



STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
HUMAN SERVICES REGISTER



I. DEPARTMENT

HUMAN SERVICES DEPARTMENT

II. SUBJECT

- 8.102.461 NMAC-CASH ASSISTANCE PROGRAMS-WORK PROGRAM ACTIVITIES
- 8.102.520.9 NMAC-CASH ASSISTANCE PROGRAMS-ELIGIBILITY POLICY-INCOME
- 8.102.620 NMAC-CASH ASSISTANCE PROGRAMS-DESCRIPTION OF PROGRAM BENEFITS-BENEFIT DETERMINATION/GENERAL

III. PROGRAMS AFFECTED

Cash Assistance Program

IV. ACTION

FINAL RULE

V. BACKGROUND

The Department is finalizing and adopting regulations that were proposed for the Cash Program in Human Register (HSR) Vol. 45 No. 17. These programs are administered by HSD, including its authority to promulgate regulation and is governed by Chapter 9, Article 8, NMSA 1978 (Repl.1983).

The Department proposed to update NMAC sections to reflect changes in policy:

- Section 12 of 8.102.461 NMAC: Excluding income for TANF eligibility participants who receive income from the activity under Subsidized Private Sector Employment;
- Section 9 of 8.102.520 NMAC: Update for pass-through distribution for TANF recipients who collect child support; and
- Section 10 of 8.102.620.10 NMAC: Eliminating sanctioning for TANF participants assigned to limited participation for failure to meet hours or providing a timesheet.

VI. Concise Explanatory Statement:

Regulations issued pursuant to the act are contained in 45 CFR Parts 200-299 and 300-399. Administration of the Human Services Department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions

This HSR addresses comments received in response to the proposed rule. A public hearing was held November 14, 2022, from 9:00am to 10:00am, and where there were several attendees and submission of both verbal and written comments. During the hearing, the Department received three verbal comments. The Department also received five written comments. Below are the comments with the Departments response:

Comment:

“Thank you for the proposed recommendations and supportive of the changes suggested. Go further and remove barriers to households to access the benefits. Young parents to access the benefits and sanction for small requirements. Lack of transportation and difficult to meet the requirements. Go further and end sanctions for children and have benefits more accessible.”

Response:

The Department appreciates the comment. Regarding the sanctioning regulations, the Department follows state statute outlined in NMSA 1978, Section 27-2B-14. In addition to state statute, the Department follows the Code of Federal Regulations at 45 CFR 264.30 to ensure that the noncompliance implementation and process remains federally compliant. 45 CFR 264.30 states: the Title IV-A agency must take appropriate action by: Deducting from the assistance that would otherwise be provided to the family of the individual an amount equal to not less than 25% of the amount of such assistance; or deny the family any assistance under the program.

Comment:

“I agree with the recommendations being put in place. Should also continue to put less sanctions on families. I am dealing with another partner who can’t pay child support. Really difficult for families who have transportation issues or childcare. Sanctions need to be ended because monies being cut impacts the care for children.”

Response:

The Department appreciates the comment. Regarding the sanctioning regulations, the Department follows state statute outlined in NMSA 1978, Section 27-2B-14. In addition to state statute, the Department follows the Code of Federal Regulations at 45 CFR 264.30 to ensure that the noncompliance implementation and process remains federally compliant. 45 CFR 264.30 states: the Title IV-A agency must take appropriate action by: Deducting from the assistance that would otherwise be provided to the family of the individual an amount equal to not less than 25% of the amount of such assistance; or deny the family any assistance under the program.

Comment:

“How will the TANF program be more assessable to families that choose to not pursue child support from absent parents.”

Response:

The Department appreciates the comment. Regarding the sanctioning regulations, the Department follows state statute outlined in NMSA 1978, Section 27-2B-14. In addition to state statute, the

Department follows the Code of Federal Regulations at 45 CFR 264.30 to ensure that the noncompliance implementation and process remains federally compliant. 45 CFR 264.30 states: the Title IV-A agency must take appropriate action by: Deducting from the assistance that would otherwise be provided to the family of the individual an amount equal to not less than 25% of the amount of such assistance; or deny the family any assistance under the program.

Comment:

“I write you today to urge to make these critical changes to our TANF program for families:

1. HSD can stop the practice of reducing or eliminating the children’s portion of the cash grant when their parents do not meet a program requirement; and
2. HSD can stop retaining and disregard 100% of the child support funds collected on behalf of families that participate in TANF. This would allow child support funds to go to the children they are meant for without reducing the families’ cash assistance amount. Please use your power and work to make cash assistance more accessible to New Mexico’s parents and children. Cash assistance like TANF helps parents afford basic needs like food, diapers, bills and bus fare.”

Response:

The Department appreciates the comment. Regarding the sanctioning regulations, the Department follows state statute outlined in NMSA 1978, Section 27-2B-14. In addition to state statute, the Department follows the Code of Federal Regulations at 45 CFR 264.30 to ensure that the noncompliance implementation and process remains federally compliant. 45 CFR 264.30 states: the Title IV-A agency must take appropriate action by: Deducting from the assistance that would otherwise be provided to the family of the individual an amount equal to not less than 25% of the amount of such assistance; or deny the family any assistance under the program.

NMHS D will collaborate and share the recommendation with the Child Support Enforcement Division (CSED) as this process is a CSED requirement.

Comment:

“I am submitting these comments in regard to the Temporary Assistance for Needy Families program. As we know, TANF provides a lifeline to families and can be the difference in helping families meet basic needs. It is critical that HSD make eligibility simple and broadly accessible. Proposed changes such as ensuring families receive \$200 of child support funds available and exempting subsidized income in determining eligibility are positive. In addition, HSD should stop retaining and disregard 100% of child support funds collected on behalf of TANF eligible families and allow those child support funds to go to children without reducing the families' cash assistance amount, every dollar is critical for these families and does make a difference.”

Response:

The Department appreciates the comment. NMHS D will collaborate and share the recommendation with the Child Support Enforcement Division (CSED) as this process is a CSED requirement.

Comment:

“I support proposed changes in TANF that will ensure NM families may receive up to \$200 of child support funds collected on their behalf and exempt subsidized income in determining TANF benefit eligibility. TANF due to burdensome rules is not being optimized and these proposed rules may address the low 40% utilization rate.

HSD can stop the practice of reducing or eliminating the children's portion of the cash grant when their parents do not meet a program requirement.”

Response:

The Department appreciates the comment. NMHSD will collaborate and share the recommendation with the Child Support Enforcement Division (CSED) as this process is a CSED requirement.

Comment:

“8.102.461.12 NMAC, Subsidized Private Sector Employment (Core Activity)

This regulation proposes to allow TANF participants who participate in subsidized work activities to have this earned income excluded for the purposes of determining TANF income eligibility. This is an important change because it will allow those participants, who are able to work, the opportunity to continue to receive TANF benefits during the subsidized work period. This will have the effect of rewarding participants who can work to continue working rather than experiencing the “cliff effect” of losing important cash benefits while trying to enter or reenter the workforce. Thank you for making this change.”

Response:

The Department appreciates the comment and the support of the rule change.

Comment:

“8.102.520.9(J) NMAC, Exempt Income

Child support is an important way to increase family income for families that participate in TANF. Families that participate in TANF receive cash benefits that put them at 24% of the Federal Poverty Guidelines. For example, the average TANF household includes a single parent with two children and is eligible to receive a maximum of \$447/month in TANF cash benefits. Prior to this proposed regulation change, only \$100 of the total child support collected was passed through to the family. This important change will increase the typical family’s income by an additional \$100. This is because \$200 of the child support collected on the family’s behalf, by HSD, will now be passed through to the family. This family’s income will increase from \$447 to \$647, an almost 45% boost to family income. We strongly support this change and urge the Department to go further by *passing through and disregarding 100% of the child support collected on behalf of these families.*”

Response:

The Department appreciates the comment. NMHSD will collaborate and share the recommendation with the Child Support Enforcement Division (CSED) as this process is a CSED requirement.

Comment:

“8.102.620.10 NMAC, Child Support and NMW Non-Cooperation Payment Sanctions

We applaud the Department for its proposed change at 8.102.620.10(A)(2)(iv) to stop sanctioning families on limited work participation for failure to meet hours or failure to provide a time sheet. This important change means that families will leave TANF sooner, are less likely to return to TANF, and more likely to higher earn future income. ***Families that are sanctioned return to the cash assistance program for longer than families who are not sanctioned.***

Response:

The Department appreciates the comment and the support of the rule change.

