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New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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The New Mexico Register

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New Mexico Register

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June 11, 2024

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Notices of Rulemaking and Proposed Rules

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.200.430, *Medicaid Eligibility-General Recipient Rules-Recipient Rights and Responsibilities*.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: June 11, 2024
Hearing Date: July 15, 2024
Adoption Date: Proposed as November 1, 2024
Technical Citations: 1917(a) and (b) of the Social Security Act

Background
House Bill 98 (HB98) passed during the legislative session excludes the Department from pursuing Medicaid estate recovery from Achieving a Better Life Experience (ABLE) accounts. The ABLE account exclusion from Medicaid estate recovery contained in HB98 has an effective date of July 1, 2024.

The Department is proposing to amend the rule as follows:

8.200.430.19 (c)
Adding a paragraph three (3) under subsection C to include the exemption of ABLE accounts from Medicaid estate recovery. Throughout the NMAC, amendments have also been made to comply with formatting and language requirements, including amending the rule to capture the name change from the Human Services Department (HSD) to the Health Care Authority (HCA).

VI. RULE

These proposed rule changes will be contained in 8.200.430 NMAC. This register and the proposed rule are available on the HSD website at: <https://www.hsd.state.nm.us/lookingforinformation/registers/> and <https://www.hsd.state.nm.us/2024-comment-period-open/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at (505) 827-1337.

VII. EFFECTIVE DATE

The Department proposes to implement this rule effective November 1, 2024.

VIII. PUBLIC HEARING

A public hearing to receive testimony on this proposed rule will be held in person at the **Administrative Services Division (ASD), 1474 Rodeo Rd, Santa Fe, NM 87505 and via Zoom on July 15, 2024 at 9:00 am, Mountain Time (MT)**.

Join Zoom Meeting:
<https://us02web.zoom.us/j/9182801909?pwd=YXZrNTV0M3MrUUFudUNVMGxlUkMvZz09&omn=86596241621>

Meeting ID: 918 280 1909
Passcode: y2CwhJ

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the MAD in Santa Fe at (505) 827-1337. The Department requests at least ten (10) working days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

IX. ADDRESS

Interested persons may address written comments to:

Human Services Department
Office of the Secretary
ATTN: Medical Assistance Division
Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: HSD-madrules@hsd.nm.gov. Written mail, electronic mail and recorded comments must be received **no later than 5 p.m. MT on July 15, 2024**. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <https://www.hsd.state.nm.us/2024-comment-period-open/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

**REGULATION
AND LICENSING
DEPARTMENT
PHARMACY, BOARD OF**

NOTICE OF REGULAR BOARD MEETING AND RULE HEARING

The New Mexico Board of Pharmacy will convene on July 18th and 19th, 2024 at 9:00 a.m. and continue until finished in the Board of Pharmacy Conference Room located at 5500 San Antonio Dr., NE, Albuquerque, NM 87109 for the purpose of conducting a regular board meeting and rule hearing.

The agenda is posted 72 hours prior to the scheduled meeting. You may view and download a copy of the agenda through the board's website: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/>

[commissions/pharmacy/pharmacy-board-information/pharmacy-board-meetings/](#). All proposed language regarding rule hearings is linked to the *Agenda*, the *Notice to the Public* on our website and the *New Mexico Sunshine Portal*.

Individuals petitioning the board regarding requests/waivers must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Board Administrator, at the general e-mail pharmacy.board@rld.nm.gov at least one week in advance of the scheduled meeting.

Interested persons wishing to comment on proposed language regarding rule hearings may submit documentation for presentation prior to the hearing; via fax (505) 222-9845, mail or email to the Board Administrator, at the general e-mail pharmacy.board@rld.nm.gov in advance of the scheduled meeting. Public comment is also allowed during the rule hearing.

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, or if you are in need of a translator to attend or participate in the hearing or meeting, please contact Board Administrator at 505-222-9830 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Board Administrator at 505-222-9830 or e-mail pharmacy.board@rld.nm.gov if a summary or other type of accessible format is needed.

Short explanation of the Purpose of Proposed Rule Amendments: see below.

The full text of Proposed Rule Amendments for Rule Hearing for July 18th, 2024, at 9:10 a.m. is available for each rule via the Notice to the Public and agenda hyperlinks.

16.19.5 NMAC - INTERNSHIP TRAINING PROGRAM – Sections 1 and 5, administrative updates. Section 8, updates, and removal of unnecessary or obsolete provisions. Remove suspension of preceptor certification upon change of employment. Section 9 is deleted (summary of objectives for last year pharmacy students in the rural health care setting), as all provisions in that section are otherwise allowed without additional requirements of previous Section 9.

