMAC - Rp, 8.106.100.7 NMAC, 12/01/2009]

8.106.100.8 ABBREVIATIONS AND ACRONYMS:

A. Abbreviations and acronyms:

(1) ARSCH: adult residential shelter care home

(2) BG: benefit group

(3) BIA: bureau of Indian affairs

(4) BIA-GA: bureau of Indian affairs-general assistance

(5) CA: cash assistance

(6) CE: categorical eligibility or categorically eligible

(7) CFR: code of federal regulations

(8) CS: child support

(9) CSED: (HSD) child support enforcement division

(10) CYFD: (New Mexico) children, youth & families department

(11) DOH: (New Mexico) department of health

(12) DVR: division of vocational rehabilitation

(13) DOT: dictionary of occupational titles

(14) E&T: employment and training (food stamp work program)

(15) EBT: electronic benefit transfer

(16) EI: earned income

(17) EWP: education works program

(18) FAP: financial assistance program

(19) FFY: federal fiscal year

(20) FMV: fair market value

(21) FPL: federal poverty level

(22) GA: general assistance

(23) GED: general equivalency degree

(24) HHS: (U.S.) health and human services

(25) HSD: (New Mexico) human services department

(26) HUD: (U.S.) housing and urban development

(27) IDA: individual development account

(28) IPV: intentional program violation

(29) IRP: individual responsibility plan

(30) IRU: incapacity review unit

(31) ISD: (HSD) income support division

(32) ISD2: integrated services delivery for income support division (ISD)

(33) MAD: (HSD) medical assistance division

(34) MVD: (New Mexico) motor vehicle division

(35) NADA: national automobile dealers association

(36) NMAC: New Mexico administrative code

(37) NMDWS: New Mexico department of workforce solutions

(38) NMW: New Mexico works

(39) NOAA: notice of adverse

action

(40) POS: point of sale

(41) PED: (New Mexico) public education department

(42) QC: quality control

(43) RR: regular reporting

(44) RRP: refugee resettlement program

(45) SAVE: systematic alien verification for entitlements

(46) SE: self employment

(47) SR: semiannual reporting

(48) SSA: social security administration

(49) SSI: supplemental security income

(50) SSN: social security number

(51) TANF: temporary assistance to needy families (block grant program under title IV-A of the Social Security Act)

(52) UCB: unemployment compensation benefits

(53) UEI: unearned income

(54) USCIS: United States immigration and naturalization services

(55) USDA: United States department of agriculture

(56) VA: veterans administration

(57) WIA: Workforce Investment Act

(58) WID: work incentive deduction

(59) WPA: work participation agreement

B. Medical abbreviations and acronyms:

(1) CNP: certified nurse practitioner

(2) MD: medical doctor

(3) NP: nurse practitioner

(4) PA: physician assistant

(5) PN: practical nurse

[8.106.100.8 NMAC - Rp, 8.106.100.8 NMAC, 12/01/2009]

HISTORY OF 8.106.100 NMAC:

History of Repealed Material:
8.106.100 NMAC, Recipient Policies - Definitions and Acronyms, filed 06/17/2004 - Repealed 12/01/2009.

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS
PART 120 ELIGIBILITY POLICY - CASE ADMINISTRATION

8.106.120.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.106.120.1 NMAC - Rp, 8.106.120.1 NMAC, 12/01/2009]

8.106.120.2 SCOPE: The rule applies to the general public.
[8.106.120.2 NMAC - Rp, 8.106.120.2 NMAC, 12/01/2009]

8.106.120.3 STATUTORY AUTHORITY: 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.
[8.106.120.3 NMAC - Rp, 8.106.120.3 NMAC, 12/01/2009]

8.106.120.4 DURATION: Permanent.
[8.106.120.4 NMAC - Rp, 8.106.120.4 NMAC, 12/01/2009]

8.106.120.5 EFFECTIVE DATE: December 1, 2009, unless a later date is cited at the end of a section.
[8.106.120.5 NMAC - Rp, 8.106.120.5 NMAC, 12/01/2009]

8.106.120.6 OBJECTIVE:

A. 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, such as New Mexico works (NMW) or the federal program of supplemental security income (SSI).

B. 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.

C. The objective of the burial assistance program is to assist in payment of burial expenses for an individual who was a low income individual at the time of death.
[8.106.120.6 NMAC - Rp, 8.106.120.6 NMAC, 12/01/2009]

8.106.120.7 DEFINITIONS: [Reserved]

8.106.120.8 REPORTING REQUIREMENTS:

A. Department responsibilities: The department shall inform the benefit group of its responsibility to report changes. Appropriate action shall be taken to determine if the change affects eligibility or benefit amount. The date the change is reported and the action taken shall be documented. In some circumstances the department shall request clarification during a certification period whenever information becomes known to the department indicating a possible change in a benefit group's circumstances that may affect eligibility or benefit amount. Circumstances that may require follow-up review include, but are not limited to:

(1) compliance with a contingency requirement by an adult with a determined disability;

(2) school attendance of children age six or older who are benefit group members;

(3) any other anticipated or reported change in circumstances that may affect eligibility or benefit amount during a certification period;

(4) the need for a disability review to determine if disability still exists.

B. Benefit group responsibilities at application: A benefit group must report all changes affecting eligibility and benefit amount that may have occurred since the date the application was filed and before the date of the interview. Changes occurring after the interview, but before the date of the approval notice, must be reported by the benefit group within ten days of the date the change becomes known to the benefit group.

C. Set and variable term GA: Within 10 days of the date the change becomes known to the benefit group, a recipient of GA, shall be required to report the following changes:

(1) a benefit group's income in excess of eighty-five percent of federal poverty guidelines for size of the benefit group;

(2) a benefit group, or the department receives evidence that the eligible recipient has started receipt of SSI, OASDI or both;

(3) that the benefit group has moved from the state or intends to move from the state on a specific date;

(4) a benefit group requests closure; or

(5) the department receives documented evidence that the head of benefit group has died.

D. Responsibility to report: A benefit group must report changes within ten days of the date a change becomes known to the benefit group.

(1) A financial change becomes known to the benefit group when the benefit group receives the first payment attributed to an income or resource change, or when the first payment is made for an allowable expense.

(2) A nonfinancial change, including but not limited to a change in benefit group composition or a change in address, becomes known to the benefit group on the date the change takes place.

(3) A change reported by the benefit group on the date the report of change is received by the local county office

or, if mailed, the date of the postmark on the benefit group's report, plus three mailing days.

(4) In the absence of a written report, a 13-day notice of adverse action is required if the change will result in a reduction or termination of benefits.

E. Effective date of change: Changes to eligibility based on reported changes shall be effective pursuant to regulation at 8.106.630.9 NMAC.

[8.106.120.8 NMAC - Rp, 8.106.120.8 NMAC, 12/01/2009]

8.106.120.9 CERTIFICATION PERIODS:

A. Set term GA: The certification period shall be for a set length of time dependent upon conditions, beginning from the month of approval and is not subject to review. The certification period shall be set for the length of the disability established by medical documentation, not to exceed eight months.

B. Variable term GA: The certification period shall be set for a length of time, not to exceed 12 months, beginning from the month of approval and is subject to review.

(1) Dependent child in the benefit group: The certification period will be set for up to six months.

(2) ARSCH: The certification period will be set for 12 months.

(3) Disability: The certification period will be set for a length of time not to exceed 12 months, subject to expected duration of disability based on medical documentation.

[8.106.120.9 NMAC - Rp, 8.106.120.9 NMAC, 12/01/2009]

8.106.120.10 ELIGIBLITY RECERTIFICATION:

A. Recertification of eligibility: The department shall provide notice of recertification 45 days prior to the end of the certification and make a prospective determination of eligibility beginning the month following the month the certification period expires. The recertification shall consist of a determination of eligibility for an additional period of time, redetermination of the amount of cash assistance payment and a complete review of all conditions of eligibility as indicated below.

(1) Financial eligibility: Current financial eligibility must be reviewed at the end of the certification period for the specific program to determine continued eligibility for a new period of time.

(2) Disability: A disability review may or may not be required at the end of the certification period.

(3) Child support enforcement: The department shall ensure that all pertinent information regarding the noncustodial parent(s) of any dependent child in the benefit group, including but not limited to the current address, social security number and work place of the noncustodial parent is updated.

(4) Other programs: The department shall provide information about other assistance programs.

(5) Review of record: The department shall review the documentation contained in the record for completeness. If the record does not contain satisfactory evidence, additional verification shall be obtained.

B. Interview: A face-to-face interview shall take place at the end of the certification period, unless the recipient's physical or mental condition makes the interview impossible or inadvisable. The county director may waive the face-to-face interview on a case-by-case basis for hardship reasons found at 8.106.110.11 NMAC. During the interview the department shall review with the recipient the possible changes in circumstances that must be reported and may affect the client's eligibility or benefit amount.

C. Exchange of information with the social security administration: During the review process, the caseworker may obtain information relevant to the eligibility of a family member who is an SSI recipient. If there is a clear indication that a SSI recipient's countable income exceeds the maximum allowable under the SSI program, that information shall be reported to the SSA district office. SSA shall also be notified when it appears that the resources of an SSI recipient exceed SSI program standards.

[8.106.120.10 NMAC - Rp, 8.106.120.10 NMAC, 12/01/2009]

8.106.120.11 DISABILITY RECERTIFICATION:

A. The disability review process requires a recertification of an individual's impairment and whether an individual's impairment prevents gainful employment within an individual's capacity. A review of disability may occur simultaneously with recertification for eligibility or occur within the certification period.

B. The review shall include, but may not be limited to:

(1) whether a recipient's disability must be reevaluated;

(2) the next review date for reevaluation;

(3) whether there is a need for current, updated medical reports to update the medical condition;

(4) whether there are any changes in work-related factors;

(5) whether a disability still exists;

(6) whether the client has satisfactorily complied with contingency requirements and if not if good cause applies as outlined at 8.106.410.13 NMAC.

[8.106.120.11 NMAC - N, 12/01/2009]

8.106.120.12 RECERTIFICATION TIME STANDARDS:

A. GA benefits shall not continue beyond the certification period if eligibility requirements in Section 10 above have not been met; regardless of disability review.

B. Reapplication:

(1) Timely reapplication: Applications submitted before the 15th of the expiration month will be considered timely.

(2) Untimely reapplication: An application received after the 15th but before the end of a benefit group's certification period expires has lost its right to interrupted benefits.

(a) If the benefit group is determined eligible, without regard to disability, the benefit group is entitled to ongoing benefits that are not prorated.

(b) Initial month verification standards will be used for all applications received more than one calendar month after the certification period expires or the case has been closed for any reason.

C. Verification: A benefit group that has reapplied timely, completed an interview and provided requirered verification, specific to eligibility, will be given 10 days to provide the verification or until the certification period expires, whichever is longer. If the certification period expires before the 10-day deadline for submitting the required verification, the benefit group will be entitled to a full month's benefits, if eligible, within five days after verification is submitted.

D. Agency failure to act: A benefit group that has made a timely application for recertification, but due to agency error, is not determined eligible in sufficient time to provide for issuance by the benefit group's normal issuance date in the following month, will be entitled to restoration of lost benefits.

[8.106.120.12 NMAC - N, 12/01/2009]

HISTORY OF 8.106.120 NMAC:

History of Repealed Material:

8.106.120 NMAC, Eligibility Policy - Case Administration, filed 06/17/2004 - Repealed 12/01/2009.

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS
PART 230 GENERAL FINANCIAL - PAYABLES AND DISBURSEMENT

8.106.230.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.106.230.1 NMAC - Rp, 8.106.230.1 NMAC, 12/01/2009]

8.106.230.2 SCOPE: The rule applies to the general public.
[8.106.230.2 NMAC - Rp, 8.106.230.2 NMAC, 12/01/2009]

8.106.230.3 STATUTORY AUTHORITY: 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.
[8.106.230.3 NMAC - Rp, 8.106.230.3 NMAC, 12/01/2009]

8.106.230.4 DURATION: Permanent.
[8.106.230.4 NMAC - Rp, 8.106.230.4 NMAC, 12/01/2009]

8.106.230.5 EFFECTIVE DATE: December 1, 2009, unless a later date is cited at the end of a section.
[8.106.230.5 NMAC - Rp, 8.106.230.5 NMAC, 12/01/2009]

8.106.230.6 OBJECTIVE:

A. 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 such as New Mexico works (NMW) or the federal program of supplemental security income (SSI).

B. 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.

C. The objective of the burial assistance program is to assist in payment of burial expenses for an individual who was a low income individual at the time of death.
[8.106.230.6 NMAC - Rp, 8.106.230.6 NMAC, 12/01/2009]

8.106.230.7 DEFINITIONS: [Reserved]

8.106.230.8 PAYMENT ISSUANCE:

A. EBT: The department issues cash assistance benefits through an electronic benefit transfer (EBT) system. In no instance shall the department restrict or dictate the use of the money paid.

B. Warrants: In some circumstances a payment can be issued by warrant.

C. Death of a recipient: An authorized beneficiary may access and use payments issued on behalf of a recipient who died before an EBT withdrawal was made if the recipient:

(1) was alive on the first day of the month for which cash assistance benefits were issued; and

(2) met all eligibility conditions at the time of death.
[8.106.230.8 NMAC - Rp, 8.106.120.8 & 9 NMAC, 12/01/2009]

HISTORY OF 8.106.230 NMAC:

History of Repealed Material:
8.106.230 NMAC, General Financial -Payables and Disbursement, filed 06/17/2004 - Repealed 12/01/2009.

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS
PART 400 RECIPIENT POLICIES - DEFINING THE BENEFIT GROUP

8.106.400.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.106.400.1 NMAC - Rp, 8.106.400.1 NMAC, 12/01/2009]

8.106.400.2 SCOPE: The rule applies to the general public.
[8.106.400.2 NMAC - Rp, 8.106.400.2 NMAC, 12/01/2009]

8.106.400.3 STATUTORY AUTHORITY: 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.
[8.106.400.3 NMAC - Rp, 8.106.400.3 NMAC, 12/01/2009]

8.106.400.4 DURATION: Permanent.
[8.106.400.4 NMAC - Rp, 8.106.400.4 NMAC, 12/01/2009]

8.106.400.5 EFFECTIVE DATE: December 1, 2009, unless a later date is cited at the end of a section.
[8.106.400.5 NMAC - Rp, 8.106.400.5 NMAC, 12/01/2009]

8.106.400.6 OBJECTIVE:

A. 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 such as New Mexico works (NMW) or the federal program of supplemental security income (SSI).

B. 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.

C. The objective of the burial assistance program is to assist in payment of burial expenses for an individual who was a low income individual at the time of death.
[8.106.400.6 NMAC - Rp, 8.106.400.6 NMAC, 12/01/2009]

8.106.400.7 DEFINITIONS: [Reserved]

8.106.400.8 WHO CAN BE A RECIPIENT: To be a recipient of general assistance, an individual must be eligible according to the regulations for the GA program. An individual for whom an application has been or must be made may receive cash assistance as long as the individual also meets individual eligibility requirements of the GA program and is otherwise eligible.
[8.106.400.8 NMAC - Rp, 8.106.400.8 NMAC, 12/01/2009]

8.106.400.9 BASIS FOR DEFINING THE BENEFIT GROUP:

A. Request for assistance: The request for assistance is the first step in determining those individuals who must be included in the benefit group. At the request of the head of the benefit group, non-mandatory members may be included or removed from the benefit group, this may require the inclusion or removal of other individuals as well.

B. Benefit group members: The head of benefit group is required to apply for any person who is a mandatory benefit group member, failure shall result in ineligibility for the entire benefit group. Changes in benefit group circumstances shall be reviewed and may

affect who is considered a mandatory benefit group member.

C. Mandatory for inclusion: The income and resources of mandatory members will always be considered to determine need, but not payment. In order to be included in the assistance group, members must individually meet eligibility requirements. Members mandatory for inclusion are: spouses residing in the home with the applicant, a caretaker of the applicant, and the father of an unborn child residing in the home with the applicant.

[8.106.400.9 NMAC - Rp, 8.106.400.9 NMAC, 12/01/2009]

8.106.400.10 CONSTRUCTING THE BENEFIT GROUP:

A. General: To be eligible for inclusion in a GA benefit group, a person must be individually eligible according to requirements set forth in 8.106.410 NMAC, 8.106.420 NMAC and 8.106.430 NMAC and not otherwise disqualified from participation. The person or persons meeting individual eligibility requirements and for whom an application has been or must be made constitute the benefit group.

B. Disability: The benefit group for the GA-disabled adult program consists of the disabled adult and may include the needs of other adults living in the home. An adult who shares custody of his or her biological child may apply for GA-disabled adults in his or her own right, provided that the adult who is applying has less than half time custody of the child.

(1) Spouse: The spouse, residing in the home with the disabled adult must be included in the benefit group to determine need, but not payment. The spouse may be included in payment if the spouse is determined disabled.

(2) Essential person: An individual, regardless of relation, is considered essential to the well being of a disabled GA applicant and may be included in the GA benefit group to determine need and payment. An essential person is capable of providing the physical care needed by the GA disabled recipient to the extent that placement into institutional care would otherwise be required without this care.

(3) Pregnant individual: An emancipated unmarried pregnant woman, age 17 or younger, or a pregnant adult, who has not reached her third trimester and has been determined to be disabled, may be considered a benefit group member in the GA disabled adult program. The father of the unborn child that resides in the home, must be included in the benefit group to determine need, but not payment.

(4) SSI: An individual receiving SSI, or who would be receiving SSI except for recovery by the social security administration of an overpayment, is not eligible to be included in a GA benefit group.

C. State supplement for adult residential care: To be eligible for inclusion in an ARSCH supplemental payment benefit group, an individual must be eligible for SSI. The benefit group consists of the SSI recipient. Two SSI recipients who would constitute a family if living at home, but who reside in an adult residential shelter care facility, are considered to be two separate benefit groups.

D. Unrelated child: The benefit group for the GA-dependent child program consists of a dependent child who lives in a family setting with a non-related adult caretaker, and all of that dependent child's full, half, step- or adopted siblings living in the home. An adult caretaker may be an individual who is not a specified relative within the fifth degree of relationship and who is not eligible for NMW in his or her own right.

(1) Caretaker: The unrelated caretaker shall be included in the benefit group upon request. The spouse of the unrelated caretaker, if living in the home, shall be included in the benefit group when the unrelated caretaker is included in the benefit group.

(2) Need and payment: The unrelated caretaker and spouse shall be included in the benefit group to determine need and payment only if they request inclusion.

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

(a) father (biological or adoptive);

(b) mother (biological or adoptive);

(c) grandfather, great grandfather, great-great grandfather, great-great-great grandfather;

(d) grandmother, great-grandmother, great-great-grandmother, great-great-great grandmother;

(e) spouse of child's parent (stepparent);

(f) spouse of child's grandparent, great grandparent, great-great grandparent, great-great-great grandparent (step-grandparent);

(g) brother, half-brother, brother-in-law, stepbrother;

(h) sister, half-sister, sister-in-law, stepsister;

(i) uncle of the whole or half-blood, uncle-in-law, great uncle, great-great uncle;

(j) aunt of the whole or half blood, aunt-in-law, great aunt, great-great aunt;

(k) first cousin and spouse of first cousin;

(l) son or daughter of first cousin (first cousin once removed);

(m) son or daughter of great aunt or great uncle (first cousin once removed) and spouse;

(n) nephew/niece and spouses.

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

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

[8.106.400.10 NMAC - Rp, 8.106.400.11, 12 & 16 NMAC, 12/01/2009]

8.106.400.11 LIVING ARRANGEMENT:

A. Disability:

(1) An individual shall not be eligible for inclusion in the benefit group if the individual is institutionalized for any reason such as:

(a) medical or mental health treatment;

(b) an inmate in a public non-medical institution, including facilities in the state prison system, jails and detention centers, as well as juvenile correction facilities;

(c) a person shall be considered an inmate if residing in a public facility at the order or discretion of a court, such as a person sentenced to a prison or committed under court order.

(2) An individual shall be eligible for inclusion in the benefit group if the individual is:

(a) attending a public educational or vocational training institution, who lives in housing provided by the institution; or

(b) residing in a homeless shelter or other supportive living program administered by a homeless services provider.

(3) To be eligible for inclusion the essential person, spouse or father of the unborn child, must be considered to be living with the disabled recipient.

B. State supplement for adult residential care: To be eligible for the ARSCH supplemental payment program, an individual must be living in a facility licensed as an adult residential shelter care facility by the New Mexico department of health.

C. Dependent child: The determination whether the dependent child meets the living arrangement is discussed with the caretaker and carefully documented in the case record.

(1) The dependent child must be living or considered to be living, in the home with an unrelated caretaker. A dependent child is considered to be living with a caretaker if:

(a) the caretaker has assumed

responsibility for care, support and supervision of an unrelated child and for meeting the child's physical and emotional needs;

(b) the caretaker has demonstrated an intent to maintain the caretaker-child relationship and to provide a home for the child;

(c) the caretaker is not the legal guardian of the dependent child;

(d) the dependent child is not physically absent from the home and is not under the care, control or supervision of himself, a relative or another adult, a social services or correctional agency, or other agency of state, local or tribal government; and

(e) the dependent child actually spends the majority of time with one caretaker.