Comment:

“HSD Should Stop Punishing Children For Noncooperation with Program Rules

We urge the Department to go further and promulgate regulations to amend 8.102.620.10(A)(2)(a)(b), Occurrence of non-cooperation with HSD’s Child Support Enforcement Division (CSED) and New Mexico Works (NMW). ***We strongly urge HSD to end full family sanctions for noncooperation with child support enforcement and NMW requirements.*** HSD can go even further and decouple the requirement to pursue child support for families that participate in TANF and ***make this a voluntary component of program participation.***”

Response:

The Department appreciates the comment. Regarding the sanctioning regulations, the Department follows state statute outlined in NMSA 1978, Section 27-2B-14. In addition to state statute, the Department follows the Code of Federal Regulations at 45 CFR 264.30 to ensure that the noncompliance implementation and process remains federally compliant. 45 CFR 264.30 states: the Title IV-A agency must take appropriate action by: Deducting from the assistance that would otherwise be provided to the family of the individual an amount equal to not less than 25% of the amount of such assistance; or deny the family any assistance under the program.

VII. PUBLICATION DATE

December 27, 2022

VIII. EFFECTIVE DATE

January 1, 2023

VIII. PUBLICATION

Publication of these proposed amendments approved on 11/22/2022 by:

DocuSigned by:
Angela Medrano

**Angela Medrano, Deputy Cabinet Secretary
Signing electronically on behalf of D.S.**

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DAVID R. SCRASE, M.D., SECRETARY

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 102 CASH ASSISTANCE PROGRAMS
PART 461 WORK PROGRAM ACTIVITIES

8.102.461.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.102.461.1 NMAC - N, 04/01/2012]

8.102.461.2 SCOPE: The rule applies to the general public.
[8.102.461.2 NMAC - N, 04/01/2012]

8.102.461.3 STATUTORY AUTHORITY:

A. New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

B. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the temporary assistance for needy families (TANF) block grant under Title IV of the Social Security Act. Through the New Mexico Works Act of 1998, NMSA 1978, Section 27-2B-1 et seq., the New Mexico works program was created.

C. In coordination with the NMW program, the department administers the food stamp employment and training program (E&T) pursuant to the Food Security Act of 1985 and federal regulations at Title 7, Code of Federal Regulations.

[8.102.461.3 NMAC - N, 04/01/2012]

8.102.461.4 DURATION: Permanent.

[8.102.461.4 NMAC - N, 04/01/2012]

8.102.461.5 EFFECTIVE DATE: April 1, 2012, unless a later date is cited in this section.

[8.102.461.5 NMAC - N, 04/01/2012]

8.102.461.6 OBJECTIVE:

A. The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, resources and support. The further purpose of the program is to increase family income through family employment and child support and by utilizing cash assistance as a support service to enable and assist parents to participate in employment.

B. The objective of education works program (EWP) is to provide cash assistance to a benefit group where at least one participant is enrolled in a post-secondary, graduate or post-graduate institution. Education and training are essential to long-term career development. The applicant or recipient benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

[8.102.461.6 NMAC - N, 04/01/2012]

8.102.461.7 DEFINITIONS: [RESERVED]

8.102.461.8 [Reserved]

8.102.461.9 PROGRAM ACTIVITIES: The following sections describe the various work program activities in which participants may participate. A participant may participate in multiple work program activities at the same time or one after the other. The activities to be completed during an established period are identified in a work participation agreement by the participant and approved by ISD.

[8.102.461.9 NMAC - Rp, 8.102.460.9 NMAC, 04/01/2012]

8.102.461.10 WORK ACTIVITIES - CORE AND NON-CORE:

A. Core work activities: Core activities are allowable for a participant to meet the standard work participation requirement hours for a single or two parent household or to meet the minimum standard work participation requirement hours as defined at 8.102.460.14 NMAC. For purposes of meeting the participant's standard work participation requirement hours core work activities are defined in 8.102.461.11 NMAC thru 8.102.461.19 NMAC.

B. Non-core work activities: Non-core activities are allowable for a participant to address barriers or to meet the work requirement hours. A non-core activity may include, but is not limited to, an activity as defined in 8.102.461.20 NMAC thru 8.102.461.22 NMAC.

C. Limited participation status: Participants with limited participation status shall participate in the qualified activities best suited to their abilities as listed on their work participation agreement. The activities will be based upon the participant's individual circumstances as per 8.102.420.15 NMAC. [8.102.461.10 NMAC - Rp, 8.102.460.19 NMAC, 04/01/2012]

8.102.461.11 UNSUBSIDIZED EMPLOYMENT (Core Activity):

A. Unsubsidized employment is full- or part-time employment in the public or private sector that is not funded directly or in part by TANF or any other public program. Unpaid apprenticeships and unpaid internships are included as unsubsidized employment.

B. General:

(1) Hours for participants who are employed for wages at or above minimum wage will be determined by actual hours worked and will include paid leave and holidays.

(2) Hours for participants who are self- employed will be determined by subtracting business expenses from gross income for the term reported and divided by the federal minimum wage.

C. Component activities: The following shall be considered as qualified participation hours for unsubsidized employment.

(1) A participant who is employed less than 30 hours per week in unsubsidized employment is considered to be participating in the part-time employment.

(2) A participant who is employed 30 or more hours per week is considered to be participating in the full-time employment.

(3) A participant whose employer claims a tax credit for hiring economically disadvantaged workers in lieu of public sector subsidies, will be considered unsubsidized.

(4) **Child care as self-employment:** Participants may meet the standard work requirement hours by providing child care services as self-employment. Participants choosing to provide child care for income shall meet the requirements as indicated below:

(a) A participant electing to participate as a child care provider is referred to CYFD to enroll in the family nutrition program and to become a registered child care provider with the state prior to placement of any children there by the department. Participants must also agree to obtain 20 hours of child care training within six months of approval.

(b) The participant is considered employed, upon placement of any child for pay, by CYFD or by a parent.

D. Supervision and documentation: Hours of participation in an employment- related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation. [8.102.461.11 NMAC - Rp, 8.102.460.20 NMAC, 04/01/2012]

8.102.461.12 SUBSIDIZED PRIVATE SECTOR EMPLOYMENT (Core Activity):

A. Employment for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a participant is considered to be subsidized private sector employment.

B. General: New Mexico will use TANF funds to offset the wages of employing a TANF participant for an established period of time. Upon expiration of the subsidized term of employment, the employer is expected to hire the participant. This income will be excluded for determining TANF eligibility.

C. Component activities: The following shall be considered as qualified participation hours for subsidized private sector employment.

(1) Employment will be considered subsidized if the employer receives TANF or other public sector funding for an employee.

(2) Public sector paid apprenticeships and paid internships shall be considered subsidized employment.

D. Supervision and documentation: Hours of participation in an employment- related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation. [8.102.461.12 NMAC - Rp, 8.102.460.21 NMAC, 04/01/2012; A, 1/1/2023]

8.102.461.13 SUBSIDIZED PUBLIC SECTOR EMPLOYMENT (Core Activity):

A. Employment for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a participant is considered subsidized employment. The employment will be considered subsidized if an employer receives a TANF or other public sector subsidy for an employee.

B. General: A participant is ineligible for NMW/TANF cash assistance while participating in subsidized public sector employment. Subsidized public sector employees will be paid no less than the greater of federal or state minimum wage.

C. Component activities: The following shall be considered as qualified participation hours for subsidized public sector employment:

(1) Paid apprenticeships and paid internships.

(2) Participation in various support services designed to remove barriers towards employment shall be considered countable hours as long as the participant is paid for involvement.

D. Supervision and documentation: Hours of participation in an employment-related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

[8.102.461.13 NMAC - Rp, 8.102.460.22 NMAC, 04/01/2012]

8.102.461.14 ON-THE-JOB TRAINING (Core Activity):

A. Training in the public or private sector that is given to a paid employee that provides knowledge and skills essential to the full and adequate performance of the job shall be considered on-the-job training. On-the-job training (OJT) may be subsidized or unsubsidized. The employer of an OJT participant will retain the employee after the successful completion of the OJT contract and the existence of a written training plan; these plan requirements distinguish OJT from other subsidized employment.

B. General:

(1) Hours in an on-the-job-training activity will be determined by actual hours worked or upon the contract the HSD has with the employer including paid leave and holidays and projected for up to six months.

(2) The department will coordinate with the department of workforce solutions, Workforce Investment Act (WIA), one-stops or the New Mexico in-plant-training program to engage TANF participants in this work activity.

