

**TITLE 8            SOCIAL SERVICES**  
**CHAPTER 100    GENERAL PROVISIONS FOR PUBLIC ASSISTANCE PROGRAMS**  
**PART 100        GENERAL OPERATING PROCEDURES**

**8.100.100.1      ISSUING AGENCY:** New Mexico Human Services Department.  
[7/1/1997; 8.100.100.1 NMAC - Rn, 8 NMAC 3.ISD 000.1, 4/13/2001]

**8.100.100.2      SCOPE:** The rule applies to the general public.  
[7/1/1997; 8.100.100.2 NMAC - Rn, 8 NMAC 3.ISD 000.2, 4/13/2001]

**8.100.100.3      STATUTORY AUTHORITY:**

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

**B.**        The income support division (ISD) of the human services department (HSD) was created by the HSD secretary under authority granted by Paragraph (3) of Subsection B of Section 9-8-6 NMSA 1978.  
[7/1/1997; 4/1/1998; 8.100.100.3 NMAC - Rn, 8 NMAC 3.ISD 000.3 & 001, 4/13/2001]

**8.100.100.4      DURATION:** Permanent.  
[7/1/1997; 8.100.100.4 NMAC - Rn, 8 NMAC 3.ISD 000.4, 4/13/2001]

**8.100.100.5      EFFECTIVE DATE:** July 1, 1997.  
[7/1/1997; 8.100.100.5 NMAC - Rn, 8 NMAC 3.ISD 000.5, 4/13/2001]

**8.100.100.6      OBJECTIVE:** The objective of these regulations is to provide general policy and procedures for income support division (ISD) administered programs.  
[7/1/1997; 8.100.100.6 NMAC - Rn, 8 NMAC 3.ISD 000.6, 4/13/2001]

**8.100.100.7      DEFINITIONS:** [RESERVED]  
[7/1/1997; 8.100.100.7 NMAC - Rn, 8 NMAC 3.ISD 000.7, 4/13/2001]

**8.100.100.8      RULES AND REGULATIONS:** The HSD secretary has authority to adopt rules and regulations governing the activities of HSD. These rules and regulations are subject to differing requirements regarding prior notice or hearing. This section details the differing types of rules and requirements relative to promulgation of those rules.

**A.        Regulations**

**(1)       Internal rules:** The HSD secretary has the authority to adopt rules governing the internal operations of the department without giving prior notice or opportunity for a hearing

**(2)       Permanent rules:** The secretary approves final rules implementing proposals to adopt, amend or repeal department rules and regulations in accordance with the provisions and procedures set forth in Subsections B-F of 8.100.100.8 NMAC.

**(3)       Interim rulemaking:** Under Section 9-8-6-F NMSA 1978, the secretary may adopt interim rules where necessary due to reductions in federal funding which do not allow the time necessary to proceed through the regular rule promulgation process. In this process, the secretary must give at least 20 days individual notice of the change, but may then implement on an interim basis until the normal proposed rule publication and hearing process can be carried out. Following that process, the interim rule is superseded by the final rule developed in accordance with the provisions set forth below.

**B.        Notice of public hearing:** A notice of public hearing on the proposed action shall include:

**(1)**       description of the proposed action stated in a manner designed to be easily understood by individuals not knowledgeable in the field of administrative law;

**(2)**       time, place and date of the public hearing on the proposed action, and name of contact person;

**(3)**       manner in which interested individuals may present their views on the proposed action and the cost, if any, to an individual of a copy of the proposed regulations.

**C.        Publication of notice of public hearing:** A public hearing notice is published once, at least 30 days before the hearing date, in at least one newspaper of general circulation in the state.

**D. Request for advance notice:** Anyone interested in routinely receiving notices of public hearings on HSD proposed rule-making actions may file a written request to be placed on a public notice mailing list. HSD mails copies of hearing notices to all such individuals at least 30 days before the hearing date.

**E. Hearing procedures:** A hearing is held in accordance with the hearing notice. HSD provides a reasonable opportunity for interested individuals to comment on and state their views regarding the proposed action. The hearing is conducted informally and the rules of evidence do not apply. HSD may, but is not required to, make a verbatim record of the hearing through stenographic notes, tape recording or similar methods.

**F. Final decision by the secretary:** After a public hearing, the secretary may adopt, change or reject the proposed action. The secretary's decision is delivered in writing, including the reasons for making it and a copy of any rule or regulation adopted or amended. The secretary takes reasonable steps to publicize the final decision but is not required to publish it in a manner other than that required under the State Rules Act unless otherwise required by law.

**G.** The adoption, amendment or repeal of a rule or regulation under this section is filed and becomes effective in accordance with the provisions of the State Rules Act.  
[7/1/1997; 8.100.100.8 NMAC - Rn, 8 NMAC 3.ISD.001, 4/13/2001]

**8.100.100.9 MISSION STATEMENT:**

**A.** ISD's primary mission is to relieve, minimize or eliminate poverty and to make available certain services for eligible low-income individuals and families through statewide programs of financial assistance, food assistance, and employment assistance and training services.