STATUTORY AUTHORITY: Paragraph (17) of Subsection A of Section 61-11-6 NMSA 1978 requires that the Board of Pharmacy provide for the registration of pharmacist interns, their certification, annual renewal of certification, training, supervision, and discipline. Section 61-11-11 NMSA 1978 establishes qualifications for registration as a pharmacist intern. Pursuant to Subsection B of Section 61-11-12 NMSA 1978, the Board is authorized to issue an appropriate certificate of registration or license to each person registered as a pharmacist intern.

16.19.30 NMAC - COMPOUNDING OF NON-STERILE PHARMACEUTICALS – Section 6, administrative update. Section 7, add provision that addition of flavoring agent subject to certain characteristics is not compounding. Section 9, update beyond use dating specifications for consistency with updated United States Pharmacopeia chapter for non-sterile compounding (“USP”). Section 10, change formulation records to master formulation records, align requirements with USP, and align requirements of compounding records with USP.

STATUTORY AUTHORITY: Paragraph (6) of Subsection A of Section 61-11-6 NMSA 1978 requires that the board of pharmacy provide for the licensing of retail pharmacies and nonresident pharmacies and for the inspection of their facilities and activities.

16.19.36 NMAC - COMPOUNDED STERILE PREPARATIONS – Section 7, remove, update, and add definitions for consistency with updated United States Pharmacopeia chapters for sterile compounding (“USP”). Section 8, clarify that consultant pharmacist for in-state clinics would be responsible for duties of the otherwise pharmacist in charge. Section 9, 10, 11, 13 and 15, update for alignment with USP.

STATUTORY AUTHORITY: Paragraph (6) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the board of pharmacy to provide for the licensing of all places where dangerous drugs are stored, dispensed, distributed or administered and for the inspection of their facilities and activities. Paragraph (7) of Subsection A of 61-11-6 NMSA 1978 authorizes the board to enforce the provisions of all laws of the state pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs and their standards of strength and purity.

Disciplinary Hearing(s): No disciplinary hearings are currently scheduled. If scheduling occurs, the final hearing date and time for each case will be included in the agenda posted to the board’s website at least 72 hours before the meeting.

Executive Director’s Report:

Published in NM Register: June 11, 2024

Published in Albuquerque Journal: June 11, 2024

End of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

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

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

The Human Services Income Support Division is approving to repeal its rule 8.100.180 NMAC, General Operating Policies - External Communications filed 3/26/2001 - and replace it with 8.100.180 NMAC, General Operating Policies - External Communications adopted on 5/6/2024 and effective on 7/1/2024.

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

**TITLE 8 SOCIAL
SERVICES
CHAPTER 100 GENERAL
PROVISIONS FOR PUBLIC
ASSISTANCE PROGRAMS
PART 180 GENERAL
OPERATING POLICIES -
EXTERNAL COMMUNICATIONS**

8.100.180.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.100.180.1 NMAC - Rp,
8.100.180.1 NMAC, 7/1/2024]

8.100.180.2 SCOPE: The rule applies to the general public.
[8.100.180.2 NMAC - Rp,
8.100.180.2 NMAC, 7/1/2024]

8.100.180.3 STATUTORY AUTHORITY:
A. Section 27 NMSA 1978 (1992 Repl.) provides for the department to "...adopt, amend and repeal bylaws, rules and regulations..." It also provides for administration of public assistance programs.

B. The income support division (ISD) of the Health Care Authority (HCA) was created by the HCA secretary under authority granted by Paragraph (3) of Subsection B of Section 9-8-6 NMSA 1978.

[8.100.180.3 NMAC - Rp,
8.100.180.3 NMAC, 7/1/2024]

8.100.180.4 DURATION: Permanent.
[8.100.180.4 NMAC - Rp,
8.100.180.4 NMAC, 7/1/2024]

8.100.180.5 EFFECTIVE DATE: July 1, 2024 unless a later date is cited at the end of a section.
[8.100.180.5 NMAC - Rp,
8.100.180.5 NMAC, 7/1/2024]

8.100.180.6 OBJECTIVE: The objective of these regulations is to provide general policy and procedures for income support division (ISD) administered programs.
[8.100.180.6 NMAC - Rp,
8.100.180.6 NMAC, 7/1/2024]

8.100.180.7 DEFINITIONS: [RESERVED]

8.100.180.8 COMMUNICATION WITH RECIPIENT - General communication: Both oral and written communications with applicants/recipients must be courteous. ISD shall inform the client promptly and in accord with state and federal regulations of actions relating to an application or ongoing case.
[8.100.180.8 NMAC - Rp,
8.100.180.8 NMAC, 7/1/2024]

8.100.180.9 DENIAL/ APPROVAL OF APPLICATION: Prompt notification of action on a specific application is required. See specific program sections in this

manual.
[8.100.180.9 NMAC - Rp,
8.100.180.9 NMAC, 7/1/2024]

8.100.180.10 NOTICE OF AN ADVERSE ACTION: Before any action to withhold a cash assistance payment or to reduce or terminate medical, food stamp or cash assistance benefits, the department must issue timely and adequate advance notice of an adverse action.

