

2022 NOV 16 PM 3:14

NMAC Transmittal Form

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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: New Amendment Repeal Emergency Renumber (ALD Use) 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.

If materials are attached, has copyright permission been received? Yes No Public domain

Specific statutory or other authority authorizing rulemaking:

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

2022 NOV 16 PM 3:14

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.

No public comments were received. The Department received comments from the Centers for Medicare and Medicaid Services (CMS) that required some changes to the proposed rule. The rules are being adopted as proposed with the CMS requested changes.

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 OR Digital Signature)

Date signed:

DocuSigned by:
David R. Scrase, M.D.
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2022 NOV 16 PM 3:14

This is an amendment to 8.281.500 NMAC, Sections 7, 8, 10, 12-23, effective 12/1/2022.

8.281.500.7 DEFINITIONS:

- A. Actuarially sound:** With respect to an annuity or promissory note, the payments made to the beneficiary must not exceed their life expectancy and returns to the beneficiary an amount at least equal to the amount used to establish the contract.
- B. Annuity:** A financial instrument, usually sold by a life insurance company, that pays out a regular income at fixed intervals for a certain period of time, often beginning at a certain age and continuing for the life of the owner.
- C. Asset limit:** An applicant or recipient may be eligible for a MAP category of institutional care on the factor of resources if countable resources do not exceed \$2,000.
- D. Assets:** All income and resources of an applicant or recipient and their spouse, if applicable.
- E. Authorized representative:** The individual designated to represent and act on the applicant's or recipient's behalf during the eligibility process. The applicant or recipient or their 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, or any other individual or individuals designated in writing by the claimant.
- F. Bona fide:** A bona fide agreement is made in good faith and is legally valid.
- G. Community spouse:** The spouse of an institutionalized applicant or eligible recipient who is residing in the community and is not in an institution.
- H. Community spouse resource allowance (CSRA):** An amount of a married couple's resources that is set aside for the community spouse when the eligible recipient is institutionalized. There is a MAD minimum and a federal maximum amount of resources that can be set aside for the community spouse.
- I. Encumbrance:** A general term for any claim or lien on a parcel of real property, including mortgages, deeds of trust and abstracts of judgments.
- J. Fair market value:** An estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria used in appraising the value of assets for the purpose of determining a MAP category of eligibility.
- K. Home equity:** (Also known as equity value.) The value of a home minus the total amount owed on it in mortgages, liens and other encumbrances.
- L. Income:** Anything that an applicant or recipient receives in cash or in kind that they can use to meet their needs for food and shelter. In kind income is not cash, but is actual food or shelter, or something that the applicant or recipient can use to get one of these.
- M. Institutionalized spouse:** An applicant or recipient who is in an acute care hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities (ICF-IID), swing bed or certified in-state inpatient rehabilitation center.
- N. Life estate:** An interest in property that exists for the life of a person. For example, an individual gives a life estate in a house to person A and the remainder to person B. Person A has a life estate and person B has a remainder interest until person A dies.
- O. Liquid resource:** Cash or something that can easily be converted to cash within 20 business days.
- P. Loan:** A transaction in which one party advances money to, or on behalf of another party, who promises to repay the lender in full, with or without interest.
- Q. Long term Care Insurance Policy:** A type of insurance developed specifically to cover the costs of nursing homes, assisted living, home health care and other long term care services as specified in the individual's policy.
- R. Lookback period:** A period of time in the past through which the ISD caseworker may examine all financial transactions for asset transfers.
- S. Minimum monthly maintenance needs allowance:** A minimum level of income that the federal government allows to be set aside for the support of the community spouse when the other spouse is in an institution.
- T. Negotiable agreement:** An agreement (i.e., a loan) in which the ownership of the agreement and the whole amount of money can be transferred from one person to another.
- U. Non liquid resource:** An asset such as real property, which cannot be easily converted to cash within 20 days.
- V. Promissory note:** A promissory note is a written, unconditional agreement in which one person

2022 NOV 16 PM 3: 14

promises to pay a specified sum of money at a specified time to another person.

W. **Protected Asset Limit:** Protected assets up to the amount of qualified long-term care insurance partnership (QLTICP) benefit payments made to or on the behalf of individual. This is the applicant's or recipient's protected asset limit (PAL).

X. **Qualified state long term care insurance partnership (QLTICP) program:** A partnership program that joins MAD with private insurance companies that offer long term care insurance policies. The MAD eligibility requirements are adjusted to provide financial incentives for eligible recipients to purchase private QLTICP coverage.

Y. **Relative:** Relative is defined as a spouse, son or daughter, grandson or granddaughter; step-son or step-daughter; in-law; mother or father; step-mother or step-father; half sister or half brother; grandmother or grandfather; aunt or uncle; sister or brother; step brother or step-sister; and niece or nephew.

Z. **Remainder/remainder man:** An interest in property that occurs after a life estate. For example, an individual gives a life estate in a house to person A and the remainder to person B. Person A has a life estate and Person B has a remainder interest until person A dies. Person B is also called the remainderman.

AA. **Resources:** Cash or other liquid assets and any real or personal property that applicant or recipient (or spouse if any) owns and could convert to be used for their support and maintenance.

BB. **Restricted coverage:** An eligible recipient who has restricted coverage may access medically necessary MAD benefits except for long term care services in a nursing facility.

CC. **Reverse mortgage:** A loan against home equity providing cash advances to a borrower and requiring no repayment until a future date.

DD. **Sole benefit of:** A transfer is considered for the sole benefit of a spouse, blind or disabled child, or a disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind, or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

EE. **Spouse:** For purposes of this rule, a spouse is an individual who is legally married under the laws of a state, a territory, or a foreign jurisdiction in which the marriage was celebrated.

FF. **Transfer:** To change over the possession, control or ownership of something.]

A. **Definitions beginning with "A":**
(1) **Actuarially sound:** With respect to an annuity or promissory note, the payments made to the beneficiary must not exceed their life expectancy and returns to the beneficiary an amount at least equal to the amount used to establish the contract.

(2) **Annuity:** A financial instrument, usually sold by a life insurance company, that pays out a regular income at fixed intervals for a certain period of time, often beginning at a certain age and continuing for the life of the owner.

(3) **Asset limit:** An applicant or recipient may be eligible for a MAP category of institutional care on the factor of resources if countable resources do not exceed \$2,000.

(4) **Assets:** All income and resources of an applicant or recipient and their spouse, if applicable.