(2) Absence from the home: The caretaker of a dependent child included in the benefit group must report when a dependent child leaves the home of the caretaker. The dependent child's needs shall be removed from the cash assistance payment if the benefit group includes only one dependent child, eligibility shall be terminated for the benefit group. A child may be physically absent from the home, for a period of time and may remain a member of the benefit group if:

(a) the absence is related to the well being of the child;

(b) the caretaker continues to exercise care, financial support, maintains living quarters, makes decisions on the behalf of the child and remains in contact with the child in order to provide supervision of the child; and

(c) the length of the absence is less than 45 days, provided that the child is not simultaneously participating in another cash assistance program.

(3) Absences related to the well being of a child: A child shall retain living-in-the-home status while receiving any of the services described below.

(a) Rehabilitation services, including psychosocial treatment services:

(i) the program must be family-based with one objective being the strengthening of family ties;

(ii) treatment plans must provide for a significant level of continuing authority, responsibility, and participation by the caretaker; and

(iii) the caretaker must retain the authority to decide when the child should leave the facility, must approve necessary treatment, and must retain responsibility for provision of pocket money.

(b) Boarding school: A child who is attending school away from home regardless of the length of the absence, when the caretaker retains responsibility for care, support and supervision of the child. The child must have been living in the home before attending boarding school.

(c) Residence in a medicaid facility: A child hospitalized for care or treatment in a title facility may retain living-in-the-home status, without regard to the length of hospitalization, provided that:

(i) the child must have been living in the home before hospitalization;

(ii) the caretaker continues to be the person with primary responsibility for care, support and supervision of the child and for meeting the child's physical and emotional needs.

(d) Treatment centers may include acute care hospitals, freestanding psychiatric hospitals and rehabilitation hospitals as well as residential treatment centers and group homes reimbursed by medicaid for psychosocial rehabilitation services. The status of a residential treatment center or group home as a medicaid provider may be made by contacting the medical assistance division of the human services department.

(e) 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 living in the home, as the caretaker no longer has significant responsibility of the care, support and supervision of the child.

(f) A child retains living-in-the-home status as long as the caretaker has the authority to control the child's treatment and duration of stay. Should a court order be issued placing the child in a psychiatric facility, a caretaker may be prevented from removing the child from the facility. In such a circumstance, the child cannot retain living-in-the-home status.

(4) Caretaker's absence from the home: The caretaker may be physically absent from the home and still retain status as the primary caretaker for purposes of eligibility, provided the caretaker is absent from the home due to illness or hospitalization for 30 days or less.

(a) Primary responsibility: In order for the caretaker to retain living-in-the-home status, he or she must retain primary responsibilities for providing care, support and supervision for the child.

(b) Residence in a medicaid facility: 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 the home. If the caretaker does not return to the home following hospitalization, the living-in-the-home determination shall be terminated.

[8.106.400.11 NMAC - Rp, 8.106.400.10, 14 & 15 NMAC, 12/01/2009]

HISTORY OF 8.106.400 NMAC:

History of Repealed Material:
8.106.400 NMAC, Recipient Policies - Defining the Benefit Group, filed 06/17/2004 - Repealed 12/01/2009.

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS
PART 410 RECIPIENT POLICIES - GENERAL RECIPIENT REQUIREMENTS

8.106.410.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.106.410.1 NMAC - Rp, 8.106.410.1 NMAC, 12/01/2009]

8.106.410.2 SCOPE: The rule applies to the general public.
[8.106.410.2 NMAC - Rp, 8.106.410.2 NMAC, 12/01/2009]

8.106.410.3 STATUTORY AUTHORITY: 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.
[8.106.410.3 NMAC - Rp, 8.106.410.3 NMAC, 12/01/2009]

8.106.410.4 DURATION: Permanent.
[8.106.410.4 NMAC - Rp, 8.106.410.4 NMAC, 12/01/2009]

8.106.410.5 EFFECTIVE DATE: December 1, 2009, unless a later date is cited at the end of a section.
[8.106.410.5 NMAC - Rp, 8.106.410.5 NMAC, 12/01/2009]

8.106.410.6 OBJECTIVE:

A. 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 such as New Mexico works (NMW) or the federal program of supplemental security income (SSI).

B. 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.

C. The objective of the burial assistance program is to assist in payment of burial expenses for an individual who was a low income individual at the time of death.

[8.106.410.6 NMAC - Rp, 8.106.410.6 NMAC, 12/01/2009]

8.106.410.7 DEFINITIONS: [Reserved]

8.106.410.8 REQUIREMENTS:

A. An applicant or recipient who fails to meet an individual eligibility requirement is not eligible to be included in the benefit group. The individual's ineligibility does not make the entire benefit group ineligible, unless the ineligible individual is the only member of the benefit group.

B Application moratorium: When the department has issued a public notice regarding the limitation of state funds, the caseworker shall deny the general assistance without consideration of eligibility requirements.

[8.106.410.8 NMAC - Rp, 8.106.410.8 NMAC, 12/01/2009]

8.106.410.9 ENUMERATION:

A. To be eligible for inclusion in the benefit group, the recipient, or the caretaker on behalf of a dependent child, must report the individual's social security number (SSN) within 60 days of approval for the GA program.

B. An SSN card shall not be required to validate the individual's SSN, but shall be requested if an individual's SSN becomes questionable or cannot be validated by the social security administration.

C. Failure to meet the enumeration requirement shall result in ineligibility of the benefit group member whose SSN has not been reported or cannot be verified.

[8.106.410.9 NMAC - Rp, 8.106.410.9 NMAC, 12/01/2009]

8.106.410.10 CITIZENSHIP AND ALIEN STATUS: To be eligible for inclusion in a GA benefit group, if otherwise eligible, an individual must be:

A. a citizen of the United States;

B. a naturalized citizen;

C. an alien who entered the United States before August 22, 1996, and who meets the definition of a qualified immigrant at 8.106.100 NMAC or meets the definition of a PRUCOL; or

D. an alien who entered the United States on or after August 22, 1996, and who meets the definition of a qualified alien at 8.106.100 NMAC.

[8.106.410.10 NMAC - Rp, 8.106.410.10 NMAC, 12/01/2009]

8.106.410.11 RESIDENCY:

A. To be eligible for inclusion in a GA benefit group, an individual must be living in the state of New Mexico, and have demonstrated an intent to remain in the state. For applicants, the residency determination shall be made on the date eligibility is determined

B. Residence shall not be considered to exist if the person is just passing through the state or is present in the state for purposes such as vacation, family visits, medical care, temporary employment, or other similar short-term stays and 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 and utilities, receiving mail at that address, etc.), enrolling children in school, renting a post office box, obtaining a state driver's license, joining a church or other local organization, obtaining or seeking employment in the state, registering to vote in the state, etc.

D. Homeless persons: Homeless persons 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 much information as possible shall be obtained and entered into the case record, but absence of the more common types of verifications, including but not limited to residence, shall not be a barrier to eligibility.

E. 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, with the intention of returning to the state.

(2) Absences related to the following purposes shall be considered temporary:

(a) short-term visits with family or friends lasting less than 30 days;

(b) out-of-state stays for medical treatment; or

(c) attendance at an out-of-state school, returning to the state during vacations.

(3) Residency DVR training out-of-state: If plans are made in conjunction with DVR for a recipient's participation in a training course in another state, cash assistance may be continued for the duration of the training course provided that the recipient or benefit group intends to return to New Mexico when the training is completed.

(4) Illness: If a recipient who is temporarily visiting outside New Mexico is unable to return to New Mexico due to illness, cash assistance may continue until such time as the recipient is able to return. The recipient's inability to return to New Mexico due to illness must be verified by a physician's report.

(5) A statement by a recipient of intent to return to the state will be accepted, provided that the recipient does not take action in another state to establish permanent residence.

F. Residency abandonment: Residence shall be considered to have been abandoned when an individual:

(1) leaves the state and indicates that he intends to establish residence in the other state; or

(2) leaves the state for no specific purpose and with no clear intention to return; or

(3) leaves the state and applies for food, financial or medical assistance from another state; or

(4) has been absent from the state for a period of 30 days or more and has not notified the department of the absence or of an intention to return.

G. Residence of children: A dependent child shall be considered to be a resident of the same state as the caretaker adult with whom the child is living.

[8.106.410.11 NMAC - Rp, 8.106.410.11 NMAC, 12/01/2009]

8.106.410.12 NONCONCURRENT RECEIPT OF ASSISTANCE:

A. Assistance from another state: An individual who is receiving assistance from another state shall be considered a resident of that state until the state is notified of the individual's intention to abandon residence. An individual who received GA from another state shall be considered to be in receipt of concurrent assistance for that month.

B. Concurrent receipt of assistance: To be eligible for inclusion in a GA benefit group, the individual cannot already be:

(1) included as a benefit group member and receiving cash assistance from another department cash assistance program;

(2) an SSI recipient;

(3) a recipient of benefits from a federally-funded TANF program (including a tribal program) or BIA-GA program;

(4) a recipient of a government-funded adoption subsidy program; or

(5) a recipient of benefits from a TANF or GA program in another state.

C. An individual may not be the payee for more than one GA cash

assistance payment.

D. Supplemental security income:

(1) Ongoing SSI eligibility: An individual eligible for SSI on an ongoing basis is not eligible for GA benefits based on concurrent receipt of assistance. The SSI recipient shall not be included in the benefit group for purposes of GA eligibility or benefit calculation. The income, resources and needs of the SSI recipient are excluded in determining benefit group eligibility and benefit amount.

(2) SSI applicants: An individual receiving GA cash assistance benefits from the department may apply for and receive SSI benefits for the same months for which the department has already issued GA benefits. Cash assistance benefits issued by the department are considered in determining the amount of retroactive SSI benefits to be paid to the SSI applicant. GA ineligibility or overpayments shall not be established for any month for which the SSA issues an SSI retroactive payment. When notice is received that a benefit group member is approved for SSI on an ongoing basis, that member shall be immediately removed from the benefit group.

(3) Retroactive SSI payments:

(a) A state funded GA recipient who receives retroactive SSI payments is required to reimburse the department under general assistance program interim assistance reimbursement (IAR) provisions set forth at 8.106.420.17 NMAC.

(b) There may be some situations in which only retroactive SSI benefits are approved. Such approvals do not result in GA ineligibility due to concurrent receipt of assistance, since the SSI benefits will not be received on an ongoing basis, but may result in GA ineligibility on the basis of resources (See 8.106.510 NMAC).

(4) Adult residential shelter care program: Receipt of SSI is a requirement for receiving adult residential shelter care payments.

E. Other department programs: The food stamp program, medicaid, LIHEAP and other similar programs are not considered concurrent assistance and shall not make an individual ineligible for GA cash assistance programs.

[8.106.410.12 NMAC - Rp, 8.106.410.12 NMAC, 12/01/2009]

8.106.410.13 ADDITIONAL ELIGIBILITY REQUIREMENTS FOR DISABILITY:

A. Compliance with IAR requirements: The state of New Mexico is a participant in the interim assistance reimbursement (IAR) program administered by the social security administration (SSA). The U.S. secretary of health and human services, through the SSA, has agreed to reimburse the state through HSD for general assistance payments made to an individual receiving GA disability during the period the individual's application for SSI was pending. Upon approval of SSI, SSA sends the first retroactive SSI payment due an individual to HSD as repayment for the state-funded GA payments made to the individual. The repayment of GA benefits from SSI is referred to as interim assistance reimbursement (IAR).

(1) Interim assistance authorization: An individual applying for disability based on set or variable term disability must, as a condition of eligibility, authorize in writing the reimbursement to HSD for the amount of GA benefits paid on the individual's behalf for any month in which the SSA pays retroactive SSI benefits to the individual.

(a) Completing the IAR authorization: The IAR authorization shall be completed and signed by the applicant and the Department representative at the time the individual is interviewed. Refusal to sign an IAR authorization shall result in immediate denial of a GA application.

(b) The department shall not approve an application for GA without a completed and valid IAR.

(c) The completed and signed IAR authorization form must be received by SSA within 30 days from the date of signature in order to be valid.

(d) Duration of authorization: The authorization for IAR shall remain in effect from the date of signature until:

(i) SSA releases the SSI retroactive payment to HSD and HSD recovers the full amount to which it is entitled; or

(ii) HSD and the individual agree to terminate the authorization.

(2) Termination of GA benefits does not constitute termination of the IAR authorization. HSD shall receive the first retroactive SSI payment for an individual who has received GA in the past and for whom an IAR authorization is in effect.

(3) Validity of an IAR authorization: In order for the IAR authorization to remain in effect, an individual must have filed an application for SSI within 12 months of signing the authorization.

(4) Determination of repayment amount:

(a) The amount of repayment of GA benefits from SSI shall be determined by comparing the months and amounts of GA paid to the individual to the months and amounts of the SSI retroactive payment issued by the SSA. The amount available for reimbursement to the department shall be calculated from the first day the individual is eligible for SSI benefits and shall end with (and include) the month the retroactive SSI payment is made.

(b) For each month that GA and SSI were both paid, the department shall recoup the amount of the GA benefit, not to exceed the amount of SSI for that month.

(c) The department shall not recoup an SSI payment for any month in which a GA payment was not issued.

(d) Emergency advance SSI payments shall not be available for recoupment. Presumptive disability SSI payments shall not be available for recoupment.

(5) Issuance of balance of SSI payment: When the amount of the total SSI payment exceeds the total GA payment, the balance of the remaining SSI retroactive payment(s) shall be sent to the individual within 10 calendar days of the date the department received the SSI retroactive payment from SSA. The balance shall be paid in the form of an HSD warrant. The individual shall be informed in writing of the retroactive SSI payment amount, how the repayment amount was computed by the department, and the balance being sent to the individual.

(6) Returned checks: When the department is issued an amount greater than the amount of GA benefits paid to an individual, and the excess payment cannot be issued because the individual is deceased or cannot be located, the balance of the SSI retroactive payment shall be returned to SSA.

(7) When the individual dies before eligibility is determined: The department has the right to receive repayment for GA benefits paid to an individual who dies before a determination of SSI eligibility is made. In such a circumstance, SSA will make a determination of eligibility or ineligibility for payment. Any excess payment after recovery by HSD will be returned to SSA.

B. Compliance with SSI status requirements:

(1) Any individual who is potentially eligible for SSI on the basis of either age or disability must apply for and accept SSI if approved by the social security administration.

(2) GA benefits shall be terminated when a determination is made that an individual has failed or refused to follow through with the initial SSI application interview, or failed or refused to file a timely request for reconsideration or appeal of an SSI denial.

(3) Ongoing SSI: An individual receiving SSI, or who would be receiving SSI except for recovery of an overpayment by the social security administration, is not eligible for GA.

C. SSI application requirement for disabled individuals:

(1) An individual who is approved for GA based on a set or variable term GA must file an application for SSI or OASDI within 60 days following approval. The GA recipient must follow through with the SSI application process and maintain an active SSI or OASDI application.

(2) An individual whose SSI or OASDI application has been denied or terminated must request and pursue his right to a hearing and appeal through the administrative law judge (ALJ) appeal level of the social security administration (SSA). If an individual has allowed his or her hearing rights to expire, the individual must file a new application with the SSA.

(3) An individual who has pursued his or her hearing rights through the SSA and who has not been approved shall not be required to pursue SSI or OASDI benefits any further.

(4) A GA recipient who has not applied for SSI by the end of the month in which the 60th day occurs shall be ineligible to continue receiving GA. In such a situation, a notice of adverse action must be issued. If the individual files an application for OASDI, SSI or both by the end of the month in which the notice of adverse action expires, the individual's benefits will be reinstated.

(5) GA benefits shall be terminated when a determination is made that an individual has failed or refused to follow through with the initial SSI application interview or failed or refused to timely request for consideration or appeal of an SSI denial, unless the individual can demonstrate good cause.

D. Contingency requirements: To remain eligible for variable term disability assistance, an individual must accept treatment available outside the GA program, unless a determination is made that good cause exists for the individual's inability to comply. The department shall make a determination of whether a contingency requirement is warranted and must be met to maintain eligibility for GA.

(1) The GA recipient shall be informed of any ongoing conditions or contingency requirements that must be met in order to ensure ongoing eligibility.

(2) If appropriate, the individual shall be referred to the division of vocational rehabilitation (DVR). A recipient must accept vocational rehabilitation services if offered by DVR.

(3) The department shall not impose a time limit or deadline for a contingency requirement to be met that cannot realistically be met in the community in which the GA recipient resides.

(4) Failure to comply: Failure to comply with out good cause shall result in termination of GA benefits and ineligibility until contingency requirements have been met or good cause can be established.

(5) If a recipient of GA fails or refuses a referral, treatment or rehabilitation services, the case shall be reviewed by the department to determine if the refusal was for good cause. A determination that the failure or refusal to accept corrective treatment was for good cause will not result in termination of benefits. A determination that the failure or refusal was not for a good cause reason shall result in termination of GA benefits.

E. Good cause: Good cause is determined on an individual basis. There may be situations in which good cause exists for a GA recipient's inability to comply with a contingency requirement, including but not limited to:

(1) the treatment is not available without cost or minimal cost to the recipient;

(2) the treatment is totally unavailable or not available at the frequency required due to lack of providers in the project area in which the recipient resides;

(3) the failure of ISD to provide written notice or sufficient information to the recipient about the contingency requirement;

(4) the recipient's inability to participate because of documented barriers, such as lack of transportation, an inability to leave work, illness, or death in the immediate family;

(5) the contingency requirement was made in error;

(6) a good cause reason approved by the department;

(7) treatment that involves more than reasonable risk to correct the impairment;

(8) treatment that conflicts with the individual's sincere religious beliefs;

(9) fear of additional treatment that could interfere with or reduce the benefits of current treatment interventions; or

(10) treatment that may cause further limitations or loss of a function or organ and the recipient is not willing to take the risk.

[8.106.410.13 NMAC - N, 12/01/2009]

8.106.410.14 PROGRAM DISQUALIFICATIONS:

A. Dual state benefits: 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 GA 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 GA cash assistance benefit group.

[8.106.410.14 NMAC - Rp, 8.106.410.13 NMAC, 12/01/2009]

HISTORY OF 8.106.410 NMAC:

History of Repealed Material:
8.106.410 NMAC, Recipient Policies - General Recipient Requirements, filed 06/17/2004 - Repealed 12/01/2009.

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS
PART 420 RECIPIENT POLICIES - REQUIREMENTS FOR DETERMINING DISABILITY

8.106.420.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.106.420.1 NMAC - Rp, 8.106.420.1 NMAC, 12/01/2009]

8.106.420.2 SCOPE: The rule applies to the general public.
[8.106.420.2 NMAC - Rp, 8.106.420.2 NMAC, 12/01/2009]

8.106.420.3 STATUTORY AUTHORITY: 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.
[8.106.420.3 NMAC - Rp, 8.106.420.3 NMAC, 12/01/2009]

8.106.420.4 DURATION: Permanent.
[8.106.420.4 NMAC - Rp, 8.106.420.4 NMAC, 12/01/2009]

8.106.420.5 EFFECTIVE DATE: December 1, 2009, unless a later date is cited at the end of a section.
[8.106.420.5 NMAC - Rp, 8.106.420.5 NMAC, 12/01/2009]

8.106.420.6 OBJECTIVE:

A. 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 such as New Mexico works (NMW) or the federal program of supplemental security income (SSI).

B. 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.

C. The objective of the burial assistance program is to assist in payment of burial expenses for an individual who was a low income individual at the time of death.

[8.106.420.6 NMAC - Rp, 8.106.420.6 NMAC, 12/01/2009]

8.106.420.7 DEFINITIONS: [Reserved]

8.106.420.8 DISABILITY DETERMINATION PROCESS

A. Disability determination: The department must find:

(1) medical evidence of physical or mental impairment(s), and

(2) medical and non-medical evidence to support that the severity of the impairment(s) is sufficient to significantly restrict the applicant's capacity to perform basic work-related activities or prevent engagement in gainful employment; or

(3) that, absent the above findings, an unsubstantiated statement of impairment or inability to work shall not be adequate to establish disability.

B. Case development process:

(1) all eligibility factors must be met prior to determining disability;

(2) complete a medical/social summary describing the applicant's health history; appearance, work and personal situation;

(3) assist, if appropriate, the applicant with obtaining documentary evidence;

(4) schedule, if appropriate, appointments for the applicant; and

(5) determine the need for additional documents for evidence.

C. The department may use the following alternative methodology to determine disability for set and variable term general assistance.

(1) Documentation requirements:

(a) The medical information must be documented on the department's standardized and approved medical release/ physician's statement or may be documented on a physician's statement that includes all the information required to make a disability determination.

(b) The medical information used to substantiate impairment and finding of disability must include, but shall not be limited to:

(i) a record or narrative report resulting from examinations or diagnostic procedures;

(ii) a statement of the impairment;

(iii) a projected time period of the length of the disability; and

(iv) certification that the impairment precludes employment within the individual's capacity.

(2) Duration of an impairment: The duration of the impairment shall be evaluated by the department based on medical documentation.

(a) An impairment substantiated by medical documentation that precludes the individual's capacity to engage in gainful employment that is expected to last at least thirty days from the date of disability and for less than eight months shall be eligible for a set term certification.

(b) An impairment substantiated by medical documentation that precludes the individual's capacity to engage in gainful employment that is expected to last at least thirty days from the date of disability and for an indefinite period exceeding 6 months shall be eligible for a period of no more than six months without substantiating medical evidence consistent with Subsection D of 8.106.420.8 below.

(3) The alternative methodology shall be used no more that once in any 12 month period.

D. Development of evidence: The applicant is responsible to obtain and provide evidence of the nature and severity of the impairment(s) as well as the capacity to work. Non-medical evidence will not be considered in the absence of medical evidence.