(3) To qualify as OJT there must be a contractual agreement with the employer and HSD may pay no more than 50 percent of the participant's wage and benefit package.

C. Component activities: The following shall be considered as qualified participation hours for OJT:

(1) on-the-job training as paid employment; or

(2) professional certification; or

(3) practicum, internship, and clinical training.

D. Supervision and documentation:

(1) Hours for this activity will be projected for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

(2) This activity must be supervised by an employer, work site sponsor, or other responsible party on a daily basis.

[8.102.461.14 NMAC - Rp, 8.102.460.23 NMAC, 04/01/2012]

8.102.461.15 JOB SEARCH AND JOB READINESS ASSISTANCE (Core Activity):

A. Job search includes the acts of seeking or obtaining employment, and preparation to seek or obtain employment.

B. General:

(1) Countable hours for looking for job openings, making contact with potential employers, applying for vacancies and interviewing for jobs, and in labor market training will be determined by actual hours spent engaged in these activities. Travel time between these activities does count as actual hours of participation, except the travel time to and from home.

(2) Job search hours are countable in meeting the core work requirement hours for an individual with the following limitations:

(a) a single parent with a child under the age of six cannot participate for more than 80 consecutive hours and not to exceed 120 hours in the preceding 12 months; or

(b) a single parent with a dependent child over age six cannot participate for more than 120 consecutive hours and not to exceed 180 hours in a preceding 12 months;

(c) in either of the above circumstances participation shall not exceed four consecutive weeks of engagement in job search and job readiness; and

(d) in either of the above circumstance participation shall not exceed six weeks of engagement in job search and job readiness.

(3) **Needy state status:** If New Mexico is determined to be a needy state as determined by the United States department of health and human services the maximum number of hours allowed for participation is as follows:

(a) a single parent with a child under age of six cannot participate for more than 80 consecutive hour and not to exceed 240 hours in the preceding 12 months; and

(b) a single parent with a dependent child over age six cannot participate for more than 120 consecutive hours and not to exceed 360 hours in the preceding 12 months.

C. Component activities: The following shall be considered as qualified participation hours for job search and job readiness.

(1) Participation in parenting classes, money management classes or life skills training.

(2) Participation in an alcohol or drug addiction program where a qualified health or social professional provides verification that such treatment or activity is necessary.

(3) Participation in job search including searching for job openings, applying for jobs and interviewing for positions.

(4) **Addressing domestic violence issues/barriers:**

(a) Participants who have significant barriers to employment because of domestic violence or abuse may participate in domestic violence work activity to receive services focused on assisting the participant to overcome the effects of domestic violence and abuse. Participants engaged in this activity may reside in a domestic violence shelter or may receive services while residing elsewhere. The primary focus of such services is on helping the participant to move into employment. Domestic violence is a temporary work-readiness activity limited to no more than 24 weeks.

(b) The need for domestic violence services can be identified at any point, starting with the resource planning session up to the point at which the case is scheduled for closure. Services are provided by local agencies or programs through referral.

(c) Domestic violence activity can include a mix of domestic violence services and other work program activities. At no point shall a victim of domestic violence be required to carry out any activity which puts the participant at risk of further violence. Domestic violence participation can include:

(i) emergency shelter or re-location assistance;

(ii) child care;

(iii) personal, family and career counseling; and

(iv) participating in criminal justice activities directed at prosecuting the perpetrator.

D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has satisfactorily completed the hours by participating in one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a monthly timesheet.

(3) Job search and job readiness assistance activities must be supervised by the NMW service provider or other responsible party on an ongoing basis no less frequently than daily.

[8.102.461.15 NMAC - Rp, 8.102.460.24 NMAC, 04/01/2012]

8.102.461.16 WORK EXPERIENCE (Core Activity):

A. Work experience is an unpaid activity. The purpose of work experience is to improve the employability of those who cannot find employment. Work experience may be in a public or private sector setting.

B. General:

(1) The type of work experience placement needed by a participant may be identified during the assessment or the development of the IRP. Participants in a work experience placement can either be subsidized employees or trainees, depending upon the nature of the placement.

(2) **Sponsoring agencies:** Participants may be placed in either a public or private sector

work site. The work site is selected based on a participant's individual needs. Sponsoring agencies provide supervision in a safe and healthy work environment and must ensure that the environment is free of discrimination based on race, gender, national origin, handicap, age, religion, or political affiliation.

(a) The sponsoring agency must enter into an agreement with the department which details the expectations and responsibilities of each party and ensures an appropriate work setting.

(b) The sponsoring agency may not displace any current employee in layoff status or infringe on the promotional opportunities of any current employee.

(c) The sponsoring agency shall be encouraged to give a hiring preference consideration to participants assigned to their agency.

(3) **Liability insurance:** All work providers must sign a work experience agreement and provide trainees with liability insurance. Participants in a trainee activity are covered by medicaid except for injuries caused on the job not covered by medicaid. Work-site accidents must be reported to the ISD office within 24 hours of occurrence. A written accident report must be obtained from the work site by the ISD office and submitted to the department's central office within five working days.

C. **Component activities:** Placement provides a participant with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment. Unpaid apprenticeships and unpaid internships are included as work experience.

D. Supervision and documentation:

(1) This activity must be supervised by an employer, work site sponsor, or NMW service provider on an ongoing basis no less frequently than daily.

(2) The Fair Labor Standards Act (FLSA) standards are used to determine the maximum number of hours the department can require a participant to meet. When the participant meets the maximum number of hours required by the FLSA calculation and the number is less than the core work hour requirement, the remaining hours may be deemed up. The maximum amount of weekly hours required by the FLSA are calculated as follows:

(a) **Single parent:** Add the monthly TANF cash assistance benefit (prior to the sanction amount) to the monthly food stamp benefit and divide by the federal or state minimum wage, whichever is higher, and divide by 4.3.

(b) **Two-parent:** The initial calculation of participation requirement hours is the same as a single parent. Both parents can simultaneously participate in an activity subject to FLSA NMW standard work participation requirement hours.

(c) **Limited participation status:** A participant in a limited work participation status may use the FLSA calculation or lesser hours to meet the hours prescribed in their work participation agreement.

[8.102.461.16 NMAC - Rp, 8.102.460.25 NMAC, 04/01/2012]

8.102.461.17 COMMUNITY SERVICE PROGRAMS (Core Activity):

A. Community service is a non-paid work activity. Participants provide services needed by their community. Sponsoring agencies may be either public sector or private nonprofit entities such as libraries, charities, churches, and schools. The department will review each placement and take into account, to the extent possible, the prior training, experience, and skills of a participant in making appropriate community service assignments.

B. **General:** To qualify as a community services placement, the activities carried out must be similar to those which would normally be carried out by a volunteer working with the agency rather than those carried out by an employee. Federal guidelines for determining whether a placement is a "volunteer" versus an "employee" must be followed by the sponsoring agency.

C. **Component activities:** The following shall be considered as qualified participation hours for community service programs.

(1) Community service programs will be limited to projects that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and child care.

(2) **Head-start, schools and child care centers:** Some educational and child care programs allow, or require, parents to contribute time in the classroom or on class activities outside the classroom. Time spent in such activities is considered to be community service time and is countable as a core work activity.

(3) **Liability insurance:** All work providers must sign a community service agreement and provide trainees with liability insurance. Participants in a trainee activity are covered by medicaid and additional medical insurance for injuries caused on the job that may not be covered by medicaid. Work-site accidents must be

reported to the ISD office within 24 hours of occurrence. A written accident report must be obtained from the work site by the ISD office and submitted to the department's central office within five working days.

D. Supervision and documentation:

(1) This activity must be supervised by an employer, work site sponsor, or NMW service provider on an ongoing basis no less frequently than daily.

(2) The Fair Labor Standards Act (FLSA) standards are used to determine the maximum number of hours the department can require a participant to meet. When the participant meets the maximum number of hours required by the FLSA calculation and the number is less than the standard work participation requirement hours, the standard work participation requirement hours may be deemed as met due to compliance with FLSA standards. The maximum amount of monthly hours required by the FLSA is calculated as follows:

(a) **Single parent:** Add the monthly TANF cash assistance benefit (prior to the sanction amount) to the monthly food stamp benefit and divide by the federal or state minimum wage, whichever is higher, and divide by 4.3.

(b) **Two-parent:** The initial calculation of standard work participation requirement hours is the same as a single parent. Both parents can simultaneously participate in an activity subject to FLSA NMW standard work participation requirement hours.