(5) **Authorized representative:** The individual designated to represent and act on the applicant's or recipient's behalf during the eligibility process. The applicant or recipient or their 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, or any other individual or individuals designated in writing by the claimant.

B. **Definitions beginning with "B":** **Bona fide:** A bona fide agreement is made in good faith and is legally valid.

C. **Definitions beginning with "C":**
(1) **Community spouse:** The spouse of an institutionalized applicant or eligible recipient who is residing in the community and is not in an institution.

(2) **Community spouse resource allowance (CSRA):** An amount of a married couple's resources that is set aside for the community spouse when the eligible recipient is institutionalized. There is a MAD minimum and a federal maximum amount of resources that can be set aside for the community spouse.

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

E. **Definitions beginning with "E":** **Encumbrance:** A general term for any claim or lien on a parcel of real property, including mortgages, deeds of trust and abstracts of judgments.

F. **Definitions beginning with "F":** **Fair market value:** An estimate of the value of an asset, if

2022 NOV 16 PM 3:14

sold at the prevailing price at the time it was actually transferred. Value is based on criteria used in appraising the value of assets for the purpose of determining a MAP category of eligibility.

G. Definitions beginning with "G": [RESERVED]

H. Definitions beginning with "H": Home equity: (Also known as equity value.) The value of a home minus the total amount owed on it in mortgages, liens and other encumbrances.

I. Definitions beginning with "I":

(1) Income: Anything that an applicant or recipient receives in cash or in kind that ~~the~~ ~~er~~ ~~shel~~ they can use to meet their needs for food and shelter. In-kind income is not cash, but is actual food or shelter, or something that the applicant or recipient can use to get one of these.

(2) Institutionalized spouse: An applicant or recipient who is in an acute care hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities (ICF-IID), swing bed or certified in-state inpatient rehabilitation center.

J. Definitions beginning with "J": [RESERVED]

K. Definitions beginning with "K": [RESERVED]

L. Definitions beginning with "L":

(1) Life estate: An interest in property that exists for the life of a person. For example, an individual gives a life estate in a house to person A and the remainder to person B. Person A has a life estate and person B has a remainder interest until person A dies.

(2) Liquid resource: Cash or something that can easily be converted to cash within 20 business days.

(3) Loan: A transaction in which one party advances money to, or on behalf of another party, who promises to repay the lender in full, with or without interest.

(4) Long-term Care Insurance Policy: A type of insurance developed specifically to cover the costs of nursing homes, assisted living, home health care and other long-term care services as specified in the individual's policy.

(5) Lookback period: A period of time in the past through which the ISD caseworker may examine all financial transactions for asset transfers.

M. Definitions beginning with "M": Minimum monthly maintenance needs allowance: A minimum level of income that the federal government allows to be set aside for the support of the community spouse when the other spouse is in an institution.

N. Definitions beginning with "N": [RESERVED]

(1) Negotiable agreement: An agreement (i.e., a loan) in which the ownership of the agreement and the whole amount of money can be transferred from one person to another.

(2) Non-liquid resource: An asset such as real property, which cannot be easily converted to cash within 20 days.

O. Definitions beginning with "O": [RESERVED]

P. Definitions beginning with "P":

(1) Promissory note: A promissory note is a written, unconditional agreement in which one person promises to pay a specified sum of money at a specified time to another person.

(2) Protected Asset Limit: Protected assets up to the amount of qualified long-term care insurance partnership (QLT CPI) benefit payments made to or on the behalf of individual. This is the applicant's or recipient's protected asset limit (PAL).

O. Definitions beginning with "O": Qualified state long-term care insurance partnership (OSLTCP) program: A partnership program that joins MAD with private insurance companies that offer long-term care insurance policies. The MAP eligibility requirements are adjusted to provide financial incentives for eligible recipients to purchase private OSLT CPI coverage.

R. Definitions beginning with "R":

(1) Relative: Relative is defined as a spouse, son or daughter; grandson or granddaughter; step-son or step-daughter; in-laws; mother or father; step-mother or step-father; half-sister or half-brother; grandmother or grandfather; aunt or uncle; sister or brother; step-brother or step-sister; and niece or nephew.

(2) Remainder/remainder man: An interest in property that occurs after a life estate. For example, an individual gives a life estate in a house to person A and the remainder to person B. Person A has a life estate and Person B has a remainder interest until person A dies. Person B is also called the remainderman.

(3) Resources: Cash or other liquid assets and any real or personal property that applicant or recipient (or spouse if any) owns and could convert to be used for their support and maintenance.

(4) Restricted coverage: An eligible recipient who has restricted coverage may access

2022 NOV 16 PM 3: 14

medically necessary MAD benefits except for long-term care services in a nursing facility.

(5) Reverse mortgage: A loan against home equity providing cash advances to a borrower and requiring no repayment until a future date.

S. Definitions beginning with "S":

(1) Sole benefit of: A transfer is considered for the sole benefit of a spouse, blind or disabled child, or a disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind, or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

(2) Spouse: For purposes of this rule, a spouse is an individual who is legally married under the laws of a state, a territory, or a foreign jurisdiction in which the marriage was celebrated.

T. Definitions beginning with "T": Transfer: To change over the possession, control or ownership of something.

U. Definitions beginning with "U": [RESERVED]

V. Definitions beginning with "V": [RESERVED]

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

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

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

Z. Definitions beginning with "Z": [RESERVED]

[8.281.500.7 NMAC - Rp, 8.281.500.7 NMAC, 8/15/2015; A, 3/1/2018; A, 12/1/2022]

8.281.500.8 [RESERVED] MISSION: 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.

[8.281.500.10 NMAC - N, 12/1/2022]

8.281.500.10 RESOURCE STANDARDS: A "resource" is defined as cash or liquid assets and real or personal property which is owned and can be used either directly, or by sale or conversion, for the applicant's or recipient's support and maintenance. Resources may be liquid or non-liquid and may be excluded from the eligibility determination process under certain conditions. A liquid resource is an asset which can readily be converted to cash. A non-liquid resource is an asset or property which cannot readily be converted to cash.

A. Resource determination: The resource determination for a MAP category of eligibility for institutional care is made as of the first moment of the first day of the month. An applicant or recipient is ineligible for any month in which [~~his or her~~] their countable resources exceed the allowable resource standard as of the first moment of the first day of the month. Changes in the amount of countable resources during a month do not affect eligibility or ineligibility for that month.

B. Distinguishing between resources and income: Resources must be distinguished from income to avoid counting a single asset twice. As a general rule, ownership of a resource precedes the current month while income is received in the current month. Income held by an applicant or recipient until the following month becomes a resource.

