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TITLE 8 SOCIAL SERVICES
CHAPTER 281 MEDICAID ELIGIBILITY - INSTITUTIONAL CARE (CATEGORIES 081, 083 and 084)
PART 400 RECIPIENT POLICIES

8.281.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.281.400.1 NMAC - Rp, 8.281.400.1 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.2 SCOPE: The rule applies to the general public.
[8.281.400.2 NMAC - Rp, 8.281.400.2 NMAC, 1/1/2019]

8.281.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 *et seq*., NMSA 1978 (Repl. Pamp. 1991).
[8.281.400.3 NMAC - Rp, 8.281.400.3 NMAC, 1/1/2019]

8.281.400.4 DURATION: Permanent.
[8.281.400.4 NMAC - Rp, 8.281.400.4 NMAC, 1/1/2019]

8.281.400.5 EFFECTIVE DATE: January 1, 2019 , unless a later date is cited at the end of a section.
[8.281.400.5 NMAC - Rp, 8.281.400.5 NMAC, 1/1/2019]

8.281.400.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.
[8.281.400.6 NMAC - Rp, 8.281.400.6 NMAC, 1/1/2019]

8.281.400.7 DEFINITIONS: [**RESERVED**]

8.281.400.8 MISSION STATEMENT: To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.
[8.281.400.8 NMAC - N, 5/1/2021]

8.281.400.9 INSTITUTIONAL CARE MEDICAID CATEGORIES 081, 083 AND 084: The New Mexico medicaid program (medicaid) pays for services furnished to individuals who require institutional care and who meet all supplemental security income (SSI) eligibility criteria and whose monthly gross countable income is less than the maximum allowed amount for institutional care.
[8.281.400.9 NMAC - Rp, 8.281.400.9 NMAC, 1/1/2019]

8.281.400.10 BASIS FOR DEFINING THE GROUP: An applicant or recipient must require institutional care as certified by a physician licensed to practice medicine or osteopathy. The applicant or recipient must be institutionalized in a medicaid qualifying bed in a New Mexico medicaid approved institution or in a hospital administered under the authority of the US department of veterans affairs (VA). Medicaid approved "Institutions" are defined as acute care hospitals (ACHs), nursing facilities (NFs) and intermediate care facilities for individuals with intellectual disabilities (ICF/IID), swing beds and certified instate inpatient rehabilitation centers. Level of care (LOC) determinations for institutional care medicaid eligibility are made by the MAD utilization review (UR) contractor or a member's selected or assigned Managed Care Organization (MCO). Documentation of these determinations is provided to the institution by the UR contractor or MCO. For applicants or recipients in a hospital awaiting placement in NFs, confirmation letters are furnished by the MAD UR contractor for use by hospital staff. A level of care (LOC) is not required for acute care hospitals. Documentation of acute care hospitalization must be provided by the hospital to determine the eligibility period.
[8.281.400.10 NMAC - Rp, 8.281.400.10 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.11 INTERVIEW REQUIREMENTS:
An interview is not required for institutional care medicaid. An applicant or recipient can request an interview from the income support division (ISD).

[8.281.400.11 NMAC - Rp, 8.281.400.11 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.12 ENUMERATION: An applicant or recipient must furnish their social security number in accordance with 8.200.410.10 NMAC.
[8.281.400.12 NMAC - Rp, 8.281.400.12 NMAC, 1/1/2019; A, 5/1/2021; A, 12/1/2022]

8.281.400.13 CITIZENSHIP: Refer to medical assistance program manual Section 8.200.410.11 NMAC.
[8.281.400.13 NMAC - Rp, 8.281.400.13 NMAC, 1/1/2019]

8.281.400.14 RESIDENCE:

A. Residence in the United States: An applicant or recipient must be residing in the United States at the time of approval. An applicant or recipient who leaves the United States for an entire calendar month loses eligibility. The applicant or recipient must re-establish their residence in the United States for at least 30 consecutive days before becoming eligible for any SSI-related medicaid program.