A. Adverse action defined: Adverse action means an action taken by HCA that adversely affects eligibility or the amount of benefits a household or benefit group receives, including withholding, suspending, reducing or terminating benefits.

B. Timing: A notice shall be issued to the household or benefit group before taking and adverse action. Benefits will not be reduced until 13 days from the date on the adverse action notice. If the 13th day falls on a weekend or holiday, the next working day is counted as the last day of the 13-day adverse action notice period.

C. Contents:
(1) **General:** An adverse action notice shall contain, in easily understood language:

(a) reason for the proposed action, including the specific regulations supporting the action and the information on which the proposed action is based;

(b) date the action will take place;

(c) statement of the right to request a fair hearing and how to request a fair hearing;

(d) phone number of the caseworker in the event the client wants more

information or wants to request a fair hearing;

(e)

date by which the client must request a fair hearing to continue receiving assistance at the current rate;

(f)

liability of the recipient for any over issuance or overpayment;

(g)

right to be represented by legal counsel, friend or other spokesperson;

(h)

notice that free legal help may be available to the household;

(i)

the current benefit amount and proposed benefit amount after reduction for any reason.

(2) **Specific:**

(a)

For a disqualification from participation in the food stamp program, the notice must also include the disqualification period, as appropriate, and the action the disqualified individual must take to end ineligibility.

(b)

For sanctions from cash assistance, the notice must also include the conciliation period, if applicable, and the sanction period, as appropriate, as well as the action the sanctioned individual must take to end ineligibility.

(c)

For termination of cash assistance benefits due to reaching the TANF 60-month term limit, the notice must also include the actions the participant must take to apply for a hardship extension, found at 8.102.410.17 NMAC, and the availability of support services in the event the benefit group is not eligible for a hardship extension.

[8.100.180.10 NMAC - Rp, 8.100.180.10 NMAC, 7/1/2024]

8.100.180.11 CONCURRENT NOTICE:

A concurrent notice is one which is mailed no later than the date the benefit is or would have been received. It is also referred to as an adequate notice.

A. Food stamps:

HCA notifies a household that its FS

benefits are reduced or terminated no later than the date the household receives, or would have received, its allotment, in the following circumstances:

(1) the

household reports the information which results in the reduction or termination;

(2) the

reported information is in writing and signed by an adult household member;

(3) HCA can

determine the household's allotment or ineligibility based solely upon the household's written information;

(4) the

household retains its right to a fair hearing;

(5) the

household retains its right to continued benefits by requesting a fair hearing within the time period provided by the adverse action notice;

(6) HCA

continues (or supplements) the household's previous benefit level, if necessary, within five working days of the household's request for a fair hearing.

B. FA and medical:

HCA notifies a benefit group that its benefits are reduced or terminated by no later than the date the group receives, or would have received, its benefit in the following circumstances.

(1) **Death:**

Termination or reduction of assistance is necessary because of the death of an FA benefit group member or a MA recipient whose death is documented.

(2) **Admission**

to institution: Reduction of assistance is necessary because the client enters a skilled nursing home or intermediate care facility, or termination is necessary because of the client's admission to an institution which makes them ineligible for payment.

(3) **Client**

request: The client requests in writing that the FA or MA assistance be reduced or terminated; the client gives information in a signed statement that causes a termination

or reduction of services and the client indicates in writing that he/she understands this is the consequence of supplying such information.

(4)

Whereabouts unknown:

Withholding FA or MA assistance is necessary because of the unknown whereabouts of the client, as evidenced by agency mail to the client's last known address having been returned to the ISD as undeliverable.

(5) **Other**

assistance: The client is accepted for FA or MA assistance in another county or state, or under another jurisdiction (including SSI) and the effective date of coverage has been established.

(6) **Removal**

of child: Termination or reduction of FA is necessary because of the removal of a recipient child from the home through judicial determination or the voluntary placement of the child in foster care by the legal guardian or specified relative.

(7) **Change in**

medical care: A change in a client's level of medical care is prescribed by their physician.

(8) **Special**

allowance: A special allowance granted to a client for a specific period of time is terminated and the client has been informed at the time the allowance was granted that it would terminate at a specific time.