[8.281.500.10 NMAC - Rp, 8.281.500.10 NMAC, 8/15/2015; A, 12/1/2022]

8.281.500.12 COUNTABLE RESOURCES: Before a resource can be considered countable, the three criteria listed below must be met.

A. Ownership interest: An applicant or recipient must have an ownership interest in a resource for it to be countable. The fact that an applicant or recipient has access to a resource, or has a legal right to use it, does not make it countable unless the applicant or recipient also has an ownership interest in it.

B. Legal right to convert resource to cash: An applicant or recipient must have the legal ability to spend the funds or to convert non-cash resources into cash.

(1) Physical possession of resource: The fact that an applicant or recipient does not have physical possession of a resource does not mean it is not [~~his or her~~] their resource. If [~~he or she has~~] they have the legal ability to spend the funds or convert the resource to cash, the resource is considered countable. Physical possession of savings bonds is a legal requirement for cashing them.

(2) Unrestricted use of resource: An applicant or recipient is considered to have free access to the unrestricted use of a resource even if [~~he or she~~] they can take those actions only through an agent, such as a representative payee, guardian, conservator, trustee, or another authorized representative. If there is a legal bar to the sale of a resource, the resource is not countable. However, if a co-owner of real property can bring an

2022 NOV 16 PM 3:14

action to partition and sell the property, [his-or-her] their interest in the property is a countable resource.

C. **Legal ability to use a resource:** If a legal restriction exists which prevents the use of a resource for the applicant's or recipient's own support and maintenance, the resource is not countable.

D. **Joint ownership of resources:** If an applicant or recipient owns either liquid or non-liquid resources jointly with others, [he-or-she-has] they have 30 calendar days from the date requested by the ISD worker to submit all documentation required to verify [his-or-her] their claims regarding ownership of, access to, and legal ability to use the resource for personal support and maintenance. Failure to do so results in the presumption that the resource is countable and belongs to the applicant or recipient.

(1) **Jointly held property:** If jointly held property is identified during review of an active case, the ISD worker must:

(a) determine whether the property is a countable resource;

(b) determine whether the value of the jointly held property plus the value of other countable resources exceeds the allowable resource maximum; and

(c) if the value of countable resources exceeds the allowable maximum, advance notice is furnished to the applicant or recipient of the intent to close [his-or-her] their case and [his-or-her] their right to verify claims regarding ownership of, access to, and legal ability to use the property for personal support and maintenance.

(i) If the applicant or recipient fails to provide required information or respond within the advance notice period, [his-or-her] their case is closed.

(ii) If, after expiration of the advance notice period but prior to the end of the month in which the advance notice expires, the applicant or recipient provides the required evidence to show the property is not a countable resource, or is countable in an amount which, when added to the value of other countable resources, does not exceed the maximum allowable limit, and eligibility continues to exist on all other factors, the case is reinstated for the next month.

(2) **Joint bank accounts:** If liquid resources are in a joint bank account of any type, the applicant's or recipient's ownership interest, while the parties to the account are alive, is presumed to be proportionate to the applicant's or recipient's contributions to the total resources on deposit.

(a) The applicant or recipient is presumed to own a proportionate share of the funds on deposit unless [he-or-she-presents] they present clear and convincing evidence that the parties to the account intended the applicant or recipient to have a different ownership interest.

(b) To establish the applicant's or recipient's ownership interest in a joint account, the following are required:

(i) statement by the applicant or recipient regarding contributions to the account; reasons for establishing the account; who owns the funds in the account; and any supporting documentation; plus

(ii) corroborating statements from the other account holder(s);

(iii) if either the applicant or recipient or the other account holder is not capable of making a statement, the applicant or recipient or an authorized representative must obtain a statement from a third party who has knowledge of the circumstances surrounding the establishment of the joint account.

(c) Failure to provide required documentation within 30 calendar days of the date requested by the ISD worker results in a determination that the entire account amount belongs to the applicant or recipient.

(d) If the existence of a jointly held bank account is identified during the review of an active case, the ISD worker requests evidence of ownership and accessibility. If the evidence is not furnished within 30 calendar days of the request, [his-or-her] their case is closed.

(3) **Life estate:** A life estate interest in the applicant's or recipient's own home will count as a resource if the applicant or recipient has not resided on the property continuously for at least 12 months from the date of the life estate purchase. For a purchase of a life estate in the home of another, see Subsection D of [Section] 8.281.500.14 NMAC.

(a) The "unisex life estate and remainder interest tables" are used to determine the value of a life estate. See [Section] 8.200.520 NMAC. The value is computed by multiplying the current fair market value by the percentage reduction on the unisex table under the column for the applicant's or recipient's age.

(b) If an applicant or recipient feels the value calculated based on this method is overstated, [he-or-she] they can obtain a valuation of the life estate in the area for use as documentation of lesser value.

E. **The home as a countable resource:** If the applicant or recipient or [his-or-her] their authorized

2022 NOV 16 PM 3:14

representative states the applicant or recipient does not intend to return to the home and it is not the residence of applicant's or recipient's spouse or dependent relative, the home is considered a countable resource. If the applicant or recipient or [his-or-her] their authorized representative puts the home up for sale and it is not the primary residence of the applicant's or recipient's spouse or a dependent relative, the home is considered a countable resource. A dependent relative is a minor child or adult disabled child of the applicant, recipient, or community spouse.

F. Value of property: The applicant or recipient must supply HSD with written documentation regarding the fair market value of the property from a real estate agent, title company or mortgage insurance company familiar with the area in which the property is located in addition to any encumbrances against the property. The ISD worker determines the equity value of the property by subtracting the amount of the encumbrances from the fair market value of the property.

G. Hardship: Applicants or recipients who are on restricted coverage due to excess equity in their homes may request an undue hardship waiver based on the criteria specified in [Section] 8.281.500.24 NMAC.

H. Real property:

(1) If an applicant or recipient is the sole owner of real property, other than the applicant's or recipient's or [his-or-her] their primary residence and has the right to dispose of it, the entire equity value is included as a countable resource.

(2) If an applicant or recipient owns property with one or more individuals and the applicant or recipient has the right, authority or power to liquidate the property or [his-or-her] their pro-rata share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource to applicant or recipient. The applicant or recipient must provide a copy of the legal document which indicates [his-or-her] their interest in the property.

I. Vehicles: One automobile is totally excluded regardless of value if it is used for transportation for the applicant or recipient or a member of applicant's or recipient's household. Any other automobiles are considered to be non-liquid resources. Recreational vehicles and boats are considered household goods and personal effects rather than vehicles.