**B. Human dignity and client rights:** HSD has a commitment to respect for human dignity. Therefore, all programs are administered in a manner respectful of the dignity and personal privacy and rights of program beneficiaries. Discrimination based on personal judgments of a client's behavior, social status, religion, race, cultural patterns, personality, political beliefs, color, handicap or sex, is a violation of the law and a violation of ISD policy.  
[7/1/1997; 8.100.100.9 NMAC - Rn, 8 NMAC 3.ISD.002, 4/13/2001]

**8.100.100.10 CATEGORIES OF ASSISTANCE:** Each assistance program in which eligibility is determined under ISD2 (HSD's automated eligibility system), the department's eligibility and payment determination and issuance system is referred to as a category of assistance. A two-digit number is assigned to each category indicating the program of assistance. Following is a list of categories, program titles to which they refer, and the type of assistance provided under each. This listing is for informational purposes only.

Category	Title	Explanation
01 03 04	aid to the aged, blind, and disabled	medical - former SSI cases eligible because of the disregard of social security increases received after July, 1977 (medicaid extension applies only to former SSI recipients).
02	NMW	financial and medical
05	general assistance	financial - temporary disability
06	non IV-E foster care	medical
08	general assistance	financial - unrelated children
09	general assistance	financial - permanent disability
10	state supplement for residential shelter care	financial - medical assistance for these cases is available based on SSI availability
14	refugee foster care	medical
17	IV-E adoption subsidy - established in another state	medical
19	refugee assistance	financial - medical
27	post-NMW medical	medical - four months medicaid coverage when NMW closing caused by increased child support
28	transitional medicaid	medical - up to 12 months medicaid coverage when NMW closing caused by increased earnings
30	medical assistance for women & children (MAWC)	medical - full medicaid coverage for pregnant women

31	medical assistance for women & children	medical - twelve months medicaid coverage for newborns
32	medical assistance for women & children	medical - for children born after September 30, 1983
33	medical assistance for women & children	medical - NMW denied because of deemed income from stepparents, alien sponsors, grandparents or siblings (deemed income is any income of another individual which is counted in determining the recipient's eligibility)
34	medical assistance for women & children	medical - SSI denials because of deemed income from stepparents or alien sponsors
35	medical assistance for women & children	medical - medicaid coverage restricted to pregnancy related matters for pregnant women
37	IV-E in-state adoption subsidy	medical
39	food stamps	food
40	qualified medicare beneficiary (QMB)	payment of medicare Part A premium and the coinsurance and deductible amounts on medicare covered services
42	qualified disabled working individuals	medical
45	specified low income medicare beneficiary	payment of medicare Part B premium for applicants who already have Part A. (state will not pay Part A premium).
46	out-of-state foster care	medical - no card issued, services by prior approval only
47	out-of-state adoption subsidy	medical - no card issued, services by prior approval only
49	refugee assistance	medical
	medical assistance for the seriously ill	
51	aged	medical
53	blind	medical
54	disabled	medical
59	refugee medical assistance (spend down required)	medical
66	IV-E foster care	medical
	medical assistance for persons requiring institutional care	
81	aged	medical
83	blind	medical
84	disabled	medical
85	emergency assistance for ineligible aliens	medical
86	IV-E foster care custody out- of-state	medical
	in-home and community based medicaid waiver programs	
90	AIDS	medical
91	aged	medical
93	blind	medical
94	disabled	medical
95	medically fragile	medical
96	developmentally disabled	medical
97	aged	categories not eligible for federal matching funds under Title XIX. These categories were closed to new approvals effective November, 1989.
98	developmentally disabled	
99	disabled/blind	

[7/1/1997, 11/1/1997, 4/1/1998; 8.100.100.10 NMAC - Rn, 8 NMAC 3.ISD.003, 4/13/2001]

**8.100.100.11 GENERAL PROGRAM DESCRIPTIONS:**

**A. NMW:**

(1) **Purpose:** The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, assisting parents to develop the discipline necessary for self-sufficiency and to improve their self-esteem. The further purpose of the program is to increase family income through family employment and child support and by viewing financial assistance as a support service to enable and assist parents to participate in employment.

(2) The program accomplishes this purpose by providing cash assistance, medical assistance, and work program services, including education, job training, and transportation to assist recipients in obtaining and keeping employment that is sufficient to sustain their families thereby ensuring the dignity of those who receive assistance and strengthening families and the families' support for their children.

(3) **Legal basis:** The New Mexico Works Act assigns responsibility for administration of the New Mexico works program to the human services department. The governor of the state of New Mexico has designated the human services department as the TANF state agency in the state's biennial TANF block grant plan, pursuant to the requirements of Section 401 of Title IV-A of the federal Social Security Act.

**B. General assistance**

(1) **Purpose:** General assistance (GA) is a limited program providing financial assistance to needy individuals and families who are not eligible for assistance under the New Mexico works program or under the federal supplemental security income (SSI) program. GA payments are made to:

(a) disabled adults who do not qualify for NMW who are not eligible for SSI because their disability is not severe enough;

(b) disabled adults who do not qualify for NMW;

(c) on behalf of children under 18 years of age who would be eligible for NMW except that they are not living with a person who is eligible to receive NMW; and

(d) SSI recipients who reside in licensed adult residential care homes.