(1) Medical evidence: Medical evidence must be submitted and considered to verify the existence of physical, mental impairment(s) or both.

(a) Source: Medical evidence must be obtained from approved source(s), limited to: medical doctors, physician assistants, doctors of osteopathy or podiatry, ophthalmologists, psychiatrists or psychologists, state-licensed providers, and individuals that meet the minimum mental health professional qualifications set by their community mental health services employer.

(b) Timeliness of report: Medical evidence over six months old from the date of application may be useful to support a pattern of recurring impairment, but should be accompanied by current medical evidence.

(c) Department assistance:

(i) Requests for reports: When necessary the department shall assist in obtaining medical evidence by making no more than two written requests per medical provider, for copies of relevant existing medical reports.

(ii) Examinations: The department shall schedule and, based on available funding, pay for a medical examination or other appropriate procedure(s) for purposes of obtaining current medical evidence. The applicant shall first be referred to the individual's own physician or provider.

(2) Non-medical evidence: Non-medical evidence may be submitted and considered from public and private agencies, schools, parents and caregivers, social workers and employers, and other sources to assist in the determination of whether the impairment(s) are of sufficient severity to restrict the applicant's capacity to perform basic work-related activities or prevent engagement in gainful employment.

E. Case disposition: Once an impairment is established, all the medical and non-medical evidence is considered in assessing impairment severity to determine disability. Case disposition shall include:

(1) a thorough review of documentary evidence;

(2) a determination as to whether disability is supported;

(3) the anticipated duration of the impairment;

(4) specific contingency requirements; and

(5) the certification review period for disability review.

F. Certification period: The certification period is primarily based on the prognosis and anticipated duration of the impairment(s), as established by medical evidence.

(1) Set term: A set term is assigned where medical evidence supports that a significant improvement in the impairment(s) is anticipated or probable in the six months following application. A set term certification shall not exceed eight months in total duration. A new application may be submitted for consideration of a new term.

(2) Variable term: A variable term is assigned where medical evidence supports that a significant change in the impairment(s) is not anticipated or probable in the six months following application.

G. Contingencies: Eligibility for benefits may be made contingent upon satisfactory completion of written condition(s) that may include, but are not limited to:

(1) follow treatment plans as prescribed by a physician or mental health provider;

(2) seek and utilize available community based resources;

(3) accept treatment as recommended by a physician or mental health provider;

(4) pursue a referral for DVR, or other available, services.

[8.106.420.8 NMAC - N, 12/01/2009]

8.106.420.9 VERIFYING IMPAIRMENT(S)

A. General: The nature of the physical and mental impairment(s) must

be verified by a medical or mental health diagnosis from an acceptable medical source and supported by current medical evidence based on acceptable clinical and laboratory diagnostic techniques.

B. Evaluation of report(s): Reports shall be reviewed for completeness and detail sufficient to identify the limiting effects of impairment(s), probable duration of the impairment(s), and capacity to perform work-related activities.

(1) Anatomical and physiological reports shall be reviewed for a description of the medical history, clinical findings, laboratory findings, diagnosis, prescribed treatment and prognosis, and to identify the applicant's ability to sit, stand, move, lift, carry, handle objects, hear, speak and travel.

(2) Psychological assessments shall be reviewed for a description of the applicant's behavior, affect, orientation, capacity for appropriate decision-making, response to stress, cognitive function (awareness, memory and intellectual capacity), contact with reality and need for occupational, personal and social adjustment(s).

[8.106.420.9 NMAC - N, 12/01/2009]

8.106.420.10 ASSESS CAPACITY FOR WORK

A. General: The applicant's capacity for work shall be determined by evaluating the severity of the impairment(s) and by applicant's work-related factors with regarding to the impact on the applicant's ability to perform basic work-related activities and to engage in gainful employment.

B. Capacity to perform basic work-related activities

(1) Sedentary work: Sedentary work involves lifting no more than ten 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.

(2) Light work: Light work involves lifting no more than twenty pounds at a time, with frequent lifting or carrying of objects weighing up to ten pounds. Even though the weight lifted may be very little, a job is placed 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 must have the ability to do substantially all of these activities

(3) 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.

(4) 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.

(5) 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.

C. Capacity for gainful employment: An applicant's verified employment status shall be taken into consideration in determining disability based on the type, nature, and duration of employment. Disability may still be determined where the applicant is employed minimally or for rehabilitative purposes.

(1) Minimal employment: An individual who is minimally employed may still be considered disabled if the individual cannot reasonably be expected to be self-supporting by at least the standard of need for the size of the benefit group.

(2) Rehabilitative employment: Work made available to an individual through the interest or compassion of others, or to rehabilitate an individual (as in a sheltered workshop), but which would not ordinarily exist on the open labor market, shall not be considered employment in a disability determination.

D. Other work-related factors: Other work-related factors may be considered to establish the applicant's capacity to perform basic work-related activities and engage in gainful employment, including but not limited to the following.

(1) Language barriers: An applicant's ability to speak, read and write in English.

(2) Educational level:

(a) Illiteracy: Inability to read or write English. Illiterate individuals are considered suitable for the general labor work force.

(b) Marginal: Eight years of education or less. Marginally-educated individuals are considered suitable for the semi-skilled work force.

(c) Limited: Lack of a high school diploma or GED, but more than eight years of education. Individuals with limited education are considered suitable for the semi-skilled to skilled work force.

(d) High school, GED and above: Indicates an individual's ability to compete in all levels of the job market.

(e) Training program: Completion of training in a particular field of employment may offset limited education in some instances.

(3) Job experience: Experience in a job field can overcome a lack of education, training or both. Jobs held in the last ten years shall be considered. Work experience shall be evaluated based on the type of work previously performed, the length of employment and the potential for transferring the experience to other types of employment. Inability to continue working in one's prior field of work does not constitute a disability. Job experience is classified in the following categories.

(a) General labor: Does not require the ability to read or write.

(b) Semi-skilled labor: Requires a minimal ability to read, write and do simple calculations.

(c) Skilled labor: Ability to do work in which the ability to read, write and do calculations of a complex nature is needed. Specialized training in the area is also considered.

(4) Appearance: An individual's appearance may not be heavily weighted in a disability determination. On rare occasions, an impairment is disfiguring and may interfere with employment.

(5) Age: The older an individual 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 will ever return to functioning effectively in his or her previous job duties.

[8.106.420.10 NMAC - Rp, 8.106.420.13 NMAC, 12/01/2009]

HISTORY OF 8.106.420 NMAC:

History of Repealed Material:
8.106.420 NMAC, Recipient Policies - Requirements for Determining Disability, filed 06/17/2004 - Repealed 12/01/2009]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS
PART 502 GENERAL INFORMATION - BURIAL ASSISTANCE

8.106.502.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.106.502.1 NMAC - N, 12/01/2009]

8.106.502.2 SCOPE: The rule applies to the general public.
[8.106.502.2 NMAC - N, 12/01/2009]

8.106.502.3 STATUTORY AUTHORITY: 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.
[8.106.502.3 NMAC - N, 12/01/2009]

8.106.502.4 DURATION: Permanent.
[8.106.502.4 NMAC - N, 12/01/2009]

8.106.502.5 EFFECTIVE DATE: December 1, 2009, unless a later date is cited at the end of a section.
[8.106.502.5 NMAC - N, 12/01/2009]

8.106.502.6 OBJECTIVE:

A. The objective of general assistance is to provide cash assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched cash assistance program, such as New Mexico works (NMW) or the federal program of supplemental security income (SSI).

B. 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.

C. The objective of the burial assistance program is to assist in payment of burial expenses for an individual who was a low-income individual at the time of death.
[8.106.502.6 NMAC - N, 12/01/2009]

8.106.502.7 DEFINITIONS: [Reserved]

8.106.502.8 BURIAL ASSISTANCE - FUNERAL EXPENSES:

A. General: The department may provide up to $200.00 towards the funeral expenses recipients of financial and medical assistance if the deceased's available resources are insufficient to pay for the funeral, the persons legally responsible for the support of the deceased are unable to pay the funeral expenses, and no other person or organization, or state agency will undertake to pay for the expense. The spouse of the deceased with whom the deceased was living at the time of death and the parents of minor unmarried children are considered legally responsible relatives.

B. Applications and interviews: A request for payment of funeral expenses may come from the family, the mortuary, or other persons furnishing funeral services to any project area. In order to evaluate available resources it may be necessary to interview the family or requestor. Burial expenses for a deceased individual shall be processed no later than 30 calendar days after receipt.

C. Eligibility: Payment towards the burial expenses for a categorically eligible individual may be made when the resources considered available to meet the cost of the funeral are less than $600. Resources that shall be considered available include:

(1) cash available to the deceased at the time of death;

(2) any insurance benefits designated for use in meeting the individual's funeral costs;

(3) any other death or burial benefits from sources such as social security or railroad retirement benefits, veterans benefits, legally responsible relatives or the estate of the deceased;

(4) real property owned by the deceased, with no surviving heir, shall be considered a resource;

(5) gifts, contributions or written commitments to help pay the cost of the funeral, which are made by any individual not having a legal support obligation for the deceased.

D. Constructing the benefit group: To be eligible for inclusion in the burial assistance benefit group, a deceased individual must have been a recipient of NMW, GA, refugee assistance, ARSCH or medicaid benefits from the state of New Mexico. The benefit group consists of the deceased individual.

E. Covered services: Funeral costs that are considered include necessary compulsory expenditures arising immediately upon and due to death, including:

(1) embalming;

(2) purchase of a coffin, burial shroud and burial plot;

(3) burial or cremation services, including the cost for opening and closing the grave;

(4) customary ceremonies, rites and services, excluding food, beverages or other similar consumables attendant on disposition of the remains; and

(5) transportation of the deceased from the mortuary to a nearby cemetery.

F. Payment: When resources are determined to be less than $600, a payment of up to $200 may be made towards the cost of the funeral. The amount of the payment is the difference between the cost of the funeral and available resources. The payment shall not exceed $200.

G. Payment procedures: Funeral payments are reimbursed by a payment voucher to the vendor providing the services.
[8.106.502.8 NMAC - Rp, 8.106.500.11 NMAC & 8.106.400.13 NMAC, 12/01/2009]

HISTORY OF 8.106.502 NMAC: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.100.100 NMAC, Section 11, effective 12/01/2009.

8.100.100.11 GENERAL PROGRAM DESCRIPTIONS

A. NMW

(1) Purpose: 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. The further purpose of the program is to increase family income through family employment and child support and by viewing financial assistance as a support service to enable and assist parents to participate in employment.

(2) The program accomplishes this purpose by providing cash assistance, medical assistance, and work program services, including education, job training, and transportation to assist recipients in obtaining and keeping employment that is sufficient to sustain their families thereby ensuring the dignity of those who receive assistance and strengthening families and the families' support for their children.

(3) Legal basis: The New Mexico Works Act assigns responsibility for administration of the New Mexico works program to the human services department. The governor of the state of New Mexico has designated the human services department as the TANF state agency in the state's biennial TANF block grant plan, pursuant to the requirements of Section 401 of Title IV-A of the federal Social Security Act.

B. General assistance

(1) Purpose: General assistance (GA) is a limited program providing financial assistance to needy individuals and families who are not eligible for assistance under the New Mexico works program or under the federal supplemental security income (SSI) program. GA payments are made to:

(a) [~~permanently~~] disabled adults who do not qualify for NMW who are not eligible for SSI because their disability is not severe enough;

(b) [~~temporarily~~] disabled adults who do not qualify for NMW;

(c) on behalf of children under 18 years of age who would be eligible for NMW except that they are not living with a person who is eligible to receive NMW; and

[~~**(d)** lawful resident immigrants who would otherwise be eligible for federally funded NMW benefits and services, except that they began residing in the United States on or after August 22, 1996; GA recipients are not eligible for medicaid based on their~~

~~receipt of GA;~~]

(d) SSI recipients who reside in licensed adult residential care homes.

(2) Legal basis: Section 27-1-3 NMSA (Repl. 1984) provides that "the state department shall: administer assistance to the needy, blind and otherwise handicapped and general relief."

C. Food stamps

(1) Purpose: The food stamp program is designed to promote the general welfare and to safeguard the health and well-being of the nation's population by raising the levels of nutrition among low-income households.

(2) Section 2 of the Food Stamp Act of 1977 states, in part: Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households... To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power to all eligible households who apply for participation.

(3) Legal basis: The food stamp program is authorized by the Food Stamp Act of 1977 as amended (7 U. S. C. 2011 et seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Administration by HSD, including its authority to issue regulations, is governed by Chapter 9, Article 8 NMSA (Repl. 1983).

D. Refugee resettlement program

(1) Purpose: The purpose of the refugee resettlement program (RRP) is to help refugees, political asylees and entrants, regardless of national origin, achieve economic self-sufficiency as quickly as possible. The purposes of the program are accomplished through financial and medical assistance while support services are provided to help refugees acclimate to American society, learn English and get a job. Federal legislation gives eligible refugees and their dependents financial and medical assistance through 100% federal reimbursement to states, including administrative costs, for the first 18 months after entry into the United States.

(2) Legal basis: The refugee resettlement program (RRP) is authorized under Title IV of the Immigration and Nationality Act of 1980. The act designates the U.S. department of health and human services as the federal administering agency. RRP program regulations are issued by DHHS in the Code of Federal Regulations Title 45, Part 400, supplemented by administrative and program instructions issued by the federal department from time to time. By Executive Order No. 80-62, dated 10/1/81, the governor of the state of New Mexico has designated HSD as the single state agency responsible for administering the program in New Mexico.

E. Medical assistance programs

(1) Medicaid

(a) Purpose: Medicaid is a federally matched program that makes certain essential health care services available to eligible New Mexico residents who otherwise would not have the financial resources to obtain them. With certain exceptions, medicaid benefits are provided through "Salud!", the department's medicaid managed care program.

(b) Eligible individuals include:

(i) families who meet New Mexico's AFDC requirements as it existed, or is considered to have existed, on July 16, 1996, as amended;

(ii) individuals who have been NMW recipients and are in transition to self-support due to employment, [~~and/or~~] child support, or both;

(iii) pregnant women who meet income and resource requirements for the state's AFDC program as it existed, or is considered to have existed on July 16, 1996 as amended (full-coverage medicaid);

(iv) children under 19 years of age whose income is below 185% of federal poverty levels;

(v) pregnant women with income below 185% of federal income poverty levels (for pregnancy-related services);

(vi) recipients of assistance under the federal SSI program and those who have lost their SSI eligibility because of cost-of-living increases in Title II benefits;

(vii) aged, blind, and disabled individuals in institutions who meet all standards for SSI except income;

(viii) individuals who meet all standards for institutional care but can be cared for at home;

(ix) qualified medicare beneficiaries(QMBs), qualified disabled working individuals (QDs),

(x) and specified low income medicare beneficiaries (SLIMBs), limited coverage for medicare beneficiaries; and

(xi) certain foster children in the custody of the state.

(c) Legal basis: HSD is the single state agency designated to administer the New Mexico Title XIX medicaid program in accordance with 42 CFR 431.10, single state agency. State authority is provided by Section 27-2-12 NMSA 1978 (Repl. 1984). Title XIX of the Social Security Act and United State department of health and human services rules establish the requirements for state plans for medical assistance.

(2) Special medical needs

(a) Purpose: The special medical needs program for seriously ill individuals is an entirely state-funded medical assistance program for individuals who suffer serious illnesses. Individuals applying under this program must be eligible according to New Mexico statutes and HSD policy. No new recipients are being added to this category.

(b) Legal basis: State authority for administering the special medical needs program is contained in Sections 27-4-1 to 27-4-5 NMSA 1978 (Repl. 1984).

(3) Medical assistance to refugees

(a) Purpose: This program operates in accordance with the provisions of the medicaid program but is at present 100% funded by the federal government. Medical assistance is provided to individuals and families qualifying for assistance under the refugee resettlement program.

(b) Legal basis: State authority for administering the medical assistance to refugees program is contained in Section 27-2-12 NMSA 1978 (Repl. 1984).

(4) Waivers for in-home care: The New Mexico department of health, under waivers from DHHS, provides certain in-home care services as an alternative to institutionalization. These waivers authorize services for: elderly, blind and physically handicapped individuals; developmentally disabled individuals; and medically fragile individuals, AIDS. Services under the waiver program are provided to both medicaid-eligible individuals and those who have income and resources in excess of medicaid standards. Within the department, the medical assistance division (MAD) is responsible for developing policy and regulations for these waiver programs.

F. Energy assistance

(1) Purpose: Three energy assistance programs to assist low-income households during periods of high heating costs are administered by HSD:

(a) low income home energy assistance program (LIHEAP);

(b) emergency crisis intervention assistance program (ECIAP); and

(c) low income utility assistance program (LIUAP).

(2) Energy assistance is provided for home heating costs incurred during the months of November, December, January, and February of each year. The department may extend the program season by one or more months subject to the availability of supplemental state or federal funds.

(3) Legal basis: These programs are governed by the federal, state and other pertinent laws and regulations established for a defined program period, including but not limited to the following:

42 USC Section 8601: Chapter 94,

Subchapter II, Low Income Home Energy Assistance Act (LIHEAA);
Sections 27-6-11 to 27-6-16 NMSA 1978 (Repl. 1984) Low Income Utility Assistance Act (LIUAA).

(4) Funding for the LIHEAP and ECIAP programs is from the LIHEAA block grant.

G. Child support services

(1) Every specified parent/relative caretaker who applies for or receives NMW from HSD is required, as a condition of eligibility, to make an assignment of support rights to the state and to cooperate with the state, if necessary, in establishing paternity and securing support.

(2) Exception: The cooperation requirement is not applied in cases where it would not be in the best interests of the child to cooperate.

(3) The provisions of the child support enforcement program are contained in Title IV-D of the Social Security Act, and the agency responsible for its implementation is frequently referred to as the IV-D agency. In New Mexico, the IV-D agency is the HSD child support enforcement division (CSED).
[07/01/97, 04/01/98; 8.100.100.11 NMAC - Rn, 8 NMAC 3.ISD.010, 04/13/2001; A, 12/01/2009]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.100.130 NMAC, Section 11, effective 12/01/2009.

8.100.130.11 TIMEFRAME FOR PROVISION OF VERIFICATION: An applicant/recipient is always allowed the complete time processing deadline for the program to provide necessary verification. The minimum amount of time allowed is specific to the program. This requirement pertains to requests for verification for initial applications as well as for verification for ongoing eligibility. Below are the time frames for provision of verification by type of assistance. The caseworker shall make an eligibility decision within three work days of the receipt of all necessary verification.

A. Food assistance and NMW/EWP cash assistance programs: The application disposition deadline for the food stamp and cash assistance programs is 30 calendar days.

(1) Expedited (emergency) food stamps: If applicant is eligible for expedited food stamp processing, issue benefits no later than the sixth day following the date of application to be available to the applicant/recipient on the seventh day or the preceding work day if the sixth day falls on a weekend or holiday.

(2) Day 1: Calendar day following date of application.

(3) Approvals: If verification provided establishes eligibility and the 30th calendar day after the application is:

(a) Monday.....by the preceding Friday, the 27th day;

(b) Tuesday.....by the preceding Monday, the 29th day;

(c) Wednesday.....by the preceding Tuesday, the 29th day;

(d) Thursday.....by the preceding Wednesday, the 29th day;

(e) Friday.....by the preceding Thursday, the 29th day;

(f) Saturday.....by the preceding Friday, the 29th day;

(g) Sunday.....by the preceding Friday, the 28th day;

(h) Monday holiday.....by the preceding Friday, the 27th day;

(i) if necessary verification is not received by these deadlines but is received on or before the end of the processing period, approve on the day that full verification is provided.

(4) Need-based determination: If verification provided establishes eligibility, ineligibility or justification for reduced benefits, approve, deny, or approve reduced benefits, no later than the 30th day after the application date, by the preceding work day if the 30th day falls on a weekend or holiday.

(5) Procedural denials:

(a) Lack of verification: If verification needed to determine eligibility is not provided and no extension of time is requested, deny on the 30th day after the application date or by next work day if 30th day falls on weekend or holiday.

(b) Missed interview: Make eligibility decision on the 30th day after the application date or by next work day if 30th day falls on weekend or holiday if applicant missed interview and did not reschedule interview.

(6) Extension of time beyond the 30th day: Make eligibility decision no later than the 60th day after the application date if the applicant requests one or more 10-day extensions of time to provide needed verification. There may only be three 10-day extensions.

(7) Reconsidering denials for refusal to provide verification or to complete application process: If an applicant/recipient has been denied benefits for refusal to provide needed verification or to complete the application process, but takes the required action within 30 days after the date of denial, the caseworker shall then make a needs-based decision.

B. Medical assistance: The application disposition deadline for medical assistance programs is 45 days from the date of application.

(1) Day 1: The date of application is the first day.

(2) No later than day 44 by the preceding work day if day 44 falls on a weekend or holiday:

(a) if verification provided establishes eligibility or ineligibility; or

(b) if the day following day 44 is not a work day, then decision must be made earlier than day 44 to allow for mailing on or before the deadline.

(3) No later than day 45 by the next work day if day 45 falls on a weekend or holiday, if needed verification is not provided until day 42 - 44.

(4) Day 45 by the next work day if day 45 falls on a weekend or holiday, if needed verification is provided on day 45, or is not provided.

(5) After day 45:

(a) When an applicant/recipient requests one or more 10-day extensions of time to provide needed verification. An applicant/recipient is entitled to receive up to three 10-day extensions of time upon request.

