

NMAC

Transmittal Form

Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: (ALD Use Only)
New Amendment Repeal Emergency Renumber Most recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment):
Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes No Please list attachments or Internet sites if applicable.

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Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

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Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

The Human Services Department (HSD) HSD is revising Institutional Care Medicaid rules to eliminate the requirement for an interview at initial application and to add language regarding the requirement for a match letter for Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) applicants to confirm the applicant or recipient meets the definition of an individual with a developmental disability. HSD received no oral or written comments on these rule changes and is adopting the rules as proposed.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

David R. Scrase

Check if authority has been delegated

Title:

Secretary

Signature: (BLACK ink only)

Date signed:

DocuSigned by:
David R. Scrase, M.D.

3/12/2021

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This is an amendment to 8.281.400 NMAC, Sections 1, 8, 10–12, 14-20, 21 and 23 effective 5/1/2021.

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]

8.281.400.8 [RESERVED] 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]

8.281.400.10 BASIS FOR DEFINING THE GROUP: An [applicant/recipient] applicant or recipient must require institutional care as certified by a physician licensed to practice medicine or osteopathy. The [applicant/recipient] 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 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/recipients] 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:

~~_____ A. _____ **Purpose and scope of interview:** An interview is required at initial application for institutional care medicaid. The initial interview is an official and confidential discussion of household circumstances with the applicant. The interview is intended to provide the applicant with program information, and to supply the facts needed by the income support division (ISD) worker to make a reasonable eligibility determination. The interview is not simply to review the information on the application, but also to explore and clarify any unclear or incomplete information. The scope of the interview shall not extend beyond examination of the applicant's circumstances that are directly related to determining eligibility. The interview shall be held prior to disposition of the application.~~

~~_____ B. _____ **Individuals interviewed:** Applicants, including those who submit applications by mail, shall be interviewed via telephone with an ISD worker. When circumstances warrant or upon request of the applicant, the household may be interviewed in person at another place reasonably accessible and agreeable to both the applicant and the ISD worker. The applicant may bring any person he chooses to the interview.~~

~~_____ C. _____ **Scheduling interviews:** The interview on an initial application shall be scheduled within 10 working days, and, to the extent possible, at a time that is most convenient for the applicant.~~

~~_____ D. _____ **Missed interviews:** ISD shall notify a household that it missed its first interview appointment, and inform the household that it is responsible for rescheduling the missed interview. If the household contacts the caseworker within the 45-day application processing period, the caseworker shall schedule a second interview. When the applicant contacts ISD, either orally or in writing, the caseworker shall reschedule the interview as soon as possible thereafter within the 45-day processing period, without requiring the applicant to provide good cause for missing the initial interview. If the applicant does not contact ISD or does not appear for the rescheduled interview, the application shall be denied on the 45th day (or the next work day) after the application was filed.]~~

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/recipient] applicant or recipient must furnish his or her 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]

8.281.400.14 RESIDENCE:

A. Residence in the United States: An [applicant/recipient] applicant or recipient must be residing in the United States at the time of approval. An [applicant/recipient] applicant or recipient who leaves the United States for an entire calendar month loses eligibility. The [applicant/recipient] applicant or recipient must re-establish [his/her] 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/recipient] 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/recipient] 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: [To be eligible for institutional care medicaid, an applicant/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/recipients in out-of-state facilities.]

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.

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 he or she meets 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]

8.281.400.16 AGED: To be considered aged, an [applicant/recipient individual must] 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/recipient] applicant or recipient must have central visual acuity of 20/200 or less with corrective lenses.

A. Documentation of blindness: An [applicant/recipient] applicant or recipient must meet the SSA's definition of blindness. If [he/she] 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/recipient] 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/recipient's] 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/recipient's] 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/recipient] 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/recipient] applicant or recipient under 65 years of age is considered to have a qualifying disability if [he/she-is] 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/recipient] applicant or recipient must meet the social security administration (SSA)'s definition of disability. If [he/she] 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/recipient] 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/recipient's] 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/recipient] 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/recipient's] applicant or recipient's SSI eligibility will continue while [he/she-is] they are institutionalized.

A. Applicant/recipient currently eligible for SSI: If an [applicant/recipient] 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/recipient] applicant or recipient enters an institution.

B. Applicant not currently receiving SSI: If an [applicant/recipient] applicant or recipient is not receiving SSI or has not applied for SSI before applying for medicaid and [his/her] 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/recipient] applicant or recipient is responsible for establishing [his/her] their eligibility for medicaid. As part of this responsibility, the [applicant/recipient] 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/recipient] applicant or recipient must also grant the [human services department (HSD)] 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/recipient]~~ 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]

8.281.400.23 REPORTING REQUIREMENTS: Medicaid recipients must report any change in circumstances, which may affect ~~[his/her]~~ their eligibility to their local ~~[income support division (ISD)]~~ 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]