(2) **Legal basis:** Section 27-1-3 NMSA (Repl. 1984) provides that "the state department shall: administer assistance to the needy, blind and otherwise handicapped and general relief."

**C. Food stamps**

(1) **Purpose:** The food stamp program is designed to promote the general welfare and to safeguard the health and well-being of the nation's population by raising the levels of nutrition among low-income households.

(2) **Section 2 of the Food Stamp Act of 1977 states, in part:** Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power to all eligible households who apply for participation.

(3) **Legal basis:** The food stamp program is authorized by the Food Stamp Act of 1977 as amended (7 U. S. C. 2011 et seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Administration by HSD, including its authority to issue regulations, is governed by Chapter 9, Article 8 NMSA (Repl. 1983).

**D. Refugee resettlement program**

(1) **Purpose:** The purpose of the refugee resettlement program (RRP) is to help refugees, political asylees and entrants, regardless of national origin, achieve economic self-sufficiency as quickly as possible. The purposes of the program are accomplished through financial and medical assistance while support services are provided to help refugees acclimate to American society, learn English and get a job. Federal legislation gives eligible refugees and their dependents financial and medical assistance through 100% federal reimbursement to states, including administrative costs, for the first 18 months after entry into the United States.

(2) **Legal basis:** The refugee resettlement program (RRP) is authorized under Title IV of the Immigration and Nationality Act of 1980. The act designates the U.S. department of health and human services as the federal administering agency. RRP program regulations are issued by DHHS in the Code of Federal Regulations Title 45, Part 400, supplemented by administrative and program instructions issued by the federal department from time to time. By Executive Order No. 80-62, dated 10/1/81, the governor of the state of New Mexico has designated HSD as the single state agency responsible for administering the program in New Mexico.

**E. Medical assistance programs**

**(1) Medicaid**

(a) **Purpose:** Medicaid is a federally matched program that makes certain essential health care services available to eligible New Mexico residents who otherwise would not have the financial

resources to obtain them. With certain exceptions, medicaid benefits are provided through “Salud!”, the department's medicaid managed care program.

**(b) Eligible individuals include:**

- (i)** families who meet New Mexico's AFDC requirements as it existed, or is considered to have existed, on July 16, 1996, as amended;
- (ii)** individuals who have been NMW recipients and are in transition to self-support due to employment, child support, or both;
- (iii)** pregnant women who meet income and resource requirements for the state's AFDC program as it existed, or is considered to have existed on July 16, 1996 as amended (full-coverage medicaid);
- (iv)** children under 19 years of age whose income is below 185% of federal poverty levels;
- (v)** pregnant women with income below 185% of federal income poverty levels (for pregnancy-related services);
- (vi)** recipients of assistance under the federal SSI program and those who have lost their SSI eligibility because of cost-of-living increases in Title II benefits;
- (vii)** aged, blind, and disabled individuals in institutions who meet all standards for SSI except income;
- (viii)** individuals who meet all standards for institutional care but can be cared for at home;
- (ix)** qualified medicare beneficiaries(QMBs), qualified disabled working individuals (QDs),
- (x)** and specified low income medicare beneficiaries (SLIMBs), limited coverage for medicare beneficiaries; and
- (xi)** certain foster children in the custody of the state.

**(c) Legal basis:** HSD is the single state agency designated to administer the New Mexico Title XIX medicaid program in accordance with 42 CFR 431.10, single state agency. State authority is provided by Section 27-2-12 NMSA 1978 (Repl. 1984). Title XIX of the Social Security Act and United State department of health and human services rules establish the requirements for state plans for medical assistance.

**(2) Special medical needs**

**(a) Purpose:** The special medical needs program for seriously ill individuals is an entirely state-funded medical assistance program for individuals who suffer serious illnesses. Individuals applying under this program must be eligible according to New Mexico statutes and HSD policy. No new recipients are being added to this category.

**(b) Legal basis:** State authority for administering the special medical needs program is contained in Sections 27-4-1 to 27-4-5 NMSA 1978 (Repl. 1984).

**(3) Medical assistance to refugees**

**(a) Purpose:** This program operates in accordance with the provisions of the medicaid program but is at present 100% funded by the federal government. Medical assistance is provided to individuals and families qualifying for assistance under the refugee resettlement program.

**(b) Legal basis:** State authority for administering the medical assistance to refugees program is contained in Section 27-2-12 NMSA 1978 (Repl. 1984).

**(4) Waivers for in-home care:** The New Mexico department of health, under waivers from DHHS, provides certain in-home care services as an alternative to institutionalization. These waivers authorize services for: elderly, blind and physically handicapped individuals; developmentally disabled individuals; and medically fragile individuals, AIDS. Services under the waiver program are provided to both medicaid-eligible individuals and those who have income and resources in excess of medicaid standards. Within the department, the medical assistance division (MAD) is responsible for developing policy and regulations for these waiver programs.