J. Household goods and personal effects: Household goods and personal effects are considered countable resources if the items were acquired or are held for their value or are held as an investment. Such items can include but are not limited to gems and jewelry that is not worn or held for family significance, or collectibles.

K. Promissory notes: If an applicant or recipient holds or owns a promissory note and the note is negotiable, it is a countable resource. The value is the outstanding principal balance due at the time of the applicant's or recipient's MAP application, unless the applicant or recipient proves that it has a lower value.

(1) A promissory note held by the applicant or recipient must be a bona fide loan. This means that it must be legally valid and made in good faith. The ISD worker must evaluate the note and determine whether or not it is a bona fide loan. In order to determine if the note is a bona fide loan, the ISD worker should obtain documentation of the applicant's or recipient's receipt of payments on the note at the time of application and at re-certification. If the applicant or recipient sells or transfers the promissory note, then [he-or-she] they may be subject to a penalty for a transfer of assets for less than fair market value.

(2) If the promissory note is non-negotiable, and the applicant or recipient receives payments on the note that could be used for food or shelter, then the amount of the payment retained in the month following receipt is a resource to the applicant or recipient.

(3) If an applicant or recipient purchases a promissory note, loan or mortgage, the repayment terms must be actuarially sound, provide for equal payment amounts with no deferral or balloon payments, and it must contain a provision that prohibits cancellation of the balance upon the death of the lender. A promissory note not meeting these requirements shall be treated as a transfer of assets for less than fair market value. If a promissory note does not meet these requirements, the value of the note, loan or mortgage is the outstanding balance due on the date of the applicant's or recipient's MAP application.

L. Pension funds: A pension fund, if accessible to the applicant or recipient, is a countable resource. Any fees for withdrawal of the funds are subtracted from the balance and the remainder is a countable resource.

M. Individual retirement accounts (IRA): An IRA is a tax-deductible savings account that sets aside money for retirement. Funds in an IRA are counted as an asset in their entirety less the amount of penalty for early withdrawal.

N. Keogh plan: A Keogh plan is a retirement plan established by a self-employed applicant or recipient alone or for the self-employed applicant or recipient and [his-or-her] their employees. If the Keogh plan was established for the self-employed applicant or recipient alone, the funds in the plan are counted as an asset in their entirety less the amount of penalty for early withdrawal. If the Keogh plan was established for employees

2022 NOV 16 PM 3: 14

other than the spouse of the applicant or recipient, the funds do not count as an asset.

O. Loans: In some circumstances a loan may be a countable resource.

(1) Negotiable loan. If an applicant or recipient owns a loan agreement or is a lender and the agreement is a negotiable, bona fide loan:

(a) the outstanding principal balance is a resource of the applicant or recipient;
(b) the cash provided to the borrower is no longer the applicant or recipient lender's resource because ~~[he or she]~~ they cannot access it for ~~[his or her]~~ their own use; the loan agreement replaces the cash as the applicant or recipient lender's resource;

(c) payments that the applicant or recipient lender receives from the borrower against the loan principal are conversions of a resource, not income; if retained, the payments are counted as the applicant or recipient lender's resource starting in the month following the month of receipt; and

(d) interest income received by the applicant or recipient lender is unearned income.
(2) Non-negotiable loan. If the applicant or recipient owns a loan agreement or is a lender and the loan agreement is not a bona fide loan or is not negotiable:

(a) the agreement is not a resource of the applicant or recipient lender;
(b) payments against the principal are income to the applicant or recipient lender, not conversion of a resource;

(c) the cash specified in the agreement may be a resource if the applicant or recipient lender can access it for ~~[his or her]~~ their own use; and

(d) interest income received by the applicant or recipient lender is unearned income.
(3) Bona fide loan. If the applicant or recipient is the borrower and the agreement is a bona fide loan:

(a) the loan agreement itself is not a resource for the applicant or recipient; and
(b) the cash provided by the applicant or recipient lender is not income, but is the borrower's resource if retained in the month following the month of receipt.

(4) Not a bona fide loan. If the applicant or recipient is the borrower and the agreement is not a bona fide loan:

(a) the loan agreement itself is not a resource of the applicant or recipient; and
(b) the cash provided by the applicant or recipient lender is income in the month received and is a resource if retained in the month following the month it was received.

(5) Informal loan. If the agreement is an agreement between applicants or recipients who are not in the business of lending money or providing credit, it is an informal loan. An informal loan is bona fide if it meets all of the following criteria:

(a) the agreement is enforceable under state law;
(b) the agreement is in effect at the time that the cash is provided to the borrower; money given to an applicant or recipient to repay cannot become a loan at a later date;

(c) the obligation to repay the loan must be acknowledged by both the applicant or recipient lender and the borrower; when money or property is given and accepted based on any understanding other than it is to be repaid by the receiver, there is no loan;

(d) the agreement must include a plan or schedule for repayment, and the borrower's express intent to repay by pledging real or personal property or anticipated future income (such as social security insurance (SSI) benefits);

(e) the repayment plan or schedule must be feasible; in determining the plan's feasibility, consider the amount of the loan, the applicant's or recipient's resources and income and the applicant's or recipient's living expenses;

(f) if the applicant or recipient is the borrower, the loan proceeds are a resource if they are retained in the month following the month of receipt; the resource value is the amount of the proceeds that the applicant or recipient still holds in the month following the month of receipt;

(g) if the applicant or recipient is the lender, the agreement is a countable resource starting in the month after the month that the applicant or recipient lender provides the proceeds to the borrower; and
(h) the agreement's resource value is the outstanding principal balance unless the applicant or recipient lender provides evidence that the loan has a lower value.

P. Other financial instruments: Other financial instruments will be evaluated by HSD to determine if they are a countable resource.

Q. Continuing care retirement community, assisted living, life care community or like living arrangement: The portion of initial fees paid upon signing a contract for housing and care that has a potential to be

2022 NOV 16 PM 3: 15

refunded to the applicant or recipient is countable.

R. Other countable resources: Other liquid or non-liquid resources must be considered in the calculation of total countable resources. The following non-liquid resources may be included in the calculation of countable resources if they cannot be excluded pursuant to [See] 8.281.500.13 NMAC:

- (1) burial funds;
- (2) burial spaces;
- (3) life insurance and other insurance products such as annuities;
- (4) income-producing property; and
- (5) other financial investment products.