(c) **Limited participation status:** A participant in a limited work participation status may use the FLSA calculation or lesser hours to meet the hours prescribed in their work participation agreement.

[8.102.461.17 NMAC - Rp, 8.102.460.26 NMAC, 04/01/2012]

8.102.461.18 CHILD CARE FOR COMMUNITY SERVICE PARTICIPANTS (Core Activity):

A. NMW participants may meet the NMW standard work participation requirement hours by providing child care services, at no cost, to other NMW participants engaged in community services.

B. **General:** Use of a child care provider by a participant, as provided in this section, is at the sole discretion of the participant.

(1) The department will make a good faith effort to assure the provision of quality care and a safe environment by referring community service participants only to childcare providers who have been certified by CYFD. The department makes no claim as to the quality of care which will be provided, and assumes no liability, for the physical or emotional condition of children referred to a home certified by CYFD.

(2) The minimum number of children a participant may care for is determined based on the number of families needing child care while participating in a community service component. However, at no time will the number exceed child-care standards established by CYFD. A participant electing to participate as child care provider is referred to CYFD to enroll in the family nutrition program and to become a registered child care provider with the state prior to placement of any children there by the department. Participants must also agree to obtain 20 hours of child care training within six months of approval.

(3) After successful registration, meeting safety regulations, and receiving training, NMW participants shall become registered child care providers. NMW participants shall then become eligible to receive payments from CYFD for providing child care services.

(4) Hours of participation are based on the number of hours each day the participant is actually providing care for the children, plus one hour before and one after the children leave for the purposes of clean-up and preparation.

(5) Upon placement of any child for pay, by CYFD or by a parent, the participant is considered to be employed.

C. Supervision and documentation:

(1) The provider is required to maintain attendance records to verify the hours of work. Also included in participation hours is time spent registering with CYFD, time spent correcting any deficiencies necessary to complete registration as well as any time spent in attendance at child care training activities.

(2) The NMW service provider or ISD office shall maintain a list of registered child care providers who are providing non-paid child care and refer to them any participant in community services who needs child care in order to participate.

[8.102.461.18 NMAC - Rp, 8.102.460.27 NMAC, 04/01/2012]

8.102.461.19 VOCATIONAL EDUCATION AND TRAINING (Core Activity):

A. Organized career and technical educational programs that are directly related to the preparation of a participant for employment in current or emerging occupations requiring training, to include a baccalaureate or

advanced degree are considered to be vocational education and training. Engagement shall be reported as core participation for not more than 12 months in a lifetime.

(1) A course of vocational education or training is one whose purpose is to provide the specific knowledge and skills needed by a participant to carry out the functions and activities of an occupation or class of occupations listed in the DOT (dictionary of occupational titles). A participant will be granted a degree or certificate at the end of the program which names the occupation.

(2) Vocational educational training must be provided by education or training organizations, which may include, but are not limited to, vocational-technical schools, community colleges, postsecondary institutions, proprietary schools, non-profit organizations, and secondary schools that offer vocational education and are certified to provide the participant a certificate of completion by an accredited agency.

B. Approval of vocational education training:

(1) A fixed number of vocational education training education slots shall be authorized by the department and shall not exceed 30 percent of the total number of persons subject to work program participation. For a participant in a slot, all approved hours of participation in vocational education activities shall count in meeting the participant's core work participation requirement.

(2) No more than 12 months in a lifetime of such activity are countable in meeting the standard work participation requirement hours.

(3) Enrollment in an agreed-upon vocational training program is the responsibility of the participant.

(4) **Level of effort:** Participation requirement hours shall be considered based on:

(a) actual supervised class time hours;

(b) labs and similar activities are considered class time;

(c) actual hours of completed supervised study-time;

(d) one hour of unsupervised study time per hour of class not to exceed the

educational program requirements; and

(e) holiday time and excused absences.

C. Component activities: Vocational educational training programs should be limited to component activities that give participants the knowledge and skills to perform a specific occupation. The following shall be considered as qualified participation hours for vocational education and training.

(1) **Vocational associate degree programs:** Programs consisting of both academic and vocational for credit course work that requires 60 credits for completion. Completion of these programs can provide an associate of arts, associates of science or associates of applied science degree in fields defined as vocational as per Subsection A of this section.

(2) **Instructional certificate programs:** Programs designed to upgrade job related skills which generally require up to a year to complete and involve less academic work than associate degrees.

(3) **Industry skills certifications:** Industry developed certificates for students who demonstrate specific skills often thru testing. Preparation for tests include both self-study and courses offered at post secondary institutions or other training providers.

(4) **Non-credit course work:** Curriculum designed to accommodate those who want specific job related skills at an accredited institution.

(5) **English as a second language (ESL) and basic education:** these courses of study can count as part of the vocational training component only if they are included in the embedded activities in the curriculum. In order to count as a work activity, basic remedial education or ESL must be required subjects by counseling or evaluative services provided by the educational facility.

(6) **Distance education and online certificate programs:** Distance education and online certificate programs in the associate degree and certificate programs listed above must be taken through an institution accredited by an accrediting agency and recognized by the council for higher education accreditation or by the U.S. department of education in order to qualify as a work activity and approved on a case-by-case basis by the NMW service provider.

(7) Class and homework hours must be reported on timesheets and verified as supervised by the attended institution's instructor or aide.

D. Supervision and documentation:

(1) Verification of level of effort shall be required to determine that a participant has satisfactorily completed the hours by one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised and unsupervised hours documented on a monthly timesheet.

[8.102.461.19 NMAC - Rp, 8.102.460.28 NMAC, 04/01/2012]

8.102.461.20 JOB SKILLS TRAINING (Non Core Activity):

- A.** Job skills training required by an employer to provide a participant with the ability to obtain employment or to advance within the workplace is considered job skills training.
 - B. General:** Non-core work activities are countable towards the total work participation requirement hours for a participant who has completed the core work activity hours.
 - C. Component activities:** Participation in the following is considered as meeting work participation requirement hours when combined with a core work activity:
 - (1) full-time training for adult basic education (ABE), English as a second language (ESL);
 - (2) post-secondary education; or
 - (3) any other job related training that can not be considered vocational education as outlined in 8.102.461.19 NMAC.
 - D. Supervision and documentation:**
 - (1) Verification of activities shall be required to determine that a participant has satisfactorily completed the hours by participating in one or several of the component criteria.
 - (2) Participation requirement hours shall be considered based on actual supervised hours documented on a monthly timesheet.
 - (3) Job skills training directly related to employment must be supervised on at least a daily ongoing basis.
 - (4) Countable work participation requirement hours shall be determined by actual hours spent in class time, completion of supervised and unsupervised study hours to include holidays and excused absences. One hour of unsupervised study time for each hour of classroom time will be counted, as long as the amount of study time does not exceed the educational program requirements.
- [8.102.461.20 NMAC - Rp, 8.102.460.30 NMAC, 04/01/2012]

8.102.461.21 EDUCATION RELATED TO EMPLOYMENT (Non Core Activity):

- A.** Any organized activity which is designed to improve the participant's knowledge or skills for the specific purpose of increasing the participant's ability to perform in the workplace is considered to be education directly related to employment.
- B. General:** NMW participants may engage in this activity if they have not received a high school diploma or a certificate of high school equivalency or needs specific education related to current employment or job offer. Non-core work activities are countable towards the total work participation standard for a participant who has completed the core work activity hours.
- C. Component activities:** Participation in the following is considered as meeting work participation requirement hours when combined with a core work activity:
 - (1) English as a second language (ESL) for participants who are unable to or uncomfortable with their ability to communicate in English, either spoken or written; or
 - (2) literacy training for participants who have trouble understanding written English and is based on a demonstrated or acknowledged difficulty in reading comprehension, regardless of the level of education completed; or
 - (3) adult basic education (ABE) to assist participants who need classes providing basic educational training before working on a general equivalency degree (GED); or
 - (4) GED classes for participants who have completed a general equivalency diploma pre-test and the results indicate the participant is ready; or
 - (5) high school attendance for participants who are attending an accredited high school, a participant who has recently dropped out of high school shall be encouraged to re-enroll or required to pursue a GED; or
 - (6) post-secondary institution for participants who are enrolled in advanced educational training activity through colleges, technical institutes or universities and who are attending classes in order to complete a two- or four-year college degree; or
 - (7) education directly related to employment shall include any other job-related class provided by a facility or organization.
- D. Supervision and documentation:**
 - (1) Verification of activities shall be required to determine that a participant has completed the hours by participating in one or several of the component criteria.