**F. Energy assistance**

**(1) Purpose:** Three energy assistance programs to assist low-income households during periods of high heating costs are administered by HSD:

- (a)** low income home energy assistance program (LIHEAP);
- (b)** emergency crisis intervention assistance program (ECIAP); and
- (c)** low income utility assistance program (LIUAP).

(2) Energy assistance is provided for home heating costs incurred during the months of November, December, January, and February of each year. The department may extend the program season by one or more months subject to the availability of supplemental state or federal funds.

(3) **Legal basis:** These programs are governed by the federal, state and other pertinent laws and regulations established for a defined program period, including but not limited to the following: 42 USC Section 8601: Chapter 94, Subchapter II, Low Income Home Energy Assistance Act (LIHEEA); Sections 27-6-11 to 27-6-16 NMSA 1978 (Repl. 1984) Low Income Utility Assistance Act (LIUAA).

(4) Funding for the LIHEAP and ECIAP programs is from the LIHEEA block grant.

**G. Child support services**

(1) Every specified parent/relative caretaker who applies for or receives NMW from HSD is required, as a condition of eligibility, to make an assignment of support rights to the state and to cooperate with the state, if necessary, in establishing paternity and securing support.

(2) **Exception:** The cooperation requirement is not applied in cases where it would not be in the best interests of the child to cooperate.

(3) The provisions of the child support enforcement program are contained in Title IV-D of the Social Security Act, and the agency responsible for its implementation is frequently referred to as the IV-D agency. In New Mexico, the IV-D agency is the HSD child support enforcement division (CSED). [7/1/1997; 4/1/1998; 8.100.100.11 NMAC - Rn, 8 NMAC 3.ISD.010, 4/13/2001; A, 12/1/2009]

**8.100.100.12 RESPONSIBILITY AND DELEGATION:**

**A. Division responsibilities:** The income support division (ISD) is responsible for administering all relevant assistance programs in an accurate and timely fashion while treating clients with respect and dignity. The Division administers those programs described in 8.100.100.10 NMAC, categories of assistance, and 8.100.100.11 NMAC, general program description.

**B. Central office responsibilities:** The division's central office includes the director, deputy directors and staff. Generally, central office is responsible for developing and managing division programs, program and organizational budgets and division personnel. It provides oversight and supervision of division field offices.

**C. Field office responsibilities:** ISD county field offices are located in the majority of counties in the state. Counties without ISD field offices may be served by scheduled itinerant visits. The county field office is the ISD unit responsible for the direct administration of ISD's food, medical, energy and financial assistance programs. The offices administer programs according to HSD regulations and policies. Each county office is supervised by a county director, who is responsible for the overall operation of the office, supervising office employees, and administering ISD programs. County directors report to and are supervised by ISD's deputy director for field operations.

**D. Privacy**

(1) Procedures used to determine eligibility must respect the rights of the client under the United States constitution, the Social Security Act, Title VI of the Civil Rights Act of 1964, or any other relevant provisions of state and federal laws. Intrusions on a client's privacy and personal dignity are limited to what is reasonably necessary to make sure that expenditures made under the programs are accurate and legal.

(2) **Prohibited activities:** Specifically prohibited activities include:

- (a) entering a home by force or without permission;
- (b) making home visits outside of normal ISD working hours; and
- (c) searching a home for clues of possible deception.

[7/1/1997; 8.100.100.12 NMAC - Rn, 8 NMAC 3.ISD.020, 4/13/2001]

**8.100.100.13 CONFIDENTIALITY:**

**A.** Both the Social Security Act and the Food Stamp Act require the state agencies responsible for the administration of these programs to provide for the confidentiality of information about applicants for and recipients of program benefits.

**B. "Confidential information"** includes all information about an applicant for or recipient of program assistance contained in division records, as well as information obtained by division employees in their official capacity, whether such information is recorded or not. The term also includes records of division evaluations of recorded information. The term does not include general information of a statistical nature that cannot be identified with a particular individual or family group.

**C. Access to Information:** All information and documentation contained in a case record, with the exception of medical information and narrative dated before February 1, 1977, may be released to an adult family member and/or his/her representative on request. In financial assistance cases, confidential information is not released to the dependent children or the spouse (if not the other parent) of the specified relative, unless permission to do so is given by the specified relative.

**D. Specific legal basis**

(1) **Federal law:** The Social Security Act, as amended, requires that state agencies administering the temporary assistance for needy families (TANF) program limit the release or use of information about applicants or recipients, including medical reports, to:

(a) purposes directly connected with the administration of TANF (Title IV-A), child support enforcement (Title IV-D), medicaid (Title XIX), social services (Title XX), and SSA program (Title V) SSI program (Title XVI);

(b) investigations, prosecutions or civil or criminal proceedings conducted in connection with the administration of these programs;

(c) agencies administering any other federal or federally-aided program which provides assistance in cash, in kind, or in services directly to individuals based on need, provided that the client's permission to release the information has been obtained in writing; the Food Stamp Act of 1977 and succeeding amendments require safeguards restricting the use or disclosure of information obtained from applicant or recipient households to persons directly connected with the administration or enforcement of the provisions of the act or regulations issued pursuant to the act.