[8.281.500.12 NMAC - Rp, 8.281.500.12 NMAC, 8/15/2015; A, 12/1/2022]

8.281.500.13 RESOURCE EXCLUSIONS: Some types of resources can be excluded from the calculation of countable resources if they meet the specific criteria listed below.

A. Burial fund exclusion: Up to ~~one thousand five hundred dollars~~ ~~(one thousand five hundred dollars (\$1500))~~ \$1,500 can be excluded from the countable liquid resources of an applicant or recipient if designated as ~~[his or her] their~~ burial fund. An additional amount of up to ~~one thousand five hundred dollars~~ ~~(one thousand five hundred dollars (\$1500))~~ \$1,500 can be excluded from countable liquid resources if designated as burial funds for the spouse of the applicant or recipient. The burial fund exclusion is separate from the burial space exclusion.

(1) **Retroactive designation of burial funds:** An applicant or recipient can retroactively designate funds for burial back to the first day of the month in which the applicant or recipient intended the funds to be set aside for burial. The applicant or recipient must sign a statement indicating the month the funds were set aside for burial.

(2) **Limit on exclusion:** An applicant or recipient can designate as much of ~~[his or her] their~~ liquid resources as ~~[he/she wishes] they wish~~ for burial purposes. However, only one burial fund allowance of up to ~~one thousand five hundred dollars~~ ~~(one thousand five hundred dollars (\$1500))~~ \$1,500 each for the applicant or recipient and ~~[his or her] their~~ spouse can be excluded from countable resources. A burial fund exclusion does not continue from one period of eligibility to another (i.e., across a period of ineligibility). For each new period of eligibility, any exclusion of burial funds must be developed as for an initial application.

(3) **Removal of designation:** An applicant or recipient cannot "un-designate" burial funds, unless one of the following occurs:

- (a) eligibility terminates;
- (b) part, or all, of the funds can no longer be excluded because the applicant or recipient purchased excluded life insurance or an irrevocable burial contract which partially or totally offsets the available burial fund exclusion; or
- (c) the applicant or recipient uses the funds or any portion of the funds for another purpose; this action makes the funds countable; any designated burial funds used for another purpose will be counted as income in the month withdrawn and as a resource thereafter.

(4) **Reduction of burial fund exclusion:** The ~~one thousand five hundred dollars~~ ~~(one thousand five hundred dollars (\$1500))~~ \$1,500 burial fund exclusion is reduced by the following:

- (a) the face value of excluded life insurance policies;
- (b) assets held in irrevocable burial trusts; irrevocable means the value paid cannot be returned to the applicant or recipient;
- (c) assets that are not burial space items held in irrevocable burial contracts;
- (d) assets held in other irrevocable burial arrangements; and
- (e) assets held in an irrevocable trust available to meet burial expenses.

(5) **Interest from burial fund:** Interest derived from a burial fund is not considered a countable resource or income if all the following conditions exist:

- (a) the original amount is excluded;
- (b) the excluded burial fund is not commingled with non-excluded burial funds;
- (c) the interest earned remains with the excluded burial funds.

(6) **Commingling of burial funds:** Burial funds cannot be commingled with non-burial funds. If only part of the funds in an account are designated for burial, the burial fund exclusion cannot be applied until the funds designated for burial expenses are separated from the non-burial funds. Countable and excluded burial funds can be commingled.

(7) **Life insurance policy designated as burial fund:** An applicant or recipient can

2022 NOV 16 PM 3:15

designate a life insurance policy as a burial fund at the time of application. The ISD caseworker must first analyze Subsection H of [Section] 8.281.500.13 NMAC [~~of this rule~~].

(8) **Burial contracts:** If an applicant or recipient has a prepaid burial contract, the ISD caseworker determines whether it is revocable or irrevocable and whether it is paid for. Until all payments are made on a burial contract, the amounts paid are considered burial funds and no burial space exclusions apply.

(a) An applicant or recipient may have a burial contract which is funded by a life insurance policy. The life insurance may be either revocably or irrevocably assigned to a funeral director or mortuary.

(b) A revocable contract exists if the value can be returned to the applicant or recipient. An irrevocable contract exists when the value cannot be returned. If the contract or insurance policy assignment is revocable, the following apply.

(i) If the burial contract is funded by a life insurance policy, the policy is the resource which must be evaluated. The burial contract itself has no value. It exists only to explain the applicant's or recipient's burial arrangements.

(ii) No exclusions can be made for burial space items because the applicant or recipient does not have a right to them if the contract is not paid for or the policy is not paid up.

(c) If the assignment is irrevocable, the life insurance or burial contract is not a countable resource, because the applicant or recipient does not own it.

(i) The burial space exclusions can apply if the applicant or recipient has the right to the burial space items.

(ii) The value of the irrevocable burial arrangement is applied against the [~~one thousand five hundred dollars (\$1500)] \$1,500 burial fund exclusion only if the applicant or recipient has other liquid resources to designate for burial.~~

B. Burial space exclusion: A burial space or an agreement which represents the purchase of a burial space held for the burial of an applicant or recipient, [~~his or her~~] their spouse, or any other member of [~~his or her~~] their immediate family is an excluded resource regardless of value. Interest and accruals on the value of a burial space are excluded from consideration as countable income or resources.

(1) When calculating the value of resources to be deemed to an applicant or recipient from [~~his or her~~] their parent(s) or spouse, the value of spaces held by the parent(s) or spouse which are to be used for the burial of the applicant or recipient, or any member of the applicant's or recipient's immediate family, including the deemer parent or spouse, must be excluded.

(2) The burial space exclusion is separate from, and in addition to, the burial fund exclusion.

(3) **Burial space definitions:** "Burial space" is defined as a burial plot, gravesite, crypt, mausoleum, casket, urn, niche, or other repository customarily used for the deceased's bodily remains.

(a) A burial space also includes necessary and reasonable improvements or additions, such as vaults, headstones, markers, plaques, burial containers (e.g., caskets), arrangements for the opening and closing of a gravesite, and contracts for care and maintenance of the gravesite, sometimes referred to as endowment or perpetual care.

(b) Items that serve the same purpose are excluded once per applicant or recipient, such as excluding a cemetery lot and a casket, but not a casket and an urn.

(4) **Burial space contract:** An agreement which represents the purchase of a burial space is defined as a contract with a burial provider for a burial space held for the eligible applicant or recipient or a member of [~~his or her~~] their immediate family.

(a) Until all payments are made on the contract, the amounts paid are considered burial funds and no burial space exclusions apply.

