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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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New Mexico Register

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Notices of Rulemaking and Proposed Rules

HEALTH CARE AUTHORITY INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Health Care Authority (HCA) through Income Support Division (ISD) is proposing amendments to the following rules:

Section 7 of 8.102.100 NMAC

- adding the following language: (8) Compacts of Free Association: is an individual who is Compact of Free Association (COFA) migrant, also referred to as compact citizen. COFA is an agreement between the United States and the three Pacific Island sovereign states of federated states of Micronesia, the republic of the Marshall Islands, and the republic of Palau known as freely associated states.
- Updated the number sequence (8) thru (10) only.
- No other sections in 8.102.100 are under review at this time.

Section 10 of 8.102.410 NMAC

- adding the following language to subsection C: (9) an individual who lawfully resides in the United States in accordance with the Compact of Free Association (COFA) migrant, who is also referred to as compact citizen.
- adding the following language to subsection E: (8) an individual who lawfully resides in the United States in accordance with the Compact of Free Association (COFA) migrant, who is also referred to as compact citizen.
- Updated the number sequence (8) and (9) only.
- No other sections in 8.102.410 are under review at this time

Section 7 of 8.139.100 NMAC

- adding the following language: (9) Compacts of Free Association: is an individual who is Compact of Free Association (COFA)

migrant, also referred to as compact citizen. COFA is an agreement between the United States and the three Pacific Island sovereign states of federated states of Micronesia, the republic of the Marshall Islands, and the republic of Palau known as freely associated states.

- Updated the number sequence (9) and (10) only.
- No other sections in 8.139.100 are under review at this time.

Section 9 of 8.139.410 NMAC

- adding the following language to: (i) an individual who lawfully resides in the United States in accordance with the Compact of Free Association (COFA) migrant, who is also referred to as compact citizen.
- Adding the following language to: (j) are identified as COFA
- No other sections in 8.139.410 are under review at this time.

These amendments are due to the “Consolidated Act, 2024 (P.L. 118-42, Division G, Title II, §201, the “Compact of Free Association Amendments Act of 2024” signed in to law which revised eligibility of citizens of freely associated states (i.e., Federated states of Micronesia, the republic of the Marshall Islands, and the republic of Palau) who lawfully reside in the United States they are included in the definition of qualified immigrants and are eligible for certain Federal public benefit programs, including SNAP and TANF.

A hybrid public hearing to receive testimony on this proposed rule will be held, pursuant to Section 14-4-5.6 NMSA 1978, on Monday, March 31, 2025, at 11:00 a.m. - 12:00 pm. You may join in person, virtually, or by phone.

You may join in person at:
HCA Income Support Division Office

at 4363 Jager Dr NE, Rio Rancho, NM 87144.

You may join virtually from your computer, tablet or smartphone:
Microsoft Teams:

Meeting ID: 225 455 120 628
Passcode: hk2Gs6rG

Dial in by phone

+1 505-312-4308,,970511538# United States, Albuquerque

Find a local number

Phone conference ID: 970 511 538#

Get the app now and be ready when your first meeting starts: **Join the meeting now**

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at Office-505-709-5468, Fax-505-827-6286 or through the New Mexico Relay system, toll free at #711. The Authority requests at least a 10-day advance notice to provide the requested alternative formats and special accommodations.

Written comment may be dropped off during the scheduled hearing time at the HCA Income Support Division Office at 4363 Jager Dr NE, Rio Rancho NM 87144. All written comments will be posted on the agency website within 3 days of receipt.

Individuals wishing to testify may contact the Income Support Division (ISD), P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling (505) 819-8118.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, March 31, 2025. Please send comments to:

Income Support Division
 P.O. Box 2348
 Santa Fe, NM 87504-2348

Recorded comments may be left at (505) 819-8118. You may send comments electronically to: HCA-isdrules@hca.nm.gov. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health (“Department”) will hold a public hearing on the proposed adoption of a new rule concerning school-based health centers, to be designated as 7.30.15 NMAC. The hearing will be held on March 28, 2025 at 9:00 a.m. via the Microsoft Teams Internet-based video conferencing system, and via telephone. Members of the public who wish to submit public comment regarding the proposed rule will be able to do so via video conference and via telephone during the course of the hearing, and by submitting written comment.

The proposed rule proposes various minimum standards and requirements for SBHCs that receive funding from the Department, concerning (but not limited to) the following subjects:

- SBHC operations and services, including location, consent to services, non-discrimination, hours of operation, and the provision of clinical services;
- Department inspection and oversight of SBHCs;
- Data collection, sharing of data with the Department, and medical record confidentiality;
- Health center certification;
- Staffing;
- Financial sustainability;
- Requests for waivers of rule requirements; and
- Disciplinary actions, the

hearings process, and final decisions on proposed disciplinary actions.

The purpose of the proposed rule is to implement Section 24-1-44 NMSA 1978 of the Public Health Act, which requires that the Department provide funding, technical assistance, clinical oversight, and other necessary support for the creation and operation of school-based health centers (SBHCs). The legal authority authorizing the proposed rule is Subsection E of Section 9-7-6 NMSA 1978, and Subsection F of Section 24-1-44 NMSA 1978.

A free copy of the full text of the proposed rule can be obtained online from the New Mexico Department of Health’s website at <http://nmhealth.org/about/asd/cmo/rules/> or by contacting the Department using the contact information below.

The public hearing will be conducted to receive public comment on the proposed rule. Any interested member of the public may attend the hearing and may submit data, views, or arguments on the proposed rule either orally or in writing during the hearing.

To access the hearing via the Internet: please go to <https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>, then enter the following meeting i.d. code and passcode where indicated on the screen: meeting i.d. code 261 704 461 719, passcode m4tw78vd. Then click the “Join a meeting” button.

To access the hearing by telephone: please call 1-505-312-4308, phone conference i.d. 513269699# All comments will be recorded.

Written public comment regarding the proposed rule can be submitted either by e-mail to Stephanie Lopez at stephanie.lopez@doh.nm.gov, or U.S. postal mail to the following address: Stephanie Lopez
 NMDOH OGC
 P.O. Box 26110
 1190 St. Francis Dr., Suite N-4095
 Santa Fe, NM 87502-6110

Written comments must be received by the close of the public rule hearing on March 28, 2025. All written comments will be published on the agency website at <https://www.nmhealth.org/about/asd/cmo/rules/> within 3 days of receipt, and will be available at the New Mexico Department of Health for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Stephanie Lopez by telephone at (505) 690-3689. The Department requests at least ten (10) days’ advance notice to provide special accommodation.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING DOCKET NO. 22-00089-UT

The New Mexico Public Regulation Commission (“Commission”) gives notice of its initiation of a formal rulemaking to promulgate a new rule at Title 17, Chapter 9, Part 587 of the New Mexico Administrative Code entitled “Grid Modernization and Integrated Distribution Planning.” A rule which may be adopted as the final rule by the Commission may include all, part, or none of the language in the proposed rule.

Summary and concise statement of proposed rule: The objective of the proposed rule is to bring transparency and consistency to distribution system planning and establishing a defined process to create a grid plan for each jurisdictional electric utility. The objective of a grid plan is to assess the state of an electric utility’s distribution systems, identify potential expansion or upgrade projects, and consider grid enhancing technologies and “non-wires” alternative solutions for infrastructure expansion that may enhance system reliability and service opportunities

at a lower cost. The further objective of the proposed rule is to ensure that the State benefits from electric distribution systems that align with New Mexico's policies, such as the Public Utility Act, Renewable Energy Act, Efficient Use of Energy Act, and the Energy Transition Act. Building on the statutory framework for grid modernization, this rule defines how proposals for grid modernization investments shall: be evaluated; fit into the larger context of integrated distribution planning and integrated resource planning while setting forth procedures for cost recovery; and be subject to reporting and accountability requirements.

Legal authority: The Commission has the authority to promulgate and adopt the proposed rule pursuant to Section 62-8-2 NMSA 1978; Section 62-8-13 NMSA 1978; and Section 62-19-9 NMSA 1978.

How a copy of the full text of the proposed rule may be obtained: A copy of the full text of the proposed rule and instructions on how to access the complete rulemaking record, reports, and other items filed in the commission's e-docket system may be obtained from the Rulemaking Proceedings section of the Commission's website at <https://www.prc.nm.gov/rulemaking-proceedings/> under Docket No. 22-00089-UT or by calling LaurieAnn Santillanes in the Office of General Counsel at (505) 670-4830.

How a person may comment on the proposed rule, where comments will be received, and when comments are due:

Written initial comments may be filed no later than **April 18, 2025**, and written response comments may be filed no later than **May 5, 2025**. Filed comments shall refer to Docket No. 22-00089-UT. Comments may be electronically filed by sending them in PDF format to prc.records@prc.nm.gov. All written comments will be posted on the Commission's e-Docket website within three days of their

receipt by the Commission's Records Management Bureau.

The record closure date is **May 30, 2025**. From that date through the completion of this proceeding, rulemaking participants shall be forbidden from communicating with the Commission or its advisory staff concerning substantive issues in this proceeding.

When and where a public rule hearing will be held and how a person may participate in the hearing: A public comment hearing on the proposed rule and any proposed alternatives, to be presided over by the Commission or its designee, shall be held beginning at **10:00 a.m. on April 24, 2025** at the Commission's offices located at 142 W. Palace, Santa Fe, New Mexico, 87505, and via the Zoom video-conferencing platform.

Any interested person who wishes to provide comment at the hearing may contact Patrick Rodriguez via email at public.comment@prc.nm.gov or by phone at (505) 490-7910 as soon as possible before the start of the hearing to sign up as a commenter. The Commission will email a Zoom invitation to all commenters. The Zoom invitation will include a call-in number for those commenters who are unable to access Zoom's video-conferencing platform. The public comment hearing shall be held to receive oral comments. All commenters may be limited in time to speak, subject to the discretion of the Commission or its designee. The Commission or its designee may also determine that a spokesperson should be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public hearing. No testimony or other evidence shall be taken at the hearing as this is a rulemaking proceeding. The subject of public comments shall be relevant to matters within the Commission's jurisdiction. A court reporter shall prepare a

transcript of the hearing for filing in this docket.

Any person with a disability requiring special assistance to participate in the hearing should contact the **Office of Director of Administrative Services of the Commission at (505) 827-8019** as soon as possible prior to the commencement of the hearing.

Technical information that served as a basis for the proposed rule and how the information can be obtained: None.

**REGULATION
AND LICENSING
DEPARTMENT
SPEECH-LANGUAGE
PATHOLOGY, AUDIOLOGY
AND HEARING AID
DISPENSING PRACTICES
BOARD**

**NOTICE OF PUBLIC RULE
HEARING AND BOARD
MEETING**

The New Mexico Speech-Language Pathology, Audiology & Hearing Aid Dispensing Practices Board will hold a rule hearing on Friday, April 11, 2025, at 10:00 a.m., immediately followed by a meeting of the board to consider any public comment and adoption of the proposed rules listed below.

Public participation is welcomed, and comments may be submitted in writing during the public comment period, or in person during the public rule hearing. The hearing and subsequent meeting will take place at the Regulation and Licensing Department, Toney Anaya Building, Rio Grande Conference Room, located at 2550 Cerrillos Road, Santa Fe, New Mexico, 87505.

The hearing and subsequent meeting may also be accessed virtually via Microsoft Teams.

Meeting Link: <https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>

Meeting ID: 286 964 876 882
Passcode: pv6jqZ
or
Join by Phone: +1-505-312-4308
Phone Access Code: 114 032 418#

The purpose of the rule hearing is to consider proposed amendments to the following board rules:

- 16.26.5 NMAC – Continuing Education
- 16.26.6 NMAC – Fees
- 16.26.7 NMAC – Grounds for Disciplinary Action

Copies of the proposed rule may be obtained through the board website or contacting the Board Administrator through the information below:
<https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/speech-language-pathology-audiology-and-hearing-aid-dispensing-practices/board-information/speech-language-pathology-meetings/>
Jen Rodriguez, Acting Board Administrator
(505) 795-3250 – Board Administrator Direct Line
speech.hearing@rld.nm.gov Attn. Jen Rodriguez

Written comment will be accepted during the public comment period, up until Friday, April 11, 2025, at 8:00 a.m. and may be submitted either by email or by postal mail to the following addresses:
speech.hearing@rld.nm.gov
Attn: New Mexico Speech-Language Pathology, Audiology & Hearing Aid Dispensing Practices Board
P.O. Box 25101
Santa Fe, NM 87504

Written comments received during the public comment period prior to the public rule hearing will be posted to the board website page linked above. Public comment will also be accepted during the rule hearing and may be submitted in writing or presented orally by those attending both in-person and virtually. The board will not enter into substantive discussion of public comments during the rule hearing, but will consider

and deliberate any public comment during the board meeting immediately following the conclusion of the public rule hearing.

The agenda for the board meeting, which will begin immediately after the public rule hearing, will available no less than 72 hours prior to the meeting, and available on the Board website linked above or by contacting the Board Administrator.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact the Board Administrator.

Statutory Authority:

The proposed rule changes are authorized by the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, Sections 61-14B-1 through 61-14B-25 NMSA 1978, which provides explicit authority for the board to promulgate rules to protect public health and safety and carry out the provisions of the Act. The rulemaking and public rule hearing is governed by the State Rules Act, Sections 14-4-1 through 14-4-11 NMSA 1978, and the Default Procedural Rule for Rulemaking promulgated by the New Mexico Department of Justice, Parts 1.24.25.1 through 1.24.25.16 NMAC.

Purpose of Proposed Rules:

The proposed rule additions are intended to clarify the continuing education requirements for license renewal, the process of auditing license renewals, the potential penalties for not meeting the continuing education requirements and setting fees for returned checks and electronic checks. More generally, the proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and certificate holders, and to generally satisfy the Board’s statutory obligation to promote,

preserve and protect public health, safety and welfare.

Summary of Proposed Rule:

16.26.5 NMAC – Continuing Education;
This repeal and replace of the rule will clarify the continuing education requirements prior to the license expiration date in order to renew a license issued by the board. It also describes the audit process of license renewals, ensuring that licensees are completing their continuing education requirements as part of their license renewal.

16.26.6 NMAC – Fees;
This change will provide a fee for returned checks and electronic checks.

16.26.7 NMAC – Grounds for Disciplinary Action;
This change will make it clear what is required from a licensee if and when there is a continuing education audit of their license renewal.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Office of Superintendent of Insurance (OSI or Superintendent) will hold a public hearing in person, via video conference and telephone conference regarding proposed amendments to 13.10.40 NMAC, Vaccine Purchasing Fund. **This hearing will commence on Wednesday, April 2, 2025, at 10:00 a.m., MDT.**

PURPOSE OF THE PROPOSED RULE: The purpose of this rulemaking is to: **1)** clean-up of the format of a citations in the rule, where necessary; **2)** update the definitions section 13.10.40.7 NMAC; **3)** update the rule from its 2015 version by repealing and replacing the entire rule; **4)** clarifying the reporting requirements for group health plans and health insurers as required by

the Vaccine Purchasing Act; and, 5) clarify the responsibilities of the OSI under the Vaccine Purchasing Act.

STATUTORY AUTHORITY:

Sections 14-4-1 *et seq.*, NMSA 1978, State Rules Act. Sections 24-5A-6, 24-5A-7, 24-5A-8 of the Vaccine Purchasing Act and Section 59A-2-9 NMSA 1978.

TO ATTEND THE HEARING IN PERSON: Office of Superintendent of Insurance - 1120 Paseo de Peralta, (PERA Building), 4th Floor Hearing Room, Santa Fe, NM 87501

PLEASE NOTE: The entrance to the PERA Building is on the ground floor. All guests must sign in with the ground floor receptionist and then will be escorted to the 4th Floor Hearing Room. Please give yourself extra time to check in before 10:00 a.m.