B. Residence in New Mexico: To be eligible for institutional care medicaid, an applicant or recipient must be physically present in New Mexico on the date of application or final determination of eligibility and must have demonstrated intent to remain in the state. If the individual does not have the present mental capacity to declare intent, the parent, guardian or adult child may assume responsibility for a declaration of intent. If the individual does not have the present mental capacity to declare intent and there is no guardian or relative to assume responsibility for a declaration of intent, the state where the person is living is recognized as the state of residence. A temporary absence from the state does not preclude eligibility. A temporary absence exists if the applicant or recipient leaves the state for a specific purpose with a time-limited goal and intends to return to New Mexico when the goal is accomplished.
[8.281.400.14 NMAC - Rp, 8.281.400.14 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.15 SPECIAL RECIPIENT REQUIREMENTS:

A. Institutional care medicaid: To be eligible for institutional care medicaid an applicant or recipient must be aged, blind, or disabled as defined by the social security administration (SSA). Recipients of institutional care medicaid in New Mexico are terminated from assistance if they are transferred to, or choose to move to, a long term care facility out-of-state. New Mexico medicaid does not cover NF services furnished to applicants or recipients in out-of-state facilities with the exception of out-of-state long-term care facilities that are not available in the state of New Mexico in accordance with Subsection F of 8.302.4.12 NMAC.

B. Intermediate care facilities for individuals with intellectual disabilities (ICF/IID): To be eligible for an ICF/IID, applicants or recipients must obtain a match letter from the department of health to confirm that they meet the definition of an individual with a developmental disability as determined by the department of health/developmental disabilities supports division, in accordance with 8.290.400.10 NMAC.
[8.281.400.15 NMAC - Rp, 8.281.400.15 NMAC, 1/1/2019; A, 5/1/2021; A, 12/1/2022]

8.281.400.16 AGED: To be considered aged, an applicant or recipient must be 65 years of age or older. Age is verified by the following:

A. decision from SSA regarding age;

B. acceptable documentary evidence including:

(1) birth certificate or delayed birth certificate;
(2) World War II ration books;
(3) baptismal records;
(4) marriage license or certificate;
(5) military discharge papers;
(6) insurance policies;
(7) Indian census records;
(8) dated newspaper clippings;
(9) voting registration;
(10) World War I registration;
(11) veterans administration records; or
(12) school census.

[8.281.400.16 NMAC - Rp, 8.281.400.16 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.17 BLIND: To be considered blind, an applicant or recipient must have central visual acuity of 20/200 or less with corrective lenses.

A. Documentation of blindness: An applicant or recipient must meet the SSA's definition of blindness. If the applicant or recipient is receiving social security or supplemental security income (SSI) benefits based on the condition of blindness, verification of this factor can be accomplished through documents, such as award letters or benefit checks.

B. Status of SSA determination: If it has not been determined whether an applicant or recipient meets SSA's definition of blindness or if only a temporary determination was made, the ISD worker must request a determination from the disability determination unit (DDU). Eligibility based on blindness cannot be considered to exist without a DDS determination.

C. Redetermination of blindness: A redetermination of blindness by the DDU is not required on a re-application following an applicant or recipient's termination from SSI/SSA or medicaid, if a permanent condition of blindness was previously established or the termination was based on a condition unrelated to blindness and there was no indication of possible improvement in an applicant or recipient's vision.

D. Remedial treatment: If the DDU recommends remedial medical treatment that carries no more than the usual risk or a reasonable plan for vocational training, an applicant or recipient must comply with the recommendation unless good cause for not doing so exists.

[8.281.400.17 NMAC - Rp, 8.281.400.17 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.18 DISABILITY: To be considered disabled, an applicant or recipient under 65 years of age is considered to have a qualifying disability if they are unable to engage in any substantial gainful activity because of any medically determinable physical, developmental, or mental impairment which has lasted, or is expected to last, for a continuous period of at least 12 months.

A. Documentation of disability: An applicant or recipient must meet the social security administration (SSA)'s definition of disability. If the applicant or recipient is receiving social security or supplemental security income (SSI) benefits based on the condition of disability, verification of this factor can be accomplished through documents, such as award letters or benefit checks.

B. Status of SSA determination: If it has not been determined whether an applicant or recipient meets the SSA's definition of disability or if only a temporary determination was made, the ISS must request a determination from the DDU. Eligibility based on disability cannot be considered to exist without a DDS determination.

C. Redetermination of disability: A redetermination of disability by the DDU is not required on a re-application following an applicant or recipient's termination from SSI/SSA or medicaid, if a permanent condition of disability was previously established or the termination was based on a condition unrelated to disability and there was no indication of possible improvement in an applicant/recipient's physical condition.

D. Remedial treatment: If the DDU recommends remedial medical treatment that carries no more than the usual risk or a reasonable plan for vocational training, an applicant or recipient must comply with the recommendation unless good cause for not doing so exists.

[8.281.400.18 NMAC - Rp, 8.281.400.18 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.19 SSI STATUS: The ISD worker determines whether an applicant or recipient's SSI eligibility will continue while they are institutionalized.

A. Applicant/recipient currently eligible for SSI: If an applicant or recipient will not continue to be eligible for SSI while institutionalized, the ISD worker processes the application regardless of the fact that SSA will not terminate SSI benefits until the month following the month the applicant or recipient enters an institution.