(b) An applicant's or recipient's immediate family includes:

- (i) spouse;
- (ii) natural or adoptive parents;
- (iii) minor or adult children, including adoptive and stepchildren;
- (iv) siblings, including adoptive and stepsiblings; and
- (v) spouse of any of the above relatives.

(c) If a relative's relationship to an applicant or recipient is by marriage only, the relationship ceases to exist upon the dissolution of the marriage.

(5) **Burial space "held" for an applicant or recipient:** A burial space is considered held for an applicant or recipient if:

(a) someone has title to or possesses a burial space intended for the use of the

2022 NOV 16 PM 3:15

applicant or recipient or a member of [his-or-her] their immediate family; or

(b) someone has a contract with a funeral service company for a specified burial space for the applicant or recipient or a member of [his-or-her] their immediate family, such as an agreement which represents the applicant's or recipient's current right to the use of the items at the amount shown.

(6) Until the purchase price is paid in full, a burial space is not considered "held for" an applicant or recipient under an installment sales contract or similar device if:

- (a) the applicant or recipient does not currently own the space;
- (b) the applicant or recipient does not currently have the right to use the space; and
- (c) the seller is not currently obligated to provide the space.

C. **Life estate exclusion:** The value of a life estate interest in the applicant's or recipient's own home or in the home of another is excluded if the applicant or recipient has continuously resided in the home for a period of 12 months or more from the date of the life estate purchase. The value of the remainderman's interest when a life estate is retained in one's own home is considered a transfer of resources to be evaluated in accordance with [Section] 8.281.500.14 NMAC.

D. **Settlement exclusions:** Agent orange settlement payments made to applicant or recipient veterans or their survivors are excluded from consideration as resources.

(1) Payments made under the Radiation Exposure Compensation Act are excluded from consideration as resources.

(2) Payments received from a state-administered fund established to aid victims of crime are excluded for nine months beginning the month after the month of receipt.

(3) Payments under the foundation called 'remembrance, responsibility and the future', excluded from consideration as resources.

E. **Exclusions for real property and home:** A home is any shelter used by an applicant or recipient, or [his-or-her] their spouse, as the principal place of residence. The home is not considered a countable resource while in use by the applicant, recipient, or [his-or-her] their spouse as a principal place of residence. If an applicant's or recipient's home equity value exceeds the amount allowed under [Section] 8.200.510 NMAC, then the entire valued amount of [his-or-her] their home is a countable resource. An applicant or recipient with home equity of more than the amount specified shall be placed on restricted coverage for as long as [he-or-she-owns] they own the home. The home includes any buildings and contiguous land used in the operation of the home. If the amount is equal to or less than allowed under [Section] 8.200.510 NMAC, then [his-or-her] their home is excluded during the periods when [he-or-she-resides] they reside in an acute care or long-term care medical facility when the applicant or recipient, or [his-or-her] their authorized representative, states that the applicant or recipient intends to return to [his-or-her] their home.

F. **Exclusion of home:** If the applicant or recipient or [his-or-her] their authorized representative states the applicant or recipient does not intend to return to the home, but the home is the residence of the applicant's or recipient's spouse or dependent minor child or adult disabled child, the home is an excluded resource.

G. **Income-producing property exclusion:** To be excluded from consideration as a countable resource, income-producing property that does not qualify as a bona fide business (e.g., rental property or mineral rights) must have an equity value of no more than [six-thousand-dollars-(~~\$6000~~)] \$6,000 and an annual rate of return of at least six percent of the equity value. See Subsection F of [Section] 8.281.500.13 NMAC if the equity value exceeds [six-thousand-dollars-(~~\$6000~~)] \$6,000 but the rate of return is at least six percent annually. The [six-thousand-dollars-(~~\$6000~~)] \$6,000 and six percent limitation does not apply to property used in a trade or bona fide business, or to property used by an applicant or recipient as an employee which is essential to the applicant's or recipient's self-support (e.g., tools used in employment as a mechanic, property owned or being purchased in conjunction with operating a business). Existence of a bona fide business can be established by documentation such as business tax returns.

(1) **Determination of rate of return:** To calculate the annual rate of return for income producing property when the [six-thousand-dollars-(~~\$6000~~)] \$6,000 and six percent limits apply, the previous year's income tax statement, or at least three months earnings is used to project the rate of return for the year.

(a) If the income is sporadic or has decreased from that needed to maintain a six percent rate of return for the coming year, the property is reevaluated at appropriate intervals.

(b) If the annual rate of return is at least six percent of the equity value but the equity value exceeds [six-thousand-dollars-(~~\$6000~~)] \$6,000, only the excess equity is a countable resource.

(c) If the annual rate of return is less than six percent but the usual rate of return is more, the property is excluded as a countable resource if all the following conditions are met:

- (i) unforeseeable circumstances, such as a fire, cause a temporary

2022 NOV 16 PM 3:15

reduction in the rate of return;

(ii) the previous year's rate of return, as documented by the income tax statement or several months receipts, is at least six percent; and

(iii) the property is expected to produce a rate of return of at least six percent within 18 months of the end of the year in which the adverse circumstances occurred; the ISD caseworker records in the case narrative the plan of action which is expected to increase the rate of return.

(d) The ISD caseworker notifies the applicant or recipient in writing that the property is excluded based on its expected increase in return and that it will be reevaluated at the end of the 18 month grace period. When this period ends, the property must be producing an annual rate of at least six percent to continue to be excluded as a countable resource.

(2) **Types of income-producing property:** Income-producing property includes:

(a) a business, such as a farm or store, including necessary capital and operating assets such as land and buildings, inventory or livestock; the property must be in current use or have been used with a reasonable expectation of resumed use within a year of its most recent use; the ISD caseworker must account for the cash actually required to operate the business; liquid business assets of any amount are excluded;

(b) non-business property includes rental property, leased property, land leased for its mineral rights, and property producing items for home consumption; property which produces items solely for home use is assumed to be producing an annual rate of return of at least six percent;

(c) employment-related property, such as tools or equipment; the applicant or recipient must provide a statement from [his-or-her] their employer to establish that tools or equipment are required for continued employment when the applicant or recipient leaves the institution; if the applicant or recipient is self-employed, only those tools normally required to perform the job adequately are excluded; the applicant or recipient must obtain a statement from someone in the same line of self-employment to establish what is excludable.