TO ATTEND THE HEARING BY ELECTRONIC VIDEO CONFERENCE VIA MS TEAMS MEETING:

Please copy the link below into your browser to get to the video conference meeting:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODAzNTexZGYtNDMxNy00ZDIwLWJiMGUtY2U0NjY4ZDcyYjZl%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%2292f8d9f0-87c0-44c3-9357-ba0eb6121f10%22%7d

Meeting ID: 213 126 441 50
Passcode: 7QZ9mk3n

TO ATTEND VIA TELEPHONE:
+1 505-312-4308 Phone Conference ID: 231 576 097#

PUBLIC COMMENT: The Superintendent designates Brenda Newell as the hearing officer for this hearing. Oral comments will be accepted at the public hearing from members of the public and other interested parties in-person or via electronic video conference. Copies of the Notice of Proposed Rulemaking

and proposed rule are available by electronic download from the OSI eDocket (<https://edocket.osi.state.nm.us/case-view/6034>). You may also request copies if the Notice of Proposed Rulemaking and proposed rule by emailing Brenda Newell at: brenda.newell@osi.nm.gov or by phone at: 505-487-0695, **email communication is preferred.** Any copies of the Notice of Proposed Rulemaking, proposed rules, and any updates concerning the hearing date, time, or location will be available by visiting the OSI website at: <https://www.osi.state.nm.us/pages/bureaus/legal/resources/laws-rules> or on the Sunshine Portal at: https://statenm.my.salesforce-sites.com/public/SSP_RuleHearingSearchPublic (from the “Agency” drop down menu, select “Office of Superintendent of Insurance”)

Written comments will be accepted through 4:00 p.m. on Thursday, March 27, 2025. Responses to written comments or to oral comments delivered at the hearing will be accepted through 4:00 p.m. on Thursday, April 3, 2025. All comments shall be filed electronically through the OSI eDocket. Please copy the following link into your browser to get to the eDocket: <https://edocket.osi.state.nm.us/case-view/6034>

Written comments may be sent via U. S. mail to:

**OSI Records and Docketing
NM Office of Superintendent of Insurance
P.O. Box 1689, Santa Fe, NM
87504-1689**

Written comments must be received by OSI and stamped as accepted between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. The Superintendent will consider all oral comments and will review and consider all timely submitted written comments and written responses. For help submitting a filing, please contact osi-docketfiling@state.nm.us. **The below docket number and title**

must be indicated on all written comments submitted to the OSI:

Docket No. 2025-0008 - Please copy the following link into your browser to get to the eDocket: <https://edocket.osi.state.nm.us/case-view/6034>

IN THE MATTER OF REPEAL AND REPLACE OF 13.10.40 NMAC, VACCINE PURCHASING FUND

SPECIAL NEEDS: Any person with a disability requiring special assistance to participate in the hearing should contact Andrea Padilla, at 505-531-7171 no later than ten (10) business days prior to the hearing.

End of Notices of Proposed Rulemaking

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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.

**HEALTH CARE
AUTHORITY
HEALTH IMPROVEMENT
DIVISION**

This is an emergency amendment to 8.370.8 NMAC, Section 11 effective 2/11/2025.

8.370.8.11 SEVERITY STANDARD: A determination of the severity of all substantiated complaints of abuse, neglect or exploitation is made for the purpose of deciding if the employee is to be referred for placement on the registry. The determination of the severity of the substantiated complaint of abuse, neglect or exploitation is based upon application of the severity standards in this section. A substantiated complaint that satisfies the severity standard in this section is a substantiated registry-referred complaint. A substantiated complaint that does not satisfy the severity standard in this section will not be referred to the registry. Severity is determined by assessing the impact of the substantiated abuse, neglect, or exploitation on the recipient of care or services, and by assessing the employee for aggravating factors. In assessing the impact of abuse, neglect or exploitation, a reasonable person standard shall apply when the harmed individual is not able to express their feelings, when there is no discernable response from the harmed individual, or when circumstances do not permit a direct evaluation of the individual's psychosocial outcome. Such circumstances may include, but are not limited to, the individual's death, cognitive impairments, physical impairments, insufficient documentation by the facility, or when an individual's reaction to a deficient practice is markedly incongruent with

the level of reaction a reasonable person in the individual's position would have to the deficient practice.

A. Abuse: A substantiated complaint of abuse meets the severity standard if:

(1) the abuse results in, or is a contributing factor to, death;

(2) the abuse results in the deliberate infliction of a [significant, identifiable] physical injury. ~~[that reasonably requires or results in medical or behavioral intervention or treatment;]~~

(3) the abuse results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;

(4) the abuse results in the infliction of [excruciating] pain. [or pain that endures over a significant time period.]

(5) the abuse causes significant mental anguish as evidenced by the victim's descriptions, ~~[or significant]~~ behavioral changes, or by applying a reasonable person standard.

(6) the abuse is sexual abuse; ~~or]~~

(7) the abuse is verbal abuse that causes [significant] mental anguish, including psychological or emotional damage, [and which is] as evidenced by [significant] behavioral changes or physical symptoms, or by applying a reasonable person standard.

(8) the employee used alcohol or a controlled substance at or near the time of the substantiated abuse; or

(9) the employee used, brandished or threatened to use, a weapon in connection with the substantiated.

B. Neglect: A substantiated complaint of neglect meets the severity standard if:

(1) the neglect results in, or is a contributing factor to, death;

(2) the neglect results in the infliction of a [significant, identifiable] physical injury or emotional injury. [that reasonably requires or results in medical or behavioral intervention or treatment;]

(3) the neglect results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;

(4) the neglect results in the infliction of [excruciating] pain. [or pain that endures over a significant time period; or;]

(5) the neglect causes [significant] mental anguish as evidenced by the victim's descriptions, or [significant] behavioral changes, or by applying a reasonable person standard; or,

(6) the employee used alcohol or a controlled substance at or near the time of the substantiated neglect.

C. Exploitation: A substantiated complaint of exploitation meets the severity standard where unjust or improper use of the money or property belonging to the recipient of care or services results in:

(1) ~~[a single instance of]~~ an objectively quantifiable loss, the value of which exceeds the lesser of either:

(a) ~~[\$25.00]~~ \$100.00; or,

(b) twenty five percent the monthly income available to the recipient of care or services for purchasing

personal items or discretionary spending; or

(2) a subjectively substantial loss to the recipient of care or services due to a special attachment to the property, as demonstrated by anger, fear, frustration, depression or behavioral changes caused by the loss.

D. Aggravating factors: A substantiated complaint of abuse, neglect or exploitation meets the severity standard requiring referral of the employee for placement on the registry where:

(1) the employee used alcohol or a controlled substance at or near the time of the substantiated abuse, neglect or exploitation; or

(2) the employee used, brandished or threatened to use, a weapon in connection with the substantiated abuse, neglect or exploitation. [8.370.8.11 NMAC - N, 07/01/2024; A/E, 2/11/2025]

HEALTH CARE AUTHORITY INCOME SUPPORT DIVISION

The Health Care Authority, Income Support Division, is approving to repeal its rule 8.106.500 NMAC, Social Services State Funded Assistance Programs, Eligibility Policy-General Information filed 6/17/2004 - and replace it with 8.106.500 NMAC, Social Services State Funded Assistance Programs, Eligibility Policy-General Information adopted 1/31/2025, and effective 3/1/2025.

The Health Care Authority, Income Support Division, is approving to repeal its rule 8.106.631 NMAC, Social Services State Funded Assistance Programs, Heat and Eat Program filed 10/14/2020 and replace it with 8.106.631NMAC, Social Services State Funded Assistance Programs, Heat and Eat Program, adopted 1/31/2025, and effective 3/1/2025.

HEALTH CARE AUTHORITY INCOME SUPPORT DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS PART 500 ELIGIBILITY POLICY - GENERAL INFORMATION

8.106.500.1 ISSUING AGENCY: New Mexico Human Services Department. [8.106.500.1 NMAC - Rp, 8.106.500.1 NMAC 3/1/2025]

8.106.500.2 SCOPE: The rule applies to the general public. [8.106.500.2 NMAC - Rp, 8.106.500.2 NMAC 3/1/2025]

8.106.500.3 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. [8.106.500.3 NMAC - Rp, 8.106.500.3 NMAC 3/1/2025]

8.106.500.4 DURATION: Permanent. [8.106.500.4 NMAC - Rp, 8.106.500.4 NMAC 3/1/2025]

8.106.500.5 EFFECTIVE DATE: March 1, 2025, unless a later date is cited at the end of a section. [8.106.500.5 NMAC - Rp, 8.106.500.5 NMAC 3/1/2025]

8.106.500.6 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). The general assistance program is not intended to be an unemployment or general relief program.

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. [8.106.500.6 NMAC - Rp, 8.106.500.1 NMAC 3/1/2025]

8.106.500.7 DEFINITIONS: [RESERVED]

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. 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 \$1,500 liquid or \$2,000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent 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 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:

one person	\$1,067	(a)
two persons	\$1,448	(b)
three persons	\$1,829	(c)
four persons	\$2,210	(d)
five persons	\$2,592	(e)
six persons	\$2,972	(f)
seven persons	\$3,353	(g)
eight persons	\$3,735	(h)
		(i)

add \$382 for each additional person.

E. Standard of need:

(1) 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) **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.

After the countable net income is determined it is rounded down prior to the comparison of the household's income to the standard of need to determine the households monthly benefit amount.

G. Special clothing allowance for school-age dependent children:

A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age as defined by PED.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group, 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.

I. Minimum Benefit Amount:

Benefits less than ten dollars (\$10.00) will not be issued for the initial month or subsequent months. ISD shall certify household beginning the month of application. [8.106.500.8 NMAC - Rp, 8.106.500.8 NMAC 3/1/2025]

8.106.500.9 PROSPECTIVE BUDGETING:

A. Initial eligibility:

Eligibility for cash assistance programs shall be determined prospectively. The benefit group must meet all eligibility criteria in the month following the month of application. Eligibility and amount of payment shall be determined prospectively for each month in the certification period.

B. Changes in benefit group composition:

A person added to the benefit group shall have eligibility determined prospectively, beginning in the month following the month the report is made.

C. Anticipating income:

In determining the benefit group's eligibility and benefit amount, the income already received and any income the benefit group expects to receive during the certification period shall be counted.

(1) Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

(2) Actual income shall be calculated by using the income already received and any other income that can reasonably be anticipated in the calendar month.

(3) If the amount of income or date of receipt is uncertain, the portion of the income that is uncertain shall not be counted.

(4) In cases where the receipt of income is reasonably certain but the amount may fluctuate, the income shall be averaged.

(5) Averaging is used to determine a monthly calculation, when there is fluctuating income within the weekly, biweekly or monthly pay period and to achieve a uniform amount for projecting future income.

D. Counting income in the certification period:

(1) For the purposes of cash assistance eligibility and determination of benefit amount, income is money received by or available to the benefit group in each month of the certification period.

(2) Only income which is actually received, or can reasonably be expected to be received, is counted for financial eligibility and benefit calculation.

(3) The benefit group must take appropriate steps to apply for and receive income from any other source to which the group may potentially be entitled.

(4) A benefit group may be found ineligible for failing or refusing to apply for or pursue potential income or assets from other sources.

(5) A benefit group member who is 62 years of age or older must apply for and take all necessary steps to receive a reduced OASDI benefit from the SSA.

E. Income availability:

(1) The availability of income to the benefit group is determined by who must be included in the benefit group and whether income must be deemed available to the benefit group.

(2) The earned and unearned income of an individual who is not a mandatory benefit group member shall not be considered available to the benefit group.

(3) Income belongs to the person who gains it, either through the person's own efforts, as in the case of earnings, or as a benefit, as in the case of a beneficiary of SSA benefits.

(4) Unearned income, such as child support or social security survivor's benefits and other similar payments for a child, are considered as belonging to the benefit group in which the child is included.

(5) Alien sponsors: The gross income belonging to an individual who is the sponsor of an alien included in the cash assistance benefit group, and the income belonging to the sponsor's spouse, shall be counted in its entirety to determine the eligibility and benefit amount if the sponsor has executed an affidavit of support pursuant to Subsection 213-A of the Immigration and Nationality Act. The income of the alien sponsor and spouse shall

be counted until the sponsored alien achieves citizenship or can be credited with 40 qualifying quarters under title II of the federal Social Security Act.

F. Unavailable income: In some situations, individuals who are included in the benefit group, either in applicant or recipient status, have a legal right to income but do not have access to it. Such income is not counted as available income for purposes of cash assistance eligibility and benefit calculation.

G. Ineligible alien: The countable income belonging to an ineligible alien who is a mandatory benefit group member is deemed available to the benefit group. The countable income shall be prorated according to the size of the benefit group to determine the eligibility and benefit amount for the benefit group.

H. Income received less frequently than monthly:

The amount of gross income that is received less frequently than monthly is determined by dividing the total gross income by the number of months the income is intended to cover. This includes, but is not limited to, income from sharecropping, farming and self-employment. It also includes contract income as well as income of a tenured teacher who may not actually have a contract.

I. Contract income: A benefit group that derives its annual income in a period of less than one year shall have that income averaged over a twelve-month period, provided that the income is not earned on an hourly or piecework basis.

J. Using exact income: Exact income, rather than averaged income, shall be used if:

- (1) the benefit group has chosen not to average income;
- (2) income is from a source terminated in the month of application;
- (3) employment began in the application month and the income represents a partial month; or

(4) income is received more frequently than weekly.

K. Income projection for earned income:

(1) Income from the four-week period prior to the date of initial interview is used to project monthly income, provided that the income is expected to continue. If a determination is made that the prior income is not indicative of income anticipated to be received during the certification period, then income from a longer period of past time may be used. If the longer period is not indicative of income anticipated to be received, then verification of anticipated income shall be obtained from the income source.

(2) The methods described above may not give the most accurate estimate of monthly earnings due to unique circumstances that may occur. In such cases, the caseworker shall use whichever method provides the most accurate estimate of earnings.

(3) An income projection shall be considered valid for the certification period unless changes are made that affect eligibility or benefit amount.

L. Unearned income: For purposes of anticipating future income, unearned income from the four-week period prior to the date of interview shall be used, provided that the income is expected to continue.

M. Use of conversion factors: Whenever a full month's income is anticipated and is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

- (1) income received on a weekly basis is averaged and multiplied by 4.0;
- (2) income received on a biweekly basis is averaged and multiplied by 2.0;
- (3) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$0.50 or more are rounded up; amounts resulting in \$0.49 or lower are rounded down.

[8.106.500.9 NMAC - Rp, 8.106.500.9 NMAC 3/1/2025]

8.106.500.10 PAYMENTS TO ADULTS IN RESIDENTIAL CARE:

A. Conditions:
Subject to the availability of state funding for the program, a payment may be made to an individual who resides in a shelter care home. The individual must be a recipient of supplemental security income (SSI) under title XVI of the Social Security Act.

B. Licensing of the shelter care home: The shelter care home must be licensed pursuant to regulations of the New Mexico department of health.

C. Payment: A cash payment may be made to an SSI recipient when the recipient resides in a licensed shelter care home because the recipient needs help with personal care, such as bathing, dressing, eating or taking prescribed medication.

(1) The payment shall be allowed only if the SSI recipient resides in a residential shelter care facility that is licensed by the New Mexico department of health.

(2) The payment made to an SSI recipient living in a licensed residential shelter care facility is \$100 per month.
[8.106.500.10 NMAC - Rp,
8.106.500.10 NMAC 3/1/2025]

8.106.500.11 [RESERVED]

HISTORY OF 8.106.500 NMAC: [RESERVED]

History of Repealed Material:
8.106.500 NMAC, Eligibility Policy - General Information filed 6/17/2004, Repealed effective 3/1/2025.

Other: 8.106.500 NMAC, Eligibility Policy - General Information filed 6/17/2004, Replaced by 8.106.500 NMAC, Eligibility Policy - General Information effective 3/1/2025.

HEALTH CARE AUTHORITY INCOME SUPPORT DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS PART 631 HEAT AND EAT PROGRAM

8.106.631.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.106.631.1 NMAC - Rp,
8.106.631.1 NMAC 3/1/2025]

8.106.631.2 SCOPE: This rule applies to the general public.
[8.106.631.2 NMAC - Rp,
8.106.631.2 NMAC 3/1/2025]

8.106.631.3 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. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.106.631.3 NMAC - Rp,
8.106.631.3 NMAC 3/1/2025 ;
A,7/1/2024]

8.106.631.4 DURATION: Permanent.
[8.106.631.4 NMAC - Rp,
8.106.631.4 NMAC 3/1/2025]

8.106.631.5 EFFECTIVE DATE: March 1, 2025, unless a later date is cited at the end of a section.
[8.106.631.5 NMAC - Rp,
8.106.631.5 NMAC 3/1/2025]

8.106.631.6 OBJECTIVE: The objective of the New Mexico heat and eat program is to provide households with a cash payment to assist with energy expenses to households that do not pay heating or cooling expenses and do not receive LIHEAP but have an identifiable shelter cost. Payments

are credited to recipients through a state managed fund. In addition to the energy assistance payment households who received this payment will see an increase in their deduction amount used to determine their SNAP benefit allotment.