(2) Countable work participation requirement hours shall be determined by actual hours spent in class time, completion of supervised and unsupervised study hours to include holidays and excused absences. One hour of unsupervised study time for each hour of classroom time will be counted, as long as the amount of study time does not exceed the educational program requirements. Hours will be documented on a monthly timesheet.

[8.102.461.21 NMAC - Rp, 8.102.460.31 NMAC, 04/01/2012]

8.102.461.22 SECONDARY SCHOOL/GED (Non Core Activity):

A. The secondary school/GED work program activity serves participants who are age 18 or older. This may be a qualified activity for a participant who is under age 20, but cannot enroll in high school if the participant has:

(1) successfully completed a previous education work program activity - English as a second language or adult basic education; or

(2) completed a general equivalency diploma pre-test and the results indicate the participant is ready for GED classes.

B. Participation must be supervised on no less than a daily basis. Non-core work activities are countable towards the total work participation standard for a participant who has completed the standard work participation requirement hours with a core work activity.

C. Component activities: Participation in the following is considered as meeting work participation requirement hours when combined with a core work activity:

(1) ABE or ESL; or

(2) GED or high school shall only be included when they are prerequisites for employment.

D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has completed the hours by participating in one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a monthly timesheet.

(3) Countable work participation requirement hours shall be determined by actual hours spent in class time, completion of supervised and unsupervised study hours to include holidays and excused absences. One hour of unsupervised study time for each hour of classroom time will be counted, as long as the amount of study time does not exceed the educational program requirements.

[8.102.461.22 NMAC - Rp, 8.102.460.32 NMAC, 04/01/2012]

HISTORY OF 8.102.461 NMAC:

NMAC History:

8 NMAC 3.FAP.460, Work Program Activities, filed 06/16/1997.

8 NMAC 3.FAP.460, Work Program Activities, filed 06/16/1998.

History of Repealed Material:

8.102.460 NMAC, Recipient Policies - Defining Group Work Program Activities, filed 03/02/2001 - Repealed effective 07/01/2001.

8.102.460 NMAC, Recipient Policies - Defining Group Work Program Activities, filed 06/18/2001 - Repealed effective 07/16/2007.

8.102.460 NMAC, Recipient Policies - Defining Group Work Program Activities, filed 07/02/2007 - Repealed effective 04/01/2012.

TITLE 8 SOCIAL SERVICES
CHAPTER 102 CASH ASSISTANCE PROGRAMS
PART 520 ELIGIBILITY POLICY - INCOME

8.102.520.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.102.520.1 NMAC - Rp 8.102.520.1 NMAC, 07/01/2001]

8.102.520.2 SCOPE: The rule applies to the general public.
[8.102.520.2 NMAC - Rp 8.102.520.2 NMAC, 07/01/2001]

8.102.520.3 STATUTORY AUTHORITY:

A. New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

B. Federal legislation contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 abolished the AFDC program. The federal act created the temporary assistance for needy families (TANF) block grant under Title IV of the Social Security Act. Through the New Mexico Works Act of 1998, the New Mexico works program was created to replace the aid to families with dependent children program.

C. Under authority granted to the governor by the federal Social Security Act, the human services department is designated as the state agency responsible for the TANF program in New Mexico.

D. Effective April 1, 1998, in accordance with the requirements of the New Mexico Works Act and Title IV-A of the federal Social Security Act, the department is creating the New Mexico works program as one of its cash assistance programs.

E. In close coordination with the NMW program, the department administers the food stamp employment and training program (E&T) pursuant to the Food Security Act of 1985 and federal regulations at Title 7, Code of Federal Regulations.
[8.102.520.3 NMAC - Rp 8.102.520.3 NMAC, 07/01/2001; A, 11/15/2007]

8.102.520.4 DURATION: Permanent.
[8.102.520.4 NMAC - Rp 8.102.520.4 NMAC, 07/01/2001]

8.102.520.5 EFFECTIVE DATE: July 1, 2001.
[8.102.520.5 NMAC - Rp 8.102.520.5 NMAC, 07/01/2001]

8.102.520.6 OBJECTIVE:

A. The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, resources and support. The further purpose of the program is to increase family income through family employment and child support and by utilizing cash assistance as a support service to enable and assist parents to participate in employment.

B. The objective of education works program (EWP) is to provide cash assistance to a benefit group where at least one individual is enrolled in a post-secondary, graduate or post-graduate institution. Education and training are essential to long-term career development. The applicant or participating benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.
[8.102.520.6 NMAC - Rp 8.102.520.6 NMAC, 07/01/2001; A, 11/15/2007]

8.102.520.7 DEFINITIONS: [Reserved]
[8.102.520.7 NMAC - Rp 8.102.520.7 NMAC, 07/01/2001]

8.102.520.8 GENERAL:

A. Income eligibility: To be eligible for cash assistance based on income eligibility factors:
(1) the countable gross income available to the benefit group cannot equal or exceed the maximum gross income limit for the size of the benefit group;
(2) the net countable income available to the benefit group cannot equal or exceed the standard of need applicable to the size of the benefit group;
(3) all income exempted or deducted in the gross income test shall be exempted or deducted

in the net income test;

(4) all income considered available in the net income test shall be considered in determining the amount of payment to the benefit group.

B. Gross income test (85 percent test): For the benefit group to be eligible, the countable gross income available to the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

C. Net income test: For the benefit group to be eligible, the countable net income must be less than the standard of need applicable to the size of the benefit group.

D. Eligibility for support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than 100 percent of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services.

E. Counting income during the certification period:

(1) For the purposes of cash assistance eligibility and payment determination, income is money received by or available to the benefit group in each month of the certification period.

(2) Only income which is actually received, or can reasonably be expected to be received, is counted for financial eligibility and payment calculation.

(3) The benefit group must take appropriate steps to apply for and receive income from any other source to which the group may potentially be eligible. A benefit group may be found ineligible for failing or refusing to apply for or pursue potential benefits from other sources.

(4) A benefit group member who is 62 years of age or older must apply for and take all necessary steps to receive a reduced OASDI benefit in order to comply with this eligibility criterion.

F. Income availability:

(1) The availability of income to the benefit group is determined by who must be included in the benefit group, and whether income must be deemed available to the benefit group.

(2) Income belongs to the person who gains it, either through the person's own efforts, as in the case of earnings, or as a benefit, as in the case of a beneficiary of social security administration income.

(3) Any unearned income, benefits, or payments, such as but not limited to: child support or social security benefits, for a child are considered as belonging to the benefit group in which the child is included.

(4) **Alien sponsors:** The gross income and resources belonging to an individual who is the sponsor of an alien included in the cash assistance benefit group, and the income belonging to the sponsor's spouse, shall be counted in its entirety to determine the eligibility and payment amount if the sponsor has executed an affidavit of support pursuant to Subsection 213-A of the Immigration and Nationality Act. The income and resources of the alien sponsor, and spouse, shall be counted until the sponsored alien achieves citizenship or can be credited with 40 qualifying quarters under title II of the federal Social Security Act.

G. Unavailable income: In some situations, individuals who are included in the benefit group, either an applicant or participant status, have a legal right to income but do not have access to it. Such income is not counted as available income for purposes of cash assistance eligibility and benefit calculation. A benefit group may be found ineligible for failing or refusing to immediately take all steps necessary to obtain access to the income.

H. Ineligible alien: The countable income belonging to an ineligible alien is deemed available to the benefit group and is prorated according to the size of the benefit group to determine the eligibility and payment amount for the benefit group.