H. **Vehicle exclusion:** The term "vehicle" includes any mode of transportation such as a passenger car, truck or special vehicle. Included in this definition are vehicles which are unregistered, inoperable, or in need of repair. Vehicles used solely for purposes other than transportation, such as disassembly to resell parts, racing or as an antique, are not included in this definition. Recreational vehicles and boats are classified as personal effects and are evaluated under the household goods and personal effects exclusion. One vehicle is totally excluded if regardless of value if it is used for transportation for the applicant or recipient or a member of [his-or-her] their household. Any other automobiles are considered to be non-liquid resources. Equity in the other automobiles is counted as a resource.

I. **Life insurance exclusion:** The value of life insurance policies is not considered a countable resource if the total cumulative face value of all policies owned by the applicant or recipient does not exceed [one thousand five hundred dollars (\$1500)] \$1,500. A policy is considered to be "owned" by the applicant or recipient if the applicant or recipient is the only one who can surrender the policy for cash.

(1) **Consideration of burial insurance and term insurance:** Burial insurance and term insurance are not considered when computing the cumulative face value because this insurance is redeemable only upon death.

(2) **Calculation when value exceeds limit:** If the total cumulative face value of all countable life insurance policies owned by the applicant or recipient exceeds [one thousand five hundred dollars (\$1500)] \$1,500, the ISD caseworker:

(a) verifies the total cash surrender value of all policies and considers the total amount a countable resource;

(b) informs the applicant or recipient that the insurance policies can be converted to term insurance or ordinary life insurance of lower face value at [his-or-her] their option, if the cash surrender value, alone or in combination with other countable resources, exceeds the resource standard.

J. **Qualified State Long-term Care Insurance Partnership (QSLTCIP) program:** A resource exclusion equal to the amount of the qualified long-term care insurance benefit payments is made to or on the behalf of the applicant or recipient as determined during [his-or-her] their eligibility process.

(1) In order to be considered a QSLTCIP policy it must meet the requirements set forth in 1917(a) of the Social Security Act.

(2) The applicant or recipient:

(a) must have been a beneficiary of a QSLTCIP that was purchased on or after

August 15, 2015; or

(b) must have a QSLTCIP policy established in another state with a CMS approved state plan for state long-term care insurance partnerships and the beneficiary must have been a resident of such a

2022 NOV 16 PM 3:15

state on the date the policy was purchased; or

(c) must be a current New Mexico resident and after August 14, 2015 have purchased a long-term care policy that was converted to a QSLTCIP through an endorsement, exchange, or rider.

(3) Long-term care insurance does not qualify as a QSLTCIP.

(4) Resources excluded in the amount of benefits paid out are also excluded in the estate recovery process.

(5) Resources can be designated for protection when a MAP category of eligibility for either institutional care services or home and community based services is established, while receiving MAD benefits provided through institutional care or home and community based waiver programs, or during the estate recovery process after a recipient dies.

(6) An applicant or recipient may protect assets up to the amount of QSLTCIP benefit payments made to or on the behalf of an applicant or recipient; this is the eligible applicant or recipient's protected asset limit (PAL). If the value of protected assets exceeds the PAL, the excess value is counted against the asset limit and is not protected in estate recovery.

(7) The following conditions may apply to assets protected under a QSLTCIP:

(a) an applicant or recipient may keep protected resources;

(b) the value of protected assets is updated each year at the MAP eligibility review; the updated value is the counted towards the PAL;

(c) an applicant or recipient may transfer a protected asset to another person without a transfer penalty; a transferred asset is counted against the PAL based on the value of the asset on the day it was transferred;

(d) an applicant or recipient may use a protected asset to obtain another protected asset, which then becomes the protected asset;

(e) an applicant or recipient can spend or deplete a protected asset; the asset

continues to be protected and is counted against the PAL even though the applicant or recipient no longer has it; (f) once an asset is officially designated for protection, it cannot be undesignated in favor of designating another asset;

(g) changes in the status of protected assets must be reported at the recipient's annual re-determination for MAP eligibility; some examples of changes are transferring, spending, depleting, or replacing an asset; and

(h) new countable assets that are reported in-between MAP eligibility renewals must be evaluated when reported to determine if they can be protected under the QSLTCIP program's PAL;

(i) the following assets cannot be protected under the QSLTCIP program and must be made available after the death of the recipient to reimburse HSD up to the amount of the paid MAD benefits on the deceased recipient behalf;

(i) special and or supplemental needs, pooled charitable trusts, irrevocable trusts with a reversionary state interest, or income diversion trusts; and

(ii) annuity interest where HSD has been named a reminder beneficiary.

(8) Unused asset protection may result because all available asset protection was not used at the time of designation or when an applicant or recipient PAL has increased because the applicant or recipient continues to receive benefits from a QSLTCIP while receiving MAD benefits.

(9) Unused asset protection will automatically apply to protect assets already officially indicated for protection when the value of the asset has increased and there is unused asset protection.

(10) Unused asset protection may also be used to more fully cover an asset that is only partially protected, protect additional assets that have become available during a recipient's lifetime, or to protect assets in a recipient's estate after [~~he or she dies~~] they die.

K. **Produce for home consumption exclusion:** The value of produce for home consumption is totally excluded.

L. **Exclusion of settlement payments from the federal department of housing and urban development:** Payments from the department of housing and urban development (HUD) as defined in *Underwood v. Harris* are excluded as income and resources. These one-time payments were made in the spring of 1980 to certain eligible tenants of subsidized housing (Section 236 of the National Housing Act).

(1) **Segregation of payment:** To be excluded as a resource, payments retained by an applicant or recipient must be kept separate; these payments must not be combined with any other countable resources.

(2) **Income from segregated funds:** Interest or dividend income received from segregated

2022 NOV 16 PM 3:15

payment funds is not excluded from income, or, if retained, is not an excluded resource; this interest or dividend income must be kept separate from excludable payment funds.

M. Lump sum payments exclusion: SSI and social security lump sum payments for retroactive periods are excluded as countable resources for nine months after the month in which they are received. See Subsection B of [Section] 8.281.500.15 NMAC for instructions regarding SSI and social security lump sums which are placed into the ownership of a MAD qualifying trust. Social security lump sum payments are considered infrequent income. See Subsection C of [Section] 8.281.500.19 NMAC.