[8.106.631.6 NMAC - Rp,
8.106.631.6 NMAC 3/1/2025]

8.106.631.7 DEFINITIONS: [RESERVED]

8.106.631.8 PROGRAM ELIGIBILITY: Benefits shall be processed annually at the beginning of the federal fiscal year dependent on the availability of funding.

A. Limited to current SNAP recipients: no application is needed for an individual or groups of individuals who reside together that do not pay separate heating or cooling costs and do not receive the Heating and Cooling Standard Utility Allowance (HCSUA).

B. Household: Eligible household include those who:

(1) are receiving SNAP after being determined eligible as outlined in 8.139.110 NMAC;

(2) have gross income less than two hundred percent of the poverty level; and

(3) do not pay for any heating or cooling expenses, including the payment of a fee to use an air conditioner; and

(4) are not receiving the maximum SNAP benefit; and

(5) have an identifiable shelter cost.

C. Eligible households: will receive the HCSUA in accordance with 8.139.510.11NMAC.
[8.106.631.8 NMAC - Rp,
8.106.631.8 NMAC 3/1/2025]

8.106.631.9 BENEFIT DELIVERY:

A. Effective date: At the beginning of every federal fiscal year, October 1, a one-time energy assistance cash payment will be issued to eligible households

as defined in Subsection A of 8.106.631.9 NMAC.

B. Benefit issuance:

Heat and Eat benefits are issued through a direct deposit into a household's EBT account. EBT cards are issued and maintained as defined at 8.139.610 NMAC. A Heat and Eat participating household has a definite issuance date so that benefits are received on or about the same time annually.

C. Benefit Amount:

Dependent on the availability of state general fund a cash payment of no less than \$20 will be issued.

D. Eligible Uses

for Benefit: This Cash benefit is intended to help the household meet their heating or cooling needs. Please refer to 8.106.610.8 NMAC for uses of Cash benefit.

[8.106.631.9 NMAC - Rp, 8.106.631.9 NMAC 3/1/2025]

8.106.631.10 RECOUPMENT:

If the benefit is not used by the end of the federal fiscal year that the benefits was issued, September 30, the benefit will be recouped from the participants EBT card and placed back into the state general fund.

[8.106.631.10 NMAC - Rp, 8.106.631.10 NMAC 3/1/2025]

HISTORY OF 8. 106.631NMAC: [RESERVED]

History of Repealed Material:

8.106.631 NMAC - Heat and Eat Program filed 10/14/2020, Repealed effective 3/1/2025.

Other: 8.106.631 NMAC - Heat and Eat Program filed 10/14/2020, Replaced by 8.106.631 NMAC - Heat and Eat Program effective 3/1/2025.

HEALTH CARE AUTHORITY

INCOME SUPPORT DIVISION

This is an amendment to 8.102.500 NMAC, Section 8 effective 3/1/2025.

8.102.500.8 GENERAL REQUIREMENTS:

A. Need determination process: Eligibility for NMW, state funded qualified non-citizens, and EWP cash assistance based on need requires a finding that:

(1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

(2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;

(3) the countable resources owned by and available to the benefit group do not exceed the \$1,500 liquid and \$2,000 non-liquid resource limits;

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

B. Gross income limits: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

one person [~~\$1,033~~] \$1,067

two persons [~~\$1,397~~] \$1,448

three persons [~~\$1,761~~] \$1,829

four persons [~~\$2,125~~] \$2,210

five persons [~~\$2,490~~] \$2,592

six persons [~~\$2,853~~] \$2,972

seven persons [~~\$3,217~~] \$3,353

eight persons [~~\$3,582~~] \$3,735

add [~~\$365~~] \$382 for each additional person.

C. Eligibility for support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than one hundred percent of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

(1) one person [~~\$1,215~~] \$1,255

persons [~~\$1,644~~] \$1,704

(2) two persons [~~\$2,072~~] \$2,152

(3) three persons [~~\$2,500~~] \$2,600

(4) four persons [~~\$2,929~~] \$3,049

(5) five persons [~~\$3,357~~] \$3,497

(6) six persons [~~\$3,785~~] \$3,945

(7) seven persons [~~\$4,214~~] \$4,394

(8) eight persons [~~\$4,642~~] \$4,792

(9) add [~~\$429~~] \$449 for each additional person.

D. Standard of need:

(1) The standard of need is based on the number of participants included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the participant's share of benefit group supplies.

(3) The financial standard includes approximately \$112 per month for each participant in the benefit group.

(4) The standard of need for the NMW, state funded qualified non-citizens, and EWP cash assistance benefit group is:

one person \$327 (a)

two persons \$439 (b)

three persons \$550 (c)

four persons \$663 (d)

five persons	\$775	(e)
six persons	\$887	(f)
seven persons	\$999	(g)
eight persons	\$1,134	(h)
(i)		
add \$112 for each additional person.		

E. Special needs:
(1) Special clothing allowance: A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(a)
 For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b)
 The clothing allowance shall be allowed for each school-age child who is included in the NMW, TBP, state funded qualified non-citizens, or EWP cash assistance benefit group, subject to the availability of state or federal funds.

(c)
 The clothing allowance is not allowed in determining eligibility for NMW, TBP, state funded qualified non-citizens, EWP cash assistance, or wage subsidy.

(2) Layette:
 A one-time layette allowance of \$25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) Special circumstance: Dependent upon the availability of funds and in accordance with the federal act, the HCA secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance

program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

F. Non-inclusion of legal guardian in benefit group: Based on the availability of state and federal funds, the HCA may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group. [8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 7/1/2024; A/E 10/1/2024; A, 3/1/2025]

**HEALTH CARE
 AUTHORITY
 INCOME SUPPORT DIVISION**

This is an amendment to 8.139.100 NMAC, Section 7 effective 3/1/2025.

8.139.100.7 DEFINITIONS:

A. Definitions beginning with "A":
(1) Adequate notice: means a written notice sent by mail or electronically that includes a statement of the action HCA has taken or intends to take, reason for the action, household right to a fair hearing, name of the individual to contact for additional information, the availability of continued benefits liability of the household for any over-issuances received if hearing decision is adverse to the household. An adequate notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. In all cases, participants have 13 days from the mailing or electronic distribution date of the notice to request that benefits be restored to their previous level pending the outcome of an administrative hearing.

(2) Adjusted net income: means the household's gross monthly income less the standard deduction, earned income deduction, dependent care deduction and the shelter deduction. (Medical expenses are allowed for certain

eligible members as a deduction from their gross income.)
(3)

Application: means a request, on the appropriate ISD form, submitted in a written or electronic format with the signature of the applicant or on the applicant's behalf by an authorized representative, for assistance.

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

(5)
Authorized representative: means an individual designated by a household or responsible member to act on its behalf in applying for SNAP benefits, obtaining SNAP benefits, or using SNAP benefits to purchase food for the household. This can include a public or private, nonprofit organization or institution providing assistance, such as a treatment or rehabilitation center or shelter which acts on behalf of the resident applicant.

B. Definitions beginning with "B":
(1) Benefit month: means the month for which SNAP benefits have been issued. This term is synonymous with issuance month defined below.

(2) Beginning month: means the first month for which a household is certified after a lapse in certification of at least one calendar month. Beginning month and initial month are used interchangeably. A household is budgeted prospectively in a beginning month.

(3) Boarder: means an individual to whom a household furnishes lodging and meals for reasonable compensation. Such a person is not considered a member of the household for determining the SNAP benefit amount.

(4) Boarding house: means a commercial establishment, which offers meals and lodging for compensation with the intention of making a profit. The number of boarders residing in a boarding house is not used to

establish if a boarding house is a commercial enterprise.

(5) **Budget**

month: means the calendar month for which income and other circumstances of the household are determined in order to calculate the SNAP benefit amount. During the beginning month of application, prospective budgeting shall be used and therefore, the budget month and the issuance month are the same.

C. **Definitions**

beginning with “C”:

(1) **Capital**

gains: means proceeds from the sale of capital goods or equipment.

(2)

Categorical eligibility (CE): means a SNAP household that meets one of the following conditions:

(a)

Financial CE: Any SNAP household in which all members receive Title IV-A assistance (TANF), general assistance (GA), or supplemental security income (SSI) benefits is considered to be categorically eligible for SNAP benefits.

(b)

Broad-based CE: Any SNAP household, in good standing, in which at least one member is receiving a non-cash TANF/MOE funded benefit or service, and household income is below ~~one hundred sixty-five~~ two hundred percent FPG.

(3) **Cash**

assistance (CA) households: (also referred to as financial assistance) means households composed entirely of persons who receive CA payments. Cash assistance (CA) means any of the following programs authorized by the Social Security Act of 1935, as amended: old age assistance; temporary assistance to needy families (TANF); aid to the blind; aid to the permanently and totally disabled; and aid to the aged, blind or disabled. It also means general assistance (GA), cash payments financed by state or local funds made to adults with no children who have been determined disabled, or to children who live with an adult who is not related. CA households composed entirely of TANF, GA or SSI

recipients are categorically eligible for SNAP.

(4)

Certification: means the authorization of eligibility of a household and issuance of SNAP benefits.

(5)

Certification period: means the period assigned for which a household is eligible to receive SNAP benefits. The certification period shall conform to calendar months and includes the requirement for the completion of an interim report form in accordance with Subsection B of 8.139.120.9 NMAC.

(6) **Collateral**

contact: means an individual or agency designated by the household to provide information concerning eligibility.

(7)

Communal diner: means an individual 60 years of age or older who is not a resident of an institution or a boarding house, who is living alone or with a spouse, and elects to use SNAP benefits to purchase meals prepared for the elderly at a communal dining facility which has been authorized by USDA/FNS to accept SNAP benefits.

(8)

Communal dining facility: means a public or nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for SSI recipients, and their spouses; a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate state or local agency to offer meals at concession prices to elderly persons or SSI recipients and their spouses. Such establishments include a facility such as a senior citizen’s center, an apartment building occupied primarily by elderly persons, or any public or private nonprofit school (tax exempt) which prepares and serves meals for elderly persons.

(9)

Conversion factor: means the calculation used to convert income that is received on a weekly or biweekly basis to an anticipated monthly amount.

D. **Definitions**

beginning with “D”:

(1) **Date**

of application: means the date an application is received by the income support division offices during regular business hours. Applications that are dropped off or submitted electronically after regular business hours will be considered received as of the next business day.

(2) **Date**

of admission: means the date established by the United States citizenship and immigration services as the date a non-citizen (or sponsored non-citizen) was admitted for permanent residence.

(3) **Date of**

entry: means the date established by the United States citizenship and immigration services as the date a non-citizen (or sponsored non-citizen) was admitted for permanent residence.

(4) **Disability:**

means the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment.

(5) **Disabled**

member: see elderly or disabled member.

(6)

Documentation: means a written statement entered in the paper or electronic case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

(7) **Drug**

addiction or alcoholic treatment and rehabilitation program: means any drug addiction treatment or alcoholic treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center under part B of title XIX of the Public Health Service Act (42 U.S.C. 3004 et seq.)

<p>E. Definitions</p> <p>beginning with “E”:</p> <p>(1) Elderly or disabled member:</p> <p>(a) Elderly: means an individual 60 years or older.</p> <p>(b) Disabled: means a person who meets any of the following standards:</p> <p>(i) receives supplemental security income (SSI) under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act;</p> <p>(ii) receives federally or state administered supplemental benefits under Section 1616a of the Social Security Act, provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act;</p> <p>(iii) receives federally or state administered supplemental benefits under Section 211(a) of Pub. L. 93-66, supplemental security income benefits for essential persons;</p> <p>(iv) receives disability retirement benefits from a government agency (e.g. civil service, ERA, and PERA) because of a disability considered permanent under Section 221(i) of the Social Security Act;</p> <p>(v) is a veteran with a service-connected or non-service connected disability rated by the veterans administration (VA) as total or paid as total by the VA under title 38 of the United States Code;</p> <p>(vi) is a veteran considered by the VA to be in need of regular aid and attendance or permanently homebound under title 38 of the United States code;</p> <p>(vii) is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently homebound or a surviving child of a veteran</p>	<p>and considered by the VA to be permanently incapable of self-support under title 38 of the United States code;</p> <p>(viii) is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for service-connected death or pension benefits for a non-service-connected death under title 38 of the United States code and has a disability considered permanent under Section 221(i) of the Social Security Act (“entitled” as used in this definition refers to those veterans’ surviving spouses and surviving children who are receiving the compensation or pension benefits stated, or have been approved for such payments, but are not yet receiving them); or</p> <p>(ix) receives an annuity payment under Section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the railroad retirement board, or Section 2(a)(i)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under title XVI of the Social Security Act;</p> <p>(x) is a recipient of interim assistance benefits pending the receipt of supplemental security income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or a recipient of disability-based state general assistance benefits provided that the eligibility to receive any of these benefits is based upon disability or blindness criteria established by the state agency which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).</p> <p>(2) Eligible foods: means:</p> <p>(a) any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot-food products prepared for immediate consumption;</p>	<p>(b) seeds and plants to grow foods for the personal consumption of eligible households;</p> <p>(c) meals prepared and delivered by an authorized meal delivery service to households eligible to use SNAP benefits to purchase delivered meals, or meals served by an authorized communal dining facility for the elderly, for SSI households, or both, to households eligible to use SNAP benefits for communal dining;</p> <p>(d) meals prepared and served by a drug addict or alcoholic treatment and rehabilitation center to eligible households;</p> <p>(e) meals prepared and served by a group living arrangement facility to residents who are blind or disabled as found in the definition of “elderly or disabled member” contained in this section;</p> <p>(f) meals prepared and served by a shelter for battered women and children to its eligible residents; and</p> <p>(g) in the case of homeless SNAP households, meals prepared and served by an authorized public or private nonprofit establishment (e.g. soup kitchen, temporary shelter) approved by HCA that feeds homeless persons.</p> <p>(3) Encumbrance: means debt owed on property.</p> <p>(4) Equity value: means the fair market value of property, less any encumbrances owed on the property.</p> <p>(5) Excluded household members: means individuals residing within a household who are excluded when determining household size, the SNAP benefit amount or the appropriate maximum food stamp allotment (MFSA). These include ineligible non-citizens, individuals disqualified for failure to provide an SSN or to comply with the work requirements, and those disqualified for intentional program violation.</p>
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The resources and income (counted in whole or in part) of these individuals shall be considered available to the remaining household members.

(6) **Expedited services:** means the process by which households reporting little or no income or resources shall be provided an opportunity to participate in the FSP, no later than the seventh calendar day following the date the application was filed.

(7) **Expungement:** means the permanent deletion of SNAP benefits from an EBT account that is stale.

F. Definitions beginning with "F":

(1) **Fair hearing:** an administrative procedure during which a claimant or the claimant's representative may present a grievance to show why they believe an action or proposed action by HCA is incorrect or inaccurate.

(2) **Fair market value (FMV):** means the amount an item can be expected to sell for on the open market.

(3) **FNS:** means the food and nutrition service of the United States department of agriculture (USDA).

(4) **Food Stamp Act:** the Food and Nutrition Act of 2008, and subsequent amendments.

(5) **Fraud:** intentionally making a misrepresentation of, or failing to disclose, a material fact: with the knowledge that such a fact is material (necessary to determine initial/ongoing eligibility or benefit entitlement); and with the knowledge that the information is false; and with the intent that the information be acted upon (deceive/cheat); with reasonable reliance on the person who hears the information to accept it as the truth.

(6) **Full time employment:** means working 30 hours or more per week, or earning income equivalent to the federal minimum wage multiplied by 30 hours.

G. Definitions beginning with "G":

(1) **General assistance (GA) households:** means a household in which all members receive cash assistance financed by state or local funds.

(2) **Gross income:** means the total amount of income that a household is entitled to receive 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 household, 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.