[8.102.520.8 NMAC - Rp 8.102.520.8 NMAC, 07/01/2001; A, 11/15/2007]

8.102.520.9 EXEMPT INCOME: The following income sources are not considered available for the gross income test, the net income test, and the cash payment calculation:

A. medicaid;

B. food stamp benefits;

C. government-subsidized foster care, if the child for whom the payment is received is not included in the benefit group;

D. SSI;

E. government-subsidized housing or a housing payment; government includes any federal, state, local or tribal government or a private non-profit or for profit entity operating housing programs or using governmental funds to provide subsidized housing or to make housing payments;

F. income excluded by federal law (described in 8.139.527 NMAC);

- G. educational payments made directly to an educational institution;
- H. government-subsidized child care;
- I. earned income that belongs to a child 17 years of age or younger who is not the head of household; only earned income paid directly to the child is considered as belonging to the child;
- J. up to \$50.00 child support disregard and \$100.00 for 1 child and \$200 for 2 or more children per month, child support pass-through distributed to the benefit group by the CSED;
- K. an emergency one-time only payment made by other agencies or programs;
- L. reimbursements for past or future identified expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the benefit group, such as expenses for job or job training related activities, travel, per diem, uniforms, transportation costs to and from the job or training site, and medical or dependent care reimbursements and any reimbursement for expenses incurred while participating in NMW work program activities; reimbursements for normal living expenses, such as rent, mortgage, clothing or food eaten at home are not excluded;
- M. utility assistance payments such as from low-income home energy assistance program (LIHEAP), low-income assistance program (LITAP), or similar assistance programs.
- N. subsidized private sector employment: as outlined at Subsection B of 8.102.461.12 NMAC. [8.102.520.9 NMAC - Rp 8.102.520.8.I NMAC, 07/01/2001; A, 11/15/2007; A, 07/15/2010; A, 1/1/2023]

8.102.520.10 EARNED INCOME DEFINITION:

- A. Earned income means cash or payment in kind that is received as wages from employment, payment in lieu of wages, earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.
- B. Earnings include gross profit from self-employment, which requires substantial effort on a continuous basis by the participant who is receiving the income.
 - (1) Income from rental property is considered earnings if the participant regularly does painting, plumbing, carpentry, maintenance, cleaning, or repair work on the property; or if substantial time is spent each month in bookkeeping, collecting rent, or paying bills on the property.
 - (2) Income from livestock is considered earnings if the participant raises livestock for the purpose of making cash sales. Net income received from the sale of livestock shall be considered in determining amount of the cash assistance grant.
 - (a) The income received from this operation may be prorated on a semiannual period if it is reasonable to expect that the client will realize the same amount during the next budgetary period.
 - (b) Domestic pets (cats, dogs, etc.) are not considered livestock, and their value is not considered in determining resource eligibility except where they are bred and raised for sale.
- C. The use of property, such as inhabiting a home or apartment, is considered as earnings if it is received in exchange for services provided to the person owning or controlling the property. [8.102.520.10 NMAC - Rp 8.102.520.9 NMAC 07/01/2001; A, 11/15/2007]

8.102.520.11 DETERMINING INCOME FOR SELF-EMPLOYED INDIVIDUALS:

- A. Reporting of earnings as business or self-employment income to state or federal tax authorities is the usual indicator of business or self-employment income. Criteria for verification of business and self-employment income are set forth in Paragraph 2 of Subsection B of 8.100.130.14 NMAC.
 - (1) Tax returns from the previous year may be used, unless the amount of business and self-employment income reported on tax returns is no longer a good indicator of expected income.
 - (2) When tax forms are used to annualize and project income, the expenses reported on the tax forms shall be used, allowing for adjustments for those expenses or costs that are treated differently or not allowed under cash assistance policy.
 - (3) Capital gains are counted in full as income to determine self-employment income. A capital gain is defined as proceeds from the sale of capital goods or equipment.
- B. **Averaging business or self-employment income:** Business or self-employment income is averaged over the period the income is intended to cover, even if the benefit group receives income from other sources.
 - (1) Benefit groups which by contract or self-employment derive their annual income in a period of time shorter than one year must have income averaged over a twelve-month period.

(2) If significant changes have occurred because of a substantial increase or decrease in business and averaged income will not accurately reflect the self-employed individuals' income, the self-employment income shall be calculated on the basis of anticipated, not prior, earnings.

(3) If a self-employment enterprise has been in existence for less than one year, the income from self-employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the coming year.

(4) If the self-employment enterprise has been in operation for such a short time that there is insufficient information to make a reasonable projection, the benefit group shall be required to report income at shorter intervals until there is enough information to make a longer projection of anticipated income.

(5) **Seasonal income:** Self-employment income that is intended to meet the benefit group's needs for only part of the year shall be averaged over the period of time the income is intended to cover.

C. Determining monthly business or self-employment income: For the period of time over which self-employment income is averaged, the individual's monthly self-employment income is determined by adding all self-employment income, including capital gains, and excluding allowable costs of producing the self-employment income, and dividing the resulting self-employment income by the number of months over which the income will be averaged.

[8.102.520.11 NMAC - Rp 8.102.520.11 NMAC, 07/01/2001]

8.102.520.12 EARNED INCOME DEDUCTIONS:

A. Earnings deductions: Deductions from gross earned income shall be made in determining the net countable earned income of benefit group members.

(1) Earned income deductions may not exceed the amount of a participant's gross earned income.

(2) The earned income deductions may not be used to reduce unearned income, nor may deductions that are not used by one benefit group member be allocated against the earnings of another benefit group member.

(3) An allowable deduction that is not verified at the time of certification or processing of the semiannual report shall not be allowed as a deduction. A deduction verified after certification shall be processed as a change.

(4) An allowable deduction that is verified after a semiannual report is processed shall be handled as set forth at Subsection I of 8.102.120.11 NMAC.

B. Business expenses and self-employment costs: Business expenses and self-employment costs shall be deducted from the gross earnings of a self-employed benefit group member. The income after all allowable business expenses and self-employment costs shall be counted as the gross income of the benefit group member. To be eligible for this expense a tax ID shall be required.

(1) **Allowable expenses and costs:** Allowable costs of producing self-employment income include, but are not limited to:

- (a) costs of materials and supplies;
- (b) business travel, but not personal commuting expenses, calculated at \$.25 per mile, unless the self-employed individual can prove that the actual expense is greater;
- (c) business taxes, including occupational taxes, gross receipts taxes, property taxes on a place of business other than the home, and business licenses.
- (d) rental of equipment, tools, and machinery;
- (e) rent expense for the place of business, except for the place of business when the individual operates the business out of the individual's residence, unless the individual can demonstrate that the expense has been allowed under federal income tax guidelines;
- (f) payments on the principal of the purchase price of income producing real estate and capital assets, machinery, equipment and other durable goods;
- (g) interest paid to purchase income producing property.

(2) **Expenses and costs not allowed:**

(a) Costs for depreciation, personal business, entertainment expenses, personal transportation to and from work.

(b) Expenses or costs of self-employment that are reimbursed by other agencies cannot also be claimed as costs of self-employment, such as but not limited to, reimbursements made through USDA

to individuals who provide home child care.

(3) Expenses or costs that exceed self-employment income shall not be deducted from other income.

C. Work incentive deduction:

(1) To qualify for the work incentive deduction the benefit group member must be a parent of a dependent child included in the benefit group or the caretaker relative of a dependent child included in the benefit group whose parent does not live in the home, or the legal spouse of such parent or caretaker relative.

(2) **Allowing the deduction:** The work incentive deduction is allowed with no time limit as follows:

(a) \$125 and one-half of the remainder for the parent in a single-parent benefit group;

(b) \$225 and one-half of the remainder for each parent in a two-parent group;

(c) \$125 and one-half of the remainder for a benefit group member in a single-parent or two-parent benefit group who is not a parent; and

(d) \$125 for a non-benefit group members whose income is deemed available.

D. Child care costs: Out of pocket expenses for child care that is necessary due to employment of a benefit group member shall be allowed.

(1) From earnings remaining after allowing the excess hours and work incentive deductions, deduct an amount not to exceed \$200 per month for a child under age two and \$175 per month for a child age two or older.

(2) If more than one parent is working, costs of child care shall be allocated to maximize the available deduction to the benefit group.

(3) The total amount deducted per child, regardless of the number of benefit group members who are employed, shall not exceed the applicable limits set forth above.

E. Contributions made into approved individual development accounts: The actual amount contributed into an approved IDA from an employed benefit group member's earnings shall be an allowable deduction from earned income.

[8.102.520.12 NMAC - Rp 8.102.520.11 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 11/15/2007; A, 07/01/2008]

8.102.520.13 DEEMED INCOME DETERMINATION:

A. The earned and unearned income of certain non-benefit group members shall be deemed available to the eligible benefit group members. The income shall be deemed from the following:

(1) the parent of a minor parent;

(2) a participant or applicant who has been disqualified from participation because of a failure or refusal to provide a social security number;

(3) an ineligible alien.

B. Earned income deductions: An employed ineligible group member's earned income shall be allowed an earned income deduction of \$125. The remainder is the net countable earned income of the non-benefit group member.

C. Unearned income: No deductions are allowed from the unearned income of a ineligible group member whose income is deemed available to the benefit group.

D. Deeming of income:

(1) The net countable earned income and all of the unearned income of a non-benefit group member shall be divided by the total number of benefit group and ineligible group members. The result is the prorated income amount.