(b) The eligibility decision must be made as soon as possible and within three work days of receipt of all necessary verification.

C. General assistance: An application for general assistance shall be processed no later than [~~60~~] 90 days from the date the application is filed.

(1) No later than day [~~59~~] 89: by the previous work day if day [~~59~~] 89 falls on a weekend or holiday:

(a) if verification provided establishes eligibility or ineligibility; or

(b) if day following day [~~59~~] 89 is not a work day, then decision must be made earlier than day [~~59~~] 89 to allow for mailing on or before deadline.

(2) No later than day [~~60~~] 90 by the next work day if day [~~60~~] 90 falls on a weekend or holiday, if needed verification is not provided until day [~~57 - 59~~] 87 - 89.

(3) Day [~~60~~] 90 by the next work day if day [~~60~~] 90 falls on a weekend or holiday, if needed verification is provided on day [~~60~~] 90, or is not provided.

(4) After day [~~60~~] 90:

(a) When an applicant/recipient requests one or more 10-day extensions of time to provide needed verification. An applicant/recipient is entitled to receive up to three 10-day extensions of time upon request.

(b) The eligibility decision must be made as soon as possible and within 3 work days of receipt of all necessary verification.

(5) Reconsideration: Disability may be re-evaluated based on additional medical evidence provided by the client during the reconsideration period, which shall not exceed 120 days from the date of receipt of the initial application.

[~~(5)~~] (6) Tracking the application

processing time limit: The application processing time limit begins on the day after the signed application is received in the ISD county office.

[~~(6)~~] (7) Delayed determination: If an eligibility determination is not made within the required application processing time limit, the applicant/recipient shall be notified in writing of the reason for the delay and that the applicant/recipient has the right to request a fair hearing regarding ISD's failure to act within the time limits.

[~~(7)~~] (8) Extensions of time: Up to three 10 calendar day extensions for providing verification shall be granted at the applicant/recipient's request. The extension begins at the end of the application processing time period or at the end of the previous extension.

[~~(8) GA disability determination delayed:~~ ~~The application for GA for disabled adults shall remain in pending status until a disability determination is made either by the caseworker or the incapacity review unit. The application shall be processed by the county office no later than three working days after the caseworker makes the eligibility determination or the county office receives notification of a disability determination from the incapacity review unit.~~]

[8.100.130.11 NMAC - Rp, 8.100.130.11 NMAC, 08/01/2008; A, 12/01/2009]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.102.410 NMAC, Sections 10 and 17, effective 12/01/2009.

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.

C. Qualified alien: 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 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 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 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; and

(8) a qualified alien who entered the United States on or after August 22, 1996, to whom the five-year bar applies, may participate in the state-funded TANF program without regard to how long the alien has been residing in the United States.

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.

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 a participant or applicant disputes the SSA determination of quarters of coverage, the participant may not participate based on having 40 qualifying quarters until a determination is made that the participant or applicant can be credited with 40 qualifying quarters. The 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.

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.

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 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 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.

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.

K. Reporting undocumented (illegal) non-citizens:

(1) HSD 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.

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; A, 12/01/2009]

8.102.410.17 LIFETIME LIMITS:

A. NMW/TANF:

(1) 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 NMW/TANF cash assistance, unless the lifetime limit has been waived pursuant to Subsection E of 8.102.410.17 NMAC.

(2) For purposes of determining the 60-month lifetime limit, the count of months of 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 NMW/TANF cash assistance shall be considered a month of receipt and shall be counted towards the 60-month lifetime limit for the benefit group in which that individual resides.

(4) The count of months of 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). 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 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 NMW/TANF cash assistance or services toward the 60-month lifetime limit if the 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 NMW/TANF assistance against the 60-month term limit, as long as the benefit group does not also receive NMW/TANF cash assistance to meet ongoing basic needs.

(3) Assistance shall not be considered a month of 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 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 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 lifetime limit.

D. Extension of the term limit due to hardship: Up to twenty percent of the population of TANF 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 NMW/TANF cash assistance shall not be granted to a benefit group prior to exhausting the 60-month 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 NMW/TANF cash assistance, an individual to whom the 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;

(7) is otherwise qualified as defined by the department.

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 deprivation 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 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 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; or

(6) is otherwise qualified as defined by the department.

[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; A, 12/01/2009]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.106.110 NMAC, Sections 8- 13, 15 and 16, effective 12/01/2009.

8.106.110.8 GENERAL:

A. Project area: The application for cash assistance 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 shall be made under oath by an applicant or an applicant on behalf of a dependent child who resides in the home. The application must contain a statement of the age of the applicant [~~and/or~~] or, dependent child, residence in New Mexico, all property in which the applicant has an interest, the income of the applicant or other benefit group members at the time the application is filed; the signature of the applicant, and other information required by the department.

[~~**C. EBT issuance:** Cash assistance benefits, when authorized, shall be available through an electronic benefit transfer (EBT) account.~~]

[8.106.110.8 NMAC - N, 07/01/2004; A, 12/01/2009]

8.106.110.9 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 or not the individual appears to meet the conditions of eligibility.

[~~(1)~~] Any individual requesting information or assistance, or who wishes to apply for assistance, shall be encouraged to complete an application that same day.

[~~(2)~~] **B.** An individual shall be informed of the right to apply, whether or not it appears the individual will be found eligible.

[~~(3)~~] **C.** An individual shall be informed that the date of application affects the benefit amount for the first month of issuance.

[~~B.~~] **D. Availability of applications:** The department shall make application forms for general assistance programs [~~shall be~~] readily available to anyone requesting an application, and to certain 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 mailed an application on the same day the office is contacted.
[8.106.110.9 NMAC - N, 07/01/2004; A, 12/01/2009]

8.106.110.10 [~~SUBMISSION OF~~] THE APPLICATION FORM:

[~~**A. Items completed:** To be accepted and registered, the cash assistance application, at a minimum, must identify the individual or individuals applying, the program(s) applied for, and must contain the signature of a responsible benefit group member, caretaker or authorized representative.~~

~~**B. Who completes the application:** The application form must be completed by the applicant, the authorized representative, caretaker, guardian, or other responsible individual.~~

~~**(1)** An authorized representative must be:~~

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

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

~~**(2)** If an authorized representative or another appropriate individual completes an application form on behalf of an applicant, the actual 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 other appropriate individual.~~

~~**(3)** The caseworker may assist in completing the form if there is no other individual who can help the applicant.~~

~~**(4) Application for minor children:** An application for assistance for minor children, including an un-emancipated minor pregnant woman, must be made by the adult with whom the child or children reside and who is assuming responsibility for the support and care of the child or children.~~

~~**(a)** If a minor pregnant woman 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 pregnant woman.~~

~~**(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 assistance from someone other than a caseworker in completing the application form, that individual who assists must also sign at the bottom of the application form.~~

~~**(3)** An individual who cannot sign his or her own name must sign the application with a mark and have it witnessed. A mark that 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 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. Filing an application:** An application may be filed in person, by mail or via facsimile with the ISD office in the project area serving the community or county where the applicant lives. If an applicant files the application in the wrong project area, the applicant shall be referred to the correct project area. If the applicant wishes to complete an application the same day, the 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 application:** If an application is incomplete, ISD shall take prompt action 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 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 his or her presence in the state. If the applicant does not contact the ISD within 30 days from receipt of the application, the application shall be returned to the applicant.~~

~~**G. Application registration:** A signed in-state application shall be registered effective the date on which the application is received by the ISD office.~~]

A. Submission of an application: An application may be submitted in person, by mail, via facsimile or by other electronic means, with the ISD office in the project area where the applicant lives.

(1) If an applicant submits the application in the wrong project area the department shall refer the applicant to the correct project area and shall complete the application process prior to transferring to the correct project area.

(2) 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 his or her presence in the state. If the applicant does not contact the ISD within 30 days from receipt of the application, the application shall be returned to the applicant.

(3) Application for minor children: An application for assistance for minor children, including an un-emancipated pregnant minor, must be made by the adult with whom the child or children reside and who is assuming responsibility for the support and care of the child or children.

(a) If a pregnant minor 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 pregnant woman.

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

B. Completeness of an application: To be accepted and registered, the cash assistance application, at a minimum, must identify the individual or individuals applying, the program(s) applied for, and must contain the signature of a responsible benefit group member, caretaker, authorized representative, or other legally responsible individual.

(1) The application form must be completed and signed by the applicant, the authorized representative or other responsible individual.

(2) If an authorized representative or another appropriate individual completes an application form on behalf of an applicant, the actual 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 other appropriate individual.

(3) The caseworker shall assist in completing the form if there is no other individual who can help the applicant. If an application is incomplete, ISD shall take action to notify the applicant. The individual who completed the application form must add the missing or incorrect information and initial and date the entries.

C. Application registration: A signed application shall be registered effective the date in which the application is received by the project area.
[8.106.110.10 NMAC - N, 07/01/2004; A, 12/01/2009]

8.106.110.11 INTERVIEWS:

A. Application interview:

(1) All applicants shall [~~be interviewed in person at the local office~~]

have a face to face interview, in the project area in which the applicant resides.

(2) [~~When circumstances warrant, the~~] The interview may take place at [~~another~~]5 a location reasonably accessible and agreeable to both the applicant and the caseworker.

(3) The applicant may bring any individual to the interview.

(4) The interview shall take place within ten days of the date an application is filed and, to the extent possible, at a time that is convenient for the applicant.

B. [~~Office interview waivers:~~] Alternatives to an office interview: 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 accompany the applicant to the office because of transportation difficulties, or similar hardships that the county director determines warrants 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 an office interview:~~] 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.~~] C. Scheduling an interview: An interview shall be scheduled upon receipt of the application. The interview shall take place within ten working days of the date an application is filed and, to the extent possible, at a time that is convenient for the applicant.

[~~E.~~] D. Missed interview: An applicant who fails to appear for the first interview shall be responsible for scheduling a second appointment for an interview. If the applicant does not contact the office or does not appear for a rescheduled interview, the application shall be denied on the 60th day (or the next workday if the 60th day is not a workday) after the application was filed.

[~~F.~~] E. Purpose and scope of interview: The interview is an official and confidential discussion of benefit group circumstances between the applicant and the caseworker.

(1) Prior to processing an application, there shall be a face-to-face interview with the applicant. The purpose and scope of the interview shall be explained to the applicant.

(2) The interview is intended to provide the applicant with information regarding eligibility requirements for the program and to provide the caseworker with the necessary information and documentation to make an accurate eligibility determination. In addition, the interview allows the caseworker to clarify unclear or incomplete information reported on the application.

[~~(3)~~ ~~At initial application a brief history shall be required in the case narrative explaining the circumstances that 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.~~] F. 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 inform the applicant about the following:

(1) the requirements that must be met by the applicant under the requested cash assistance program;

(2) responsibility to report changes;

(3) complaint and fair hearing procedures;

(4) application processing standards;

(5) procedures in cases of overpayment or underpayment of benefits;

(6) non-discrimination policies and procedures;

(7) timeliness standards.

[8.106.110.11 NMAC - N, 07/01/2004; A, 12/01/2009]

8.106.110.12 APPLICATION PROCESSING TIME LIMITS:

[~~A. Timeliness:~~ ~~The caseworker shall explain time limits and the applicant's right to request a fair hearing if the application is not processed within the applicable time limits.~~

~~**B. Application processing time limit:**~~

~~**(1)** An application for general assistance shall be processed no later than 60 days from the date the application is filed.~~

~~**(2)** An application for a supplemental payment from the ARSCH program shall be processed no later than 30 days from the date the application is filed.~~

~~**(3)** An application for payment of burial expenses for a deceased individual shall be processed no later than 30 days from the date the application is filed.~~

~~**C. Tracking the application processing time limit:** The application processing time limit begins on the day after the signed application is received in the ISD county office.~~

~~**D. Delayed determination:** If an eligibility determination is not made within the required application processing time limit, the applicant shall be notified in writing of the reason for the delay, and that the applicant has the right to request a fair hearing regarding ISD's failure to act within the time limits.~~

~~**E. GA disability determination delayed:** The application for GA for disabled adults shall remain in pending status until a disability determination is made either by the caseworker or by the incapacity review unit. The application shall be processed by the county office no later than three working days after the caseworker makes the disability determination or the county office receives notification of a disability determination from the incapacity review unit.~~]

A. Application processing time limit: The time limit begins on the day after the signed application is received by the ISD office.

(1) ARSCH program supplemental payments shall be processed no later than 30 calendar days after receipt.

(2) Set and variable term general assistance applications shall be processed no later than 90 calendar days, after receipt. Reconsideration determinations shall occur no later than 120 calendar days after receipt of the initial application.

B. Reconsideration: A reconsideration of a disability determination may be requested, verbally or in writing, by a client within 15 days of the date of the denial for not meeting conditions of disability. The reconsideration period shall not exceed 30 days from the date of denial. Disability will be evaluated based on additional medical evidence provided by the client during the reconsideration period. Should no request be made or the client does not provide additional medical evidence during the reconsideration period the denial shall remain and the client may reapply.

C. Delayed determination: If an eligibility determination is not made within the required application processing time limit due to department failure to assist the applicant or pursue eligibility timely, the applicant shall be notified in writing. The notice shall include the reason for the delay, and that the applicant has the right to request a fair hearing regarding the department's failure to act within the time limits.

[8.106.110.12 NMAC - N, 07/01/2004; A, 12/01/2009]

8.106.110.13 DISPOSITION OF APPLICATION/NOTICE:

[~~A. Denials:~~ ~~If an application is denied, ISD shall issue a written notice to the applicant. The denial notice shall include the date of denial, reason for denial, the regulation citation under which the denial was made, the applicant's~~

~~right to a fair hearing concerning the denial, and the time limits for filing a fair hearing request. The notice shall also explain that the applicant may discuss the denial with the caseworker, supervisor or county director.~~

~~**B. Approvals:** If the application is approved, the applicant shall be notified in writing. The notice shall report the first and last month of eligibility, amount of payment and the members who have been determined eligible.~~

~~**C. Application withdrawal:** An applicant may voluntarily withdraw the application orally or in writing any time before eligibility determination. A notice shall be sent to confirm the applicant's expressed desire to withdraw the application. Applicants shall be advised that withdrawal of the application does not affect the right to apply for assistance in the future.~~] Applicants shall receive written notice of application disposition, as indicated below:

A. Denials: Provide the reason for denial including regulation citation; the applicant's rights and time limits for requesting a fair hearing; and the applicant's right to discuss the denial with the caseworker, supervisor or county director.

B. Approvals: Inform the applicant who is eligible to receive benefits of the amount of payment and the certification period.

C. Withdrawal: An applicant may voluntarily withdraw the application orally or in writing any time before eligibility determination. Notice shall confirm the applicant's expressed desire to withdraw the application and be informed that the withdrawal does not affect the right to apply for assistance in the future.

[8.106.110.13 NMAC - N, 07/01/2004; A, 12/01/2009]

8.106.110.15 CASE RECORD TRANSFERS: If a recipient moves [~~to another county in New Mexico or~~] to an area administered by another project area, the recipient's case record shall be transferred as follows:

A. Responsibilities of sending [~~county~~] project area:

(1) The project area to which the recipient is moving or has moved to shall be [~~promptly~~] notified within 10 days. The record shall not be transferred to the new project area until a new address for the recipient is provided to the sending [~~county office~~] project area.

(2) Before transferring the case record, the sending [~~county~~] project area shall review the case record to ensure the information is complete and updated. The sending [~~county~~] project area shall enter the recipient's new address and the geographic and administrative [~~county~~] number in the computer system.

B. Responsibilities of receiving [~~county~~] project area:

(1) The case is reviewed for changes and continued eligibility at the time of the transfer.

(2) The receiving project area shall transfer in the case by contacting the recipient to update the circumstances of the case and, at a minimum, document the benefit group's current circumstances. The receiving project area shall act on any change that becomes known by the sending project area, the recipient or any other means.

C. Transfer pending approval of an application: If transfer of a benefit group's case record is necessary before eligibility has been determined on an application, the sending [~~county~~] project area shall transfer the pending application and associated documents to the receiving [~~county~~] project area. The receiving [~~county~~] project area shall continue the determination of eligibility based on the new circumstances. The application shall be completed based on the original application date.

[8.106.110.15 NMAC - N, 07/01/2004; A, 12/01/2009]

8.106.110.16 APPLICATION MORATORIUM:

A. Based on limited state funds the department may limit the number of benefit groups by imposing a moratorium, subject to quarterly review, upon all GA applications. All applications for GA shall be denied under this provision without consideration of eligibility.

B. Program suspension: When state funds are unavailable the GA program may be suspended for a designated time period. GA payments will not be made to any benefit group and all rights to payment during the suspension period are lost. All applications for GA shall be denied without consideration of eligibility.

C. Notice: Notice shall be issued within 60 days, to all applicants denied due to moratorium or suspension in accordance and shall explain the applicant's right to discuss the denial with the caseworker, supervisor or county director.

(1) Notice to applicant: Applications denied based on a moratorium shall include the state statute and regulation, the date of denial, reason for denial, the regulation citation under which the denial was made, the applicant's right to a fair hearing, and the time limits for filing a fair hearing request.

(2) Public notice: The department shall issue a public notice 60 days prior to the imposition of a moratorium or suspension.

D. Interviews: GA applications denied on the basis of a moratorium or suspension shall not require an interview to meet the requirements specific to GA, other categories of assistance requested by the applicant may require an interview to determine eligibility.

[8.106.110.136 NMAC - N, 12/01/2009]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.106.500 NMAC, Sections 8 and 11, effective 12/01/2009.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. [~~Lack of availability of~~] Limited state funds may result in a suspension or reduction in general assistance benefits without eligibility and need considered.

B. Need determination process: Eligibility for the GA program based on need requires a finding that the:

(1) countable resources owned by and available to the benefit group do not exceed either the $1500 liquid or $2000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent (85%) of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

C. GA payment determination: The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

D. Gross income test: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent (85%) 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	$ 768
(b) two persons	$1,033
(c) three persons	$1,297
(d) four persons	$1,562
(e) five persons	$1,828
(f) six persons	$2,092
(g) seven persons	$2,357
(h) eight persons	$2,622

(i) add $265 for each additional person.

E. Standard of need:

(1) [~~The standard of need is based on the availability of state funds and the number of individuals included in the benefit group and allows for a financial standard and basic needs.~~] As published monthly by the department, the standard of need is an

amount provided to each GA cash assistance benefit group on a monthly basis and is based on availability of state funds, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR caseload number and expenditures, and number of pending applications.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

[~~(3)~~ ~~The financial standard includes approximately $84 per month for each individual in the benefit group.~~

~~**(4)** The standard of need, based on the availability of state funds for the GA cash assistance benefit group is:~~

~~**(a)** one person $ 245~~
~~**(b)** two persons $ 329~~
~~**(c)** three persons $ 412~~
~~**(d)** four persons $ 496~~
~~**(e)** five persons $ 580~~
~~**(f)** six persons $ 664~~
~~**(g)** seven persons $ 748~~
~~**(h)** eight persons $ 849~~
~~**(i)** add $84 for each additional person.~~]

(3) Notice: The department shall issue prior public notice identifying any change(s) to the standard of need amounts for the next quarter, as discussed at 8.106.630.11 NMAC.

F. Net income test: The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group.

G. Special clothing allowance for school-age dependent children: 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 months of August and January subject to the availability of state or federal funds.

(1) 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 nineteen (19) by the end of August.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group for the months of August and January subject to the availability of state or federal funds.

(3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

H. Supplemental issuance: A one time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services department and the availability of state funds.

(1) The one time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.

[8.106.500.8 NMAC - N, 07/01/2004; 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, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008; A, 07/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 12/01/2009]

8.106.500.11 [~~B U R I A L ASSISTANCE - FUNERAL EXPENSES:~~

~~**A. Eligibility:** Payment towards the burial expenses for a categorically eligible individual may be made when the resources considered available to meet the cost of the funeral are less than $600. Resources that shall be considered available include:~~

~~**(1)** cash available to the deceased at the time of death;~~

~~**(2)** any insurance benefits designated for use in meeting the individual's funeral costs;~~

~~**(3)** any other death or burial benefits from sources such as social security or railroad retirement benefits, veterans benefits, legally responsible relatives or the estate of the deceased;~~

~~**(4)** gifts, contributions or written commitments to help pay the cost of the funeral, which are made by any individual not having a legal support obligation for the deceased.~~

~~**B. Covered services:** Funeral costs that are considered include necessary compulsory expenditures arising immediately upon and due to death, including:~~

~~**(1)** embalming;~~

~~**(2)** purchase of a coffin, burial shroud and burial plot;~~

~~**(3)** burial or cremation services, including the cost for opening and closing the grave;~~

~~**(4)** customary ceremonies, rites and services, excluding food, beverages or other similar consumables attendant on disposition of the remains; and~~

~~**(5)** transportation of the deceased from the mortuary to a nearby cemetery.~~

~~**C. Payment:** When resources are determined to be less than $600, a payment of up to $200 may be made towards the cost of the funeral. The amount of the payment is the difference between the cost of the funeral and available resources. The payment shall not exceed $200.~~

~~**D. Payment procedures:** Funeral payments are reimbursed by a payment voucher to the vendor providing the services.~~] **[RESERVED]**

[8.106.500.11 NMAC - N, 07/01/2004; A, 12/01/2009]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.106.610 NMAC, Sections 8 - 10, effective 12/01/2009.