(3) **Group living arrangements:** means a residential setting that serves no more than sixteen residents that is certified by DOH under regulations issued under Section 1616(e) of the Social Security Act, or under standards determined by the secretary to be comparable to standards implemented by appropriate state agencies under Section 1616(e) of the Social Security Act. To be eligible for SNAP benefits, a resident shall be living in a public or private non-profit group living arrangement and must be blind or disabled as defined in the definition of "elderly or disabled member" set forth at Items (i) through (x) of Subparagraph (b) of Paragraph (25) of Subsection A of 8.139.100.7 NMAC.

(4) **Guaranteed basic income:** Guaranteed basic income provides an individual or household a one time or recurring cash payment or transfer funded from a public or private source intended to support the basic needs of individuals or households by reducing poverty, promoting economic mobility, or increasing the financial stability.

H. Definitions beginning with "H":

(1) **Head of household:** the household is the basic assistance unit for the SNAP

program. The household has the right to select the head of household in accordance with CFR 273.1 (d).

(2) **Homeless individual:** means an individual who lacks a fixed and regular nighttime residence, or an individual whose primary nighttime residence is:

(a) a supervised shelter providing temporary accommodations (such as a welfare hotel or congregate shelter);

(b) a halfway house or similar institution providing temporary residence for individuals intended to be institutionalized;

(c) a temporary accommodation for no more than 90 days in the residence of another individual, beginning on the date the individual moves into the temporary residence; or

(d) a place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (e.g. a hallway, a bus station, a lobby or similar places).

(3) **Homeless meal provider:** means a public or private nonprofit establishment, (e.g., soup kitchen, temporary shelter), approved by an appropriate state agency, that feeds homeless persons.

I. Definitions beginning with "I":

(1) **Immigrant:** means a lawfully admitted non-citizen who entered the U.S. with the expressed intention of establishing permanent residence as defined in the federal act.

(2) **Ineligible non-citizen:** means an individual who does not meet the eligible non-citizen requirements or who is not admitted for permanent residence.

(3) **Income:** means all monies received by the household from any source, excluding only the items specified by law or regulation. Income is also defined as any monetary gain or benefit to the household.

(4) **Income and eligibility verification system:** means a system of information

acquisition and exchange for purposes of income and eligibility verification which meets the requirements of Section 1137 of the Social Security Act, referred to as IEVS.

(5) **Initial**

month: means the first month for which a first-time household is certified for participation in SNAP. An initial month is also a month in which a household is certified following a break in participation of one calendar month or longer. For migrant or seasonal farm worker households, an initial month shall only be considered if there has been an interruption in certification of at least one calendar month.

(6) **Inquiry:**

means a request for information about eligibility requirements for a cash, medical, or food assistance program that is not an application (although the inquiry may be followed by an application).

(7) **Institution**

of higher education: means certain college-level institutions, such as vocational schools, trade schools, and career colleges that award academic degrees or professional certifications.

(8) **Institution**

of post-secondary education: means any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or provides a program of training to prepare students for gainful employment.

(9)

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

(10) **Issuance**

month: means the calendar month for which SNAP is issued. In prospective budgeting, the budget

and issuance months are the same. In retrospective budgeting, the issuance month follows the budget month.

J. Definitions

beginning with “J”: [RESERVED]

K. Definitions

beginning with “K”: [RESERVED]

L. Definitions

beginning with “L”: **Low-income household** means a household whose annual income does not exceed one hundred and twenty-five percent of the office of management and budget poverty guideline.

M. Definitions

beginning with “M”:

(1)

Maintenance of effort (MOE): means the amount of general funds the state agency must expend annually on the four purposes of temporary assistance for needy families (TANF) to meet a minimum expenditure requirement based on a state’s historical assistance to families with dependent children (AFDC) expenditures.

(2) **Maximum**

food stamp allotment (MFSA): means the cost of the diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child six through eight, and a child nine through 11 years of age. The cost of such a diet shall be the basis for uniform SNAP benefit amounts for all households, regardless of their actual composition. In order to develop maximum SNAP benefit amounts, the USDA makes adjustments for household size taking into account the economies of scale and other adjustments as required by law. The MFSA is used to determine if a boarder is paying reasonable compensation for services. The maximum SNAP allotment (MFSA) was previously named the thrifty food plan (TFP).

(3)

Meal delivery service: means a political subdivision, a private nonprofit organization, or a private establishment with which a state or local agency has contracted for the preparation and delivery of meals at concession prices to elderly persons, and their spouses, and to the

physically or mentally handicapped, and to persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

(4) **Medicaid:**

medical assistance under title XIX of the Social Security Act, as amended.

(5) **Migrant/**

migrant household: means an individual who travels away from home on a regular basis with a group of laborers to seek employment in an agriculturally related activity. A migrant household is a group that travels for this purpose.

(6) **Mixed**

households: means those households in which some but not all of the members receive cash assistance benefits.

N. Definitions

beginning with “N”:

(1) **Net**

monthly income: means gross nonexempt income minus the allowable deductions. It is the income figure used to determine eligibility and SNAP benefit amount.

(2) **Non-**

cash assistance (NCA) households: means any household, which does not meet the definition of a cash assistance household, including households composed of both cash assistance and NCA members (mixed household). Same applies to non-financial households (NFA).

(3) **Non-cash**

TANF/MOE benefit or service: means non-cash TANF/MOE benefit or services include programs or services that do not provide cash to recipients, but are funded by the TANF program, either by the federal TANF block grant or the state MOE share. These services may include transportation, childcare, counseling programs, parenting programs, pamphlets or referrals to other TANF/MOE-funded services.

(4)

Non-financial assistance (NFA) households: means any household, which does not meet the definition of a financial assistance household, including households composed of both cash assistance and NFA

members (mixed household). NFA has the same meaning as non-cash households (NCA).

(5) Non

household members: means persons residing with a household who are specifically excluded by regulation from being included in the household certification, and whose income and resources are excluded. No household members include roomers, boarders, attendants, and ineligible students. Included in this classification are institutionalized household members such as children attending school away from home and members who are hospitalized or in a nursing home.

(6) Notice:

means written correspondence that is generated by any method including handwritten, typed or electronic, delivered to the client or an authorized representative by hand, U.S. mail, professional delivery or by any electronic means. The term “written notice” and “notice” are used interchangeably.

(7) Notice of

adverse action (NOAA): means a notice informing the household that an action is being taken by the HCA that adversely affects eligibility or the amount of benefits a household receives, including withholding, suspending, reducing or terminating benefits. The NOAA shall be issued to the household before taking the adverse action. Benefits will not be reduced until 13 days from the date on the adverse action. 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 period.

O. Definitions

beginning with “O”: **Over-issuance** means the amount by which SNAP benefits issued to a household exceed the amount the household was eligible to receive.

P. Definitions

beginning with “P”:

(1) Period

of intended use: means the month in which the benefits are issued if issued before the 20th of the month. For benefits issued after the 20th of the month, the period of intended

use is the rest of the month and the following month.

(2) Principal

wage earner: means the household member with the greatest amount of earned income in the two months preceding a determination that a program rule has been violated. This applies only if the employment involves 20 hours or more a week or pays wages equivalent to the federal minimum wage multiplied by 20 hours. In making this evaluation, the entire household membership shall be considered, even those who are excluded or disqualified but whose income must be counted for eligibility and benefit amount determination. For purposes of determining noncompliance with the SNAP work requirements, including employment and training components, voluntary quit, and work-fare, the head of household is the principal wage earner unless the household has selected an adult parent of children (of any age) or an adult with parental control over children (under age 18) as the designated head of household as agreed upon by all adult members of the household. A person of any age shall not be considered the principal wage earner if the person is living with a parent or person fulfilling the role of parent or the parent or parent-substitute is:

(a)

registered for employment;

(b)

exempt because of Title IV compliance;

(c)

in receipt of UCB or is registered as part of the UCB process; or

(d)

employed or self-employed a minimum of 30 hours a week or receiving income at the federal minimum hourly rate multiplied by 30 hours.

(3)

Prospective budgeting: means the computation of a household’s eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

Q. Definitions

beginning with “Q”: **Quality control (QC)** means the federal mandate, as part of the performance reporting system whereby each state agency is required to review a sample of active cases for eligibility and benefit issuance, and to review a sample of negative cases for correct application of policy. The objectives are to determine a state’s compliance with the Food Stamp Act and CFR regulations, and to establish the basis for a state’s error rate, corrective action to avoid future errors, and liability for errors in excess of national standards, or eligibility for enhanced federal funding if the error rate is below national standards.

R. Definitions

beginning with “R”:

(1) Real

property: means land, buildings, and whatever is built on or affixed to the land.

(2) Recipient:

means a person receiving SNAP benefits. Recipient is the same as participant.

(3) Refugee:

means a lawfully admitted individual granted conditional entry into the U.S.

(4)

Reasonable compensation: means a boarder payment amount that equals or exceeds the MFSA for the number of boarders.

(5) Retail

food store: means:

(a)

an establishment or recognized authority of an establishment, or a house-to-house trade route, whose eligible food sales volume, as determined by visual inspection, sales records, purchase records, or other inventory or accounting record keeping methods that are customary or reasonable in the retail food industry, is more than fifty percent staple food items for home preparation and consumption;

(b)

public or private communal dining facilities and meal delivery services; private nonprofit drug addict or alcoholic treatment and rehabilitation programs; publicly operated community mental health centers

which conduct residential programs for drug addicts or alcoholics;

(c) public or private nonprofit group living arrangements, or public or private nonprofit shelters for battered women and children, or public or private nonprofit establishments, approved by HCA, or a local agency, that feed homeless persons;

(d) any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; a farmer’s market.

(6) **Retrospective budgeting:** means the computation of a household’s benefits for an issuance month based on actual income and circumstances that existed in the previous month, the ‘budget’ month.

S. Definitions beginning with “S”:

(1) **Self-employed:** means an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income. Self-employed individuals are not eligible to draw UCB by virtue of their job efforts.

(2) **Shelter for battered persons:** means a public or private nonprofit residential facility that serves battered persons. 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 persons.

(3) **Simplified reporting:** is the reporting requirement for households that receive SNAP benefits.

(4) **Sponsor:** means a person who executed an affidavit(s) of support or similar agreement on behalf of a non-citizen as a condition of the non-citizen’s entry or admission to the United States as a permanent resident.

(5) **Sponsored non-citizen:** means a non-citizen lawfully admitted for permanent residence in the United States as an immigrant, as defined in Subsection 101(a)(15) and Subsection 101(a)(2)

of the Immigration and Nationality Act.

(6) **Spouse:** means either of two individuals who:

(a) would be defined as married to each other under applicable state law; or

(b) are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

(7) **Stale:** means EBT accounts which have not been accessed or had any withdrawal activity by the household for 90 days from the most recent date of withdrawal.

(8) **Standard utility allowance (SUA):** means an average utility amount used year round that includes the actual expense of heating and cooling fuel, electricity (apart from heating or cooling), the basic service fee for one telephone, water, sewerage, and garbage and trash collection. This amount is adjusted annually to reflect changes in expenses. A cooling expense is a verifiable utility expense relating to the operation of air conditioning.

(9) **State wage information collection agency:** means for New Mexico the department of workforce solutions, employment security division (ESD) which administers the state employment compensation law and provides a quarterly report of employment related income and eligibility data.

(10) **Striker:** means anyone involved in a strike or concerted work stoppage by employees (including stoppage due to the expiration of a collective bargaining agreement) and any concerted slow down or other concerted interruption of operations by employees.

(11) **Student:** means an individual attending at least half time, as defined by the institution any kindergarten, preschool, grade school, high school, vocational school, technical school, training program, college, or university.

(12) **Supplemental nutrition assistance program (SNAP):** The Food and Nutrition Act of 2008 changed the federal name of the food stamp program to the supplemental nutrition assistance program. SNAP is synonymous with the food stamp program.

(13) **Supplemental nutrition assistance program trafficking:** means:

(a) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via electronic benefit transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;

(b) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in Section 802 of title 21, United States Code, for SNAP benefits;

(c) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;

(d) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or

(e) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

(14) **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; or

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

(c)
Section 212(a) of P.L. 93-66.

(15) **SSI household:** means a household in which all members are applicants or recipients of SSI. An SSI household may also apply for SNAP through a social security office. The application must be forwarded to the appropriate SNAP (ISD) office for processing. SSI households are categorically eligible.

(16) **Supplementary unemployment benefits (SUB):** part of the guaranteed annual wage provisions in the auto industry whereby the company supplements state UCB to insure that laid off workers receive a guaranteed amount of income during the layoff period.

T. **Definitions beginning with "T":**

(1) **Thrifty food plan (TFP):** see maximum SNAP allotment.

(2) **Transitional food stamps:** an extension of SNAP benefits up to five months to certain households whose cash assistance benefits have been terminated.

(3) **Transitional housing:** means housing for which the purpose is to facilitate the movement of homeless individuals and families to permanent housing within 24 months, or such longer period as is determined necessary. All types of housing meant to be transitional should be considered as such for the purpose of determining exclusion. The definition does not exclude specific types of housing and does not require the presence of cooking facilities in a dwelling.

U. **Definitions beginning with "U":**

(1) **Unclear information:** Unclear information is information that is not verified, or information that is verified but ISD

needs additional information to act on the change.

(2) **Universal basic income:** Universal basic income is a government-guaranteed program that provides a modest cash income at regular intervals (e.g., each month or year) to every individual or household to meet the basic needs.

V. **Definitions beginning with "V":**

(1) **Vehicles:** means a mode of transportation for the conveyance of passengers to or from employment, daily living, or for the transportation of goods. Boats, trailers and mobile homes shall not be considered vehicles, for purposes of SNAP.

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

W. **Definitions beginning with "W":**
[RESERVED]

X. **Definitions beginning with "X":** [RESERVED]

Y. **Definitions beginning with "Y":** [RESERVED]

Z. **Definitions beginning with "Z":** [RESERVED]
[8.139.100.7 NMAC - Rp, 8.130.100.7 NMAC 7/16/2024; A, 3/1/2025]

HEALTH CARE AUTHORITY INCOME SUPPORT DIVISION

This is an amendment to 8.139.120 NMAC Section 9, effective 3/1/2025.

8.139.120.9 SIMPLIFIED REPORTING: All households will be assigned to simplified reporting (SR). Households must submit an interim report once every six or twelve months, depending on their certification period. Households assigned to a 12-month certification period have an interim report form due at six months. Households assigned to a 24-month certification period have an interim report form due at 12 months.

A. **Household Certification Periods:** A household that is approved for SNAP benefits shall be assigned the longest certification period possible in accordance with the household's circumstances. Households wherein all adult members are elderly or disabled, with no earned income, will be assigned a 24-month certification period. All other households will be assigned a 12-month certification period.

B. **Household responsibility to turn in interim report form:**

(1) A household assigned to a 12-month certification period shall be required to file an interim report form no later than the 10th day of the sixth month of the certification period in order to receive uninterrupted benefits.

(2) A household assigned to a 24-month certification period shall be required to file an interim report form no later than the 10th day of the 12-month of the certification period in order to receive uninterrupted benefits.

C. **Information that ISD is responsible to provide to households regarding simplified reporting:** At the initial certification and at recertification, ISD shall provide the household with the following:

(1) a written and oral explanation of how simplified reporting works;

(2) a written and oral explanation of the reporting requirements including:

(a) what needs to be reported and verified;

(b) when the interim report form is due;

(c) how to obtain assistance; and

(d) the consequences of failing to file an interim report form.

(3) special assistance in completing and filing interim reports to households whose adult members are all either mentally or physically handicapped or are non-

English speaking or otherwise lacking in reading and writing skills such that they cannot complete and file the required report; and

(4) a toll-free number which the household may call to ask questions or to obtain help in completing the interim report.

D. Information

requirements for the interim report form: The interim report form will be written in clear, simple language, include information on the availability of a bilingual version of the document described in 7 CFR 272.4(b), and shall specify:

(1) the deadline date to submit the form to ISD to ensure uninterrupted benefits if the household is determined eligible;

(2) the consequences of submitting a late or incomplete form including whether ISD shall delay benefits if the form is not received by the due date;

(3) verification the household must submit with the form;

(4) a statement to be signed by a member of the household indicating their understanding that the information provided may result in a reduction or termination of benefits;

(5) where to call for help in completing the form;

(6) a statement explaining that ISD will not change certain deductions until the household's next recertification and identify those deductions if ISD has chosen to disregard reported changes that affect certain deductions in accordance with paragraph (c) of section 7 CFR 273.12;

(7) a brief explanation of fraud penalties; and

(8) how the agency may use social security numbers.