(2) The deemed income to the eligible benefit group members shall be determined by multiplying the prorated income amount by the number of eligible benefit group members. The non-benefit group member's share of the prorated income shall be excluded from consideration.

[8.102.520.13 NMAC - N, 07/01/2001; A, 11/15/2007]

8.102.520.14 NET EARNED INCOME: The income remaining after all allowable exemptions and deductions shall be made from the earned income of benefit group members, plus the deemed income to the benefit group, shall be the net countable earned income of the benefit group. The net countable income shall be used to determine the

cash assistance payment to the benefit group.
[8.102.520.14 NMAC - Rp 8.102.520.13 NMAC, 07/01/2001]

8.102.520.15 UNEARNED INCOME:

A. Definition of unearned income: Unearned income means old age, survivors, and disability insurance payments (social security), railroad retirement benefits, veterans administration compensation or pension payments, military retirement and allotments, pensions, annuities and retirement benefits; lodge or fraternal benefits, any other public or private disability or retirement benefit or pension, shared shelter payments, individual Indian money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income. Unearned income is not subject to deductions.

B. Special conditions:

(1) **Direct receipt of child support:** Child support payments directly received and retained by the benefit group are considered available to the benefit group in their entirety.

(2) **Real property income:** Income from real property is considered as unearned income when the benefit group engages in the management of the property less than 20 hours a week. The benefit group shall take all appropriate steps to utilize real property in a manner that will produce maximum benefits for the benefit group's maintenance. Costs associated for maintenance of the property or the production of income for which the benefit group is responsible are deducted from the income received for the use of the property.

(3) **Alien sponsor income:** All of the income of the alien sponsor and sponsor's spouse is counted as unearned income to the benefit group.
[8.102.520.15 NMAC - N, 07/01/2001; A, 11/15/2007]

HISTORY OF 8.102.520 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:
ISD FA 430, Income, 2/11/88.

History of Repealed Material: 8 NMAC 3.FAP, Financial Assistance Program - Repealed, 07/01/97.
8.102.520 Eligibility Policy - Income, - Repealed, 07/01/01.

TITLE 8 SOCIAL SERVICES
CHAPTER 102 CASH ASSISTANCE PROGRAMS
PART 620 DESCRIPTION OF PROGRAM BENEFITS - BENEFIT DETERMINATION/GENERAL

8.102.620.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.102.620.1 NMAC - Rp 8.102.620.1 NMAC, 07/01/2001]

8.102.620.2 SCOPE: The rule applies to the general public.
[8.102.620.2 NMAC - Rp 8.102.620.2 NMAC, 07/01/2001]

8.102.620.3 STATUTORY AUTHORITY:

A. New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

B. Federal legislation contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 abolished the AFDC program. The federal act created the temporary assistance for needy families (TANF) block grant under Title IV of the Social Security Act. Through the New Mexico Works Act of 1998, the New Mexico works program was created to replace the aid to families with dependent children program.

C. Under authority granted to the governor by the federal Social Security Act, the human services department is designated as the state agency responsible for the TANF program in New Mexico.

D. Effective April 1, 1998, in accordance with the requirements of the New Mexico Works Act and Title IV-A of the federal Social Security Act, the department is creating the New Mexico works program as one of its cash assistance programs.

E. In close coordination with the NMW program, the department administers the food stamp employment and training program (E&T) pursuant to the Food Security Act of 1985 and federal regulations at Title 7, Code of Federal Regulations.

[8.102.620.3 NMAC - Rp 8.102.620.3 NMAC, 07/01/2001; A, 11/15/2007]

8.102.620.4 DURATION: Permanent.
[8.102.620.4 NMAC - Rp 8.102.620.4 NMAC, 07/01/2001]

8.102.620.5 EFFECTIVE DATE: July 1, 2001, unless a later date is cited at the end of a section.
[8.102.620.5 NMAC - Rp 8.102.620.5 NMAC, 07/01/2001]

8.102.620.6 OBJECTIVE:

A. The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, resources and support. The further purpose of the program is to increase family income through family employment and child support and by utilizing cash assistance as a support service to enable and assist parents to participate in employment.

B. The objective of education works program (EWP) is to provide cash assistance to a benefit group where at least one individual is enrolled in a post-secondary, graduate or post-graduate institution. Education and training are essential to long-term career development. The applicant or participating benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

[8.102.620.6 NMAC - Rp 8.102.620.6 NMAC, 07/01/2001; A, 11/15/2007]

8.102.620.7 DEFINITIONS: [RESERVED]
[8.102.620.7 NMAC - Rp 8.102.620.7 NMAC, 07/01/2001]

8.102.620.8 CASH ASSISTANCE BENEFITS:

A. The cash assistance grant shall be determined by subtracting the benefit group's countable income from the standard of need applicable to the benefit group as indicated in 8.102.520 NMAC.

B. The payment made to the benefit group shall be determined by subtracting certain amounts from the grant if the group is subject to payment sanctioning or recoupment of an overpayment. The amount left over after these amounts are deducted from the amount of payment shall be issued to the benefit group.

[8.102.620.8 NMAC - Rp 8.102.620.8 NMAC, 07/01/2001]

8.102.620.9 GRANT DETERMINATION:

A. Determining the payment standard: The payment standard shall be determined based on the eligibility standards and requirements forth in 8.102.500.8 NMAC. The payment standard also includes the special clothing allowance.

B. Determining benefit group income: The benefit group's net countable income considered in the payment determination shall be the sum of:

- (1) gross alien sponsor income;
 - (2) countable earnings after allowable deductions and disregards of benefit group members;
- and
- (3) gross unearned income of benefit group members;
 - (4) the net income calculation is rounded down removing the cents.

C. Determining the grant: A benefit group whose countable income after allowed deductions and disregards equals or exceeds the standard of need applicable to the benefit group shall not be eligible for payment. The grant shall be a monthly benefit amount determined by subtracting the benefit group's net countable income from the payment standard applicable to the benefit group.

[8.102.620.9 NMAC - Rp 8.102.620.9 NMAC, 07/01/2001; A, 11/15/2007; A, 01/01/2011; A, 07/01/2013; A, 08/01/2015; A, 11/1/2018]

8.102.620.10 CHILD SUPPORT AND NMW NON-COOPERATION PAYMENT SANCTIONS:

A. General:

(1) The benefit group shall be subject to a non-cooperation payment sanction under either or both of the following circumstances:

- (a) failure by a benefit group member to meet NMW requirements; or
- (b) failure by the adult responsible for children included in a benefit group to meet child support enforcement division (CSED) cooperation requirements or both;
- (c) good cause will be evaluated based on the circumstances of each instance of non-cooperation.

(2) **Occurrence of non-cooperation:**

- (a) **Child support:**
 - (i) A benefit group shall be subject to a payment sanction for failure to comply with CSED cooperation requirements, even if the adult required to cooperate with child support requirements is not included in the benefit group.
 - (ii) Each benefit group member that fails to cooperate with the NMW requirement is subject to a sanction and shall affect the benefit group.
 - (iii) An occurrence of non-cooperation shall be applied when a sanction progresses to the next sanction level as a result of the noncompliance continuing for three consecutive months without the sanctioned participant reestablishing compliance. Progression to the next sanction level shall be effective in the fourth month.
 - (iv) A first or second level sanction is considered to be cured upon full cooperation by the sanctioned participant or a sanction shall be reversed based on a hearing decision when the sanction imposed is determined to be invalid.
- (b) **NMW:**
 - (i) A benefit group is subject to a payment sanction when a participant in the benefit group fails to cooperate with the NMW requirements absent a finding of good cause.
 - (ii) In a two-parent benefit group, each mandatory benefit group member that fails to cooperate with the NMW requirements is subject to a sanction that affects the benefit group's sanction level and payment.
 - (iii) A participant shall not be sanctioned for more than one NMW requirement element at one time. A participant may be sanctioned for the same or a different NMW requirement element only after the original sanction element is cured or reversed. A first or second level sanction may be cured upon full cooperation by the sanction participant and a sanction shall be reversed based on a hearing decision when the sanction imposed is determined to be invalid.
 - (iv) A participant with limited participation status may not be sanctioned for failure to meet hours or failure to provide a time sheet as identified on the approved work participation agreement.
 - (v) An occurrence of non-cooperation shall be applied when a sanction

progresses to the next sanction level as a result of the noncompliance continuing for three consecutive months without the sanctioned participant reestablishing compliance. Progression to the next sanction level shall be effective in the fourth month.