(9) **Fair**

Hearings: An adverse action has been suspended pending a fair hearing and the fair hearing determination is not in the client's favor.

(10)

Recertification: A recertification is not completed by the time the certification expires and a notice of suspension is issued, or the non-certified case has been in payment suspension for a month, and the case is being closed.

(11) **Sanction:**

An FA payment is being reduced or terminated because an individual is not cooperating with the child support enforcement program or is failing to meet work program requirements.

(12) A client is also informed of their right to request a hearing on the action, the way to make such a request, and the conditions under which assistance will be continued if a hearing is requested. In any contact with the county office or in a hearing, the client may speak for themselves or be represented by legal counsel or a friend or other spokesperson.
[8.100.180.11 NMAC - Rp, 8.100.180.11 NMAC, 7/1/2024]

8.100.180.12 FOOD STAMP EXCEPTIONS: Adverse action notices are not required under the following conditions.

- A. Mass changes:** The state initiates a mass change.
- B. Death:** The ISS determines, based on reliable information, that all members of a household have died.
- C. Move from project area:** The ISS determines, based on reliable information, that the household has moved from the project area, or will move before the next FS issue.
- D. Completion of restoration of lost benefits:** The client has been receiving an increased allotment to restore benefits, the restoration is complete, and the client has been previously notified in writing when the increased allotment would end.
- E. Anticipated changes in monthly benefit amount:** A household's allotment varies from month to month within the certification period to take into account changes which are anticipated at the time of certification, and the household was notified at the time of certification of the allotment variations.
- F. Benefit reduction upon approval of household's FA application:** The household jointly applied for FA and FS benefits, and has been receiving food stamps pending the approval of the FA grant, and was notified at the time of certification that FS benefits would be reduced upon approval of the FA grant.

G. Household member disqualified for intentional program violation: The benefits of the remaining household members are reduced or terminated to reflect the disqualification of a household member.

H. Benefits contingent upon providing postponed verification: The ISS has assigned a normal certification period to a household certified on an expedited basis, for whom verification was postponed, and the household was given a written notice that the receipt of benefits beyond the month of application was contingent upon its providing the required verification.

I. Conversion: Converting a household from cash or FS benefit recovery to recoupment (benefit reduction) because of failure to make agreed-upon repayment.

J. Loss of certification by drug or alcoholic treatment center or group living arrangement.: The ISS terminates the eligibility of a resident of a drug or alcoholic treatment center or a group living arrangement because the facility loses either its certification from the New Mexico health department or other appropriate state agency, or has its status as an authorized representative suspended because FCS has disqualified it as a retailer.

K. Transfer between FSP and food distribution programs. If a local office is notified by the appropriate Indian tribal organization (ITO) that a participating household wishes to switch programs, the ISS:

- (1) advises the ITO of the earliest date that program transfer may occur without risk of dual participation;
- (2) closes the FS case without advance notice; and
- (3) follows up with the appropriate ITO-provided form.

L. Household requests termination.
[8.100.180.12 NMAC - Rp, 8.100.180.12 NMAC, 7/1/2024]

8.100.180.13 FRAUD: If the agency obtains facts indicating that FA or MA should be suspended, terminated or reduced because of probable fraud by the recipient which has been verified, if possible, by collateral sources, notice of the action being taken is mailed at least five days before the action is to become effective.
[8.100.180.13 NMAC - Rp, 8.100.180.13 NMAC, 7/1/2024]

8.100.180.14 CONTINUATION OF BENEFITS: If a fair hearing request is filed, benefits are continued, under the circumstances described below, until the fair hearing determination is completed.

A. Timely requests:
(1) Advance notice: If a household requests a fair hearing within the advance notice period provided by the advance adverse action notice, and its certification period has not expired, the household's participation in the program is continued on the same basis authorized immediately before the adverse action notice, unless the household specifically waives a continuation of benefits.

(2) All fair hearing request forms contain a space for a household to indicate whether or not continuation of benefits is requested. If the form does not positively indicate that the household has waived continuation of benefits, the ISS assumes that continuation of benefits is desired and the benefits are issued accordingly. Such benefits are continued until the end of the certification period or the resolution of the fair hearing, whichever is first.

B. Concurrent notice: If a benefit group requests a fair hearing within 13 days of issuance of a concurrent adverse action notice, and its certification period has not expired, cash assistance, food stamps and medicaid benefits are reinstated. Unless other intervening changes occur, assistance is not reduced or terminated, nor may the manner or form of payment be changed to a protective payment, during the period until the hearing decision is rendered,

except as provided in regulations at 8.100.180.10 and 8.100.180.15 NMAC.