E. The following information, along with required verification, must be returned to ISD with the interim report form:

(1) a change of more than \$125 in the amount of unearned income, except changes relating to public assistance (PA) or

general assistance (GA) programs when jointly processed with SNAP cases;

(2) a change in the source of income, including starting or stopping a job or changing jobs, if the change in employment is accompanied by a change in income;

(3) changes in either:

(a) the wage rate or salary or a change in full-time or part-time employment status as defined in Subsection C of 8.102.461.11 NMAC, provided the household is certified for no more than six months; or

(b) a change in the amount earned of more than one hundred twenty-five dollars (\$125) a month from the amount last used to calculate the household's allotment, provided the household is certified for no more than six months.

(4) all changes in household composition, such as the addition or loss of a household member;

(5) changes in residence and the resulting shelter costs;

(6) the acquisition of a licensed vehicle, unless the household is categorically eligible as defined at Sections 8 and 9 of 8.139.420 NMAC or the vehicle is not fully excludable under 8.139.527 NMAC;

(7) when cash on hand, stocks, bonds and money in a bank account or savings institution reach or exceed the resource limit set at 8.139.510.8 NMAC, unless the household is categorically eligible as defined at 8.139.420.8 and 8.139.420.9 NMAC;

(8) changes in the legal obligation to pay child support;

(9) for able-bodied adults subject to the time limit of 7 CFR 273.24, any changes in work hours that bring an individual below 20 hours per week, averaged monthly, as defined in 7 CFR 273.24(a)(1)(i); and

(10) In accordance with 7 CFR 273.12(a)

(2), SNAP households must report substantial lottery and gambling winnings;

(a) if the substantial lottery and gambling winning is won by multiple beneficiaries and is over the elderly and disabled resource standard, each SNAP member's share must be reported;

(b) if the winning is less than the elderly and disabled resource standard it does not need to be reported;

F. ISD's responsibility with interim report forms:

(1) Interim report form is not received: If a household fails to file a report by the specific filing date, defined in Subsection B of 8.139.120.9 NMAC, ISD will send a notice to the household advising of the missing report no later than 10 calendar days from the date the report should have been submitted. If the household does not respond to the notice, the household's participation shall be terminated.

(2) Incomplete interim report form is received:

(a) An interim report form that is not signed shall be returned to the household for a signature. The household:

(i) shall be notified that the form is incomplete;

(ii) what needs to be completed to complete the interim report form; and

(iii) shall be given 10 calendar days to provide the signed interim report form to be reviewed for completeness.

(b) An interim report form that is incomplete because required verification is not provided shall not be returned to the household. The household:

(i) shall be notified that the form is incomplete;

(ii) what information must be provided to complete the interim report form; and

(iii) shall be given 10 calendar days to provide the verification to process the interim report form.

(3) Complete interim report form is received:

(a) A form that is complete and all verifications are provided, shall be processed within 10 calendar days of receipt.

(b) A form that is complete, and all verifications are provided except for verification of an allowable deduction, shall be processed, unless the verification is otherwise questionable, in accordance with 8.100.130.12 NMAC. The household:

(i) shall be notified that verification is questionable; and

(ii) shall be given 10 calendar days to provide the verification to process the allowable deduction.

(c) A deduction that is verified within the month the interim report form is due shall be processed as part of the interim report form.

(d) A deduction that is verified in the month after the interim report form is due shall be processed as a change reported by the household.

(e) If the household files a timely and complete report resulting in reduction or termination of benefits, ISD shall send a notice of case action. The notice must be issued so that the household will receive it no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, ISD will not terminate the household, but will instead determine the household's benefits excluding the deduction from the benefit calculation.

G. Changes that must be reported at any time during certification period: Households must report changes no later than 10 days from the end of the calendar month in which the change occurred, provided

that the household has at least 10 calendar days within which to report the change. If there are not 10 days remaining in the month, the household must report within 10 days from the date the work hours fall below 20 hours per week, averaged monthly or when income exceeding the gross federal poverty limit as mentioned below is first received. The interim report form is the sole reporting requirement for any information that is required to be reported on the form, except that a household must report at any time during the certification period:

(1) ~~[the household must report when its monthly gross income exceeds one hundred thirty percent of poverty level. A categorically eligible household defined in accordance with 8.139.420.8 NMAC, must report when its monthly gross income exceeds one hundred sixty-five percent of poverty level. The household shall use the monthly gross income limit for the household size that existed at the time of certification or recertification regardless of any subsequent changes to its household size; and] the household must report when its monthly gross income exceeds one hundred thirty percent of the poverty level. If the household was last certified with monthly gross income which exceeds one hundred thirty percent of the poverty level, and the household is a categorically eligible household defined in accordance with 8.139.420.8 NMAC, the requirement is to report any additional changes to their monthly gross income at their next interim report or recertification; and~~

(2) able-bodied adults subject to the time limit in accordance with 7 CFR 273.24 shall report whenever their work hours fall below 20 hours per week, averaged monthly; and

(3) in accordance with 7 CFR 273.12(a) (2), SNAP households must report substantial lottery and gambling winnings within 10 days of the end of the month in which the household received the winnings.

(a) if the substantial lottery and gambling winning is won by multiple beneficiaries and is over the elderly and disabled resource standard, each SNAP member's share must be reported.

(b) if the winning is less than the elderly and disabled resource standard it does not need to be reported.

H. Action on changes reported outside of the interim report form: In addition to changes that must be reported in accordance with Subsection G of 8.139.120.9 NMAC, ISD must act on changes in between interim report forms, if it would increase the household's benefits. ISD shall not act on changes that would result in a decrease in the household's benefits unless:

(1) The household has voluntarily requested that its case be closed.

(2) ISD has information about the household's circumstances considered verified upon receipt. Verified upon receipt is defined:

(a) information is not questionable; and

(b) the provider of the information is the primary source of information; or

(c) the recipient's attestation exactly matches the information received from a third party.

(3) A household member has been identified as a fleeing felon or probation violator in accordance with 7 CFR 273.11(n);

(4) There has been a change in the household's cash grant, or where cash and SNAP cases are jointly processed in accordance with 7 CFR 273.2(j)(2).

I. Responsibilities on reported changes outside of the interim report form: When a household reports a change, ISD shall take action to determine the household's eligibility or SNAP benefit amount within 10 working days of the date the change is reported.

(1) During the certification period, action shall not be taken on changes to medical expenses of households eligible for the medical expense deduction which ISD learns of from a source other than the household and which, in order to take action, requires ISD to contact the household for verification. ISD shall act only on those changes in medical expenses that it learns about from a source other than the household, if those changes are verified upon receipt and do not necessitate contact with the household.

(2) Decreased or termination of benefits: For reported and verified changes that result in a decrease or termination of household benefits, ISD shall act on the change as follows:

(a) Issue a notice of adverse action within 10 calendar days of the date the change was reported and verified unless one of the exemptions to the notice of adverse action in 7 CFR 273.13 (a)(3) or (b) applies.

(b) When a notice of adverse action is used, the decrease in the benefit level shall be made effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested.

(c) When a notice of adverse action is not used due to one of the exemptions in 7 CFR 273.13 (a)(3) or (b), the decrease shall be made effective no later than the month following the change. Verification which is required by 7 CFR 273.2(f) must be obtained prior to recertification.

(3) Increased benefits: For reported and verified changes that result in an increase of household benefits, ISD shall act on the change as follows:

(a) For changes which result in an increase in a household's benefits, other than changes described in Paragraph (b) of this section, ISD shall make the change effective no

later than the first allotment issued 10 calendar days after the date the change was reported to ISD.

(b) For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of \$50 or more in the household's gross monthly income, ISD shall make the change effective not later than the first allotment issued 10 calendar days after the date the change was reported.

(i) In no event shall these changes take effect any later than the month following the month in which the change is reported.

(ii) If the change is reported after the last day to make changes and it is too late for ISD to adjust the following month's allotment, ISD shall issue a supplement or otherwise provide an opportunity for the household to obtain the increase in benefits by the 10th day of the following month, or the household's normal issuance cycle in that month, whichever is later.

(4) No change in SNAP benefit amount: When a reported change has no effect on the SNAP benefit amount, ISD shall document the change in the case file and notify the household of the receipt of the report.

(5) Providing verification: The household shall be allowed 10 calendar days from the date a change is reported to provide verification, if necessary. If verification is provided at the time a change is reported or by the deadline date, the increase in benefits shall be effective in accordance with (a) and (b) above. If the household fails to provide the verification by the deadline date, but does provide it at a later date, the increase shall be effective in the month following the month the verification is provided. If the household fails to provide necessary verification, its' SNAP benefit amount shall revert to the original benefit amount.

J. Resolving unclear information:

(1) During the certification period, ISD may obtain information about changes in a household's circumstances from which ISD cannot readily determine the effect of the change on the household's benefit amount. The information may be received from a third party or from the household itself. ISD must pursue clarification and verification of household circumstances using the following procedure if unclear information received outside the periodic report is:

(a) information fewer than 60 days old relative to the current month of participation; and,

(b) if accurate, would have been required to be reported under simplified reporting rules, in accordance with 8.139.120.9 NMAC.

(c) ISD must pursue clarification and verification of household circumstances in accordance with the process outlined in Subsection B of 8.100.130.12 NMAC, for any unclear information that appears to present significantly conflicting information from that used by ISD, at the time of certification.

(2) Unclear information resulting from certain data matches:

(a) if the HCA receives match information from a trusted data source as described in 7 CFR 272.13 or 7 CFR 272.14, ISD shall send a notice in accordance with Subsection B of 8.100.130.12 NMAC in accordance with 7 CFR 272.13(b)(4) and 7 CFR 272.14 (c)(4). The notices must clearly explain what information is needed from the household and the consequences of failing to respond to the notice.

(b) if the household fails to respond to the notice or does respond but refuses to provide sufficient information to clarify its circumstances, ISD shall remove the individual and the individual's income from the

household and adjust benefits accordingly. As appropriate, ISD shall issue a notice of adverse action.

K. Failure to report changes: If ISD discovers that the household failed to report a change as required, ISD shall evaluate the change to determine whether the household received benefits to which it was not entitled or if the household is entitled to an increased benefit amount.

(1) Decreased benefit amount: After verifying the change, ISD shall initiate a claim against the household for any month in which the household was over issued SNAP benefits. The first month of the over issuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced. No claim shall be established because of a change in circumstances that a household is not required to report in accordance with Subsection G of 8.139.120.9 NMAC above.

(2) Increased benefit amount: When a household fails to make a timely report of a change which will result in an increased SNAP benefit amount, the household is not entitled to a supplement for any month prior to and including the month in which the change was reported. The household is entitled to an increased benefit amount effective no later than the first benefit amount issued 10 calendar days after the date the change was reported.

[8.139.120.9 NMAC - Rp 8.139.120.9 NMAC, 7/16/2024; A, 3/1/2025]

**HEALTH CARE
AUTHORITY
INCOME SUPPORT DIVISION**

This is an amendment to 8.139.400 NMAC Section 8, effective 3/1/2025.

8.139.400.8 BASIS FOR DEFINING GROUP (HOUSEHOLD COMPOSITION):

A. Households: The basic assistance unit of the food stamp program is the household. A household is composed of an individual or a group of individuals who customarily purchase and prepare meals together for home consumption. There can be more than one household living in one place.

B. Verification of information:

(1) Identity: It is mandatory that the applicant's identity be verified. Identity may be established through readily available documentary evidence, or, if this is not possible, through a collateral contact or home visit. Acceptable documentary evidence includes, but is not limited to, driver's license; work or school ID; school records; ID for health benefits or for another assistance or social services program; voter registration card; wage stubs or marriage certificate. Any document that reasonably establishes the applicant's identity must be accepted. No requirement for a specific type of document, such as a birth certificate, may be imposed.

(2) Household composition: Information regarding household composition must be verified before certification, recertification, or when a change is reported. If household size or composition becomes questionable, the income support specialist (ISS) must request verification. Findings must be documented in the case file.

C. Household composition: A food stamp household may be composed of any of the following:

(1) an individual living alone;

(2) an individual living with others who customarily purchases food and prepares meals for home consumption separate and apart from the others;

(3) a group of individuals who live together and who customarily purchase food and prepare meals together for home consumption;

(4) an individual 60 years of age or older (and the spouse of such individual) who lives with others and cannot purchase and prepare food because they suffer from a disability considered permanent under the Social Security Act or suffers from a non disease-related, severe, permanent disability; the income of the others with whom such an individual resides (excluding the income of the individual and spouse) cannot exceed [~~one hundred sixty-five~~] **two hundred** percent of the poverty line [(Subsection E of 8.139.500.8 NMAC)] (8.139.500.8 NMAC);

(5) separate status may be granted on a case-by-case basis to other individuals or groups of individuals who have customarily purchased and prepared food apart from the individual(s) with whom they are now living. [8.139.400.8 NMAC - Rp 8.139.400.8 NMAC, 7/16/2024; A, 3/1/2025]

**HEALTH CARE
AUTHORITY
INCOME SUPPORT DIVISION**

This is an amendment to 8.139.420 NMAC, Section 8, effective 3/1/2025.

8.139.420.8 CATEGORICAL ELIGIBILITY (CE):

All members of a food stamp household must maintain CE status for the household to be considered CE. Categorically eligible one and two person households are entitled to the minimum food stamp benefit amount, except in an initial month if the prorated benefit is less than ten dollars (\$10).

A. Determining CE: Households may be CE by receiving financial assistance or by receiving a non-cash TANF/MOE funded benefit or service, known as broad-based CE.

(1) Financial assistance/SSI CE: A food stamp household is considered CE for the entire month when all of its members receive or has been determined

eligible to receive any combination of the benefits or services from the following:

- (a) financial assistance;
- (b) financial, in-kind benefits, or services funded either under Title IV-A of the Social Security Act or by the state as part of the TANF maintenance of effort;
- (c) SSI under Section 1619(a) or 1619(b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)).

(2) **Broad-based CE due to receiving a non-cash TANF/MOE funded benefit or service:** A food stamp household is considered to be a broad-based CE household for the month of application and the entire certification period when the household's gross income is less than [~~one hundred sixty-five~~] two hundred percent FPG and the household has received a non-cash TANF/MOE funded benefit or service.

(3) **Households not entitled to CE:** A household shall not be considered CE if:

- (a) any member is disqualified for an IPV;
- (b) any member is disqualified for failure to comply with work registration or E&T requirements, including voluntarily quitting a job or reducing employment hours without good cause;
- (c) any member is disqualified because of fleeing felon status or parole/probation violations;
- (d) the household is institutionalized;
- (e) the household refuses to cooperate in providing information that is necessary to determine eligibility;
- (f) households that lose eligibility because an individual member received substantial lottery or gambling winnings will remain ineligible until they meet the income

and resource limits detailed in 7 CFR 273.8 and 273.9. The next time such a household reapplies and is certified for SNAP after losing eligibility under this rule, the household would not be considered categorically eligible. This requirement is not permanent; it applies only to the first time a household is certified under regular SNAP rules following the loss of eligibility for substantial lottery and gambling winnings.

(4) Households may be CE if they contain non-household members such as ineligible students, ineligible non-citizens, ABAWDs who are ineligible due to time limits.

B. Eligibility factors for CE households: All CE households are subject to food stamp eligibility requirements, including, but not limited to, verification of household composition, if questionable; benefit determination (income and deductions); disqualification for any reason; claims recovery and restored benefits; notices and fair hearings; and all reporting requirements.

(1) Financial assistance/SSI households: Households entitled to CE because of receipt of financial assistance or SSI do not have to provide verification of the following eligibility factors:

- (a) resources;
- (b) social security number;
- (c) sponsored non-citizen information; and
- (d) residency.

(2) Broad-based households: Households entitled to CE because they received a non-cash TANF/MOE funded benefit or service do not have to verify resources.

C. Case management for all CE households:

(1) Applicant households: Caseworkers shall postpone denying a potentially CE household until the 30th day to allow financial assistance or SSI benefit

approval. If within 30 days following the denial date, the caseworker becomes aware of, approval which makes the household CE benefits shall be paid using the original application and any other information which has become available since that time.

(2) Responsibility to report changes: CE households subject to simplified or regular reporting must report changes in accordance with 8.139.120 NMAC.

(3) Action on changes to CE status: When a household reports a change or the HCA becomes aware of a change, the caseworker shall take action to determine if the household is still entitled to continue CE.