(2) **State law:** Section 17 of the New Mexico Works Act of 1998 requires the department to establish and enforce rules governing the custody and use of records, papers, files and communications and restricting the use or disclosure of information in these documents concerning applicants and recipients of assistance in accordance with federal legislation.

[7/1/1997, 4/1/1998; 8.100.100.13 NMAC - Rn, 8 NMAC 3.ISD.030, 4/13/2001]

**8.100.100.14 CLIENT INFORMATION:**

**A. ISD case record:**

(1) ISD case records, consisting of forms, records, narrative material, correspondence and documents, are scanned into electronic format and maintained in the department's secure electronic data management system. Documents submitted in person will be electronically scanned and returned to the individual. Original documents mailed to or left with the office will be photocopied and the originals mailed back to the client at his/her last known address known to the department. The copied documents will be electronically scanned and destroyed once successful completion of a scan into electronic format is confirmed. The case record documents the current and historical eligibility of a recipient group and thereby to establish the validity of decisions to approve or deny assistance.

(2) Case records are the property of the department and are established and maintained solely for use in the public assistance programs administered by the department. Information contained in the case record(s) is confidential and is released only under the limited circumstances and conditions as provided in federal and state laws and regulations, including 8.100.100 NMAC, Sections 13 through 15. Case records and their contents must remain in the possession of the department, its contractors, or approved federal employees. Copies of case records may be released in accordance with federal and state laws and regulations or pursuant to a court order.

(3) **Electronic eligibility system information:** Client information stored on the department's electronic eligibility system is subject to the same guidelines for release of information as the department's case record.

**B. Persons with access to confidential information:**

(1) **Client:** The name of an individual(s) providing confidential information to the department regarding a client is not released to a client or his or her authorized representative. The release of all other case information is subject to the following conditions:

(a) A client or his or her authorized representative must complete a request for access to a case record each time he or she wishes to have access to the case record. If the client wishes to have his or her authorized representative review the record in his or her absence, the client must provide formal documentation authorizing the named individual(s) to access the identified case information for a specified purpose and time frame. This includes an individual(s) acting as the client's authorized representative in a fair hearing. Only the client or the client's authorized representative may authorize another individual(s) to review the record.

(b) The record must be reviewed in the presence of the county director or designee.

(c) If a client disagrees with information contained in the case record, he or she may make a written rebuttal which is made part of the case record. Contested material may not be removed from the case record.

(2) **Inquiries on client's behalf:** Inquiries made on behalf of a client regarding eligibility for or amount of assistance received are treated as coming from private individuals, regardless of whether they come from a private citizen, elected official, or public or private agency. The department must receive formal documentation from the client or his or her authorized representative permitting the release of information.

(3) **Department employees:** Confidential information is available to employees or agents of the department who need it in connection with the various services and public assistance programs administered by the department. This includes field and central office staff, representatives of the child support enforcement division (CSED) and medical assistance division (MAD), and private firms or other agencies under contract with the department that perform work or provide services related to public assistance programs. Confidential information is also available to employees of the federal government concerned with the public assistance programs administered by the department.

(4) **Non-department employees:** Confidential information about applicants for and recipients of public assistance may be released to other agencies or individuals including law enforcement officers that meet all of the following standards:

(a) agency or individual is involved in the administration of a federal or a federally-assisted program that provides assistance in cash, in kind or in services, directly to individuals on the basis of need;

(b) information is to be used for the purpose of establishing eligibility, determining amount of assistance or for providing services for applicants or recipients;

(c) agency or individual is subject to standards of confidentiality comparable to those of the department; and

(d) agency or individual has actual or implied consent of the applicant or recipient to release the information; in an emergency, information may be released without permission, but the client must be informed of its release immediately thereafter; consent may be considered as implied if a recipient or member of the assistance group has made application to the inquiring agency for a benefit or service.

(5) **Funding agencies/auditors:** The department's public assistance programs' funding agencies and auditors may have access to and use of client information and is subject to the confidentiality requirements specified above and in accordance with federal and state laws and regulations.

(6) **Employers:** To claim a tax credit on wages paid to cash assistance recipients, as provided under the Revenue Act of 1978, an employer may request and receive information from the department as to whether an employee is a recipient who meets the criteria for either (a) the welfare tax credit (NMW recipient during the three (3) month period consisting of the month hired and the two (2) months immediately preceding the date of hire); or (b) the targeted jobs tax credit (recipient of GA who received GA for at least thirty (30) days, ending within the sixty (60) day period which ends on the hiring date). Such releases are to be made on a case by case basis and must be accompanied by a consent to release information signed by the client.

**C. Medical records:** Medical reports and medical information in the department's possession, regardless of how they were obtained, may not be shown to a client, unless they are released as part of a fair hearing. Because of the potentially upsetting nature of the facts contained in some reports and because a physician's knowledge is frequently necessary to interpret those facts, a client shall be referred to his/her physician regarding any questions.