N. Home replacement exclusion: The proceeds from a reverse mortgage from the sale of an excluded home is excluded. Additionally, the value of a promissory note or similar installment sales contract which constitutes proceeds from the sale of an excluded home is excluded from countable resources if all of the following conditions are met:

(1) the note results from the sale of the applicant's or recipient's home as described in Subsection E of [Section] 8.281.500.13 NMAC;

(2) within three months of receipt (execution) of the note, the applicant or recipient purchases a replacement home which meets the definition of a home in Subsection E of [Section] 8.281.500.13 NMAC;

(3) all note-generated proceeds are reinvested in the replacement home within three months of receipt;

(4) **additional exclusions:** in addition to excluding the value of the note itself, the down payment received from the sale of the former home, as well as that portion of any installment amount constituting payment on the principal are also excluded from countable resources;

(5) **failure to purchase another excluded home timely:** if the applicant or recipient does not purchase another home which can be excluded under the provisions of Subsection E of [this section] 8.281.500.13 NMAC and the following paragraphs within three months, the value of the promissory note or similar sales contract received from the sale of an excluded home becomes a countable resource as of the first moment of the first day of the month following the month the note is executed; if the applicant or recipient purchases a replacement home after the expiration of the three month period, the value of the promissory note or similar installment sales contract becomes an excluded resource effective the month following the month of purchase of the replacement home provided that all other proceeds are fully and timely reinvested;

(6) **failure to reinvest proceeds timely:** if the proceeds from the sale of an excluded home under a promissory note or similar installment sales contract are not reinvested fully within three months of receipt in a replacement home, the following resources become countable as of the first moment of the first day of the month following receipt of the payment:

(a) the fair market value of the note;

(b) the portion of the proceeds, retained by the applicant or recipient which was not timely reinvested;

(c) the fair market value of the note remains a countable resource until the first moment of the first day of the month following the receipt of proceeds that are fully and timely reinvested in the replacement home; failure to reinvest proceeds for a period of time does not permanently preclude exclusion of the promissory note or installment sales contract; however, previously received proceeds that were not timely reinvested remain countable resources to the extent they are retained;

(7) **interest payments:** if interest is received as part of an installment payment resulting from the sale of an excluded home under a promissory note or similar installment sales contract, the interest payments are considered countable unearned income in accordance with Subsection A of [Section] 8.281.500.19 NMAC;

(8) **when the home replacement exclusion does not apply:** if the home replacement exclusion does not apply, the market value of a promissory note or sales contract as well as the portion of the payment received on the principal are considered countable resources.

O. Household goods and personal effects exclusion: Household goods and personal effects are excluded if they meet one of the following four criteria:

(1) items of personal property, found in or near the home, which are used on a regular basis; items may include but are not limited to furniture, appliances, recreational vehicles (i.e. boats and RVs), electronic equipment (i.e. computers and television sets), and carpeting;

(2) items needed by the householder for maintenance, use and occupancy of the premises as a home; items may include but are not limited to cooking and eating utensils, dishes, appliances, tools, and furniture;

(3) items of personal property ordinarily worn or carried by the applicant or recipient; items

2022 NOV 17 PM 3:15

may include but are not limited to clothing, shoes, bags, luggage, personal jewelry including wedding and engagement rings, and personal care items;

(4) items otherwise having an intimate relation to the applicant or recipient; items may include but are not limited to prosthetic devices, educational or recreational items such as books or musical instruments, items of cultural or religious significance to an applicant or recipient; or items required because of an applicant or recipient impairment.

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8.281.500.14 ASSET TRANSFERS: The ISD caseworker must determine whether an applicant or recipient or [his-or-her] their spouse transferred assets within a specified period of time (lookback period) before applying for a MAP category of eligibility for institutional care or at any time after approval of the applicant's or recipient's application. Then the ISD caseworker must determine if the applicant or recipient or [his-or-her] their spouse received fair market value for the asset. If the applicant or recipient or [his-or-her] their spouse did not receive fair market value for the asset, then the applicant or recipient may be subject to a penalty. In the case of an asset held by the applicant or recipient in common with another individual or individuals in a joint tenancy, tenancy in common, or similar arrangement including life estate or remainderman relation, the asset (or the affected portion of such asset) is considered to be transferred by the applicant or recipient when any action is taken, either by the applicant or recipient or by any other individual, acting on behalf of the applicant or recipient (including but not limited to a spouse, representative payee, trustee, guardian, conservator, or another authorized representative), that reduces or eliminates the applicant's or recipient's ownership or control of such asset. Any asset transferred to a community spouse in excess of the community spouse resource allowance (CSRA) is considered to be totally available to the institutionalized spouse and must be spent down before eligibility can be established.

A. Lookback period: Any transfer of assets made prior to February 8, 2006, is subject to a 36-month lookback period prior to the date of the applicant's or recipient's application or at any time subsequent to the approval of an application for a MAP category of eligible for institutional care. Transfers made on or after February 8, 2006, are subject to a 60-month lookback period.

(1) The lookback period is 60 months if the transfer occurred as the result of payments from a trust or portions of a trust that are treated as assets disposed of by the applicant or recipient.

(2) The lookback period starts on the date the applicant or recipient applies for a MAP category of institutional care and is in an institution.

B. Transfer of assets for less than fair market value: If a transfer of assets occurred within the applicable lookback period, or at any time after approval of the applicant's or recipient's application, the ISD caseworker must determine whether the applicant or recipient or [his-or-her] their spouse received fair market value for the transferred asset(s).

(1) **Documentation requirement:** The applicant or recipient or [his-or-her] their spouse must provide documentation of the transfer, the fair market value of the asset(s) transferred, the circumstances surrounding the transfer and the amount, if any, received as compensation for the transferred asset.

(2) If the applicant or recipient fails to provide this information without good cause within 30 calendar days from the date requested by the ISD caseworker, the ISD caseworker denies the application or closes the applicant's or recipient's case, as appropriate.

(a) Good cause is considered to exist if the applicant or recipient or [his-or-her] their authorized representative can show that [he-or-she-was] they were effectively precluded from timely reporting because of legal, financial, or other reasons, or because of the existence of a health related problem including death of a family member within the specific degree of relationship during the period of time in which the applicant or recipient, or authorized representative has to report the required information. The health or other problem must have been of such severity and duration as to have effectively precluded the applicant or recipient or [his-or-her] their authorized representative from reporting in a timely manner. See [See] 8.291.410 NMAC for a detailed description of relationships.

(b) To document the good cause claim, the applicant or recipient or authorized representative must provide proof of the existence of the health or other problem and must explain the circumstances which precluded provision of the required information.

(c) The ISD caseworker makes the determination of good cause subject to review and approval by the county director or designee.

(3) **Restricted coverage:** If a transfer of assets occurred within the applicable lookback period, or at any time subsequent to approval for a MAP category of institutional care eligibility, for which the applicant or recipient or [his-or-her] their spouse did not receive fair market value, the ISD caseworker determines if