(a) Financial assistance: When the household reports a loss or the HCA becomes aware of a loss of SSI or financial assistance, the household should be evaluated for broad-based CE.

(b) Broad-based CE: The caseworker shall take action to determine if the household still meets the criteria for broad-based CE status per Paragraph (2) of Subsection A above. Should the reported change result in a loss of broad-based CE the household will be notified in writing. Any household no longer entitled to broad-based CE status may still participate in the food stamp program and are subject to all eligibility requirements including resource and reduced income limits. [8.139.420.8 NMAC - Rp 8.138.420.8 NMAC, 7/16/2024; A, 3/1/2025]

**HEALTH CARE
AUTHORITY
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.312.2 NMAC, Sections 7, 8, 10, 11, 13, 15, 16, 18, 19, 23, 24 and 25, effective 3/1/2025.

8.312.2.7 DEFINITIONS:
A. "Authorized representative" means the individual designated to represent and act

on the claimant’s behalf. The eligible recipient or managed care organization (MCO) member’s authorized representative must provide formal documentation authorizing the named individual or individuals to access the identified case information for a specified purpose and time frame. An authorized representative may be an attorney representing a person or household, a person acting under the authority of a valid power of attorney, a guardian ad litem, or any other individual or individuals designated in writing by the eligible recipient or MCO member.

B. “Designee” means a state agency or an institution MAD has designated to be responsible for:

(1) conducting a preadmission screening and annual resident review (PASRR) level 1 screening to identify if a medical assistance program (MAP) eligible recipient or a MCO member has a mental illness or an intellectual disability; or

(2) conducting a PASRR level 2 evaluation.

C. ~~“DOH- DDSB”~~ “HCA DDSB” means the developmental disabilities support division of the ~~[department of health]~~ health care authority, which conducts the PASRR level II evaluation for a MAP eligible recipient or a MCO member that has been identified through a PASRR level 1 screen.

D. “[HSD] HCA administrative hearing” or “fair hearing” means an informal evidentiary hearing that is conducted by the ~~[HSD fair hearings bureau (FHB)]~~ HCA office of fair hearings so that evidence may be presented as it relates to an adverse action taken, or intended to be taken, by MAD, the MCO or their designees.

E. “MAD” means the medical assistance division, which administers medicaid and other medical assistance programs (MAP) under ~~[HSD] HCA~~.

F. “MAP” means the medical assistance programs administered by MAD.

G. “MCO” means a member’s ~~[HSD] HCA~~ contracted managed care organization.

H. “Member” means a MAP eligible recipient enrolled in a ~~[HSD] HCA~~ contracted MCO. Once a member requests a ~~[HSD] HCA~~ administrative hearing, the member is referred to as a claimant.

I. “Notice of action” means the notice issued by MAD, the MCO or their designees of their intent to take an adverse action against an eligible recipient or a member in the form an adverse determination is made with regard to the preadmission or annual resident review requirements.

J. “Nursing facility (NF)” means a MAD enrolled, and as appropriate, a MCO contracted, nursing facility which meets the requirements as described in 8.312.2 NMAC. The NF completes a PASRR level one screen for a MAP eligible recipient or a MCO member. [8.312.2.7 NMAC - Rp, 8.312.2.7 NMAC, 8/1/2014; A/E, 3/1/2025]

8.312.2.8 MISSION STATEMENT: ~~[To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.]~~ We ensure that New Mexicans attain their highest level of health by providing whole-person, cost-effective, accessible, and high-quality health care and safety-net services.

[8.312.2.8 NMAC - Rp, 8.312.2.8 NMAC, 8/1/2014; A/E, 3/1/2025]

8.312.2.10 ELIGIBLE PROVIDERS: Health care to eligible recipients or members is furnished by a variety of providers and provider groups. The reimbursement and billing for these services is administered by MAD. Upon approval of a New Mexico MAD provider participation agreement (PPA) by MAD or its designee, licensed practitioners, facilities and other providers of services that meet applicable requirements are eligible to be

reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors or the MCO. MAD makes available on the ~~[HSD/MAD] HCA/MAD~~ website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by ~~[HSD] HCA~~ or its authorized agents, including program rules, billing instructions, utilization review (UR) instructions, and other pertinent materials. When enrolled, a provider receives ~~[instruction]~~ instructions on how to access these documents. It is the provider’s responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact ~~[HSD] HCA~~ or its authorized agents to obtain answers to questions related to the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD PPA and all applicable statutes, regulations, and executive orders. MAD, its selected claims processing contractor or the MCO issues payments to a provider using electronic funds transfer (EFT) only. Eligible providers include:

A. nursing facilities (NF) which:

(1) are currently licensed and certified by the department of health (DOH) to meet MAD nursing facility conditions of participation; see 42 CFR Part 483, as amended;

(2) comply with the eligible recipient or MCO member resident’s personal funds rules;

(3) comply with MAD, its UR or the MCO UR processes and agree to operate in accordance with all MAD NMAC rules, including the performance of discharge planning;

(4) comply with the NMAC MAD rules for the pre-admission screening and resident review (PASRR) of mentally ill and intellectually disabled program;

(5) ensure the required nurse aide training is implemented; and

(6) ensure that facilities with 60 or more MAD beds certify a minimum of four distinct beds in the medicare program;

B. the above requirements can be waived if the NF meets one of the following conditions:

(1) the NF is located in a rural area and is unable to attract therapists as required by the medicare program. For a waiver to be granted under this condition, the provider must prove that good faith efforts to hire or contract with the required therapists have been made;

(2) the NF has obtained a waiver of the registered nurse (RN) staffing requirement from DOH, in accordance with applicable federal regulations; or

(3) the NF is one of two or more NFs in the same town owned or operated by the same owner/manager and one of the other facilities is medicare-certified; in addition, the NF must demonstrate on a yearly basis that the waiver does not hinder access to medicare part A services for eligible recipients or members and that the facility is using, to the best of its ability, corridor billings to medicare for part B services(s); if medicare removes the ability to do corridor billing, the waiver automatically ceases.

(a) Any requests for a waiver must contain sufficient documentation to support the request and must be submitted in writing to MAD;

(b) medicare is the primary payer for NF services covered under the medicare program; NF services must be provided within the scope of the practice and licensure for each provider; and must be in compliance with the statutes, rules and regulations of the applicable practice and with the New Mexico administrative code (NMAC) MAD rules.

[8.312.2.10 NMAC - Rp, 8.312.2.10 NMAC, 8/1/2014; A/E, 3/1/2025]

8.312.2.11 PROVIDER RESPONSIBILITIES:

A. A provider who furnishes services to a medicaid or other health care program eligible recipient or member must comply with all federal and state laws, regulations, and executive orders relevant to the provision of services as specified in the MAD PPA. A provider also must conform to MAD program rules and instructions as specified in the MAD NMAC rule manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and centers for medicare and medicaid services (CMS) national correct coding initiatives (NCCI), including not improperly unbundling or upcoding services.

B. A provider must verify that an individual is eligible for a specific health care program administered by [HSD] HCA and its authorized agents, and must verify the recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient or member has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient or member.

C. When services are billed to and paid by a MAD fee-for-service coordinated services contractor authorized by [HSD] HCA, under an administrative services contract, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services; see 8.302.1 NMAC.

[8.312.2.11 NMAC - Rp, 8.312.2.11 NMAC, 8/1/2014; A/E, 3/1/2025]

8.312.2.13 COVERED SERVICES:

A. MAD covers NF services identified as allowable costs; see 8.312.3 NMAC.

B. MAD covers physical, occupational and speech

therapy services furnished to an eligible recipient or member residing in a NF in the following manner:

(1) if the eligible recipient or member is also eligible for medicare and the NF does part B billing, the co-payment or deductible is processed by MAD or the MCO for services is paid by MAD or the MCO;

(2) if the eligible recipient or member receives high NF level services, services are included in the MAD facility rate; or

(3) if eligible, the recipient or member receives low NF level services, services are billed separately by participating therapy providers.

C. MAD covers a NF per diem add-on for ventilator services in long-term and skilled nursing facilities in New Mexico.

(1) The per diem add-on costs of providing services to the ventilator dependent resident or member shall be maintained separately (as a distinct part) of each facility's annual cost report.

(2) Ventilator dependent per diem add-on rates will cover skilled nursing care services and will be all-inclusive.

(3) Ventilator dependent per diem add-on services must be prior authorized by the MCO. The resident's or member's clinical condition shall be reviewed every 90 days to determine if the resident's or member's medical condition continues to warrant services at the ventilator dependent NF rate. Prior authorization (PA) through the MCO spans a 90-day maximum time period. The NF is required to resubmit requests for continued stay prior to expiration of the current PA.

If a resident or member no longer requires the use of a ventilator, the provider shall not receive additional reimbursement beyond the New Mexico medicaid nursing home per diem rate determined for the facility.

(4) Long-term and skilled nursing facilities in New Mexico must be certified by the department of health to provide ventilator services.

(5) Eligible ventilator dependent recipients residing in a NF must meet the following criteria:

(a) Have a health condition that requires close medical supervision defined as 24 hours a day of licensed nursing care along with specialized services or equipment;

(b) Require mechanical ventilation greater than or equal to six hours a day;

(c) Have tracheostomy (with daily care) and require mechanical ventilation for a portion of each day for stabilization;

(d) Require continuous pulse oximetry monitoring to check the stability of oxygen saturation levels;

(e) Require respiratory assessment and daily documentation by a licensed respiratory therapist or registered nurse;

(f) Have a provider's order for respiratory care to include suctioning as needed;

(g) Have tracheostomy care with suctioning and room air mist or oxygen as needed, and one of the four treatment procedures listed below:

(i) total parenteral nutrition;

(ii) inpatient physical, occupational, or speech therapy;

(iii) tube feeding (nasogastric or gastrostomy); or

(iv) inhalation therapy treatments every shift and a minimum of four times per 24-hour period.

(h) The recipient's diagnosis must be consistent with ICD diagnosis codes for ventilator dependency;

(i) The skilled nursing facility must be approved for ventilator care; and

(j) Providers must be specially trained and competent in respiratory and vent care.

[8.312.2.13 NMAC - Rp, 8.312.2.13 NMAC, 8/1/2014; A/E, 3/1/2025]

8.312.2.15 ELIGIBLE RECIPIENT AND MEMBER PERSONAL FUND ACCOUNTS:

A. As a condition for MAD provider participation, each NF must establish and maintain an acceptable system of accounting for an eligible recipient or member resident's personal funds when an eligible recipient or member requests that ~~his or her~~ their personal funds be cared for by the facility. See 42 CFR Section 483.10(c) and see 7.9.2.22 NMAC.

(1) Requests for a NF to care or not care for an eligible recipient or member resident's funds must be made in writing and secured by a request to handle recipient or member funds form or letter signed by the eligible recipient or member or ~~his or her~~ their authorized representative. The form or letter is kept in the eligible recipient or member's file at the facility.

(2) An eligible recipient or member's personal fund consists of a monthly maintenance allowable, established by MAD. If the eligible recipient or member resident receives any income in excess of this allowance, the excess is applied to the cost of the eligible recipient or member resident's medical care at the NF. This excess is reported as a medical care credit to the facility by the local county income support division (ISD) office, when applicable.

(3) A NF must have procedures on the handling of eligible recipient or member residents' funds. These procedures must not allow the facility to commingle eligible recipient or member residents' funds with facility funds.

(4) A NF should use these applicable federal statutes, regulations and state rules to develop procedures for handling eligible recipient or member resident's funds.

(5) An eligible recipient or member resident has

the right to manage ~~his or her~~ their financial affairs and no NF can require an eligible recipient or member resident to deposit ~~his or her~~ their personal funds with the NF.

(6) A NF must purchase a surety bond or furnish self-insurance to ensure the security of all personal funds deposited with the NF.

(7) Failure of a NF to furnish an acceptable accounting system constitutes a deficiency that must be corrected by the provider and verified by DOH survey teams.

B. Fund custodians: A NF must designate a full-time employee and an alternate to serve as fund custodians for handling an eligible recipient or member resident's money on a daily basis; see 7.9.2.22 NMAC.

(1) Another individual, other than those employees who have daily responsibility for the fund, must do the following:

(a) reconcile balances of each eligible recipient or member accounts with the collective bank account;

(b) periodically audit and reconcile the petty cash fund; and

(c) authorize checks for the withdrawal of funds from the bank account.

(2) A NF must ensure that there is a full, complete and separate accounting, based on generally accepted accounting principles, of each eligible recipient or member resident's personal funds entrusted to ~~his or her~~ their NF on the eligible recipient or member resident's behalf.

C. Bank account: A NF must establish a bank account for the deposit of all money for each eligible recipient or member resident who requests the NF to handle ~~his or her~~ their funds. An eligible recipient or member resident's personal funds are to be held separately and not commingled with the NF funds; see 7.9.2.22 NMAC.

(1) A NF must deposit an eligible recipient

or member's personal funds of more than \$50 in an interest bearing account that is separate from any of the NF operating accounts and which credits all interest earned on the eligible recipient or member resident's account to that account. An eligible recipient or member resident must have convenient access to these funds.

(2) A NF must maintain an eligible recipient or member resident's personal funds up to \$50 in an interest bearing account or a petty cash fund that is separate from any of the NF operating accounts. An eligible recipient or member resident must have convenient access to these funds.

(3) Individual financial records must be available on the request of an eligible recipient or member resident or [his or her] their authorized representative.

(4) Within 30 calendar days of the death of an eligible recipient or member resident whose personal funds are deposited with the facility, a NF must convey the deceased eligible recipient or member resident's funds and a final accounting of these funds to the individual or probate jurisdiction administering the deceased eligible recipient or member resident's estate.

D. Establishment of individual accounts: A NF must establish accounts for each eligible recipient or member resident in which all transactions can be recorded.

Accounts can be maintained in a general ledger book, card file or loose leaf binder; see 7.9.2.22 NMAC.

(1) For money received, the source, amount and date must be recorded. The NF must provide the eligible recipient or member resident or [his or her] their authorized representative receipts for the money. The NF still retains a copy of the deposit in the eligible recipient or member resident's individual account file.

(2) The purpose, amount and date of all disbursements to or on behalf of an eligible recipient or member resident must be recorded. All money spent

either on behalf of the eligible recipient or member resident or withdrawn by the eligible recipient or member resident or [his or her] their authorized representative must be validated by receipts or signatures on each eligible recipient or member resident's individual ledger sheet.

(3) The NF must notify each eligible recipient or member resident when the account balance is \$200 less than the supplemental security income (SSI) resource limit for one person specified in Subparagraph (a) of Paragraph (3) of Subsection B of Section 1611 of the Social Security Act. If the amount of the account and the value of the eligible recipient or member resident's other nonexempt resources reach the SSI resource limit for one person, the eligible recipient or member resident can lose eligibility for a medical assistance program (MAP) or SSI.

E. Personal fund reconciliation: The NF must balance each eligible recipient or member resident's individual accounts, the collective bank accounts and the petty cash fund at least once each month. The NF must furnish each eligible recipient or member resident or [his or her] their authorized representative with an accounting of the eligible recipient or member residents' funds at least quarterly. Copies of each eligible recipient or member resident's individual account records can be used to furnish this information; see 7.9.2.22 NMAC.

F. Petty cash fund: The NF must maintain a cash fund in the facility to accommodate the small cash requirements of an eligible recipient or member resident. \$5 or less per each eligible recipient or member resident may be adequate. The amount of money kept in the petty cash fund is determined by the number of NF residents using the service and the frequency and availability of bank service. A petty cash fund ledger must be established to record all actions regarding money in this fund; see 7.9.2.22 NMAC.

(1) To establish the fund, the NF must withdraw money from the collective

bank account and keep it in a locked cash box.

(2) To use the petty cash fund, the following procedures should be established:

(a) an eligible recipient or member resident or [his or her] their authorized representative request small amounts of spending money;

(b) the amount disbursed is entered on each eligible recipient resident's individual ledger record; and

(c) the eligible recipient or member resident or [his or her] their authorized representative signs an account record and receives a receipt.

(3) To replenish the petty cash fund, the following procedures should be used.

(a) The money left in the cash box is counted and added to the total of all disbursements made since the last replenishment; and the total of the disbursements plus cash on hand equals the beginning amount.

(b) Money equal to the amount of disbursements is withdrawn from the collective bank account.