**D. Court proceedings:**

(1) **Program-related court cases:**

(a) Criminal or civil court proceedings involving the establishment of paternity and enforcement of child and medical support for recipients, prosecution for fraud, suits for recovery of fraudulently obtained public assistance benefits, third-party recovery, and custody hearings regarding custody of children for whom public assistance is being provided are considered part of the public assistance programs administered by the department. The department or its interests may be represented in such cases by an attorney from the office of general counsel (OGC), CSED, CYFD, by a local district attorney, by a representative of the attorney general's office or by a federal prosecutor.

(b) If information contained in a case record or known to a department employee is needed in preparation for or as part of a court proceeding, the department employee(s) will cooperate in making sure that needed information is supplied. Although employees may receive a subpoena to testify in such a court proceeding, a subpoena is not needed if the court proceeding relates to the public assistance programs administered by the department. To the extent possible, attorneys responsible for a case, or other persons helping in preparing the



case for court action, will notify the department, or other custodian of a case record, in advance and in writing, of the need for court testimony, whether the record should be brought, and of the time, date and place of hearing. If there is not enough time before the hearing to provide written notice, a phone call that the department logs in the narrative section of the case record, is sufficient. If it is not clear whether a court proceeding relates to the public assistance programs administered by the department, the local county office may contact the OGC or the appropriate division director's office for help.

(2) **Non-program related court cases:** Any person or attorney seeking confidential information from a case record for a non-program related court case should direct a properly issued subpoena to the appropriate local county office with a copy also sent to the department's OGC. The department will seek to preserve the confidentiality of the case record unless the release of the information is expressly authorized by federal and state laws and regulations or is otherwise ordered by a court of competent jurisdiction. [7/1/1997, 4/1/1998; 8.100.100.14 NMAC - Rn, 8 NMAC 3.ISD.031, 4/13/2001; A, 11/27/2013]

#### **8.100.100.15 PUBLIC INFORMATION ACT:**

**A. Policy and procedures manual:** The regulations for the public assistance programs administered by the department are located on the official website of the New Mexico administrative code located at <http://www.nmcpr.state.nm.us/nmac/>. Procedures and policy guidance is located at the official department website under the specified division at <http://www.hsd.state.nm.us/>. Copies of appropriate regulations and procedures and policy guidance will be provided to the claimant as part of the summary of evidence in a fair hearing pursuant to Subsection F of 8.100.970.10 NMAC.

**B. State program and plan materials:** The department state plans are available at the official department website under the specified division at <http://www.hsd.state.nm.us/>.

**C. Other printed materials:** Additional printed materials, such as brochures and pamphlets describing basic financial and nonfinancial eligibility criteria, the application process, and participant rights and responsibilities, are available at the local county offices, social security administration offices, state employment services offices, other agencies providing public assistance services, and the official department website at <http://www.hsd.state.nm.us/>.

**D. Federal laws, regulations and other materials:** Federal materials should be obtained by contacting the responsible federal agency directly. The university of New Mexico is a federal repository. Many federal agencies post regulations, planning documents and requirements as well as program instructions on the internet.

[4/1/1998; 8.100.100.15 NMAC - Rn, 8 NMAC 3.ISD.035, 4/13/2001; A, 11/27/2013]

#### **8.100.100.16 NONDISCRIMINATION/PROGRAM ACCESS AND DELIVERY OF SERVICE:**

**A. Statement of nondiscrimination:** HSD programs must be administered in a manner which makes sure that no person is denied any aid, care, services or other benefits on the grounds of race, color, age, sex, handicap, religious creed, national origin or political beliefs, or is otherwise subjected to unlawful discrimination.

**B. Right to file complaint:** Any individual who thinks he/she is discriminated against because of race, color, sex, handicap, religious creed, national origin or political beliefs has the right to file a complaint with the central or any local HSD office, or with the U.S. department of health and human services, the U.S. department of justice, the U.S. department of agriculture, or the civil rights commission in Washington D.C.

(1) **Complaint form:** Individuals wishing to file complaints with HSD may use forms provided by ISD on request. A letter or statement, written or oral, expressing a belief of being unlawfully discriminated against is also accepted as a complaint.

(2) **Unwritten complaints:** If an individual alleges that a discriminatory act has been committed, but refuses or is reluctant to put the complaint in writing, the person receiving the complaint does so.

(3) **Written complaints:** Written complaints are accepted even if the information listed below (in Paragraph 6 of Subsection B of 8.100.100.16) is incomplete.

(4) **Investigation:** HSD investigates any complaints received. Individuals making complaints are told whether unlawful discrimination is found to exist and what other action may be taken by complainants who are not satisfied with the decision.

(5) **Food stamp complaint deadline:** A complaint claiming unlawful discrimination in the food stamp program must be filed no later than 180 days after the date of the alleged discrimination. However, this deadline may be extended by the U.S. secretary of agriculture.

(6) **Information needed:**

(a) name, address and telephone number or other means of contacting complainant;

(b) location and name of individual/agency responsible for delivering service and accused of discriminatory practices;

(c) nature of incident or action causing the complainant to allege unlawful discrimination; or an example of the aspect of the program administration which is alleged to harm potential participants or the individual making the complaint;

(d) basis on which complainant feels unlawful discrimination exists (age, race, handicap, sex, religious creed, color, national origin or political beliefs);

(e) names, titles and addresses of persons who may have knowledge of the discriminatory acts;

(f) date or dates on which the alleged discriminatory actions occurred.