(1)

Additionally, receipt of continued benefits ends if a determination is made at the hearing that the sole issue is one of federal policy or law, or change in such policy or law, and not one of incorrect grant computation.

(2)

If a later change affecting the client's grant occurs while the hearing decision is pending and the client does not request a hearing regarding the change, the payment which the client continues to receive during the hearing period is adjusted only by the amount required by the change.

(3)

If assistance is to be continued, it is continued through the end of the month in which a decision on the hearing is reached.

(4)

If hearing decisions are delayed, assistance is continued only if the delay is caused by HCA or if a delay of five days or less is requested by the client because of unusual circumstances beyond their control.

C. Late requests:

(1)

If a hearing request is not made within the period provided by the adverse action notice, benefits are reduced or terminated as provided in the notice.

(2)

If a client demonstrates that failure to make the request within the advance notice period was for good cause, benefits are reinstated to the previous level. The hearing unit supervisor decides if the failure was for good cause.

[8.100.180.14 NMAC - Rp,
8.100.180.14 NMAC, 7/1/2024]

8.100.180.15 MASS CHANGES:**A. General:**

Certain changes initiated by the state or federal government may affect the entire caseload or significant portions of it. These changes include, but are not limited to, increases or decreases in eligibility or payment standards changes in excluded or deducted items or amounts. Mass changes

affecting income include annual adjustments of Social Security, SSI, and other federal benefit programs, and any other changes in eligibility criteria based on legislative or regulatory actions.

B. Notice of mass

changes: Adverse action notices are required for mass changes resulting from statutory or regulatory changes in eligibility or payment standards, benefit, changes in excluded or deducted items or amounts for purposes of eligibility or calculation of benefit levels. The department will either provide concurrent notice to affected households of the mass change no later than the date the household receives, or would have received, its benefit issuance, or the affected cases will be notified through the media, or posters in county offices.

C. Appeal rights:

Notice of the change will include the recipient's right to appeal. If the recipient requests a fair hearing within the advance notice period, benefits will be continued at the former amount. If the appeal results in a decision that the reduction or closure was incorrect, the difference between what the recipient received pending the appeal decision and the amount that should have been received will be restored to the recipient.

[8.100.180.15 NMAC - Rp,
8.100.180.15 NMAC, 7/1/2024]

8.100.180.16 DISPUTED CONTINUATION OF BENEFITS:

If a client and the ISS disagree about the continuation of benefits, the client may request a fair hearing. Adverse action defined. "Adverse action" is action taken by HCA which adversely affects the amount of benefits a client receives. Such actions include holding mailing of assistance warrants, and suspension, reduction or termination of benefits.

[8.100.180.16 NMAC - Rp,
8.100.180.16 NMAC, 7/1/2024]

8.100.180.17 HOME VISIT

NOTICE: The worker shall give advance notice to an applicant or recipient of any visit to the applicant's

or recipient's home.

A. Verbal notice: The advance notice may be in the form of a verbal communication between the worker and the applicant or recipient. The time and date of the visit must be mutually agreeable and should, in most cases, be made at least one day in advance of the visit. The worker shall provide an explanation of the need for the visit to the applicant or recipient. The worker shall document the discussion in the case narrative and provide a justification if the period of advance notice is any less than one day.

B. Written notice:

The home visit notice may be written. The written notice shall be mailed at least 10 days in advance of the intended visit. The notice shall indicate the time, date, and purpose of the visit. The notice shall request the applicant or recipient to confirm the appointment date with the worker. In the absence of a response from the applicant or recipient, the visit shall take place and the applicant or recipient is expected to be at home for the visit.

[8.100.180.17 NMAC - Rp,
8.100.180.17 NMAC, 7/1/2024]

History of 8.100.180 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: ISD Rule 180, Notice Requirements, 2/9/1988.

History of Repealed Material:

8 NMAC 3.ISD.180, General Operating Policies, External Communications - Repealed, 7/1/1997.
8.100.180 NMAC, General Operating Policies - External Communications filed 3/26/2001 Repealed effective 7/1/2024.

Other: 8 NMAC 3.ISD.180, General Operating Policies, External Communications filed 6/16/1997 Refiled and renumbered for NMAC2 codification. Also replaces 8 NMAC 3.ISD.000 (S# 17.0), filed 6/16/1997. 8.100.180 NMAC, General Operating

Policies - External Communications filed 3/26/2001 Replaced 8.100.180 NMAC, General Operating Policies - External Communications effective 7/1/2024.

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This amendment to 8.100.970 NMAC, Section 1, 3 & 9 effective 7/1/2024.