(4) To reconcile the fund, the following procedures should be used once each month:

(a) count money at hand; and

(b) total cash disbursed either from receipts or each eligible recipient or member resident's individual account records; the cash on hand plus total disbursements equals petty cash total.

(5) To close each eligible recipient or member resident account, the NF should do the following:

(a) enter date of and reason for closing the account;

(b) write a check against the collective bank account for the balance shown on each eligible recipient or member resident's individual account record;

(c) get signature of the eligible recipient resident or ~~his or her~~ their authorized representative on the eligible recipient or member resident’s individual account record, as receipt of payment; and

(d) notify the local ISD office if closure is caused by death of an eligible recipient or member resident so that prompt action can be taken to terminate assistance; within 30 calendar days of the death of an eligible recipient or member resident who has no relatives; the NF conveys the eligible recipient or member resident’s funds and a final accounting of the funds to the individual or probate jurisdiction administering the eligible recipient or member resident’s estate; see 42 CFR Section 483.10(c)(6).

G. Retention of records: All account records are retained for at least six years or, in case of an audit, until the audit is completed.

H. Non-acceptable uses of residents’ personal funds: Non-acceptable uses of an eligible recipient or member resident’s personal funds include the following:

(1) payment or charges for services or items covered by MAD or medicare specified as allowable costs; see 8.312.3 NMAC;

(2) difference between the NF’s billed charge and the MAD payment; and

(3) payment for services or supplies routinely furnished by the NF, such as linens or nightgowns;

(4) a NF cannot impose charges against eligible recipient resident’s personal funds for any item or service for which payment is made by MAD or for any item the eligible recipient or member resident or ~~his or her~~ their authorized representative did not request;

(5) a NF must not require eligible recipient or member resident or ~~his or her~~ their authorized representative to request any item or service as a condition of admission or continued stay;

(6) a NF must inform an eligible recipient or member resident or ~~his or her~~ their authorized representative who requests non-covered items or services that there is a charge for the item and the amount of the charge.

I. Monitoring of residents’ personal funds: NFs must make all files and records involving an eligible recipient or member resident’s personal funds available for inspection by authorized state or federal auditors. DOH survey teams verify that a NF has established systems to account for an eligible recipient or member resident’s personal funds, including the components described above. Failure to furnish an acceptable accounting system constitutes a deficiency that must be corrected; see 7.9.2.22 NMAC.

[8.312.2.15 NMAC - Rp, 8.312.2.15 NMAC, 8/1/2014; A/E, 3/1/2025]

8.312.2.16 RESERVE BED DAYS: MAD pays to hold or reserve a bed for an eligible recipient or member resident in a NF to allow for the eligible recipient or member resident to make a brief home visit, for acclimation to a new environment, or for hospitalization according to the limits and conditions outlined below.

A. Coverage of reserve bed days: MAD covers six reserve bed days per calendar year for every long term care eligible recipient or member resident for hospitalization without prior approval. MAD covers three reserve bed days per calendar year for a brief home visit without prior approval. MAD covers an additional six reserve bed days per calendar year with prior approval to support an eligible recipient or member resident to adjust to a new environment as part of the discharge plan.

(1) An eligible recipient or member resident’s discharge plan must clearly state the objectives, including how the home visits or visits to alternative placement relate to discharge implementation.

(2) The prior approval request must include

the eligible recipient or member resident’s name, MAP identification number, requested approval dates, copy of the discharge plan, name and address for individuals who will care for the eligible recipient or member resident during the visit or placement and a written medical order for trial placement.

B. Documentation of reserve bed days: When an eligible recipient or member resident is discharged from a NF for any reason, appropriate documentation must be placed in the eligible recipient or member resident’s chart. A medical order must be obtained if the eligible recipient or member resident is hospitalized, requests a home visit or a trial placement.

C. Re-admission review: A new level of care (LOC) determination must be performed by MAD, its UR contractor or the MCO if an eligible recipient or member resident is gone from ~~this or her~~ their NF for more than three midnights. A NF notification form must be completed, including information on the reason for the eligible recipient or member resident’s absence, outcome of the leave and any other pertinent information concerning the leave; see the MAD managed care policy manual.

D. Reimbursement and billing for reserve bed days: Reimbursement for reserve bed days to the NF is limited to the rate applicable for LOC medically necessary for the eligible recipient or member resident, as determined and approved by MAD, its UR contractor or the MCO. The reserve bed day reimbursement is equal to 50% of the regular payment rate for MAD fee-for-service or as otherwise negotiated between the NF provider and the MCO. Billing for reserve bed days is based on the nursing census, which runs from midnight to midnight. MAD or the MCO pays for the admission day but not for the discharge day.

[8.312.2.16 NMAC - Rp, 8.312.2.16 NMAC, 8/1/2014; A/E, 3/1/2025]

8.312.2.18 PRE-ADMISSION SCREENING AND RESIDENT REVIEW (PASRR) OF MENTALLY ILL AND INTELLECTUALLY DISABLED INDIVIDUALS: As part of the initial NF communication form for a new admission or as part of a subsequent specified review as determined by PASRR, or a significant change review as indicated by the minimum data set (MDS) for an eligible recipient or member resident with identified mental illness or is intellectually disabled, the NF must complete a level I PASRR screening. See Omnibus Reconciliation Acts of 1987 and 1990 as codified at 42 CFR Section 483.100 Subpart C. See also P.L. 104-315 which amends title XIX of the Social Security Act effective October 19, 1996. This requirement applies to all applicants or residents, regardless of payment source.

A. Pre-admission screens not required: Pre-admission screens do not need to be performed on the following eligible recipient or member resident:

(1) when admitted from the hospital whose attending physicians certify before admission to the NF that the eligible recipient or member resident is likely to require NF care for less than 30 days (as determined by PASRR review of ~~the his or her~~ their level I screen data which was done prior to NF admission);

(2) when readmitted to NFs from a hospital to which ~~he or she was~~ they were transferred for the purpose of receiving care; and

(3) when transferred from one NF to another without an intervening hospital stay.

B. Purpose of the screens: The purpose of the PASRR screen is to determine whether residents have a mental illness or an intellectual disability, need the level of services furnished in a NF and need specialized services based on the mental illness or intellectual disability. A NF performs the level I screen which identifies an eligible

recipient or member resident who has a mental illness or an intellectual disability. When an eligible recipient or member resident is identified, the NF refers ~~him or her~~ them to the ~~DOH~~ HCA DDS for a PASRR level II evaluation.

C. Level II screen determination: The PASRR level II screen determines the following:

(1) the eligible recipient or member resident's total needs are such that ~~his or her~~ their needs can be met in an appropriate community setting;

(2) the eligible recipient or member resident's total needs are such that they can be met only on an inpatient basis, which can include the option of placement in a home and community-based service waiver program, but for which inpatient care is necessary;

(3) if inpatient care is appropriate and desired, the NF is an appropriate institutional setting for meeting those needs; or

(4) if inpatient care is appropriate and desired but the NF is not the appropriate setting for meeting the eligible recipient or member resident's needs, another setting, such as an intermediate care facility for individuals with intellectual disabilities (ICF-IID) can be indicated.

D. Right to an administrative hearing: An individual who has been adversely affected by the preadmission screening or resident review screening is entitled to a ~~HSØ~~ HCA administrative hearing. See 8.354.2 NMAC for a detailed description of this specific type of ~~HSØ~~ HCA administrative hearings.

(1) An eligible recipient or member or ~~his or her~~ their authorized representative may request a ~~HSØ~~ HCA administrative hearing.

(2) MAD, the MCO or their designees do not pay fees or costs, including attorney's fees, incurred by the individual or ~~his or her~~ their authorized representative as a result of a ~~HSØ~~ HCA pre-hearing conference or a ~~HSØ~~ HCA

administrative hearing, or if ~~he or she files~~ they file an appeal of the ~~HSØ~~ HCA administrative hearing final decision.

E. Restriction on reimbursement for medicaid residents: A NF is not reimbursed for any service furnished to an eligible recipient or member resident when pre-admission screens, subsequent specified reviews or significant change reviews are not performed in a timely manner. MAD or the MCO pays only for services furnished after the screens or reviews are performed and will recoup amounts paid to a NF during periods of noncompliance. MAD or the MCO payment for services does not begin until a level II screening has been performed, if applicable.

[8.312.2.18 NMAC - Rp, 8.312.2.18 NMAC, 8/1/2014; A/E, 3/1/2025]

8.312.2.19 MINIMUM DATA SET:

A. A long term care facility participating in the medicare and is an enrolled MAD provider is required to conduct a comprehensive, accurate, standardized, reproducible assessment of each eligible recipient or member resident's functional capacity. See Sections 4201 (a) (3) and 4211 (a)(3) of the Omnibus Reconciliation Act (OBRA) of 1987.

B. The capacity assessment describes the resident's ability to perform daily life functions and any significant impairment in functional capacity. The assessment is based on a uniform MDS of core elements and common definitions specified by the secretary of the federal health and human services department. A NF is required to use the most current iteration of the MDS. A section of the MDS requires a NF to identify eligible recipient or member residents who may be interested in transitioning back to ~~his or her~~ their community.

(1) The resident assessment instrument (RAI) is specified by the state. State RAIs include at least the health care financing administration MDS, triggers, resident assessment protocols (RAPs) and utilization guidelines.

(2) On a date to be specified by the federal government, NFs will be required to encode the MDS in machine-readable form. After that date, all MDS reporting will be done electronically. [8.312.2.19 NMAC - Rp, 8.312.2.19 NMAC, 8/1/2014; A/E, 3/1/2025]

8.312.2.23 RESIDENT RIGHTS TO REQUEST AN ADMINISTRATIVE HEARING:

An eligible recipient or member resident who believes that the NF has erroneously determined that ~~he or she~~ they should be transferred or discharged may request a [HSD] HCA administrative hearing. A NF must provide an eligible recipient or member resident notice of the proposed transfer or discharge. The notice must inform the eligible recipient or member resident of ~~his or her~~ their right to request a hearing, the method by which a hearing can be requested and ~~his or her~~ their right to present evidence in person or through ~~his or her~~ their authorized representative; see 8.354.2 NMAC and the MAD MCO policy manual. [8.312.2.23 NMAC - Rp, 8.312.2.23 NMAC, 8/1/2014; A/E, 3/1/2025]

8.312.2.24 PRIOR APPROVAL AND UTILIZATION REVIEW:

All MAD services are subject to utilization review for medical necessity, inspection of care, and program compliance. Reviews can be performed before services are furnished, after services are furnished, and before payment is made, or after payment is made; see 8.310.2 NMAC. The provider must contact [HSD] HCA or its authorized agents to request UR instructions. It is the provider’s responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided, to comply with the requirements, and to obtain answers to questions not covered by these materials.

A. Prior approval:

Certain procedures or services can require prior approval from MAD, the MCO or their designee. Services for which prior approval was obtained

remain subject to UR at any point in the payment process.

B. Eligibility

determination: Prior authorization of services does not guarantee that an individual is eligible for MAD services or other health care programs. A provider must verify that an individual is eligible for a specific program at the time services are furnished and must determine if the eligible recipient or member has other health insurance.

C. Reconsideration:

A provider who disagrees with a prior approval request denial or other review decisions can request a reconsideration of utilization review; see 8.350.2 NMAC. [8.312.2.24 NMAC - Rp, 8.312.2.24 NMAC, 8/1/2014; A/E, 3/1/2025]

8.312.2.25

REIMBURSEMENT: A NF provider must submit claims for reimbursement on the long term care turn around document (TAD) or its successor; see 8.302.2 NMAC.

A. MAD reimburses a NF at the lesser of the following:

- (1) the NF’s billed charges;
- (2) the prospective reimbursement rates constrained by the ceilings established by MAD; see 8.312.3 NMAC; and
- (3) the NF’s billed charge must be its usual and customary charge for services; “usual and customary charge” refers to the amount which the individual provider charges the general public in the majority of cases for a specific procedure or service.

B. Reimbursement

limitations: Payments are made only to a MAD enrolled, and as appropriate a [HSD] HCA MCO contracted NF. Payments to a NF are limited to those service costs which are included as allowable costs under approved provisions of the medicaid state plan or the MAD alternative benefit; see 8.312.3 NMAC. All claims for payment from MAD or the MCO are subject to utilization review and control.

C. Reimbursement

methodology: See 8.312.3 NMAC for a detailed description of this methodology. [8.312.2.25 NMAC - Rp, 8.312.2.25 NMAC, 8/1/2014; A/E, 3/1/2025]

TAXATION AND REVENUE DEPARTMENT

The New Mexico Taxation and Revenue Department approved, at its 12/19/2024 hearing, to repeal its rules 3.13.1 NMAC, Business Tax Credits - General Provisions filed 6/18/2001 and replace it with 3.13.1 NMAC, Business Tax Credits - General Provisions effective 02/25/2025.

The New Mexico Taxation and Revenue Department approved, at its 12/19/2024 hearing, to repeal its rules 3.13.3 NMAC, Business Tax Credits - Call Center Equipment Tax Credit filed 6/1/2001, effective 02/25/2025.

TAXATION AND REVENUE DEPARTMENT

**TITLE 3 TAXATION
CHAPTER 13 BUSINESS TAX
CREDITS
PART 1 GENERAL
PROVISIONS**

3.13.1.1 ISSUING

AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630. [3.13.1.1 NMAC - Rp, 3.13.1.1 NMAC 2/25/2025]

3.13.1.2 SCOPE: This part applies to all persons applying or claiming a business tax credit in New Mexico.

[3.13.1.2 NMAC - Rp, 3.13.1.2 NMAC 2/25/2025]

3.13.1.3 STATUTORY

AUTHORITY: Section 9-11-6.2 NMSA 1978. [3.13.1.3 NMAC - Rp, 3.13.1.3 NMAC 2/25/2025]

3.13.1.4 DURATION:
Permanent.
[3.13.1.4 NMAC - Rp, 3.13.1.4 NMAC 2/25/2025]

3.13.1.5 EFFECTIVE DATE: February 25, 2025, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.13.1.5 NMAC - Rp, 3.13.1.1 NMAC 2/25/2025]

3.13.1.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of tax credit acts and tax credits which are regulated specifically under Chapter 3 Article 13 NMAC.
[3.13.1.6 NMAC - Rp, 3.13.1.6 NMAC 2/25/2025]

3.13.1.7 DEFINITIONS:
[RESERVED]

3.13.1.8 CITATION OF STATUTES: Unless otherwise stated, all citations to statutes in Chapter 3 Article 13 NMAC are to the New Mexico Statutes Annotated 1978.
[3.13.1.8 NMAC - Rp, 3.13.1.8 NMAC 2/25/2025]

HISTORY 3.13.1 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
R.D.-I.C. Regulation 3(C):1, Regulation Pertaining to the Investment Credit Act, Section 7-9A-3(C) NMSA 1978, filed 8/1/1984.
R.D.-I.C. Regulation 6:1, Regulation Pertaining to the Investment Credit Act, Section 7-9A-6 NMSA 1978, filed 8/1/1984.
R.D.-I.C. Regulation 7.1:1, Regulation Pertaining to the Investment Credit Act, Section 7-9A-7.1 NMSA 1978, filed 8/1/1984.
R.D.-I.C. Regulation 8:1, Regulation Pertaining to the Investment Credit Act, Section 7-9A-8 NMSA 1978, filed 8/1/1984.
TRD Rule IC-93, Regulations

Pertaining to the Investment Credit Act, Section 7-9A-1 to 7-9A-9 NMSA 1978, filed 2/17/1994.

History of Repealed Material:
3.13.1 NMAC, Business Tax Credit - General Provisions filed 6/18/2001, Repealed effective 2/25/2025.

NMAC History: 3 NMAC 13.1, Business Tax Credits - General Provisions, filed 9/3/1996.
3.13.1 NMAC, Business Tax Credits - General Provisions, filed 6/18/2001, Replaced by 3.13.1 NMAC, Business Tax Credits - General Provisions effective 2/25/2025.

TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.1 NMAC, Section 18, effective 2/25/2025.

3.2.1.18 GROSS RECEIPTS: SERVICES GENERALLY:

A. Receipts from performing a service in New Mexico or performing a service outside New Mexico the product of which is initially used in New Mexico. Receipts derived from performing a service in New Mexico or performing a service outside New Mexico the product of which is initially used in New Mexico are subject to the gross receipts tax unless a specific exemption or deduction provided for in the Gross Receipts and Compensating Tax Act applies.