**C. Complaint system:** Complaints regarding individual case deficiencies, such as processing standards or service to participants and applicants, are referred to the relevant county office.

(1) **Exclusions:** This procedure does not include:

(a) complaints that can be pursued through a fair hearing; and

(b) some mail issuance complaints: for example, if a recipient complains of nonreceipt of coupons through the mail, the procedures for replacement of coupons lost in the mail are followed; however, if the complaint concerns the mailing system, (staggered issue, use of certified mail, etc.) the complaint is handled through the complaint procedure.

(2) **Filing:** No special format is necessary for an individual to file a complaint. Instead, the complainant is encouraged to lodge a complaint by telephone (using HSD's toll-free number), through the mail, or in person. If a complainant needs help lodging the complaint, an ISS provides this help.

(3) **Response:** A complainant receives a response to his/her complaint within 10 days after receipt of the complaint.

(4) **Public information:** ISD personnel give information regarding the complaint system and civil rights complaints to all program recipients, applicants, and other interested persons. Such information is provided to clients during interviews, included in brochures, and publicized by posters displayed in all ISD offices.

**D. Bilingual services:** The state provides bilingual outreach materials and staff. This service is provided to households without an English-speaking adult. If a recipient has limited literacy or comprehension of English, the HSD employee provides, in a language understood by the recipient, an explanation containing the following elements:

(1) that the information requested is needed to determine eligibility for assistance;

(2) the consequences of providing incorrect or incomplete information;

(3) that changes in circumstances must be reported to HSD according to specific program changes;

(4) the consequences of failure to report changes;

(5) that HSD takes appropriate legal and/or administrative steps to recover overpayments which result from incorrect, incomplete or late reporting of information;

(6) a list of all information or changes which must be reported;

(7) monthly or other periodic reporting requirements.

[7/1/1997; 8.100.100.16 NMAC - Rn, 8 NMAC 3.ISD.050, 4/13/2001]

#### **8.100.100.17 BENEFIT ISSUANCE SYSTEM:**

**A. Electronic benefit transfer (EBT):** SNAP and cash benefits are issued through a direct deposit into an EBT account. The benefits are maintained in a central database and accessed by the household through an individual debit card issued to the household.

**B. Initial issuance of EBT card:** The EBT card is issued to the designated payee of the eligible household or to the designated authorized representative.

(1) The EBT card is mailed to the head of household or the designated authorized representative on the first working day after the application is registered. The applicant or recipient shall receive training on the use of the EBT card prior to activation of the EBT card.

(2) The EBT card shall be issued to the payee for an eligible household through the most effective means identified by HSD which may include issuance at the county office or by mail.

(3) The applicant or recipient must verify his or her identity.

(4) The payee for the eligible household may select the four-digit personal identification number that will allow access to the household's benefits.

**C. Replacement of the EBT card:** The recipient or designated authorized representative shall be instructed on the procedure for replacement of an EBT card that has been lost, stolen or destroyed.

(1) The recipient or designated authorized representative may report a lost, stolen or destroyed EBT card through the HSD EBT contractor customer service help desk, HSD EBT customer service help desk or any ISD field office.

(2) The lost, stolen, or destroyed EBT card shall be deactivated prior to a replacement card being issued to the household.

(3) ISD shall make replacement EBT cards available for client to pick up or place the card in the mail within two business days following notice by the household to ISD that the card has been lost, stolen or damaged.

(4) ISD may impose a replacement fee by reducing the monthly allotment of the household receiving the replacement card, however, the fee may not exceed the cost to replace the card.

**D. Excessive replacement cards:** The HSD office of inspector general (HSD OIG) will generate a warning letter to SNAP recipients that have replaced their EBT card five or more times in a 12 month period. The letter is a notice of warning and will explain that as a result of the recipient's high number of replacement EBT cards, their EBT SNAP transactions will be closely monitored. The letter will become part of the recipient's case record. The letter will:

(1) be written in clear and simple language;

(2) meet the language requirements described at 7 CFR 272.4(b);

(3) specify the number of cards requested and over what period of time;

(4) explain that the next request, or the current request if the threshold has been exceeded, requires contact with ISD before another card is issued;

(5) provide all applicable information on how contact is to be made in order for the client to comply, such as whom to contact, a telephone number and address; and

(6) include a statement that explains what is considered a misuse or fraudulent use of benefits and the possibility of referral to the fraud investigation unit for suspicious activity.

**E. Inactive EBT accounts:** EBT accounts which have not been accessed by the recipient in the last 90 days are considered a stale account. HSD may store stale benefits offline after notification to the household of this action.

(1) The notification to the household shall include the reason for the proposed action and the necessary steps required by the recipient to reactive the account.

(2) The recipient may request reinstatement of their EBT account anytime within 364 days after the date of the last benefit account activity.