8.106.610.8 [~~CASH ASSISTANCE ISSUANCE~~

~~**A. Method of payment:** Cash assistance benefits are issued by deposit of funds into an electronic benefit transfer (EBT) account and in some instances payments are issued by warrant.~~

~~**(1) EBT card issuance:** EBT account cards shall be issued at time of application to the authorized payee or authorized representative.~~

~~**(2) Replacement card:** The caseworker, the HSD help desk or the contractor customer service help desk shall have a card deactivated upon request of an adult participant in the benefit group or authorized payee. The card will be deactivated immediately and a replacement card provided to the participant. Once a card is deactivated it cannot be reactivated for any reason.~~

~~**(3) Warrants:** In some instances hard copy checks are generated and issued via mail.~~

~~**B. Authorizing and issuing payments:** Cash benefits are clarified below.~~

~~**(1) Payment authorization:** Cash payments are authorized through the department's eligibility system.~~

~~**(2) Payment issuance:** Payment in the first month shall be prorated from the date of authorization; which will be either the date of approval or from the 30th day after the date of application; whichever is earlier.~~

~~**(a)** 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.~~

~~**(b) Ongoing monthly issuance:** Ongoing cash assistance payments are authorized in the regular monthly issuance process.~~

~~**(c) Warrants:** An initial month's cash assistance payment that is issued by warrant is sent by mail on the first working day after the date of authorization. During the monthly issuance process, if necessary, hard copy checks are written the night before the third to the last working day of each month. They are mailed so as to arrive on or about the first mail delivery day of the~~

~~month.~~

~~**(3) Whereabouts unknown:** Eligibility 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:~~

~~**(a)** 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;~~

~~**(b)** warrants for two consecutive months are returned to the HSD accounting section of the administrative services division; or~~

~~**(c)** the benefit group does not make any withdrawals from the benefit group's EBT account for 60 days or more.~~

~~**C. Due to changed in a benefit group's circumstances:** If a change in the benefit amount occurs as a result of an untimely report by the benefit group, an overpayment or underpayment may occur in accordance with regulation at 8.106.120.8 NMAC. If an underpayment occurs, it shall be corrected by issuing a supplemental payment effective the month following the month the change is verified. In case of an overpayment, an overpayment claim shall be established for all appropriate months and efforts shall be made to recover the overpayment from the benefit group. The cash assistance payment reduction of benefits shall be effective in the month following the month of the adverse action.~~]

METHOD OF PAYMENT

A. EBT: Cash assistance benefits are issued by deposit of funds into an electronic benefit transfer (EBT) account.

(1) EBT card issuance: EBT account cards shall be issued at time of application to the authorized payee or authorized representative.

(2) Replacement card: The caseworker, the HSD help desk or the contractor customer service help desk shall have a card deactivated upon request of an adult participant in the benefit group or authorized payee. The card will be deactivated immediately and a replacement card provided to the participant. Once a card is deactivated it cannot be reactivated for any reason.

B. Authorizing and issuing payments:

(1) Payment authorization: Cash payments are authorized when action is taken to approve a cash payment for a benefit group.

(2) Payment issuance: Payments are prorated from the date of authorization or from the 30th day after the day of application, whichever is earlier.

(a) If the case was eligible in a month prior to the month of approval, but is not eligible for payment in the month following approval, the benefit group is not eligible for payment in any of these months.

(b) Ongoing monthly issuance: Ongoing cash assistance payments are authorized in the regular monthly issuance process.

(3) Whereabouts unknown: Eligibility 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:

(a) 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

(c) the benefit group does not make any withdrawals from the benefit group's EBT account for 60 days or more.

[8.106.610.8 NMAC - N, 07/01/2004; A, 02/28/2007, A/E, 01/30/2009; A, 03/31/2009; A, 07/01/2009; A, 12/01/2009]

8.106.610.9 CHANGE OF PAYEE:

Change of name or payee: Whenever there is a change in a recipient's name or in the payee's name the caseworker shall immediately make the appropriate changes.

A. New caretaker of an unrelated dependent child:

(1) If a new caretaker assumes responsibility for an unrelated dependent child in a case, the case shall be closed and a new application processed.

(2) If the new caretaker is already has an active cash assistance case for other dependent children, the cash assistance case for the children being transferred shall be closed, and the children added to the existing benefit group.

B. Payee change after benefits are issued: Cash assistance benefits have been posted to an EBT account, the EBT account can be accessed by another family member through authorization of a new PIN under the old account.

C. Changes in name or payee are made when:

(1) a payee legally changes his or her name and the change has been processed through the social security administration;

(2) a legal guardian is appointed or dismissed;

(3) the parent of an incompetent adult recipient begins to serve as natural guardian; or

(4) there is a change of caretaker for an unrelated dependent child.

[8.106.610.9 NMAC - N, 02/27/2007; 8.106.610.9 NMAC - N, 12/01/2009]

[~~8.106.610.9~~] 8.106.610.10 STALE BENEFIT ACCOUNTS: Stale benefit accounts are those cash assistance benefit accounts that have not been accessed for 90 days from the most recent date of withdrawal.

A. Offline accounts: EBT accounts which have not been accessed by the recipient in the last 90 days are considered a stale account. HSD may store stale benefits offline after notification to the household of this action.

(1) Notification: The department shall notify the household of this action before storing the benefits in an offline account and provide the necessary steps to reactivate the account.

(2) Reinstatement: The participant may contact the department or the HSD EBT help desk, the contractor customer service help desk, or the caseworker and request reinstatement of their EBT account anytime within 180 days from the initial date of benefit activity. Requests from the participant to reinstate any benefit must be received prior to the date of expungement.

B. Expungement: Cash assistance benefits which have had no activity for an excess of 180 days will be expunged. All benefits older than 180 days in the account will no longer be accessible to the household. The household loses all rights to all expunged benefits.

(1) Notification: The department shall notify the household no less than 45 days prior to the expungement of the cash assistance benefits.

(2) Payment of claims against household. The contractor shall notify the department no less than five days prior to expungement of the cash assistance benefits and any cash assistance claims against the household shall be removed from the account and applied to the claims upon expungement.

[8.106.610.10 NMAC - Rp, 8.106.610.9 NMAC, 12/01/2009]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.106.630 NMAC, Sections 8 - 12, effective 12/01/2009.

8.106.630.8 CHANGE PROCESSING STANDARDS:

A. There is a continuing responsibility on the part of both the recipient and the caseworker to make sure that benefits paid to the benefit group correctly reflect the benefit group's circumstances for the certification period.

B. A change is considered reported on the date the report of change is received by the [~~local county~~] project area office or, if mailed, the date of the postmark on the benefit group's report, plus three days mailing time.

C. A benefit group will be encouraged to use a change report form to document changes. A change may be

reported by mail, by personal visit, by telephone, fax, electronic mail.

D. Department action on reported changes: Reported changes shall be evaluated and changes to eligibility, [~~and/or~~] benefit amount [~~changes~~], or both shall be acted on within 10 days of receiving the notice of a change.

(1) 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.

(2) The caseworker shall take action on any change reported by a benefit group, and on any change that becomes known to the department through other sources.

[8.106.630.8 NMAC - N, 07/01/2004; A, 12/01/2009]

8.106.630.9 CHANGE PROCESSING ACTION: If, during a certification period, a change occurs that affects eligibility or benefit amount, the caseworker shall take action to adjust the benefit group's eligibility or benefit amount.

A. Action on changes: When a benefit group reports a change, the caseworker must take action to determine the benefit group's eligibility and benefit amount within ten days of the date the notice of change is received by the [~~ISD county office~~] department.

B. Reducing the benefit amount: For changes that result in a reduction of cash assistance benefits, the caseworker shall act on the change as follows.

(1) If a signed written report is provided by the benefit group, action shall be taken for the following month without issuing a notice of adverse action. The benefit group shall be provided with adequate notice. If the benefits will be reduced in the same month in which the certification period will expire, no action shall be required to reduce or terminate benefits.

(2) When a benefit group timely reports a change that will reduce benefits, but does not provide a signed written report, the caseworker shall issue an adverse action notice to the benefit group. If the adverse action time limit expires in the following month, there is no overpayment in that month and the benefit group is entitled to the higher benefit amount. The reduction shall be effective in the month following the month in which the adverse action notice expires.

(3) If the change is reported by any other means, within 10 days the caseworker shall take action to issue a notice of adverse action to reduce or terminate benefits effective the month following the month in which the adverse action time limit expires. If the notice of adverse action time limit will expire in the same month that the benefit group's certification period will expire, no action shall be required to reduce or terminate benefits.

C. Increased benefit amount:

(1) If verification of the change is provided at the time the change is reported, the caseworker shall make the change prospective, beginning in the month following the month in which the change was reported.

(2) If verification is not provided at the time the change is reported, the benefit group shall be allowed 13 days from the date a change is reported to provide verification. Benefits shall be increased effective the month following the month in which the verification is provided.

(3) When a benefit group fails to make a timely report of a change that will result in an increased benefit amount, the benefit amount shall increase the month following the month in which the verification is provided. The benefit group is not entitled to an increased benefit amount for any month prior to the month in which the verification is provided.

D. Termination of benefits: When the benefit group reports a change that will result in a termination of benefits, and the change is not reported in writing and signed by a benefit group member, the caseworker shall issue an adverse action notice.

(1) If the adverse action time limit expires in the month following the month the notice is mailed, there is no overpayment to the benefit group in the following month and the benefit group shall be entitled to the higher benefit amount. A claim against the benefit group shall not be established.

(2) If the adverse action time limit will expire in the same month in which the certification period ends, or after the certification period ends, no action shall be taken to terminate benefits and the certification period shall be allowed to expire. The caseworker shall document the change in the case record.

E. No change in benefit amount: When a reported change will not change the benefit amount, the caseworker shall document the change in the case file and notify the benefit group that the report was received and there is no change in benefits.

F. Other changes: All unreported changes of which the caseworker becomes aware must be acted upon. At a minimum, this means documenting changes in the case record. All discrepancies and questionable information shall be resolved to make sure that the correct benefit amount is issued to the benefit group.

[8.106.630.9 NMAC - N, 07/01/2004; A, 12/01/2009]

8.106.630.10 CHANGE NOTICES:

A. Notice of adverse action: Prior to any action to reduce or terminate cash assistance benefits within the certification period, the benefit group shall be provided with a notice of an adverse action, unless the change was reported by the benefit group in writing and was signed by a benefit group member. The adverse action notice shall include at least the following information:

(1) proposed action and reason for the action;

(2) month in which the change takes effect;

(3) adjusted benefit amount;

(4) benefit group's right to request a fair hearing, circumstances under which the benefit group can continue benefits at the greater amount, and deadline dates for requesting a hearing;

(5) benefit group's liability for any benefits overpaid if the result of the fair hearing is that the department took the correct action;

(6) general information on whom to contact for additional information, including the right to representation by legal services.

B. Adequate notice: If a change was reported by the benefit group in writing, was signed by a benefit group member, and will result in a reduction or termination in benefits, the benefit group shall be provided with advance written notice of the reduction or termination.

(1) The benefit group shall be notified that its benefits are being reduced or terminated no later than the date the benefit group receives, or would have received, its benefits.

(2) Adequate notice shall be provided when changes reported in writing meet the following conditions:

(a) the benefit group provides a written report of the information that results in the reduction or termination and the report is signed by a member of the benefit group;

(b) the caseworker can determine the benefit group's reduced benefit amount or ineligibility based solely on the information provided by the benefit group in the written report; and

(c) the benefit group retains its right to a fair hearing.

C. Fair hearing rights: The benefit group retains its right to have continued benefits if the fair hearing is requested within the adverse action time limit and the benefit group requests the higher benefit amount pending the hearing decision. The caseworker shall continue the benefit group's previous benefit amount if required, within five working days of the benefit group's request.

D. Other changes: A notice of adverse action shall not be provided

when:

(1) there is a mass change in benefits affecting the entire GA program;

(2) the caseworker determines, on the basis of reliable information, that the benefit group has moved [~~from the project area~~] out of state;

(3) the caseworker determines on the basis of reliable information that all members of a benefit group have died;

(4) the benefit group has received an increased benefit amount to restore lost benefits, the restoration is complete, and the benefit group has been notified in writing of the date the increased benefit amount will terminate;

(5) the benefit group voluntarily requests in writing, or in the presence of the caseworker, that its participation be terminated; or

(6) the caseworker determines, on the basis of reliable information, that the benefit group has been approved for a concurrent cash assistance program.

[8.106.630.10 NMAC - N, 07/01/2004; A, 12/01/2009]

8.106.630.11 MASS CHANGE NOTICE

A. Change in payment amount: A benefit group's cash assistance payment may be increased or decreased after initial certification.

(1) Increase in payment amount: The department shall issue adequate notice to GA recipients regarding an increase in payment amount.

(2) Decrease in payment amount: The department shall issue written notice to GA recipients no later than 60 days prior to the change effective date. The notice shall include the citation to the state statute and regulation and fair hearing rights.

B. Application moratorium: Public notice shall be issued 60 days prior to the imposition of a moratorium on applications. Applications received during the moratorium shall be processed in accordance with 8.106.110.16 NMAC.

C. Suspension of program: The GA payment for all benefit groups may be denied for a designated time period based on unavailable state funds. During program suspension disposition of applications shall be made pursuant to 8.106.110.16 NMAC.

(1) Payment of assistance: There shall be no payment to the GA recipient during the designated suspension period and any right to the payment is lost. Retroactive payments for pending applicants shall be authorized for months prior to a designated suspension period.

(2) Notice to recipient and applicant: No later than 60 days prior to the effective change the department shall provide GA recipients appropriate notice regarding suspension or restoration of the grant based on the availability of state funds. The notice shall include the citation to the state statute and regulation and fair hearing rights.

D. Public notice: The department shall issue a public notice 60 days prior to the changes made based on the availability of state funds in Subsections A - C above. Public notice shall include effective date of change and right to fair hearing consistent with mass change requirements at 8.100.180.15 NMAC.

[8.106.630.11 NMAC - N, 07/01/2004; 8.106.630.11 NMAC - N, 12/01/2009]

[~~8.106.630.11~~] 8.106.630.12 LATE REPORTING OF CHANGES

A. If the benefit group failed to timely report a change, the caseworker shall verify the change to determine whether the benefit group received benefits to which it was not entitled (an overpayment).

B. Failure to report changes: Failure to report any change in a timely manner may result in an underpayment or an overpayment to the benefit group.

(1) The caseworker shall establish a claim against the benefit group for any month in which the benefit group was overpaid benefits.

(2) If the establishment of an overpayment is made within the certification period, the benefit group is entitled to a notice of adverse action that its benefits will be reduced due to the overpayment.

(3) No claim shall be established because of a change in circumstances that a benefit group is not required to report.

C. 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 can show, with appropriate documentation, that the recipient was prevented from reporting by a health problem, including illness, or death of an immediate family member during the time period the individual was required to report.

(2) The health problem or death of an immediate family member must have been of such severity and duration as to effectively prevent the timely reporting by the head of household or unrelated caretaker. The head of household or unrelated caretaker must provide proof of the existence of the health problem and explain exactly how it prevented the recipient from reporting the information to the ISD office.

(3) 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.

[8.106.630.12 NMAC - Rn, 8.106.630.11 NMAC, 12/01/2009]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.245.400 NMAC, sections 5, 8, 9, 13, 18 and 19, effective December 1, 2009. This rule was also renumbered and reformatted from 8 NMAC 4.SMB.000 and 8 NMAC 4.SMB.400 to comply with NMAC requirements.

8.245.400.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.

[2/1/95; 8.245.400.5 NMAC - Rn, 8 NMAC 4.SMB.000.5 & A, 12/1/09]

8.245.400.8 MISSION: To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.

[8.245.400.8 NMAC - N, 12/1/09]

8.245.400.9 SPECIFIED LOW INCOME MEDICARE BENEFICIARIES (SLIMB) - CATEGORY 045: To be eligible for category 045, an applicant/recipient must be covered by medicare part A. The part A insurance is a free entitlement to social security beneficiaries who are [~~sixty-five (65)~~] 65 years of age or older or who have received social security disability payments for [~~twenty-four (24)~~] 24 months. Fully or currently insured workers, or their dependents, with end-stage renal disease are also covered under medicare.

[2/1/95; 8.245.400.9 NMAC - Rn, 8 NMAC 4.SMB.400 & A, 12/1/09]

8.245.400.13 CITIZENSHIP AND IDENTITY: [~~Refer to Medical Assistance Program Manual Section MAD 412, 412.1 and 412.2.~~

~~**A. Verification of citizenship:** Citizenship determinations rendered by the social security administration (SSA) for SSI are final.~~

~~**B. Documentation of citizenship:** Primary documentation of citizenship is a birth certificate. Secondary documentation includes:~~

~~(1) Certificate of naturalization;~~

~~(2) Citizenship certificate;~~

~~(3) Other resident identification documents issued by the U.S. immigration and naturalization service, such as:~~

~~(a) U.S. passport issued by the U.S. state department;~~

~~(b) consular report of birth;~~

~~(c) certification of birth issued by the United States state department, proof of marriage to a U.S. citizen before September 2, 1922, and a card of identity~~

~~and registration of a U.S. citizen; or~~

~~(d) official communication from an American foreign service post indicating that the applicant/recipient is registered as a United States citizen.~~

~~**C. Declaration of citizenship, nationality or immigration status:** As a condition of eligibility, the human services department (HSD) requires a declaration by the applicant/recipient, another person on behalf of a child or an applicant/recipient who is mentally incapacitated, which specifies whether the applicant/recipient is a citizen or national of the United States. If not, the declaration must also state that the applicant/recipient is in satisfactory immigration status. Eligibility is not denied solely because an applicant/recipient cannot legally sign the declaration and the individual who is legally able to do so refuses to sign on behalf of the applicant/recipient or to cooperate, as required.~~] Individuals entitled to or receiving medicare already meet citizenship and identity requirements.

[2/1/95, 4/30/98; 8.245.400.13 NMAC - Rn, 8 NMAC 4.SMB.412 & A, 12/1/09]

8.245.400.18 ASSIGNMENT OF SUPPORT:

[~~**A.**~~] **Assignment of medical support:** As a condition of eligibility, applicants for or recipients of benefits must do the following, [42 CFR Section 433.146; NMSA 1978 Section 27-2-28 (G)(Repl. Pamp. 1991)]:

[~~(1)~~] A. assign individual rights to medical support and payments to human services department (HSD); the assignment authorizes HSD to pursue and make recoveries from liable third parties on behalf of a recipient;

[~~(2)~~] B. assign the rights to medical support and payments of other individuals eligible for medicaid, for whom they can legally make an assignment; and

[~~(3)~~] C. assign their individual rights to any medical care support available under an order of a court or an administrative agency.

[~~**B. Assignment of parental support:** Assignment of parental support rights is required for all minor medicaid recipients with absent or deceased parents. By signing applications and receiving medicaid benefits, applicants/recipients have assigned support rights and indicated agreement to cooperate with parental support requirements. See Section MAD-425, Eligibility Assignment and Cooperation Requirements. Medicaid benefits are not denied to otherwise eligible recipients solely because they cannot legally assign their own support rights when the individual who is legally able to assign their rights refuses to assign or cooperate, as required by law.~~]

[2/1/95; 8.245.400.18 NMAC - Rn, 8 NMAC 4.SMB.434 & A, 12/1/09]

8.245.400.19 REPORTING REQUIREMENTS: Medicaid recipients must report any change in their circumstances which may affect eligibility within [~~ten (10)~~] 10 days after the change to the local income support division (ISD) office.

[2/1/95; 8.245.400.19 NMAC - Rn, 8 NMAC 4.SMB.451 & A, 12/1/09]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.245.500 NMAC, sections 5, 8, 10, 11, 12 and 14, effective December 1, 2009. This rule was also renumbered and reformatted from 8 NMAC 4.SMB.000 and 8 NMAC 4.SMB.500 to comply with NMAC requirements.

8.245.500.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.

[2/1/95; 8.245.500.5 NMAC - Rn, 8 NMAC 4.SMB.000.5 & A, 12/1/09]

8.245.500.8 MISSION: To reduce the impact of poverty living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.

[8.245.500.8 NMAC - N, 12/1/09]

8.245.500.10 RESOURCE STANDARDS: The value of an applicant/recipient's countable resources must not exceed $4,000. The resource limit for an applicant couple is $6,000. An applicant/recipient with an ineligible spouse is eligible if the couple's countable resources do not exceed $6,000, when resources are deemed. A resource determination is always made as of the first moment of the first day of the month. An applicant/recipient is ineligible for any month in which the countable resources exceed the current resource standard as of the first moment of the first day of the month. Changes in the amount of resources during a month do not affect eligibility for that month. [~~See Section SSI-510, Supplemental Security Income Methodology~~] See 8.215.500.11 NMAC, *resource standards*, for information on exclusions, disregards, and countable resources.

[2/1/95; 8.245.500.10 NMAC - Rn, 8 NMAC 4.SMB.510 & A, 12/1/09]

8.245.500.11 RESOURCE TRANSFERS: The social security administration excluded transfer of resources as a factor of eligible for non-institutionalized SSI recipients. Transfer of resources is not a factor for consideration in [~~categories that use SSI methodology in the eligibility determination~~] the medicare savings programs.