8.100.970.1 ISSUING AGENCY: [~~New Mexico Human Services Department~~] New Mexico Health Care Authority. [8.100.970.1 NMAC - Rp, 8.100.970.1 NMAC, 11/27/2013; A, 7/1/2024]

8.100.970.3 STATUTORY AUTHORITY:

A. Section 27 NMSA 1978 (1992 Repl.) provides for the department to "...adopt, amend and repeal bylaws, rules and regulations..." It also provides for administration of public assistance programs.

B. The income support division (ISD) of the [~~human services department (HSD)~~] Health Care Authority (HCA) was created by the HSD secretary under authority granted by Paragraph (3) of Subsection B of Section 9-8-6 NMSA 1978.

C. The New Mexico health insurance exchange (NMHIX) was established by Section 59A-23F-1 of NMSA 1978 *et al.* Pursuant to 45 CFR 155.505(c) and 155.510(a), NMHIX has designated to the [~~New Mexico human services department~~] New Mexico health care authority the authority to conduct fair hearings of NMHIX eligibility appeals pursuant to 45 CFR 155 Subpart F. [8.100.970.3 NMAC - Rp, 8.100.970.3 NMAC, 11/27/2013, A/E, 11/1/2021; A, 4/1/2022; A, 7/1/2024]

8.100.970.9 THE HEARING PROCESS:

A. Initiation of the hearing process:
(1) A request for a fair hearing can be made by the claimant or an authorized representative orally or in writing.
(2) If a claimant requests a fair hearing orally, the department shall take such actions as are necessary to initiate the fair hearing process.
(3) The fair hearings bureau shall promptly send written acknowledgement to the claimant and the authorized representative upon its receipt of a written or oral hearing request.

B. Time limits:
(1) A household or its authorized representative shall request a fair hearing no later than close of business on the 90th day following the date of the notice of adverse action. If the 90th day falls on a weekend, holiday or other day the department is closed, a request received the next business day will be considered timely.

(2) The department shall assure that the fair hearing is conducted, a fair hearing decision is reached and the claimant and the authorized representative are notified of the decision within the specified program time limit set forth below, except in instances where the time limit may be extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(a) **SNAP program:** The final fair hearing decision shall be issued to the claimant and the authorized representative within 60 days from the date the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(b) **Cash assistance programs:** The final fair hearing decision shall be issued to the claimant and the authorized representative within 90 days from the date that the department receives the hearing request unless extended pursuant to Subsection B of

8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(c) **LIHEAP:** The final fair hearing decision shall be issued to the claimant and the authorized representative within 60 days from the date that the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(d) **Medical assistance programs:** The final fair hearing decision shall be issued to the claimant and the authorized representative within 90 days from the date that the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC. Fair hearing decisions regarding the termination, modification, reduction or suspension of services is governed by all applicable federal and state laws and regulations, including 8.352 NMAC, *et seq.*

(e) **NMHIX matters:** The final fair hearing decision shall be issued to the claimant and the authorized representative within 90 days from the date of the appeal request. Fair hearing decisions regarding adverse actions by NMHIX are governed by all applicable federal and state laws and regulations, including 45 CFR 155 Subpart F. In the case of an appeal request submitted under 45 CFR 155.540 that the department determines meets the criteria for an expedited appeal, the department must issue the fair hearing decision notice as expeditiously as reasonably possible.

C. Jurisdiction of the fair hearings bureau:

(1) An applicant for, or recipient of, a department administered public assistance program may request a fair hearing, and the department's fair hearings bureau shall have jurisdiction over the matter, if:

(a) an application for benefits or services

is denied in whole or in part, or not processed timely;

(b) assistance or services are reduced, modified, terminated, suspended or not provided, or the form of payment is changed;

(c) a good cause request for not participating in the work program or CSED is denied in whole or in part;

(d) the department refuses or fails to approve a work program participation plan, or the supportive services related to it, that have been developed by a participant; or

(e) the claimant is aggrieved by any other action affecting benefit level or participation in an assistance program administered by HSD.

(2) An applicant for, or enrollee in, health insurance coverage or insurance affordability programs through the New Mexico health insurance exchange may request a fair hearing, and the department's fair hearings bureau shall have jurisdiction over the matter, if the applicant or enrollee is appealing:

(a) An eligibility determination made in accordance with 45 CFR Subpart D, including:

(i) an initial determination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, made in accordance with the standards in 45 CFR section 155.305(a) through (h); and

(ii) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, made in accordance with 45 CFR section 155.330 and 155.335;

(iii) a determination of eligibility for an enrollment period, made in accordance with 45 CFR section 155.305(b); and

(b) A failure by NMHIX to provide timely

notice of an eligibility determination in accordance with 45 CFR section 155.310(g), 45 CFR section 155.330(e)(1)(ii), 45 CFR section 155.335(h)(1)(ii), or 45 CFR section 155.610(i).

