



State of New Mexico  
Human Services Department  
Human Services Register



**I. DEPARTMENT**

NEW MEXICO HUMAN SERVICES DEPARTMENT

**II. SUBJECT**

TRANSFER OF ASSETS  
IN THE  
HOME AND COMMUNITY BASED SERVICES  
WAIVER PROGRAMS

**III. PROGRAM AFFECTED**

(TITLE XIX) MEDICAID

**IV. ACTION**

PROPOSED REGULATIONS

**V. BACKGROUND SUMMARY**

The Human Services Department is proposing to clarify eligibility for Home and Community Based Services Waiver programs when there has been a transfer of assets for less than fair market value during the five year look back period.

**VI. REGULATIONS**

These regulations will be contained in Sections 8.290.500 NMAC of the Medical Assistance Eligibility Manual. All manual sections are available on the Medical Assistance Division web site at [www.hsd.state.nm.us/mad/CEligibilityManual](http://www.hsd.state.nm.us/mad/CEligibilityManual). If you do not have Internet access, a copy of the regulations may be requested by contacting the Medical Assistance Division at 827-3156.

**VII. EFFECTIVE DATE**

The Department proposes to implement these regulations effective March 1, 2010.

**VIII. PUBLIC HEARING**

A public hearing to receive testimony on these proposed regulations will be held at 9:00 a.m. on January 14, 2010 in the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Division toll free at 1-888-997-2583 and ask for extension 7-3156, in Santa Fe call 827-3156, or through

the Department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

#### **IX. ADDRESS**

Interested persons may address written or recorded comments to:

Pamela S. Hyde, J.D., Secretary  
Human Services Department  
P.O. Box 2348  
Santa Fe, New Mexico 87504-2348

These comments must be received no later than 5:00 p.m., on January 14, 2010. Written and recorded comments will be given the same consideration as oral comments made at the public hearing. Interested persons may also address comments via electronic mail to: Magdalena.Romero@state.nm.us.

#### **X. PUBLICATIONS**

Publication of these regulations approved on

---

PAMELA S. HYDE, J.D, SECRETARY  
HUMAN SERVICES DEPARTMENT

**TITLE 8            SOCIAL SERVICES  
CHAPTER 290 MEDICAID ELIGIBILITY - HOME AND COMMUNITY-BASED SERVICES WAIVER  
(CATEGORIES 090, 091, 092, 093, 094, 095 AND 096)  
PART 500          INCOME AND RESOURCE STANDARDS**

**8.290.500.8          MISSION:** To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.  
[8.290.500.8 NMAC - N, 3-1-10]

**8.290.500.14        ASSET TRANSFERS:** See 8.281.500.14 NMAC, *asset transfers*, and following subsections for rules governing transfers of assets. All provisions pertaining to transfers under institutional care medicaid apply to transfers under the waiver programs with the exception of the penalty for transfers of assets for less than fair market value. The penalty for transfers of assets [~~without fair return~~] for less than fair market value for waiver applicants/recipients is ineligibility for long term care medicaid services under the waiver programs. Federal regulations specify that, to be eligible for a waiver program, an individual must be receiving the waiver or long term care services. Because a waiver applicant/recipient is not eligible to receive these services under the medicaid program, they [~~become medicaid~~] are ineligible for the HCBS waiver program. [~~For transfers without fair return that occur after February 8, 2006, the penalty period is five years. If the transfer took place prior to February 8, 2006, the look back period is three years. The penalty period is calculated in the same way as for institutional care medicaid if the applicant or recipient enters a nursing facility.~~] The period of ineligibility is based on when the assets were transferred during the look back period. After February 8, 2006 the look back period for transfers is 60 months prior to the date of application. As soon as the HCBS waiver applicant has no transfers for less than fair market value during the 60 months look back period, they are eligible to be reconsidered for HCBS provided all financial and non-financial criteria are met. If the transfer for less than fair market value is discovered after the applicant is approved for HCBS, the period of ineligibility begins the first day of the month in which the resources were transferred. If the applicant or recipient enters a nursing facility, a penalty period for the transfer of assets for less than fair market value is calculated based on 8.281.500.14, *asset transfers*. This penalty period runs whether or not the individual remains in the nursing facility.  
[2/1/95, 1/1/97; 8.290.500.14 NMAC - Rn, 8 NMAC 4.WAV.515, 5/1/02; A, 11/1/07; A, 3-1-10]

**HISTORY OF 8.290.500 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the Commission of Public Records-State Records Center and Archives:  
MAD Rule 898, Transfers Of Assets, 12/29/94.

**History of Repealed Material:** [RESERVED]