[2/1/95; 8.245.500.11 NMAC - Rn, 8 NMAC 4.SMB.515 & A, 12/1/09]

8.245.500.12 INCOME STANDARDS: Income standards for this category are at least 100 percent but no more than [~~110~~] 120 percent of the federal income poverty guidelines. The federal income poverty guidelines are adjusted annually, effective April 1. [~~See Section MAD-520, Income Standards and Section SSI-521, Supplemental Security Income Methodology~~] See 8.200.520 NMAC, *Income Standards*, and 8.215.500.19 NMAC, *income standards*, for information on exclusions, disregards, and countable income. [~~Effective January 1, 1995 the upper SLIMB income limit will be 120% of the current federal poverty income level.~~] Verification of income must be documented in the case file.

[2/1/95; 8.245.500.12 NMAC - Rn, 8 NMAC 4.SMB.520 & A, 12/1/09]

8.245.500.14 DEEMED INCOME: If an applicant/recipient is a minor who lives with a parent(s), deemed income from the parent(s) must be considered. If an applicant/recipient is married and lives with a spouse, deemed income from the spouse must be considered. [~~See Section SSI-523, Supplemental Security Income Methodology~~] See 8.215.500.21 NMAC, *deemed income*, for information on deemed income.

[2/1/95; 8.245.500.14 NMAC - Rn, 8 NMAC 4.SMB.523 & A, 12/1/09]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.245.600 NMAC, sections 5, 8, 9, 10, 12 and 13, effective December 1, 2009. This rule was also renumbered and reformatted from 8 NMAC 4.SMB.000 and 8 NMAC 4.SMB.600 to comply with NMAC requirements.

8.245.600.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.

[2/1/95; 8.245.600.5 NMAC - Rn, 8 NMAC 4.SMB.000.5 & A, 12/1/09]

8.245.600.8 MISSION: To reduce the impact on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.

[8.245.600.8 NMAC - N, 12/1/09]

8.245.600.9 BENEFIT

DESCRIPTION: Most individuals [~~sixty-five (65)~~] 65 or older receive free medicare part A. Those who do not receive free part A can voluntarily enroll for hospital insurance coverage and pay the monthly premium. Medicaid does not pay the medicare part A monthly premium for this category of recipients. Voluntary enrollees for premium/conditional medicare part A must enroll for supplementary medical insurance, medicare part B, and pay that premium also. After an application for SLIMB benefits is approved, medicaid begins to pay the medicare part B premium. Applicants/recipients eligible for medicaid coverage under another medicaid category may also be eligible for SLIMB. SLIMB eligibility allows the state to receive federal matching funding for the purchase of medicare part B. Since payment of the medicare part B premium is the only benefit, no medicaid card is issued and there is no interaction with the medicaid claims processing contractor.
[2/1/95; 8.245.600.9 NMAC - Rn, 8 NMAC 4.SMB.600 & A, 12/1/09]

8.245.600.10 BENEFIT DETERMINATION: Application for SLIMB is made on the assistance application form. Applications are acted on and notice of action taken is sent to the applicant within [~~forty-five (45)~~] 45 days of the application. Determination of SLIMB eligibility for current recipients of medicaid is made without a separate application. Recipients of supplemental security income (SSI) [~~and/or~~] or qualified medicare beneficiaries are not eligible for SLIMB.
[2/1/95; 8.245.600.10 NMAC - Rn, 8 NMAC 4.SMB.620 & A, 12/1/09]

8.245.600.12 ONGOING BENEFITS: A redetermination of eligibility is made every [~~twelve (12)~~] 12 months.
[2/1/95; 8.245.600.12 NMAC - Rn, 8 NMAC 4.SMB.624 & A, 12/1/09]

8.245.600.13 RETROACTIVE BENEFIT COVERAGE: Up to three [~~(3)~~] months of retroactive medicaid coverage can be furnished to applicants who have received medicaid-covered services during the retroactive period and would have met applicable eligibility criteria had they applied during the three [~~(3)~~] months prior to the month of application [42 CFR Section 435.914].

[~~**A. Application for retroactive benefit coverage:** Application for retroactive medicaid can be made by checking "yes" in the "application for retroactive medicaid payments" box on the application/redetermination of eligibility for medical assistance (MAD 381) form or by checking "yes" to the question on "does anyone in your household have unpaid medical expenses in the last three (3) months?" on the application for assistance (ISD 100-S) form. Applications for retroactive SSI medicaid benefits for recipients of supplemental security income (SSI) must be made by 180 days from the date of approval for SSI. Medicaid-covered services which were furnished more than two (2) years prior to approval are not covered.~~

~~**B. Approval requirements:** To establish retroactive eligibility, the ISS must verify that all conditions of eligibility were met for each of the three (3) retroactive months and that the applicant received medicaid-covered services. Eligibility for each month is approved or denied on its own merits.~~

~~(1) Applicable benefit rate: The federal benefit rate (FBR) in effect during the retroactive months based on the applicant's living arrangements is applicable for retroactive medicaid eligibility determinations. See MAD-520, Income Standards. If the applicant's countable income in a given month exceed the applicable FBR, the applicant is not eligible for retroactive medicaid for that month. If the countable income is less that the FBR, the applicant is eligible on the factor of income for that month. A separate determination must be made for each of the three (3) months in the retroactive period.~~]

A. Application for retroactive benefit coverage: Application for retroactive medicaid is made by checking "yes" to the question on the application form about having unpaid medical bills in the three months prior to application for assistance. Applications for retroactive medicaid benefits must be made no later than 180 days from the date of application for assistance.

B. Approval requirements: To establish retroactive eligibility, the ISD worker must verify that all conditions of eligibility were met for each of the three retroactive months. Each month must be approved or denied on its own merit. In certain cases this may involve using the federal benefit rate (FBR) in effect during the retroactive months based on the applicant's living arrangement. See 8.200.520 NMAC, *Income Standards*.

C. Benefit coverage: Retroactive benefits in this category of eligibility are limited to the payment of the medicare part B premium only.

[~~(2)~~] **D. Disability determination required:** If a determination is needed as of the date of onset of blindness or disability, the [~~ISS~~] ISD caseworker must send a referral to [~~disability determination services (ISD 305) to~~] the disability determination unit. Medical records for the requested months of determination must accompany the referral.

[~~**C.**~~] **E. Notice:**

(1) Notice to applicant: The applicant must be informed if any of the retroactive months are denied.

(2) Recipient responsibility to notify provider: After the retroactive eligibility has been established, the [~~ISS~~] ISD worker must notify the recipient that he/she is responsible for informing all providers with outstanding bills of the retroactive eligibility determination. If the recipient does not inform all providers and furnish verification of eligibility which can be used for billing and the provider consequently does not submit the billing within 120 days from the date of approval of retroactive coverage, the recipient is responsible for payment of the bill.
[2/1/95; 8.245.600.13 NMAC - Rn, 8 NMAC 4.SMB.625 & A, 12/1/09]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.250.400 NMAC, sections 5, 8, 9, 13, 15, 18 and 19, effective December 1, 2009. This rule was also renumbered and reformatted from 8 NMAC 4.QIS.000 and 8 NMAC 4.QIS.400 to comply with NMAC requirements.

8.250.400.5 EFFECTIVE DATE: April 30, 1998, unless a later date is cited at the end of a section.
[4/30/98; 8.250.400.5 NMAC - Rn, 8 NMAC 4.QIS.000.5 & A, 12/1/09]

8.250.400.8 MISSION: To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.
[8.250.400.8 NMAC - N, 12/1/09]

8.250.400.9 QUALIFIED INDIVIDUALS 1 (QI1s) - CATEGORY 045: To be eligible for the qualified individual 1 program (Category 045), an applicant/recipient must be covered by medicare part A. The part A insurance is a free entitlement to social security beneficiaries who are [~~sixty-five (65)~~] 65 years of age or older or who have received social security disability payments for [~~twenty-four (24)~~] 24 months. Fully or currently insured workers, or their dependents, with end-stage renal disease are also covered under medicare.
[4/30/98; 8.250.400.9 NMAC - Rn, 8 NMAC 4.QIS.400 & A, 12/1/09]

8.250.400.13 CITIZENSHIP:

A. Undocumented aliens cannot purchase medicare coverage and, therefore, are not eligible for QI1 benefits. To be eligible for QI1 an applicant/recipient must be one of the following:

(1) a citizen of the United States;

or

(2) an alien who entered the United States prior to August 22, 1996, as one of the classes of aliens described in [~~Section MAD-412.1~~] Subsection A of 8.200.410.11 NMAC, *Citizenship*, or an alien who entered the United States as a qualified alien on or after August 22, 1996, and who has met the five year bar listed in [~~section MAD-412.2~~] Subsection B of 8.200.410.11 NMAC.

B. Verification of citizenship: [~~Citizenship determinations rendered by the social security administration (SSA) for SSI are final.~~

~~(1) Documentation of citizenship: Primary documentation of citizenship is a birth certificate. Secondary documentation includes:~~

~~(a) certificate of naturalization;~~

~~(b) citizenship certificate;~~

~~(c) other resident identification documents issued by the U.S. immigration and naturalization service, such as~~

~~(i) U.S. passport issued by the U.S. state department;~~

~~(ii) consular report of birth;~~

~~(iii) certification of birth issued by the United States state department, proof of marriage to a U.S. citizen before September 2, 1922, and a card of identity and registration of a U.S. citizen; or~~

~~(iv) official communication from an American foreign service post indicating that the applicant/recipient is registered as a United States citizen.~~

~~(2) Declaration of citizenship, nationality or immigration status: As a condition of eligibility, the human services department (HSD) requires a declaration by the applicant/recipient, another person on behalf of a child or an applicant/recipient who is mentally incapacitated, which specifies whether the applicant/recipient is a citizen or national of the United States. If not, the declaration must also state that the applicant/recipient is in satisfactory immigration status. Eligibility is not denied solely because an applicant/recipient cannot legally sign the declaration and the individual who is legally able to do so refuses to sign on behalf of the applicant/recipient or to cooperate, as required.~~] Individuals entitled to or receiving medicare already meet citizenship and identity requirements.

[4/30/98; 8.250.400.13 NMAC - Rn, 8 NMAC 4.QIS.412 & A, 12/1/09]

8.250.400.15 NONCONCURRENT RECEIPT OF ASSISTANCE: QI1s cannot be otherwise eligible for medical assistance under [~~the~~] any of the other categories of NM medicaid eligibility.

[4/30/98; 8.250.400.15 NMAC - Rn, 8 NMAC 4.QIS.414 & A, 12/1/09]

8.250.400.18 [~~**ASSIGNMENT OF SUPPORT:**~~

~~**A. Assignment of medical support:** As a condition of eligibility, applicants for or recipients of benefits must do the following, [42 CFR Section 433.146; NMSA 1978 Section 27-2-28 (G)(Repl. Pamp. 1991)]:~~

~~(1) assign individual rights to medical support and payments to human services department (HSD). The assignment authorizes HSD to pursue and make recoveries from liable third parties on behalf of a recipient;~~

~~(2) assign the rights to medical support and payments of other individuals eligible for medicaid, for whom they can legally make an assignment; and~~

~~(3) assign their individual rights to any medical care support available under an order of a court or an administrative agency.~~

~~**B. Assignment of parental support:** Assignment of parental support rights is required for all minor medicaid recipients with absent or deceased parents. By signing applications and receiving medicaid benefits, applicants/recipients have assigned support rights and indicated agreement to cooperate with parental support requirements. See Section MAD-425, Eligibility Assignment and Cooperation Requirements. Medicaid benefits are not denied to otherwise eligible recipients solely because they cannot legally assign their own support rights when the individual who is legally able to assign their rights refuses to assign or cooperate, as required by law.~~]

[4/30/98; 8.250.400.18 NMAC - Rn, 8 NMAC 4.QIS.434, Repealed 12/1/09]

[RESERVED]

8.250.400.19 REPORTING REQUIREMENTS: Medicaid recipients must report any change in their circumstances which may affect eligibility within [~~ten (10)~~] 10 days after the change to the local income support division (ISD) office.

[4/30/98; 8.250.400.19 NMAC - Rn, 8 NMAC 4.QIS.451& A, 12/1/09]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.250.500 NMAC, sections 5, 8, 10, 12 and 14, effective December 1, 2009. This rule was also renumbered and reformatted from 8 NMAC 4.QIS.000 and 8 NMAC 4.QIS.500 to comply with NMAC requirements.

8.250.500.5 EFFECTIVE DATE: April 30, 1998, unless a later date is cited at the end of a section.

[4/30/98; 8.250.500.5 NMAC - Rn, 8 NMAC 4.QIS.000.5 & A, 12/1/09]

8.250.500.8 MISSION: To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.

[8.250.500.8 NMAC - N, 12/1/09]

8.250.500.10 RESOURCE STANDARDS: The value of an applicant/recipient's countable resources must not exceed $4,000. The resource limit for an applicant couple is $6,000. An applicant/recipient with an ineligible spouse is eligible if the couple's countable resources do not exceed $6,000, when resources are deemed. A resource determination is always made as of the first moment of the first day of the month. An applicant/recipient is ineligible for any month in which the countable resources exceed the current resource standard as of the first moment of the first day of the month. Changes in the amount of resources during a month do not affect eligibility for that month. [~~See Section SSI-510, Supplemental Security Income Methodology~~] See 8.215.500.11 NMAC, *resource standards*, for information on exclusions, disregards, and countable resources.

[4/30/98; 8.250.500.10 NMAC - Rn, 8 NMAC 4.QIS.510 & A, 12/1/09]

8.250.500.12 INCOME STANDARDS: Income standards for this category are at least 120[~~% but no more~~] percent but less than 135 percent of the federal income poverty guidelines. The federal income poverty guidelines are adjusted annually, effective April 1. [~~See Section MAD-520, Income Standards and Section SSI-521, Supplemental Security Income Methodology~~] See 8.200.520 NMAC, *Income Standards*, and 8.215.500.19 NMAC, *income standards*, for information on exclusions, disregards and countable income. Verification of income must be documented in the case file.

[4/30/98; 8.250.500.12 NMAC - Rn, 8 NMAC 4.QIS.520 & A, 12/1/09]

8.250.500.14 DEEMED INCOME: If an applicant/recipient is a minor who lives with a parent(s), deemed income from the parent(s) must be considered. If an applicant/recipient is married and lives with a spouse, deemed income from the spouse must be considered. [~~See Section SSI-523, Supplemental Security Income Methodology~~] See 8.215.500.21 NMAC, *deemed income*, for information on deemed income.

[4/30/98; 8.250.500.14 NMAC - Rn, 8 NMAC 4.QIS.523 & A, 12/1/09]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.250.600 NMAC, sections 5, 8, 9, 10, 12 and 13, effective December 1, 2009. This rule was also renumbered and reformatted from 8 NMAC 4.QIS.000 and 8 NMAC 4.QIS.600 to comply with NMAC requirements.

8.250.600.5 EFFECTIVE DATE: April 30, 1998, unless a later date is cited at the end of a section.
[4/30/98; 8.250.600.5 NMAC - Rn, 8 NMAC 4.QIS.000.5 & A, 12/1/09]

8.250.600.8 MISSION: To reduce the impact of poverty on people living in New Mexico to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.
[8.250.600.8 NMAC - N, 12/1/09]

8.250.600.9 BENEFIT DESCRIPTION: Most individuals [~~sixty-five (65)~~] 65 or older receive free medicare part A. Those who do not receive free part A can voluntarily enroll for hospital insurance coverage and pay the monthly premium. Medicaid does not pay the medicare part A monthly premium for this category of recipients. Voluntary enrollees for premium/conditional medicare part A must enroll for supplementary medical insurance, medicare part B, and pay that premium also. After an application for QI benefits is approved, medicaid begins to pay the medicare part B premium. Applicants/recipients eligible for QI1 coverage under another medicaid category may not be eligible for QI1. QI1 eligibility is funded by limited block grant funding beginning in 1998 and ending [~~after the year 2002~~] when the congressional extension period expires. Since payment of the medicare part B premium is the only benefit, no medicaid card is issued [~~and there is no interaction with the medicaid claims processing contractor~~].
[4/30/98; 8.250.600.9 NMAC - Rn, 8 NMAC 4.QIS.600 & A, 12/1/09]

8.250.600.10 BENEFIT DETERMINATION: Application for QI1 is made on the assistance application form. Applications are acted on and notice of action taken is sent to the applicant within [~~forty-five (45)~~] 45 days of the application.
[4/30/98; 8.250.600.10 NMAC - Rn, 8 NMAC 4.QIS.620 & A, 12/1/09]

8.250.600.12 ONGOING BENEFITS: A redetermination of eligibility is made every [~~twelve (12)~~] 12 months.
[4/30/98; 8.250.600.12 NMAC - Rn, 8 NMAC 4.QIS.624 & A, 12/1/09]

8.250.600.13 RETROACTIVE BENEFIT COVERAGE: Up to three [~~(3)~~] months of retroactive coverage can be furnished to applicants who have been on medicare during the retroactive period and would have met applicable eligibility criteria had they applied during the three [~~(3)~~] months prior to the month of application.

[~~**A. Application for retroactive benefit coverage:** Application for retroactive medicaid can be made by checking "yes" in the "application for retroactive medicaid payments" box on the application/redetermination of eligibility for medical assistance (MAD 381) form or by checking "yes" to the question on "does anyone in your household have unpaid medical expenses in the last three (3) months?" on the application for assistance (ISD 100 S) form. Prior to January 1, 1998, no retroactive medicaid coverage is available for applicants/recipients.~~

~~**B. Approval requirements:** To establish retroactive eligibility, the ISS must verify that all conditions of eligibility were met for each of the three (3) retroactive months. Eligibility for each month is approved or denied on its own merits.~~

~~**C. Applicable benefit rate:** The federal benefit rate (FBR) in effect during the retroactive months based on the applicant's living arrangements is applicable for retroactive medicaid eligibility determinations. See MAD-520, Income Standards. If the applicant's countable income in a given month exceeds the applicable FBR, the applicant is not eligible for retroactive medicaid for that month. If the countable income is less than the FBR, the applicant is eligible on the factor of income for that month. A separate determination must be made for each of the three (3) months in the retroactive period.~~]

A. Application for retroactive benefit coverage: Application for retroactive medicaid is made by checking "yes" to the question on the application form about having unpaid medical bills in the three months prior to application for assistance. Applications for retroactive medicaid benefits must be made no later than 180 days from the date of application for assistance.

B. Approval requirements: To establish retroactive eligibility, the ISD worker must verify that all conditions of eligibility were met for each of the three retroactive months. Each month must be approved or denied on its own merits. In certain cases this may involve using the federal benefit rate (FBR) in effect during the retroactive months based on the applicant's living arrangement. See 8.200.520 NMAC, *Income Standards*.

C. Benefit coverage: Retroactive benefits in this category of eligibility are limited to the payment of the medicare part B premium only.

[~~**C.**~~] **D. Notice - Notice to applicant:** The applicant must be informed of which months are approved or denied.
[4/30/98; 8.250.600.13 NMAC - Rn, 8 NMAC 4.QIS.625 & A, 12/1/09]

NEW MEXICO RETIREE HEALTH CARE AUTHORITY

This is an amendment to 2.81.6 NMAC, Sections 2, 3, 6, 7, 8, and 10 effective 1-1-2010. The part name is also amended, effective 1-1-2010.

PART 6 RETIREE SPOUSE, DOMESTIC PARTNER AND DEPENDENT BENEFIT COVERAGE ENROLLMENT

2.81.6.2 SCOPE: This rule applies to all eligible retirees, eligible spouses, eligible domestic partners, and eligible dependents authorized to participate in the NMRHCA coverages.
[6-15-98; 2.81.6.2 NMAC - Rn, 2 NMAC 81.6.2, 12-30-02; A, 1-1-2010]

2.81.6.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to the Retiree Health Care Act [~~("Act")~~], Sections 10-7C-1 et seq. NMSA 1978.
[6-15-98; 2.81.6.3 NMAC - Rn, 2 NMAC 81.6.3, 12-30-02; A, 1-1-2010]

2.81.6.6 OBJECTIVE: The objective of this rule is to establish the enrollment policy for eligible retirees, eligible spouses, eligible domestic partners, and dependents authorized to participate in the NMRHCA's coverage. The objective is to establish rules for new eligible retiree, spouse, domestic partners, and dependent enrollment, change in status enrollment for eligible dependents and new dependent enrollment. The objective of this rule is to clarify when proof of medical insurability will be required in these cases, requiring certain documentation of retirees, spouses, domestic partners, and those claiming improper loss of coverages.
[6-15-98; 2.81.6.6 NMAC - Rn, 2 NMAC 81.6.6, 12-30-02; A, 1-1-2010]
[In compliance with Levitt v. Board of the NMRHCA and State of New Mexico, No. D-202-CV-2007-1048 (2nd Jud. Dist. 2009)]

2.81.6.7 DEFINITIONS:

A. "Act" means the Retiree Health Care Act (Sections 10-7C-1 et seq. NMSA 1978).

B. "Domestic partner"

means a person at least 18 years of age, not married or a member of another domestic partnership, who is in an exclusive committed relationship with and for the benefit of the retiree member, and who has shared a primary residence with the retiree member for twelve or more consecutive months, is jointly responsible with the retiree member for each other's common welfare, shares joint financial obligations with the retiree member, and does not have a blood relationship with the retiree member such as to preclude marriage between them under New Mexico law.

C. "Termination of domestic partnership" means the cessation of the joint and mutually responsible financial and exclusive committed relationship.