(3) Fair hearing requests submitted to the local county office shall be immediately forwarded to the fair hearings bureau for scheduling. The fair hearings bureau shall promptly inform the applicable local county office upon its receipt of a written or oral fair hearing request submitted directly to the fair hearings bureau to ensure timely scheduling of an ARC.

D. Denial or dismissal of request for hearing: The fair hearings bureau shall deny or dismiss, as applicable, a request for a fair hearing when:

(1) the request is not received by the close of business on the 90th day following the date of the notice of adverse action; in instances where the fair hearings bureau schedules a hearing prior to becoming aware of the lateness of the fair hearing request, the fair hearings bureau shall, upon learning of the late request, promptly dismiss the matter and provide notice thereof to all parties;

(2) the request for a fair hearing is withdrawn or canceled, either orally or in writing, by the claimant or claimant's authorized representative; if withdrawn orally, the claimant and the authorized representative shall be provided written verification of the withdrawal and given 10 calendar days from the date of the notification to request reinstatement of the hearing;

~~[(3) the sole issue presented concerns a federal or state law requiring an adjustment of assistance for all or certain classes of clients, including but not necessarily limited to a reduction, suspension or cancellation of benefits, unless the reason for the hearing request involves alleged error in the computation of benefits (e.g. mass changes);]~~

[(4) (3) the

claimant fails to appear, without good cause, at a scheduled fair hearing;

~~[(5) (4) the same issue has already been appealed and a hearing decision made;~~

~~[(6) (5) there is no adverse action or delay of benefits or services for which a fair hearing may be requested; or~~

~~[(7) (6) the issue is one that the fair hearings bureau does not have jurisdiction as provided by federal or state laws and regulations;~~

~~[(8) (7) requests for fair hearings for medical assistance cases involving the termination, modification, reduction or suspension of services are governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq;~~

~~[(9) (8) in matters involving NMHIX, an appeal will be dismissed if the appellant:~~

(a) withdraws the appeal request in writing or orally;

(b) fails to appear at a scheduled hearing without good cause;

(c) fails to submit a valid appeal request as specified in section 155.520(a)(4); or

(d) dies while the appeal is pending, except if the executor, administrator, or other duly authorized representative of the estate requests to continue the appeal.

E. Good cause for failing to appear:

(1) If the claimant or the claimant's authorized representative fails to appear for a fair hearing at the scheduled time and place, the claimant's appeal will be considered abandoned and the fair hearings bureau shall dismiss the matter, unless the claimant or authorized representative presents good cause. A claimant or authorized representative may present good cause for failing to appear to the scheduled fair hearing at any time no later than close of business on the 10th calendar day immediately following the scheduled hearing date.

If the 10th calendar day falls on a weekend, holiday or other day that the department is closed, a request received the next business day will be considered timely. If good cause is submitted timely and permitted, the fair hearings bureau shall reschedule the hearing or, where appropriate, reinstate a matter previously dismissed.

(2) If the department fails to appear due to circumstances beyond its control, the department may present good cause within 10 calendar days after the scheduled hearing. If good cause is submitted timely and permitted, the fair hearings bureau shall reschedule the fair hearing.

(3) Good cause includes, but is not limited to, a death in the family, disabling personal illness, or other significant emergencies. At the discretion of the hearing officer, other exceptional circumstances may be considered good cause.

[8.100.970.9 NMAC - Rp, 8.100.970.9 NMAC, 11/27/2013; A/E, 11/1/2021; A, 4/1/2022; A, 7/1/2024] The Human Services Income Support Division is approving to repeal its rule 8.100.180 NMAC, General Operating Policies - External Communications filed 3/26/2001 - and replace it with 8.100.180 NMAC, General Operating Policies - External Communications adopted on 5/6/2024 and effective on 7/1/2024.

RACING COMMISSION

This is an amendment to 15.2.7 NMAC, Section 10, effective 6/11/2024

15.2.7.10 SIMULCAST WAGERING:

A. [General Provisions: No person shall conduct or attempt to conduct interstate, or intrastate, simulcast wagering unless authorized and permitted to do so by the commission.

~~(1) No person shall attempt to conduct wagering on~~

~~the results of a simulcast unless an agreement has been executed between the host and guest track operators, the agreement has been approved by the New Mexico Horsemen's Association and the agreement is filed with the commission.~~

~~(2) In the event the New Mexico horsemen's association withholds its approval of an agreement submitted, reasons for non-approval will be detailed to the commission in writing, with the final decision to be made by the commission.] Interstate simulcasting shall be conducted in accordance with the "Interstate Horseracing Act of 1978."~~

B. Duties of Simulcast

Host: Every host association simulcasting its performance, if requested, may contract with an authorized receiver for the purpose of providing authorized users its simulcast.