**F. EBT benefit expungement:** When benefits have had no activity:

(1) **SNAP:** HSD may expunge benefits that have not been accessed by the household after a period of 274 days. HSD must attempt to notify the household prior to expungement. Expunged benefits are no longer available to the household. Requests for reactivation must be received prior to expungement and a determination shall be made by the director or designee of the income support division.

(2) **Cash:** Cash assistance benefits which have had no activity for an excess of 180 days will be expunged. All benefits older than 180 days in the account will no longer be accessible to the household. The household loses all rights to all expunged benefits. The department shall attempt to notify the household no less than 45 days prior to the expungement of the cash assistance benefits.

[8.100.100.17 NMAC - N, 3/1/2020; A, 10/1/2021]

### **8.100.100.18 TRAINING:**

**A. General statement:** Effective staff development and training is an integral part of successful ISD program operations. ISD supports employee attendance at job-relevant training opportunities. Attendance at training sessions needs supervisory approval. Priorities for such approval are:

(1) training to improve skills needed in an employee's current position;

(2) training to add new skills useful in an employee's current position;

(3) training for an employee's career development.

**B. Budget:** ISD managers are encouraged to develop training plans and budgets for their administrative units. Such plans must be coordinated with the ISD training staff. ISD training staff members are available for consultation in developing these plans and budgets.

[7/1/1997; 8.100.100.17 NMAC - Rn, 8 NMAC 3.ISD.060, 04/13/2001; Rn, 3/1/2020]

**8.100.100.19 ADMINISTRATIVE TRAINING:**

**A. Personnel:** New employees: ISD encourages prompt attendance at new-employee orientation sessions and requires completion of these sessions as specified in the division's training plan(s).

**B. Professional development:** ISD supports attendance at training sessions for an employee's professional development needs and goals. Such attendance requires supervisory review and approval and must not interfere with timely performance of an employee's ongoing duties.

[7/1/1997; 8.100.100.18 NMAC - Rn, 8 NMAC 3.ISD.062, 04/13/2001; Rn, 3/1/2020]

**8.100.100.20 PROGRAM TRAINING:**

**A. New employee training:** The division maintains a new-employee training curriculum for all major programs administered by ISD. This program is accessible to all division and HSD employees who need training in food stamps, financial assistance or medical assistance programs.

**B. Training standards:** ISD training programs conform to the following standards:

(1) Needs assessments: Training programs are developed based upon generally accepted methods of training needs assessment, for example; formal analysis, training needs survey, performance statistics.

(2) Objectives and skills: Training developed and presented by ISD staff must be objective or competency based.

(3) Agenda and prior notification: Training provided to ISD staff members by other HSD employees must, at a minimum:

(a) be planned in advance with enough notice to adjust work schedules;

(b) have a written agenda;

(c) be coordinated with the ISD training staff.

(4) **Training event report:** All individuals who provide individual training sessions to ISD staff must complete an ISD training event report and submit the form to the ISD training staff.

[7/1/1997; 8.100.100.19 NMAC - Rn, 8 NMAC 3.ISD.065, 04/13/2001; Rn, 3/1/2020]

**8.100.100.21 PROVIDER TRAINING:** Provision of training sessions - The ISD training staff provides program training to providers on request as scheduling permits.

[7/1/1997, 04/01/98; 8.100.100.20 NMAC - Rn, 8 NMAC 3.ISD.066, 04/13/2001; Rn, 3/1/2020]

**8.100.100.22 SECURITY:**

**A. Physical property:** It is the responsibility of each ISD county director or bureau chief to develop and maintain plans for insuring the security office equipment, furniture and facilities according to department and other state and federal government guidelines.

**B. Personnel security:** ISD staff are provided training in tools and techniques to reduce the incidence or likelihood of violence or threats directed towards the ISD employee.

[7/1/1997; 8.100.100.21 NMAC - Rn, 8 NMAC 3.ISD.070, 04/13/2001; Rn, 3/1/2020]

**8.100.100.23 ITINERANT SERVICES:**

**A.** ISD provides itinerant service to clients residing at a distance from local ISD offices. Income support specialists visit specified locations on a regularly scheduled basis and conduct required interviews.

**B.** Itinerant schedules are available through local ISD offices. An itinerant location may not be eliminated by ISD without public notice and adequate justification.

[7/1/1997; 8.100.100.22 NMAC - Rn, 8 NMAC 3.ISD.100, 04/13/2001; Rn, 3/1/2020]

**History of 8.100.100 NMAC:**

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

ISD Rule 100, Program Descriptions, 2/9/1988.

ISD Rule 131, Administrative Policy, 2/10/1988.

ISD Rule 141, Treatment of Clients, 2/9/1988.

ISD Rule 141, Treatment of Clients, 6/18/1990.

ISD Rule 150, Confidential Information, 2/9/1988.

**History of Repealed Material:**

8 NMAC 3.ISD.000, 8 NMAC 3.ISD.010, 8 NMAC 3.ISD.020, 8 NMAC 3.ISD.030, 8 NMAC 3.ISD.050, 8 NMAC 3.ISD.060, General Administration and 8 NMAC 3.ISD.100, General Operating Procedures - Repealed, 7/1/1997.