[6-15-98; 2.81.6.7 NMAC - Rn, 2 NMAC 81.6.7, 12-30-02; A, 1-1-2010]

2.81.6.8 REQUIREMENTS FOR ENROLLMENT IN COVERAGES: An eligible retiree, spouse, domestic partner or dependent shall be enrolled pursuant to his/her actual status at the time of enrollment or at any time thereafter when a change in status occurs. A retiree may add eligible dependents at the time of acquiring them. A retiree may enroll himself/herself only, and any eligible dependents, or no eligible dependents. Each such enrollee's status must be the same for all lines of coverage (i.e. single, two party or family). An eligible spouse, domestic partner or dependent of a retiree may not be enrolled unless the eligible retiree is enrolled, except as otherwise provided by court order pursuant to the Mandatory Medical Support Act (MMSA). A spouse, domestic partner or dependent of a deceased eligible retiree receiving a survivor's pension benefit may enroll separately. Any eligible retiree, spouse, domestic partner or dependent desiring to enroll for coverages shall meet the following requirements:

A. Spouse, domestic partner and dependent enrollment/ medical insurability: An eligible retiree, spouse, domestic partner or dependent may enroll without evidence of medical insurability only during an established open enrollment.

B. Eligible retiree, spouse, domestic partner, dependent change in status/enrollment: Where an eligible retiree, spouse, domestic partner or dependent was receiving or eligible to receive group health benefit coverages through a third party and because of a change in status they lose the coverage and become ineligible for the coverage the eligible retiree, spouse, domestic partner or dependent may be enrolled without evidence of medical insurability if enrolled during an established open enrollment period. If the loss of coverage due to the change in status was not caused by any neglect or wrong doing by the eligible retiree, spouse, domestic partner or dependent, they may enroll at any time so long as they do so within 31 calendar days of the change of status. If an eligible retiree is employed by an employer offering its employees a basic plan of benefits, the coverage provided by the NMRHCA plan shall be secondary regardless of whether the retiree enrolls in his employer's plan.

C. Domestic partner enrollment: An eligible domestic partner may enroll upon the submittal of sworn statements of domestic partnership executed by both domestic partners on a form approved by the board.

[~~C.~~]D. Prohibition against duplicate coverage: An eligible retiree, spouse, domestic partner or dependent is prohibited from having duplicate coverage from the NMRHCA for any line of coverage. An eligible retiree, spouse, domestic partner or dependent is also prohibited from having retiree coverage and dependent coverage at the same time from the NMRHCA for any line of coverage.

[~~D.~~]E. More than one eligible retiree in a family: Where an eligible retiree, spouse, domestic partner or dependent are all three or two of them eligible retirees, either may enroll into coverage as the eligible retiree and the other be treated as an eligible spouse, domestic partner or dependent.

[~~E.~~]F. Participation requirements for eligible retiree, spouse, domestic partner or dependent enrollment: An eligible retiree, spouse, domestic partner or dependent is not permitted to enroll for a particular line of coverage unless the minimum participation level as determined by the NMRHCA is met.

[~~F.~~]G. Switching coverage: The eligible retiree, spouse, domestic partner or dependent shall all select the same line or lines of coverage and shall only be permitted to switch, add or delete coverages during established switch enrollment periods.

[~~G.~~]H. Dropping coverage: An eligible retiree, spouse, domestic partner or dependent (except for dental or vision coverages) may drop any line of coverage at any time at their discretion. If they drop a line of coverage, they cannot re-enroll except as this rule permits. Members of the same family shall not be allowed to carry different lines of coverage.

[~~H.~~]I. Dental or vision/ dropping coverage: Once enrolled in dental or vision coverages an eligible retiree, spouse, domestic partner or dependent may drop such coverages any time after enrollment. However, once a NMRHCA participant drops dental or vision coverage, that individual may not reenroll in that line of coverage for four years. The four year waiting period does not apply to an involuntary loss of coverage.

[~~I.~~]J. Proper documentation: Proper documentation, including evidence of medical insurability where required, must be provided by the eligible retiree, spouse, domestic partner or dependent seeking coverage within thirty-one days of the application for coverage. Coverage may be rejected where adequate proof and documentation satisfactory to the NMRHCA is not submitted in a timely manner. In the event such documentation is not timely submitted, the coverage shall not be effective and any contribution paid by the retiree, spouse, domestic partner or dependent shall be returned without interest.

[~~J.~~]K. Eligible spouse, domestic partner dependent/open enrollment: During an established period of open enrollment, eligible spouses, domestic partners, and dependents may be enrolled without evidence of medical insurability. A new spouse, domestic partner or newborn dependent of an eligible retiree is eligible for coverage from date of birth [~~or~~] the date of marriage or date of submission of affidavit of domestic partnership, respectively, without providing evidence of medical insurability if the eligible retiree [~~or spouse~~] submits the required contribution and proper documentation within 31 calendar days of the birth[~~or~~], marriage or onset of domestic partnership. Newly eligible dependents are also eligible for coverage from the date that a court order establishes their dependent status without providing evidence of medical insurability, if the eligible retiree submits the required contribution and proper documentation within 31 calendar days of the court order. In the event they fail to enroll within this period of time, they may not do so without providing evidence of medical insurability unless they subsequently enroll during an established period of open enrollment. Those persons considered to be a new eligible spouse, domestic partner or dependent are persons becoming related to the eligible retiree by marriage, establishment of a domestic partnership, a newborn child, legal guardianship and other similar situations where [~~the spouse or dependent~~] he or she becomes a new family member and is otherwise an eligible spouse, domestic partner or dependent under these rules.

[~~K.~~]L. Eligible retiree, dependent, domestic partner or spouse/ same coverage as eligible retiree: The eligible spouse, domestic partner or dependent has no greater coverage than the eligible retiree participant and the eligible spouse, domestic partner or dependent can maintain coverage only to the extent that the eligible retiree participant maintains his/her coverage.

[~~L.~~]M. Re-enrollment of eligible dependent student: In those situations in which the eligible retiree

maintains dependent coverage on an eligible dependent child under Section 4.F.3. of the act and the child student loses coverage because the child no longer qualifies as a full time student and at some later time the child again becomes a full time student and the student otherwise qualifies as an eligible dependent, the child may re-enroll at a time other than during an established period of open enrollment as an eligible dependent, without evidence of medical insurability if notification and proper documentation is provided within 31 days of the change in status.

[~~M.~~]N. Certificate of eligibility: On certification by the executive director of the public schools insurance authority, the executive director the public employees retirement association, the executive director of the educational retirement association or the certifying official designated by board rule of an independent public employer or other public entity, eligible retirees, spouses, domestic partners and dependents will be permitted to enroll in coverages within 31 days without proof of medical insurability. Certification shall be on a form approved by the executive director of the NMRHCA.

[~~N.~~]O. Retirement documentation: Employees contemplating retirement are responsible for submitting documentation prior to retirement so as to assure no break in coverage occurs.

[~~O.~~]P. Prohibition of split coverages: Retirees who have spouses or domestic partners who are employed by employers who offer or provide an employer benefits plan may choose to be covered by the spouses or domestic partner's employers' plan of benefits or the retiree may choose to be covered by the plan of benefits offered by the NMRHCA. Provided, however, the entire family shall be required to select to be covered under either the NMRHCA or the spouse employer. Any responsibility for continued coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) shall be the responsibility of either the NMRHCA or the spouse or domestic partner employer coverage selected.

[~~P.~~]Q. Coverage after marriage dissolution: Where there is a dissolution of a marriage by decree which results in either the former spouse no longer being eligible for coverage, the spouse shall be eligible only for such continuation of coverage as is required by COBRA.

R. Termination of domestic partnership: Eligibility for benefit coverage shall terminate for the non-retiree member of the domestic partnership upon the termination of the domestic partnership. The retiree member must notify the NMRHCA of the termination of his/her domestic partnership in writing, which must include the name of the former domestic partner and the effective date of the termination of the partnership, within 31 days of the termination.

[6-15-98; 2.81.6.8 NMAC - Rn, 2 NMAC 81.6.8, 12-30-02; A, 05-14-04; A, 1-1-2010]

2.81.6.10 ENROLLMENT IN OPTIONAL, VOLUNTARY, OR SUPPLEMENTAL PLANS: Eligible retirees, and their spouses, domestic partners, and dependents, may enroll in optional, voluntary, or supplemental plans such as dental, vision, and life without enrolling in an NMRHCA medical plan of benefits. The eligible retirees and their spouses, domestic partners, and dependents enrolling in such optional, voluntary, and supplemental plans shall pay a monthly premium which will cover the total cost for each benefit plan they elect to receive.

[2.81.6.10 NMAC - N, 12-30-02; A, 1-1-2010]

NEW MEXICO RETIREE HEALTH CARE AUTHORITY

This is an amendment to 2.81.7 NMAC, Sections 2, 5, 10 and 11, effective 1-1-2010.

2.81.7.2 SCOPE: This rule applies to independent public employers. It applies to their employees, retirees, spouses, domestic partners, and dependents.

[6-15-98; 2.81.7.2 NMAC - Rn, 2 NMAC 81.7.2, 4/30/02; A, 1-1-2010]

2.81.7.5 EFFECTIVE DATE: June 15, 1998, unless a later date is cited in the history note at the end of a section.

[6-15-98; 2.81.7.5 NMAC - Rn, 2 NMAC 81.7.5, 4/30/02; A, 1-1-2010]

2.81.7.10 RETIREES/TIME IN SERVICE OF INDEPENDENT PUBLIC EMPLOYER AND RETIREMENT SYSTEM PUBLIC EMPLOYER:

A. Normal retirement. The service requirement for coverage for those persons having served a participating employer affiliated with a public pension plan, but having been individually excluded from the public pension plan, or having served an independent public employer which has opted to become a participating employer is five or more years of creditable service. Periods of employment with, or retirement from, a non-participating employer shall not affect an employee's eligibility, so long as the employee has met the minimum requirement for years of creditable service with a participating employer and is eligible to receive a pension from the participating employer's pension system.

B. Duty disability. Without regard to age or length of service, an applicant for coverage based on duty disability shall be granted coverage if the incident resulting in the disability arose from and in the course of performance of duties by the applicant for the participating employer and if the applicant is unable, after the incident, to perform the job which the applicant was performing prior to the time of the incident resulting in the disability. In the event there is a determination that the applicant is unable to perform the job being performed by the applicant at the time of the incident leading to the duty disability, the applicant will be granted temporary duty disability for a period up to one year. Prior to the end of the temporary period of duty disability, there shall be a second inquiry to determine whether or not the applicant can perform any gainful employment. In the event, on the initial inquiry it is determined that the applicant can perform the job that was being performed at the time of the incident resulting in the disability or in the second inquiry it is determined that the applicant is capable of performing any gainful employment, the applicant shall be denied coverages provided by the act.

C. Non-duty disability. A person shall be entitled to coverages under the act provided that person has five or more years of credited service with a participating employer. The applicant must show that the applicant is not capable of any gainful employment. In the event the applicant fails to show that the applicant has five or more years of credited service in employment with a participating employer or fails to show that he is incapable of holding any gainful employment, the applicant shall not be entitled to coverages under the act.

D. Survivor's benefit. Survivor pension beneficiary means a person entitled to a survivors benefit either pursuant to the retirement program of a participating Independent public employer or if the person meets the tests that would be applicable pursuant to 10-11-1 et seq. NMSA 1978.

E. Administrative Determination: The executive director of the retiree health care authority shall review and grant or deny the opportunity for coverage under the act on a form approved by the executive director. The executive director shall provide notice of the determination by regular mail and notify the applicant of the right of appeal.

F. Appeal. The applicant may appeal an adverse decision of the executive director. The appeal shall be filed with the office of executive director thirty days following the day on which the executive director's determination is deposited in the mail.

G. Board determination final. The board, at a time mutually convenient for the applicant, executive

director and board shall review the appeal. A formal hearing shall not be held unless the board determines that substantial material factual issues are present that cannot be resolved satisfactorily through an examination of written documents in the record. The applicant may request a hearing, but such requests shall be deemed denied unless specifically granted. Hearings, when held, should be as informal as practicable under the circumstances, but the board has absolute discretion in establishing the degree of formality for any particular hearing. In no event is the executive director or board required to adhere to formal rules of evidence or procedure. The decision of the board shall be final and not subject to appeal.

H. Retirees not eligible for coverage. Persons who retire from an employer which does not become or does not remain a participating employer shall not be eligible for retiree, spouse, domestic partner or dependent coverage unless they have been employed by a participating employer under the act and have satisfied prior to or after July 1, 1990, the age and service requirements of 2.81.7.10 NMAC while employed by a participating employer under the act. The time during which employees have exempted themselves from the employer-provided retirement system shall not be considered time in service.

[6-15-98; 2.81.7.10 NMAC - Rn & A, 2 NMAC 81.7.10, 4/30/02; A, 1-1-2010]

2.81.7.11 BENEFITS ELIGIBILITY/ CERTIFYING OFFICIAL: Pursuant to Subsection M of 2.81.6.8 NMAC, the certifying official designated to certify permission to enroll in coverages by retirees, spouses, domestic partners, and dependents of persons having served an independent public employer or non-retirement system institution of higher education is the executive director of the NMRHCA. Certification shall be on a form approved by the executive director of the NMRHCA.

[6-15-98; 2.81.7.11 NMAC - Rn, 2 NMAC 81.7.11, 4/30/02; A, 1-1-2010]

NEW MEXICO RETIREE HEALTH CARE AUTHORITY

This is an amendment to 2.81.8 NMAC, Section 9, effective 1-1-2010.

2.81.8.9 RETIREES, SPOUSES, DOMESTIC PARTNERS OR DEPENDENTS OF RETIREES OF INDEPENDENT PUBLIC EMPLOYERS THAT FAIL TO PETITION FOR PARTICIPATION IN THE ACT NOT ELIGIBLE FOR BENEFITS: Those retirees, their spouses, domestic partners or dependents who are current retirees, their spouses, domestic partners or dependents as defined in the act or who retire from service with an independent public employer which fails to become a participating employer under the act shall not be eligible for the benefits of the act and shall not be allowed to purchase coverages offered under the act.

[6-5-90, 6-15-98; 2.81.8.9 NMAC - Rn, 2 NMAC 81.8.9, 05-14-04; A, 1-1-2010]

NEW MEXICO RETIREE HEALTH CARE AUTHORITY

This is an amendment to 2.81.4 NMAC, Sections 5, 6, 7, 8, 12, 13, 14, 15, 20, 25 and the part name has also been amended, effective 1-1-2010. 2 NMAC 81.4 has also been renumbered and reformatted to 2.81.4 NMAC, in conformance with current NMAC requirements, effective 1-1-2010.

PART 4 CONTRACTS [~~FOR PURCHASE OF PROFESSIONAL SERVICES~~]

2.81.4.5 EFFECTIVE DATE: June 15, 1998 unless a later date is cited at the end of a section.

[6/15/98; 2.81.4.5 NMAC - Rn & A, 2 NMAC 81.4.5, 1-1-2010]

2.81.4.6 OBJECTIVE: The objective of this rule is to establish requirements for procurement of professional services, consulting and insurance services, and tangible personal property for the authority. The objective is to set out policies whereby maximum competition is stimulated for provision of these services to the NMRHCA.

[6/15/98; 2.81.4.6 NMAC - Rn & A, 2 NMAC 81.4.6, 1-1-2010]

2.81.4.7 DEFINITIONS:

A. "Retiree health care authority" or "NMRHCA" means the retiree health care authority established by Chapter 6 Laws of New Mexico, 1990 (Sections 10-7C-1 et seq. NMSA 1978).

B. "Board" means, the board of directors of the NMRHCA.

C. "Group health insurance" means coverage which includes but is not limited to: life insurance, accidental death and dismemberment, medical care and treatment, dental care, eye care and other coverages as determined to be necessary by the NMRHCA.

D. "Professional services" means the services of third party administrators, insurance consultants, banks, underwriters, brokers, agents, architects, archaeologists, artists, entertainers, auditors, engineers, clergymen, land surveyors, landscape architects, medical arts practitioners, scientists, managements and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, photographers, pilots, researchers, teachers, writers, interpreters and persons or businesses providing similar services.

E. "Contract" means any agreement for the procurement of professional services entered into by the NMRHCA.

F. "Sole source" means that there is only one source for a required professional service which is the object of a contract or amendment.

G. "Best source" means that a source for a required professional service is for a reason or combination of reasons significantly less costly, or better qualified, or more capable, or more advantageously situated or otherwise more suitable than any other source to provide the professional service which is the object of an amendment to a contract.

H. "Emergency" is when there exists a threat to public health, welfare, safety or property requiring procurement under emergency conditions. An emergency condition is a situation which creates a threat to public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. Any emergency procurement shall be made with competition as is practicable under the circumstances. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten:

(1) the functioning of government;

(2) the preservation or protection of property; or

(3) the health or safety of any person.

I. "Services" means the furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than reports and other materials which are merely incidental to the required performance. "Services" includes the furnishing of insurance but does not include construction or the services of employees of a state agency or a local public body.

J. "Tangible personal property" means tangible property other than real property having a physical existence, including but not limited to supplies, equipment, materials and printed materials.

[6/15/98; 2.81.4.7 NMAC - Rn & A, 2 NMAC 81.4.7, 1-1-2010]

2.81.4.8 [~~ATTORNEY~~

~~**GENERAL REVIEW:** All professional services contracts in excess of two hundred thousand dollars shall be subject to approval by the attorney general.~~] [RESERVED]
[6/15/98; 2.81.4.8 NMAC - Rn & Repealed, 2 NMAC 81.4.8, 1-1-2010]

2.81.4.12 [~~S M A L L PURCHASES:~~

~~**A.** The board shall procure services, construction or items of tangible personal property having a value not exceeding $5,000 in accordance with applicable small purchase regulations adopted by the secretary of the department of finance and administration (DFA).~~

~~**B.** Notwithstanding the requirements of Subsection 12.1 [now Subsection A of 2.81.4.12 NMAC] of this section, the board may procure professional services having a value not exceeding $20,000 excluding applicable state and local gross receipts taxes, in accordance with professional services procurement regulations promulgated by the secretary of the DFA.~~

~~**C.** Notwithstanding the requirements of Subsection 12.1 [now Subsection A of 2.81.4.12 NMAC] of this section, the board may procure services, construction or items of tangible personal property having a value not exceeding $10,000 in accordance with regulations promulgated by the secretary of the DFA.~~

~~**D.** Notwithstanding the requirements of Subsection 12.1 [now Subsection A of 2.81.4.12 NMAC] of this section, the board may procure services, construction or items of tangible personal property having a value not exceeding $500 by issuing a direct purchase order to a contractor based upon the best obtainable price.~~

~~**E.** Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.~~] [RESERVED]
[6/15/98; 2.81.4.12 NMAC - Rn & Repealed, 2 NMAC 81.4.12, 1-1-2010]

2.81.4.13 SOLE SOURCE PROCUREMENT:

A. Subject to the limitations [~~Subsections 13.2 and 13.3~~] of Subsections B and C of this section, a contract may be awarded without competitive sealed proposals regardless of the estimated cost when the board makes a written determination, after conducting a good-faith review of available sources, that there is only one source for the required professional service, in accordance with Section 13-1-126 NMSA 1978, of the Procurement Code. The written determination shall include a detailed, sufficient explanation of the reasons why the qualifications or unique capabilities of the proposed vendor require a sole source contract with the vendor.

B. A copy of the written determination shall be kept on file pursuant to [~~Section 16 of this rule~~] 2.81.4.16 NMAC.

C. The board or its designee shall conduct negotiations as to price and terms in order to obtain the price most advantageous to the NMRHCA.
[6/15/98; 2.81.4.13 NMAC - Rn & A, 2 NMAC 81.4.13, 1-1-2010]

2.81.4.14 M U L T I - T E R M CONTRACTS; SPECIFIED PERIOD:

A. A multi-term contract for services (including the furnishing of insurance) except for professional services, in an amount under twenty-five thousand dollars [(~~$24,00.00~~)] $25,000.00, or more if authorized under Section 13-1-150 NMSA 1978, may be entered into for any period of time deemed to be in the best interests of the NMRHCA, not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting.

B. If the amount of the contract is twenty-five thousand dollars ($25,000.00) or more, a multi-term contract for services (including the furnishing of insurance) shall not exceed eight years including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

C. A contract for [~~professions~~] professional services (not including the furnishing of insurance) may not exceed a term of four years including all extensions and renewals, except that a multi-term contract for the services of trustees, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement, and other similar services (excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities) may be for the life of the securities or as long as the securities remain outstanding.
[6/15/98; 2.81.4.14 NMAC - Rn & A, 2 NMAC 81.4.14, 1-1-2010]

2.81.4.15 AMENDMENTS TO CONTRACTS:

A. Amendments to contracts originally entered into pursuant to this rule, may be made pursuant to rules adopted by the secretary of DFA.

B. For amendments to contracts originally entered into as sole source procurement pursuant to [~~Section 13of this rule~~] 2.81.4.13 NMAC.

(1) A written determination which includes a detailed, sufficient explanation of the reason, qualifications or unique capabilities that make the vendor a sole source shall be required for all amendments which:

(a) significantly change the scope of work in the original contract; or

(b) when aggregated with any prior amendments, more than double the amount of the original contract.

(2) All other amendments, may be made pursuant to rules adopted by the secretary of DFA.

(3) Amendments which only extend the term of the original contract shall not require the determination provided for in [~~15.2.1 or 15.2.2 above.~~] Paragraphs (1) or (2) of Subsection B of this section.