(1) A host association is responsible for content of the simulcast and shall use all reasonable effort to present a simulcast, which offers the viewers an exemplary depiction of each performance.

(2) Unless otherwise permitted by the commission, every simulcast will contain in its video content a digital display of actual time of day, the name of the host facility from where it emanates, the number of the contest being displayed, and any other relevant information available to patrons at the host facility.

(3) The host association shall maintain such security controls including encryption over its uplink and communications systems as directed or approved by the commission.

(4) In the event that the host association fails to link with any guest association, or loses a link and is unable to re-establish that link, the tote operator at the host association will immediately call tote at all New Mexico guest associations to close pools on the racetrack in question. The tote operator at the guest association(s)

will notify the manager on duty and supply a written report of the event to the commission and the simulcast coordinator at once. This report must include, but not be limited to the following: a detailed incident report, name of manager on duty, time and person contacted at the guest association(s) and any other pertinent information. In no event will a guest association take a simulcast race, which the host association is not taking. If the link is re-established by the host association, the tote operator will call the guest association(s) and advise them that they may link up. In the event of a total telephone outage at the host association, the tote operator will contact the other tote company by cellular phone. In the event that a guest association fails to establish or loses a link, the tote operator will notify the manager on duty of his track and supply a written report of the event to the commission and the simulcast coordinator at once. This report must include, but not be limited to the following: a detailed incident report, name of manager on duty, time and person contacted at the host association(s), and any other pertinent information.

C. Duties of

Authorized Receiver: An authorized receiver conducts and operates a pari-mutuel wagering system on the results of contests being held or conducted and simulcast from the enclosures of one or more host associations and with the approval of the commission.

- (1) An authorized receiver shall provide:
 - (a) adequate transmitting and receiving equipment of acceptable broadcast quality, which shall not interfere with the closed circuit TV system of the host association for providing any host facility patron information;
 - (b) pari-mutuel terminals, pari-mutuel odds displays, modems and switching units enabling pari-mutuel data transmission, and data communications between the host and guest associations;
 - (c) a voice communication system

between each guest association and the host association providing timely voice contact among the commission designees, placing judges and pari-mutuel departments.

(2) The guest association and all authorized receivers shall conduct pari-mutuel wagering pursuant to the applicable commission rules.

(3) The commission may appoint at least one designee to supervise all approved simulcast facilities and may require additional designees as is reasonably necessary for the protection of the public interest.

(4) Not less than 30 minutes prior to the commencement of transmission of the performance of pari-mutuel contests for each day or night, the guest association shall initiate a test program of its transmitter, encryption and decoding, and data communication to assure proper operation of the system.

(5) The guest association shall, in conjunction with the host association or associations for which it operates pari-mutuel wagering, provide the commission with a certified report of its pari-mutuel operations as directed by the commission.

(6) Every authorized receiver shall file with the commission an annual report of its simulcast operations and an audited financial statement.

[15.2.7.10 NMAC - Rp, 15 NMAC 2.7.10, 3/15/2001, A, 6/11/2024]

End of Adopted Rules

Other Material Related to Administrative Law

**HUMAN SERVICES
DEPARTMENT**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Human Services Department gives Notice of a Minor Correction to its *Notice of Rulemaking (HCA Amendments)* that was published in Issue 9 of the NEW MEXICO REGISTER.

The sentence giving the date and time of when the hearing is to be held had a “pm” for its time. The meeting, like all the other meetings, is to occur in the morning and so it should have been “am”.

The sentence has been amended to state:

“A public hearing to receive testimony on these amendments will be held on June 7, 2024, at 10:30 am Mountain Time (MT). There are three options for attending the hearing:

NURSING, BOARD OF

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Board of Nursing gives Notice of a Minor, Nonsubstantive Correction to 16.12.9 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule, as follows:

Section 11: There were incorrect subheadings (1) and (2). The existing language was folded into the text of the section with no sub headers.

A copy of this Notification will be filed with the official version of the above rule.

**End of Other Material
Related to Administrative
Law**

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Submittal Deadlines and Publication Dates

Volume XXXV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 16
Issue 2	January 18	January 30
Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	February 29	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 7
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Issue 20	October 10	October 22
Issue 21	October 24	November 5
Issue 22	November 7	November 19
Issue 23	November 26	December 10
Issue 24	December 12	December 23

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. The *New Mexico Register* is available free online at: <http://www.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941