B. Sales of state licenses by nongovernmental entities:
(1) Amounts retained by nongovernmental entities as compensation for services performed in selling state licenses are gross receipts.

(2) Example:
G owns and operates a small grocery store in rural New Mexico which is located near a popular fishing area. As a convenience to the public, G sells New Mexico ~~[Game and Fish]~~ game and fish licenses. For its services in selling these licenses, G

retains a small percentage of the total license fee. The amounts retained are gross receipts because they are receipts derived from services performed in New Mexico. G may not deduct the amounts retained pursuant to Section 7-9-66 NMSA 1978 which deals with commissions derived from the sale of tangible personal property not subject to the gross receipts tax. A New Mexico game and fish license is not tangible personal property pursuant to ~~[Subsection J of]~~ Section 7-9-3 NMSA 1978.

C. Stockbrokers' commissions: Gross receipts include commissions received by stockbrokers for handling transactions. The commissions are receipts from performing a service.

D. Directors' or trustees' fees: Receipts from attending a board of directors or board of trustees meeting in New Mexico are gross receipts from performing services in New Mexico. Receipts from attending a board of directors or board of trustees meeting outside New Mexico are not gross receipts because the initial use of the product of the service is not in New Mexico.

E. Racing receipts:
(1) Unless the receipts are exempt under Section 7-9-40 NMSA 1978:

(a) the receipts of vehicle or animal owners from winning purse money at races held in New Mexico are receipts from performing services in New Mexico and are subject to the gross receipts tax if any charge is made for attending, observing or broadcasting the race.

(b) receipts of vehicle drivers, animal riders and drivers and other persons from receiving a percentage of the owner's purse are receipts from performing services in New Mexico and are subject to the gross receipts tax, unless the person receiving the percentage of purse money is an employee, as that term is defined in 3.2.105.7 NMAC, of the owner.

(2) Where there is an agreement between the

driver, rider or other person and the owner for distribution of the winning purse, then only the amount received pursuant to the agreement is gross receipts of the driver, rider or other person receiving the distribution.

(3) Racetrack operators. Receipts of operators of racetracks other than horse racetracks, from gate admission fees and entrance fees paid by drivers are subject to the gross receipts tax. Any portion of these fees paid out by the operator as prizes are not exempt or deductible since the payments are part of the operator's cost of doing business.

F. Advertising services: The service of advertising is performed and initially used at the location of the intended recipient or viewer regardless of where related services may be performed or the location of the advertiser who purchases the advertising services.

(1) Advertising receipts of a newspaper or broadcaster. The receipts of a New Mexico newspaper or a person engaged in the business of radio or television broadcasting from performing advertising services in New Mexico do not include the customary commission paid to or received by a nonemployee advertising agency or a nonemployee solicitation representative, when said advertising services are performed pursuant to an allocation or apportionment agreement entered into between them prior to the date of payment.

(2) Advertising space in pamphlets. Receipts from selling advertising service to New Mexico merchants in a pamphlet printed outside New Mexico and distributed wholly inside New Mexico are receipts from performing an advertising service in New Mexico. Such receipts are subject to the gross receipts tax.

(3) Billboard advertising. Receipts derived from contracts to place advertising on outdoor billboards located within the state of New Mexico are receipts from performing an advertising service in New Mexico. Such receipts

are subject to the gross receipts tax, regardless of the location of the advertiser.

G. Day care centers or licensed child care assistance programs:

(1) Receipts from providing day care are receipts from performing a service and are subject to the gross receipts tax unless an applicable deduction exists.

(2) Receipts from providing day care for children in a situation where a commercial day care center provides day care for the children and the expenses of the care for some of these children is paid for by the state of New Mexico are subject to the gross receipts tax. However, the deduction under Section 7-9-77.2 NMSA 1978 may apply.

(3) Receipts from providing day care for children in a situation where a person provides day care for children in a residence and the care for all these children is paid for by the state of New Mexico are subject to the gross receipts tax. However, the deduction under Section 7-9-77.2 NMSA 1978 may apply.

(4) Receipts from providing day care for children in a situation where a person provides day care for children in the children's home and the care for ~~all of these~~ the children is paid for by the state of New Mexico are subject to the gross receipts tax. However, the deduction under Section 7-9-77.2 NMSA 1978 may apply.

H. Child care:

(1) Receipts derived by a corporation for providing child care facilities for its employees are subject to the gross receipts tax on the amount received from its employees.

(2) Example: The X corporation operates a licensed child care facility to accommodate dependent children of its employees. In order to defray a portion of the cost of the facility, the corporation charges each employee ~~two dollars (\$2.00)]~~ a fee per child per week for the use of the facility. All receipts from the ~~two-dollar charge~~ fee per child per week are subject to the gross receipts tax.

I. Service charges; tips:

(1) Except for tips, receipts of hotels, motels, guest lodges, restaurants and other similar establishments from amounts determined by and added to the customer's bill by the establishment for employee services, whether or not such amounts are separately stated on the customer's bill, are gross receipts of the establishment.

(2) A tip is a gratuity offered to service personnel to acknowledge service given. An amount added to a bill by the customer as a tip is a tip. Because the tip is a gratuity, it is not gross receipts.

(3) Amounts denominated as a "tip" but determined by and added to the customer's bill by the establishment may or may not be gross receipts. If the customer is required to pay the added amount and the establishment retains the amount for general business purposes, clearly it is not a gratuity. Amounts retained by the establishment are gross receipts, even if labeled as "tips". If the customer is not required to pay the added amount and any such amounts are distributed entirely to the service personnel, the amounts are tips and not gross receipts of the establishment.

(4) Examples:
(a) Restaurant R has a policy of charging parties of six or more a set percentage of the bill for food and drink served as a tip. If a customer insists on another arrangement, however, the set amount will be removed. R places all amounts collected from the set tip percentage into a pool ~~which~~ that is distributed to the service staff at the end of each shift. The amounts designated as tips and collected and distributed by R to the service staff are tips and not gross receipts. If R retains any amounts derived from the set tip percentage, the amounts retained are gross receipts.

(b) Hotel H rents rooms for banquets and other functions. In addition to the rental fee for the room, H ~~also~~

charges amounts for set-up and post-function cleaning. H retains these amounts for use in its business. These amounts are gross receipts. They are gross receipts even if H denominates them as “tips”.

J. Entertainers: The receipts of entertainers or performers of musical, theatrical or similar services in New Mexico are subject to the gross receipts tax.

K. Data access charges: Receipts from fees or charges made in connection with property owned, leased or provided by the person providing the service are subject to the gross receipts tax when the information or data accessed is utilized in this state.

L. Allied company underwriting automotive service contracts: When a New Mexico automotive dealer pays an entity [which] that is allied or affiliated with that dealer (allied company) to undertake all of the dealer’s obligations under automotive service contracts as that term is defined in Subsection C of 3.2.1.16 NMAC on which the dealer is promisor, the undertaking of the allied company does not involve the sale of property in New Mexico or the lease of property employed in New Mexico. The undertaking principally involves an obligation of the allied company to indemnify the dealer by paying the dealer for furnishing parts and labor to fulfill the dealer’s obligation to furnish the parts and labor. However, the undertaking also involves the performance of services by the allied company for the dealer since the allied company undertakes to handle the claims of automotive service contract purchasers and otherwise perform the dealer’s task under the contract. Absent a showing of a different value by the allied company or the department, seven and a half percent of the contract amount paid by the dealer to the allied company will be treated as consideration received for services performed in New Mexico.

M. Custom software:
(1) Receipts derived by a person from developing

custom software are receipts from performing a service.

(2) When custom software is developed by a seller for a customer, but the terms of the transaction restrict the customer’s ability without the seller’s consent to sell the software to another or to authorize another to use the software, the seller’s receipts from the customer are receipts from the performance of a service. The seller’s receipts from authorizing the customer’s sublicensing of the software to another person are receipts from granting a license.

N. Check cashing is a service: Receipts from charges made for cashing checks, money orders and similar instruments by a person other than the person upon whom the check, money order or similar instrument is drawn are receipts from providing a service, not from originating, making or assuming a loan. Such charges are not interest.

O. Receipts of collection agencies:

(1) The fee charged by a collection agency for collecting the accounts of others is gross receipts subject to the gross receipts tax, regardless of whether the receipts of the client are subject to gross receipts tax and regardless of whether the agency is prohibited by law from adding its gross receipts tax amount to the amount collected from the debtor.

(2) Example
1: X is a cash basis taxpayer utilizing the services of Z collection agency for the collection of delinquent accounts receivable. From its New Mexico offices, Z collects from X’s New Mexico debtors in the name of X, retains a percentage for its services and turns over the balance to X. The percentage retained by Z is its fee for performing services in New Mexico. The fee is subject to the gross receipts tax. It makes no difference that federal law prohibits Z from passing the cost of the tax to the debtor by adding it to the amount to be collected. X’s gross receipts include the full amount collected by Z.

(3) Amounts received by collection agencies from collecting accounts sold to the collection agency are not gross receipts.

(4) Example
2: X, a cash basis taxpayer, sells its delinquent accounts receivable to Z, a collection agency, for a percentage of the face amount of the accounts. X’s gross receipts include the full amount of the receivables, excluding any time-price differential. The amount subsequently collected by Z from those accounts, however, is not subject to gross receipts tax because the amount is not included within the definition of gross receipts. In this situation Z is buying and selling intangible property of a type not included within the definition of property in [Subsection J of] Section 7-9-3 NMSA 1978.

P. Commissions of independent contractors when another pays gross receipts tax on the receipts from the underlying transaction. The following regulations address independent contractors, including commissioned sales agents, who are not consignees or marketplace providers.

(1) Commissions and other consideration received by an independent contractor from performing a sales service in New Mexico with respect to the tangible or intangible personal property of other persons are gross receipts whether or not the other person reports and pays gross receipts tax with respect to the receipts from the sale of the property. This situation involves two separate transactions. The first is the sale of the property by its owner to the customer and the second is the performance of a sales service by the independent contractor for the owner of the property. The receipts from the sale of the property are gross receipts of the person whose property was sold. Receipts, whether in the form of commissions or other remuneration, of the person performing a sales service in New Mexico are gross receipts of the person performing the sales service.

(2) Example 1: S is a national purveyor of tangible personal property. S has stores and employees in New Mexico. S also has catalogue stores in less populated parts of New Mexico. Catalogue stores maintain minimal inventories; their primary purpose is to make S's catalogues available to customers, to take orders of merchandise selected from the catalogues, to place the orders with S and to provide general customer service. The catalogue stores are operated by independent contractors and not by S. S pays the contractors commissions based on the orders placed. In charging its customers, S charges the amount shown in the catalogue and does not add any separate amount to cover the cost of the contractors' commissions. S pays gross receipts tax on its receipts from the sale of catalogue merchandise. The contractors contend that the cost of their selling services is included in the amount S charges for its merchandise and so their commissions are not gross receipts. The contention is erroneous. The contractors have receipts from performing a service in New Mexico; it is immaterial that S paid the amount of gross receipts tax S owed on S's receipts. See, however, the deduction at Subsection B of Section 7-9-66 NMSA 1978.

(3) Example 2: M is a nationwide, multi-level sales company with presence in New Mexico. M sells products to households mainly through a network of individual, independent contractors. The network of sellers is controlled by one or more sets of individuals, also independent contractors, who train and supervise the individuals selling the merchandise; these supervisory contractors may also sell merchandise. The sellers display, promote and take orders for M's products. Payment for orders are sent to M along with the orders. M ships the merchandise directly to the final customers. M has agreed to, and does, pay the gross receipts tax on the retail value of the merchandise sold, whether sold by M or one of the independent contractors. Based on

the volume and value of merchandise sold, M pays both the selling and supervisory independent contractors a commission. The commissions received by the independent contractors engaging in business in New Mexico with respect to merchandise sold in New Mexico are gross receipts subject to the gross receipts tax. The commissions are receipts from performing a service in New Mexico. The fact that M pays gross receipts tax on M's receipts from the sale of the property is immaterial in determining the liability of the independent contractors.

(4) Commissions and other consideration received by an independent contractor from performing a sales service in New Mexico with respect to a service to be performed by other persons are gross receipts whether or not the other person reports and pays gross receipts tax with respect to the receipts from the performance of the underlying service. This situation involves two transactions. The first is the performance of the underlying service by the other person for the customer and the second is the performance of the sales service by the independent contractor for the performer of the underlying service. The receipts from the performance of the underlying service for the customer are gross receipts of the person performing that service. Receipts, whether in the form of commissions or other remuneration, of the person performing the sales service are gross receipts of the person performing the sales service.

(5) Example 3: P is the publisher of a magazine published in New Mexico. P enters into arrangements with independent contractors to solicit ads to be placed in P's publication. P pays each contractor a percentage of the billings for the ads placed by the contractor as a commission. The independent contractors claim that they owe no gross receipts tax with respect to ads solicited in New Mexico because P has paid gross receipts tax on P's advertising revenues. The contractors are incorrect. There are

two transactions in this situation, P's service of publishing advertisements and the contractors' service of soliciting ads for P. The fact that P paid the amount of gross receipts tax due on P's advertising revenues is immaterial regarding the contractors' gross receipts tax obligations on their receipts.

(6) If the receipts from the underlying sale of the tangible property are exempt or deductible, the commission received by an independent contractor from selling the tangible property of another may be subject to the deduction provided by Section 7-9-66 NMSA 1978.

Q. Consignees and Marketplace Providers: Consignees and marketplace providers have gross receipts from amounts collected by those persons for the sale, lease or license of property or the sale of services to customers as defined under Section 7-9-3.5, regardless of whether the consignee or marketplace provider is obligated to pay the consignor or marketplace seller some part of the amounts collected or whether the contract between the consignee and consignor or the marketplace provider and marketplace seller calls for the consignor or marketplace provider to perform certain services in conjunction with the sale, lease or license of property or the sale of services to the customer. A consignee or marketplace provider will be considered to be selling a separate service for the consignor or marketplace seller only if the contract requires the performance of the service separate and apart from any sale, lease or license of property [of state] or sale of a service to the customer.

R. Receipts from winning contest:

(1) Receipts of a contestant from winning purse money in a rodeo or an athletic game, match or tournament held in New Mexico are gross receipts from performing services if any charge is made for attending, observing or broadcasting the event. Such receipts are subject to the gross receipts tax

unless an exemption or deduction applies. Where the contestant is a team and there is an agreement among the team members governing distribution of the purse money, then only the amount received by each team member pursuant to the agreement is gross receipts of the team member.

(2) Subsection R of 3.2.1.18 NMAC does not apply to receipts exempt under Section 7-9-40 NMSA 1978 nor does it apply to activities that are primarily or solely gambling.

[3.2.1.18 NMAC - Rp, 3.2.1.18 NMAC 10/13/2021; A, 2/25/2025]

End of Adopted Rules

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Other Material Related to Administrative Law

LIVESTOCK BOARD**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Livestock Board gives Notice of a Minor, Nonsubstantive Correction to 21.30.4 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:

In the emergency amendment explanatory statement, the incorrect rule citation “21.30.4.7 NMAC” was corrected to the correct rule citation “21.30.4 NMAC”. Second, there is mention that Section 11 has been amended. Section 11 remains unchanged and unamended. Lastly, the incorrect history notes for Section 13 was changed from “1/30/2025” to “2/11/2025”.

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

**TAXATION AND
REVENUE DEPARTMENT**
**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Taxation and Revenue Department gives Notice of a Minor, Nonsubstantive Correction to 3.13.3 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:

The repeal statement was corrected from “ The New Mexico Taxation and Revenue Department approved, at its 12/19/2024 hearing, to repeal its rules 3.13.3 NMAC, Business Tax Credits - Call Center Equipment Tax Credit filed 2/25/2025.” to “ The New Mexico Taxation and Revenue Department approved, at its 12/19/2024 hearing, to repeal its rule 3.13.3 NMAC, Business Tax Credits - Call Center Equipment Tax Credit filed 6/1/2001 effective 2/25/2025.”

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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Issue 3	January 30	February 11
Issue 4	February 13	February 25
Issue 5	February 27	March 11
Issue 6	March 13	March 25
Issue 7	March 27	April 8
Issue 8	April 10	April 22
Issue 9	April 24	May 6
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Issue 24	December 11	December 23

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