C. For amendments to contracts originally entered into pursuant to a competitive proposal process, as provided for in Sections 13-1-111 through 13-1-117 of the Procurement Code, a written determination that includes a reasonable explanation of the reasons, qualifications or capabilities that make the vendor the best source for the contract services shall be required for all amendments, except for amendments which only extend the term of the contract.

D. For multi-term contracts, renewals shall be made pursuant to the terms of the contract, and amendments involving a change in the scope of services shall be made pursuant to the provisions of Subsections [~~15.1, 15.2 or 15.3 or this section~~] A, B or C of this section as appropriate.

E. No amendment to a professional services contract shall be approved which would renew or extend the term of a contract, including the original contract, beyond four years, except as allowed under Subsection C of 2.81.4.14 NMAC.

F. Contract amendments containing term periods with retroactive dates, or back-date contract amendments under which work has already begun, will not be approved by the board, except for good cause or in extraordinary cases such as the imminent loss of available contractual funds. Requests for retroactive contract approval must be explained in detail in writing and be approved in writing by the executive director of the NMRHCA.
[6/15/98; 2.81.4.15 NMAC - Rn & A, 2 NMAC 81.4.15, 1-1-2010]

2.81.4.20 PROCEDURE:

A. Upon the filing of a timely protest, the executive director shall give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders and offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied.

B. The protestant and every

business that receives notice pursuant to [~~Section 20.1~~] Subsection A of this section will automatically be parties to any further proceedings before the executive director or the board. In addition, any other person or business may move to intervene at any time during the course of the proceedings. Intervention will be granted upon a showing of a substantial interest in the outcome of the proceedings. Intervenors shall accept the status of the proceeding at the time of their intervention; in particular, they must abide by all prior rulings and accept all previously established time schedules.

C. The executive director and all employees and the general legal counsel of the NMRHCA are not parties to the proceedings.

[6/15/98; 2.81.4.20 NMAC - Rn & A, 2 NMAC 81.4.20, 1-1-2010]

2.81.4.25 RELIEF:

A. If, prior to award, the executive director makes a determination that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be cancelled.

B. If, after an award, the executive director makes a determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has not acted fraudulently or in bad faith:

(1) the contract may be ratified, affirmed and revised to comply with law, provided that a determination is made that doing so is in the best interest of the NMRHCA; or

(2) the contract may be terminated, and the business awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract plus a reasonable profit prior to termination.

C. If, after an award, the executive director or the board make a determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has acted fraudulently or in bad faith, the contract shall be cancelled.

D. Except as provided in [~~Section 25.2.2 above~~] Paragraph (2) of Subsection B of this section, the executive director of the board shall not award money damages or attorneys' fees.

[6/15/98; 2.81.4.25 NMAC - Rn & A, 2 NMAC 81.4.25, 1-1-2010]

NEW MEXICO RETIREE HEALTH CARE AUTHORITY

This is an amendment to 2.81.5 NMAC, Sections 2, 5, 6, 8, 9 and 10, effective 1-1-2010. 2 NMAC 81.5, Contributions (filed 6/02/98) was also renumbered and reformatted by 2.81.5 NMAC, Contributions, in conformance with the current NMAC requirements, effective 1-1-2010.

2.81.5.2 SCOPE: This rule applies to:

A. eligible retirees, spouses, domestic partners, and their dependents;

B. participating employers; and

C. pension administrators.

[6-15-98; 2.81.5.2 NMAC - Rn & A, 2 NMAC 81.5.2, 1-1-2010]

2.81.5.5 EFFECTIVE DATE: June 15, 1998, unless a later date is cited at the end of a section.

[6/15/98; 2.81.5.5 NMAC - Rn & A, 2 NMAC 81.5.5, 1-1-2010]

2.81.5.6 OBJECTIVE: The objective of this rule is to establish procedures governing the determination of amounts of monthly contributions by eligible retirees, spouses, domestic partners, and dependents for the basic medical plan and optional coverages and to establish procedures for collection of contributions and participation fees. The objective of this rule is to identify the payroll date beginning from which employer/employee contributions shall begin under Section 15 of the act and to define "salary" and "annual salary" for the purpose of calculating the participating employer, employee contributions.

[6/15/98; 2.81.5.6 NMAC - Rn & A, 2 NMAC 81.5.6, 1-1-2010]

2.81.5.8 ELIGIBILITY AND CONTRIBUTIONS OF EMPLOYEES OF INDEPENDENT SCHOOL BUS CONTRACTORS:

A. There are also persons employed by independent school bus contractors. They are not owner/drivers. They are employees of bus contractors providing bus services to public school districts and other educational entities. They are eligible to participate in the insurance overages of the New Mexico public school insurance authority. On approval of the executive director of the retiree health care authority, the public school district or other educational entity may at their option irrevocably contract with the NMRHCA to: withhold the employer/employee contributions from the payments due the school bus contractor; and pay on behalf of the school bus contractor the employer and employee contributions provided for in Section 15. A. and B. of the act.

B. This option may only be exercised prior to January 1, 1991 and if exercised after July 1, 1990, the contributions required shall be retroactive to July 1, 1990 but without interest. Those retirees, their spouses, domestic partners, and dependents who are current retirees, their spouses, domestic partners, and dependents retired from service in the employment of a school bus contractor contracting with a public school district or other educational entity which does not enter into an irrevocable agreement shall not be eligible for the benefits of the act and shall not be allowed to purchase coverages offered under the act.

C. Those retirees, their spouses, domestic partners, and dependents who are current retirees, their spouses, domestic partners, and dependents retired from service in the employment of a school bus contractor contracting with a public school district or other educational entity which does enter into an irrevocable agreement shall be eligible for the benefits of the act and shall be allowed to purchase coverages offered under the act at such time as they have complied with the provisions of Subsection B of 2.81.7.7 NMAC, and 2.81.7.8 NMAC, 2.81.7.9 NMAC and 2.81.7.10 NMAC.

[6/15/98; 2.81.5.8 NMAC - Rn & A, 2 NMAC 81.5.8, 1-1-2010]

2.81.5.9 BASIC PLAN OF MEDICAL BENEFITS/ DETERMINATION OF THE LEVEL OF CONTRIBUTIONS: Pursuant to the provisions of Section 8 B. of the act, the board of the NMRHCA shall provide for the collection of contributions from eligible retirees, spouses, domestic partners, and dependents which money when combined with other money appropriated to the fund, shall be sufficient to provide the required insurance coverage and to pay the expenses of the NMRHCA. The board shall in the month of February of each year review and make a determination with regard to contribution levels for all lines of coverages offered by the NMRHCA. Such contributing levels shall be effective the following first day of July of the subsequent year.

[6/15/98; 2.81.5.9 NMAC - Rn & A, 2 NMAC 81.5.9, 1-1-2010]

2.81.5.10 OPTIONAL PLANS/DETERMINATION OF CONTRIBUTION/PARTICIPATION FEE COLLECTION:

A. Pursuant to Section 13 B. of the act, for those eligible retirees, spouses, domestic partners, and dependents who desire to participate in the optional plans or list of coverage, collection of additional contributions to pay the cost to the authority of such plans shall be accomplished by the NMRHCA third party administrator. The monthly contribution to cover the NMRHCA cost of providing the optional plans or lines of coverage shall be established by the board.

Any eligible retiree, spouse, domestic partner or dependent must pay the contributions required for optional coverages at least thirty days in advance of the first day of the month of coverage. Provided, however, these time requirements may be altered if payment for such optional plan is authorized by payroll deduction by the retirees pension system under a payment schedule approved in writing by the NMRHCA executive director.

B. Failure to make timely payments shall result in termination of coverage. Those former employers of retirees who enter into an arrangement with their retirees and desire to pay some or all of the retiree contribution required under Section 13 A. of the act, may make such payments monthly pursuant to an arrangement approved in writing by the executive director of the NMRHCA. Provided, however, the $5.00 monthly participation fee required of current retirees and non-salaried eligible participating entity governing authority members who become eligible retirees must be paid by the retiree or eligible governing authority member. Payments agreed to be made or required to be made by former employers of retirees shall be made at least thirty days in advance of the first day of the month of coverage. If with regard to an individual retiree, either the payment agreed to be made by the former employer or the fee required to be paid by the retiree is not timely paid, coverage is terminated. In all other situations, payment shall be made in advance for the first month of coverage and for subsequent months by the tenth day of the month preceding the month of coverage.

[6/15/98; 2.81.5.10 NMAC - Rn & A, 2 NMAC 81.5.10, 1-1-2010]

NEW MEXICO RETIREE HEALTH CARE AUTHORITY

This is an amendment to 2.81.9 NMAC, Sections 5 and 10, effective 1-1-2010. 2 NMAC 81.9, Affiliated Municipal, County, Institution of Higher Education and Public Entity Option (filed 6/02/1998) was also renumbered and reformatted to 2.81.9 NMAC, Affiliated Municipal, County, Institution of Higher Education and Public Entity Option, in conformance with the current NMAC requirements, effective 1-1-2010.

2.81.9.5 EFFECTIVE DATE: July 15, 1998 unless a [~~different~~] later date is cited at the end of a [~~paragraph~~] section.

[12/31/96; Rn, 2 NMAC 81.10.5, 6/15/98; 6/15/98; 2.81.9.5 NMAC - Rn & A, 2 NMAC 81.9.5, 1-1-2010]

2.81.9.10 RETIREES, SPOUSES, DOMESTIC PARTNERS OR DEPENDENTS OF RETIREES OF AFFILIATED MUNICIPALITIES, COUNTIES, INSTITUTIONS OF HIGHER EDUCATION OR PUBLIC ENTITIES FAILING TO OPT INTO THE NMRHCA NOT ELIGIBLE FOR BENEFITS: Those retirees, their spouses, domestic partners or dependents who are current retirees, their spouses, domestic partners or dependents as defined in the act or who retire from service with an eligible municipality, county, institution of higher education or public entity which fails to opt-in to the NMRHCA shall not be eligible for the benefits of the act and shall not be allowed to purchase coverages offered under the act.

[6/5/90, 12/31/96; Rn, 2 NMAC 81.10.10, 6/15/98; 6/15/98; 2.81.9.10 NMAC - Rn & A, 2 NMAC 81.9.10, 1-1-2010]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.3.2 NMAC, Section 11 effective 12/1/09.

3.3.2.11 **CLAIMS FOR SETTLEMENT PAYMENTS FROM THE NATIVE AMERICAN VETERANS' INCOME TAX SETTLEMENT FUND**

A. A claim for a settlement payment from the Native American veterans' income tax settlement fund may be made for any period of active duty in the armed forces of the United States during which the claimant or, where the claimant is a successor, the deceased veteran:

(1) was a member of a federally recognized Indian nation, tribe, or pueblo;

(2) was a resident within the boundaries of the Indian member's or the member's spouse's reservation or pueblo grant, or within the boundaries of lands held in trust by the United States for the benefit of the member or spouse or the member's or spouse's nation, tribe or pueblo; and

(3) had New Mexico personal income tax withheld from his or her active duty military pay, and the amount withheld:

(a) has not already been refunded to the claimant or the claimant's representative; and

(b) cannot be claimed as a refund by filing a New Mexico personal income tax return because the period for filing a refund has run under the applicable statute of limitations.

B. A claim for a settlement payment must provide the following substantiation of the claimant's or, where the claimant is a successor, the deceased veteran's, eligibility for the claim and the amount of the claim.

(1) **Active duty in the armed forces of the United States**. The claimant must provide a copy of *certificate of release or discharge from active duty* (DD Form 214) or other proof of service provided by the department of defense and approved by the department of veterans' service. If a claimant does not have a copy of his or her DD Form 214 or other proof of service, the claimant can request that the department of veterans' services request the claimant's DD Form 214 or other proof of service from the department of defense.

(2) **Status as a Native American**. The claimant must provide a statement signed by the claimant that the claimant or, where the claimant is a successor, the deceased veteran was a member of a federally recognized Indian nation, tribe, or pueblo during the period(s) of his or her active duty in the armed forces of the United States.

(3) **Domicile on tribal land during period(s) of active duty**. The claimant must substantiate domicile on tribal land (as described in Paragraph (2) of Subsection A above) during the period(s) any New Mexico personal income tax was withheld from active duty military pay. If the address shown on the DD Form 214 or other proof of service is on the claimant's tribal land, the claimant's or deceased veteran's DD Form 214 is sufficient substantiation. If the address shown on the claimant's or deceased veteran's DD Form 214 or other proof of service is not on tribal land, or the claimant cannot establish that the address is on tribal land, the claimant must provide a statement signed by the claimant that the claimant or deceased veteran was domiciled on tribal land during the period(s) any New Mexico personal income tax was withheld from active duty military pay; the statement must provide the claimant's or deceased veteran's address on the tribal land for each period and an official designated by the nation, tribe, or pueblo must attest that each address is on tribal land.

(a) For the purposes of this regulation, "domicile" means a place where an individual has a true fixed home and is a permanent establishment to which the individual intends to return after an absence. Every individual has a domicile somewhere, and each individual has only one domicile at a time. Once established, domicile does not change until the individual moves to a new location with the bona fide intention of making that location his or her permanent home. No change in domicile results when an individual leaves the tribal land if the individual's intent is to stay away only for a limited time, no matter how long.

(b) Examples:

(i) G is a Native American who lives and works on his tribe's pueblo in New Mexico. G joins

the marines and is stationed outside New Mexico. G's domicile remains unchanged during his military service unless G moves to a new location with the intent to make that location his permanent home after leaving the military.

(ii) C is a Native American who lives on her tribe's pueblo in New Mexico. She leaves New Mexico to pursue a two-year master's degree program in Spain. She intends to return to her pueblo when she completes her studies. She remains domiciled on her pueblo while in Spain.

(4) **Amount of New Mexico personal income tax withheld from active duty military pay**. The claimant can substantiate this amount by providing copies of Form(s) W-2 covering active duty military pay for the year(s) during which New Mexico personal income tax was withheld. If a claimant does not have copies of the applicable Form(s) W-2 for one or more of these years, the claimant can request that the taxation and revenue department obtain the claimant's or deceased veteran's Form(s) W-2 (or other withholding information in a form approved by taxation and revenue department) from the department of defense.

(5) **Amount of withholding has not already been refunded**. The claimant must provide a signed statement attesting that the claimant or deceased veteran did not receive a refund of the New Mexico personal income tax withheld for the year(s) for which the claimant is filing a claim for a settlement payment.

C. A claim for a settlement payment must be made by the eligible Native American veteran, or, in the case of a deceased veteran, by the veteran's surviving spouse, other successor or personal representative (an executor, administrator, or anyone in charge of the deceased veteran's property). If the claim is being made for a deceased veteran, the claim must be accompanied by a death certificate or other proof of death and by:

(1) if the claimant is a successor who is not the surviving spouse of the deceased veteran, a signed and dated notarized statement attesting that:

(a) the value of the entire probate estate of the decedent, wherever located, less liens and encumbrances, does not exceed thirty thousand dollars ($30,000);

(b) at least 30 days have elapsed since the death of the decedent; and

(c) the successor is entitled to the settlement payment, or

(2) if the claimant is a personal representative, executor, or other representative authorized to administer the estate under applicable state law or the tribal law of the deceased veteran, a signed and dated notarized statement attesting that:

(a) he or she has been duly appointed as the personal representative, executor, or other representative of the estate of the decedent; and

(b) a copy of that appointment is attached;

(3) if the estate exceeds thirty thousand dollars ($30,000), only the surviving spouse, a personal representative, an executor, or other representative of the estate as designated by applicable law or tradition may make a claim.

D. No claim for a settlement payment can be made for an amount of withholding that can be claimed as a refund by filing a New Mexico personal income tax return. A New Mexico personal income tax return can be filed by a Native American veteran to claim a refund by the later of:

(1) December 31 of the year three years after the veteran separated from military service, or

(2) December 31 of the year three years after the year the in which New Mexico personal income tax was withheld from the active duty pay of the veteran.

E. All claims for settlement payments must be made with the department of veterans' services on the form prescribed by the taxation and revenue department. No claim for a settlement payment may be made after December 31, 2012.

F. Settlement payments will include interest on substantiated amounts of eligible withholding, computed on a daily basis from the date of withholding to the date a settlement warrant is issued at the rate specified for individuals pursuant to Section 6621 of the Internal Revenue Code of 1986. The date of withholding will be determined as follows:

(1) for withholding that occurred over an entire calendar year, one-twelfth of the amount withheld during the year will the considered to have been paid on the last day of each calendar month of the year; or

(2) for withholding that occurred over a period of less than an entire calendar year, the amount withheld during the period will be divided by the number of months (including partial months) in the period, and the resulting amount will be considered to have been paid on the last day of each calendar month during the period.

G. Eligible settlement payments will be made by the taxation and revenue department from the Native American veterans' income tax settlement fund. Settlement payments will be made on a "first come, first served" basis until the fund is exhausted or until no further claims are received.

H. Department of veterans' services must determine whether the claim meets the requirements of Paragraphs (1), (2) and (3) of Subsection B above and must act on a claim for settlement payment within 210 days of receipt of the claim. Claims not acted upon within 210 days are deemed denied.

I. A claimant whose claim is denied by department of veterans' services for failure to meet the requirements of Paragraphs (1), (2) and (3) of Subsection B above may dispute the denial by filing with the secretary of the department of veterans' services a written protest of the denial.

(1) The protest must contain the name and address of the claimant and must state with specificity the grounds for the protest. All evidence in support of the protest must also be submitted with the written protest. The secretary or designated hearing officer shall not consider any evidence that has not been submitted to the department of veterans' services at least 10 days prior to the hearing.

(2) The written protest must be filed within 30 days of the date of mailing to the claimant by the department of veterans' services of the denial of the claim.

(3) Upon timely receipt of a protest, the department of veterans' services shall promptly set a date for hearing and on that date hear the protest. The hearing shall be scheduled no later than 90 days after the filing of the written protest. Notice of the hearing shall be mailed to the protestant no less than 15 days prior to the date of the hearing. The secretary of the department of veterans' services may designate a hearing officer to conduct the hearing. The claimants may appear at a hearing for themselves, may have the assistance of an advocate, or may be represented by an attorney. Hearings shall not be open to the public except upon request of the claimant and may be postponed or continued at the discretion of the secretary or hearing officer.

(4) The technical rules of evidence and the rules of civil procedure shall not apply in the hearings, but hearings shall be conducted so that claims are amply and fairly presented. It is the burden of the claimant to prove that the denial of the claim was improper.

(5) A complete record of the proceedings will be made. A written decision shall be issued within 30 days of the hearing.

J. If the department of veterans' services approves the claim, the claim will be sent to taxation and revenue department to determine whether the claim meets the requirements of Paragraphs (4) and (5) of Subsection B above. The taxation and revenue department must act on a claim within 210 days of the date that the claim is received by the taxation and revenue department from the department of veterans' services. Claims not acted upon within 210 days are deemed denied.

K. A claimant whose claim is denied in whole or in part by the taxation and revenue department for failure to meet the requirements of Paragraphs (4) and (5) of

Subsection B above may dispute the denial by filing with the secretary of the taxation and revenue department a written protest of the denial.

(1) The protest must contain the name and address of the claimant and must state with specificity the grounds for the protest. All evidence in support of the protest must also be submitted with the written protest. The secretary or designated hearing officer shall not consider any evidence that has not been submitted to the taxation and revenue department at least 10 days prior to the hearing.

(2) The written protest must be filed within 30 days of the date of mailing to the claimant by the taxation and revenue department of the denial of the claim.

(3) Upon timely receipt of a protest, the taxation and revenue department shall promptly set a date for hearing and on that date hear the protest. The hearing shall be scheduled no later than 90 days after the filing of the written protest. Notice of the hearing shall be mailed to the protestant no less than 15 days prior to the date of the hearing. The secretary of the taxation and revenue department may designate a hearing officer to conduct the hearing. The claimants may appear at a hearing for themselves, may have the assistance of an advocate, or may be represented by an attorney. Hearings shall not be open to the public except upon request of the claimant and may be postponed or continued at the discretion of the secretary or hearing officer.

(4) The technical rules of evidence and the rules of civil procedure shall not apply in the hearings, but hearings shall be conducted so that claims are amply and fairly presented. It is the burden of the claimant to prove that the claimant or deceased veteran is entitled to a settlement payment.

(5) A complete record of the proceedings will be made. A written decision shall be issued within thirty (30) days of the hearing.

[3.3.2.11 NMAC - N, 12/1/09]

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO COMMISSION OF PUBLIC RECORDS

HISTORICAL RECORDS ADVISORY BOARD

Commission of Public Records
New Mexico State Records Center & Archives
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

NOTICE OF REGULAR MEETING

The New Mexico Historical Records Advisory Board has scheduled a regular meeting for Friday, Dec. 11, 2009 from 9:00 a.m. to 12:00 noon. The meeting will be held at the Albuquerque Museum of Art & History, 2000 Mountain Road, NW, Albuquerque, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Randy Forrester at 505-476-7936 of the State Records Center and Archives at least one week prior to the meeting. Public documents, including the agenda and minutes will be available 24 hours before the meeting.

End of Other Related Material Section

Submittal Deadlines and Publication Dates
2009

Volume XX	Submittal Deadline	Publication Date
Issue Number 21	November 2	November 13
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

Submittal Deadlines and Publication Dates
2010

Volume XXI	Submittal Deadline	Publication Date
Issue Number 1	January 4	January 15
Issue Number 2	January 19	January 29
Issue Number 3	February 1	February 12
Issue Number 4	February 15	February 26
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	August 2	August 16
Issue Number 16	August 17	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 18	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 30

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