B. Applicant not currently receiving SSI: If an applicant or recipient is not receiving SSI or has not applied for SSI before applying for medicaid and their gross income is less than $50, the ISD worker processes the application and refers the applicant to the SSA for determination of eligibility for SSI benefits. If an applicant's gross monthly income is $50 or more but not in excess of the maximum allowable income standard, the ISD worker determines eligibility for institutional care medicaid based on remaining financial and nonfinancial criteria.

[8.281.400.19 NMAC - Rp, 8.281.400.19 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.20 RECIPIENT RIGHTS AND RESPONSIBILITIES: An applicant or recipient is responsible for establishing their eligibility for medicaid. As part of this responsibility, the applicant or recipient must provide required information and documents or take the actions necessary to establish eligibility. Failure to do so must

result in a decision that eligibility does not exist. An applicant or recipient must also grant the HSD permission to contact other persons, agencies or sources of information, which are necessary to establish eligibility.
[8.281.400.20 NMAC - Rp, 8.281.400.20 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.21 RIGHT TO HEARING: An applicant or recipient residing in an institution can request an administrative hearing to dispute issues relating to the eligibility determination process at the time of the eligibility determination (see Section 8.200.430.12 NMAC, Right to Hearing).
[8.281.400.21 NMAC - Rp, 8.281.400.21 NMAC, 1/1/2019; A, 5/1/2021]

8.281.400.22 ASSIGNMENTS OF MEDICAL SUPPORT: Refer to medical assistance program manual Subsection F of Section 8.200.420.12 NMAC.
[8.281.400.22 NMAC - Rp, 8.281.400.22 NMAC, 1/1/2019]

8.281.400.23 REPORTING REQUIREMENTS: Medicaid recipients must report any change in circumstances, which may affect their eligibility to their local ISD office within 10 days of the change in accordance with 8.200.430.18 NMAC.
[8.281.400.23 NMAC - Rp, 8.281.400.23 NMAC, 1/1/2019; A, 5/1/2021]

HISTORY OF 8.281.400 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
ISD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 12/29/1983.
ISD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 8/11/1987.
MAD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 2/5/1988.
MAD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 2/25/1988.
MAD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 6/1/1988.
MAD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 1/31/1989.
MAD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 6/21/1989.
MAD Rule 880.0000, Medical Assistance For Persons Requiring Institutional Care, filed 3/21/1990.
MAD Rule 880, Medical Assistance For Persons Requiring Institutional Care, filed 5/3/1991.
MAD Rule 880, Medical Assistance For Persons Requiring Institutional Care, filed 6/12/1992.
MAD Rule 880, Medical Assistance For Persons Requiring Institutional Care, filed 11/16/191994.
MAD Rule 882, Resources - Medical Assistance For Persons Requiring Institutional Care, filed 3/9/1993.
MAD Rule 882, Resources - Medical Assistance For Persons Requiring Institutional Care, filed 11/16/191994.
MAD Rule 882, Resources, filed 12/29/191994.
MAD Rule 883, Income - Medical Assistance For Persons Requiring Institutional Care, filed 3/18/1993.
MAD Rule 883, Income - Medical Assistance For Persons Requiring Institutional Care, filed 11/16/191994.
MAD Rule 883, Income, filed 12/29/1994.
MAD Rule 885, Medical Care Credit, filed 11/16/1994.
MAD Rule 888, Medicare Catastrophic Coverage Act of 1988 Regarding Transfers of Assets, filed 3/10/1994.
MAD Rule 888, Transfers of Assets, filed 12/27/1994.
MAD Rule 889, Spousal Impoverishment, filed 8/17/1992.
MAD Rule 889, Spousal Impoverishment, filed 2/17/1994.

History of Repealed Material:
MAD Rule 880, Medical Assistance For Persons Requiring Institutional Care, filed 11/16/1994 - Repealed effective 2/1/191995.
MAD Rule 882, Resources, filed 12/29/1994 - Repealed effective 2/1/1995.
MAD Rule 883, Income, filed 12/29/1994 - Repealed effective 2/1/1995.
MAD Rule 885, Medical Care Credit, filed 11/16/1994 - Repealed effective 2/1/1995.
MAD Rule 888, Transfers of Assets, filed 12/27/1994 - Repealed effective 2/1/1995.
MAD Rule 889, Spousal Impoverishment, filed 2/17/1994 - Repealed effective 2/1/1995.
8.281.400 NMAC - Recipient Policies, filed 6/13/2003 - Repealed effective 1/1/2019.