(3) Cumulative sanctions:

(a) Non-cooperation sanctions are cumulative within the benefit group and shall occur when:

- (i)** the participant fails to comply with the NMW and child support enforcement requirements;
- (ii)** more than one participant in the benefit group have failed to comply with either the NMW and child support enforcement requirement.

(b) Cumulative sanctions, whether or not cured, shall remain the property of that benefit group participant who caused the sanction.

(i) A participant with a sanction who leaves a benefit group relieves the benefit group of that participant's sanction status.

(ii) A participant with a sanction who joins another benefit group subjects the new benefit group to any sanction or sanction level that has not been cured prior to joining the benefit group.

(c) The benefit group's cumulative sanctions and benefit level shall be reevaluated when a sanction is cured or reversed.

(4) Progressive sanctions:

(a) Non-cooperation sanctions are progressive to both the participant and to the benefit group and shall progress to the next level for the benefit group in which the sanctioned participant resides when:

- (i)** a participant fails to establish compliance in three-month increments; or
- (ii)** a participant fails to comply with NMW or CSED requirements as a separate occurrence.

(b) A sanction that is not cured for three consecutive months shall progress until compliance is established by the participant.

(c) A participant's compliance cannot reverse the sanction level attributed to the benefit group. Any subsequent sanction is imposed at the next higher level, unless reversed by a hearing decision.

B. The conciliation process:

(1) When conciliation is available: Conciliation shall be available to a participant or applicant once during an occurrence of assistance. There must be a period of at least 12 months between occurrences of cash assistance in order for a conciliation to be available again to the benefit group. NMW conciliation and child support conciliation are independent and are counted separately from each other.

(2) Determining that noncompliance has occurred:

(a) The determination of noncompliance with child support shall be made by CSED. The conciliation and sanctioning process for child support noncompliance is initiated upon receipt of notice from CSED that the participant or applicant has failed to cooperate. Under 8.102.420 NMAC, the non-cooperative participant or applicant shall be individually disqualified from participation in the benefit group.

(b) The determination of noncompliance with NMW requirements shall be made by the caseworker. A finding of noncompliance shall be made if:

- (i)** the participant has not completed an assessment;
- (ii)** the participant fails or refuses to complete an IRP;
- (iii)** the participant fails or refuses to submit an approvable WPA;
- (iv)** the participant fails to submit timely documentation showing completion of required work hours;
- (v)** the participant's monthly attendance report shows fewer than the minimum required hours of participation and no other allowable hours of activity can be reasonably attributed by the caseworker towards the monthly participation requirement.

(3) Initiating conciliation: Within 10 days of determining that noncompliance exists, the caseworker shall take action to initiate a conciliation, if the participant's conciliation has not been used. A conciliation is initiated by the department or its designee issuing a conciliation notice. CSED shall determine noncompliance and notify the caseworker who shall initiate the conciliation process.

(4) Conciliation period: Conciliation gives a participant a 30-calendar day period to correct the current non-compliance for either a NMW participation or CSED requirement.

(a) The conciliation process is established by the department, to address the

noncompliance, identify good cause for noncompliance or barriers to compliance and shall occur only once prior to the imposition of the sanction.

(i) The participant shall have ten working days from the date a conciliation notice is mailed to contact the department to initiate the conciliation process. A participant who fails to initiate the conciliation process shall have a notice of adverse action mailed to him after the 10th working day following the date on which the conciliation notice is mailed.

(ii) Participants who begin but do not complete the conciliation process shall be mailed a notice of adverse action 30 days from the date the original conciliation was initiated. The benefit group shall be subject to sanction in the month following the month the notice of adverse action expires.

(b) **Non-cooperation with CSED requirements:** When the participant has initiated the conciliation process, it is the participant's responsibility to contact CSED and to comply with requirements or to request a waiver from CSED due to good cause. If the caseworker does not receive confirmation from CSED within 30 days of issuing the conciliation notice that the participant is cooperating or has requested a waiver for good cause in accordance with 8.50.105.14 NMAC; the conciliation process shall be considered to have failed the benefit group shall be subject to payment sanctioning.

(c) The caseworker shall make the determination whether arrangements have been made to meet NMW requirements or whether there is good cause for waiving the cooperation requirements. If arrangements to meet the requirement or to waive it have not been made by the 30th day following issuance of the conciliation notice, the conciliation shall be considered to have failed and the participant is subject to sanctioning.

C. Sanctioning:

(1) Within 10 days of determining that a participant has failed to meet a NMW requirement, department or its designee shall issue notice of adverse action that the payment shall be reduced. The payment reduction shall take place with the first payment following expiration of the notice of adverse action.

(2) Notice of adverse action shall apply to all NMW and child support noncompliance sanctions, including those relating to the conciliation process.

(3) A participant who corrects the failure of compliance with NMW or child support enforcement requirements during the notice of adverse action 13-day time period shall not have the sanction imposed against the benefit group or payment amount. The sanction shall not count as a cumulative or progressive sanction, since the reason for the sanction was corrected during the time period of the notice of adverse action and prior to a benefit reduction being imposed. A participant who has failed to meet work participation hours cannot correct the sanction during the notice of adverse action time period.

(4) Failure to comply during the notice of adverse action 13-day time period shall cause the sanction to become effective for a minimum of one month. If the participant later complies with the NMW compliance requirements, as determined by the department, the sanction may be removed, so long as the participant has received at least one month of reduced benefit due to sanction.

(a) A child support enforcement sanction shall be removed after CSED notifies the caseworker that the participant is in compliance with child support enforcement requirements.

(b) A NMW sanction shall be removed after the caseworker receives verification that the participant has completed an assessment; or has completed an IRP; or has completed a WPA that indicates the appropriate number of monthly hours in work activities; or has met NMW participation hours for at least 30 days; or has good cause to waive work participation requirements.

D. Sanction levels:

(1) **First-level sanction:**

(a) The first level sanction for failure to comply shall result in a sanction of twenty-five percent of the standard of need. The benefit group shall be given notice of the imposition of the sanction.

(b) A first level sanction that is not cured for three consecutive months shall progress to a second level sanction.

(2) **Second-level sanction:**

(a) The second level of sanction for failure to comply shall result in a decrease of fifty percent of the standard of need. The second level shall be initiated by:

(i) failure to comply with NMW participation or child support enforcement requirements for more than three months; or

(ii) a second occurrence of noncompliance with a NMW or CSED requirement by a participant; or

(iii) failure of a participant to comply with both CSED and NMW participation requirements simultaneously. The group shall be given concurrent notice of imposition of the second-

level sanction.

(b) A second level sanction that is not cured for three consecutive months shall progress to the third level as described below.

(3) **Third-level sanction:**

(a) The third sanction level is case closure for a period of not less than six months. The group shall be given notice of adverse action prior to imposition of the sanction.

(i) Once a participant is sanctioned at the third level, any subsequent occurrence of failure to comply with NMW or CSED requirements shall immediately result in a third level sanction, and case ineligibility for six months.

(ii) The TANF grant will be counted as unearned income for SNAP benefits for the six month period of ineligibility in accordance with 8.139.520 NMAC.

(b) TANF applications received after a six month closure period will be reviewed for eligibility.

(i) Based on eligibility the TANF will be approved and all mandatory members will be required to meet the NMW compliance requirements set forth in 8.102.460 NMAC;

(ii) If ISD determines the applicant is still non-compliant with CSED, the sanction will remain and the application will be denied.

E. Sanctions by other states or other programs: Participants in sanction status for failure to participate in other programs, such as the food stamp E&T program, or another state's or tribal TANF program, shall not carry that sanction status into NMW.

F. Sanctions with respect to voluntary participants: A voluntary participant is not subject to sanction for failure to participate, but shall be removed from the NMW and lose eligibility for support services

G. Good cause:

(1) Good cause applies to timely completion of assessment, IRP, WPA, work participation rates, and cooperation with the child support enforcement division.

(2) Good cause for failure to meet the NMW requirements.

(a) Good cause may be considered to exist for no more than 30 days in the event of:

(i) family death;

(ii) hospitalization;

(iii) major injury to the participant or a benefit group member for whom the participant has been the primary caretaker;

(iv) reported domestic violence;

(v) catastrophic event; or

(vi) it is shown the department did not provide the participant reasonable assistance to complete the assessment, IRP, or WPA.

(b) The participant must meet with the NMW service provider prior to the end of the 30-day period to establish a WPA for the full participation standard beginning on day 31 or must request a limited work participation status prior to the end of the 30-day period. The participant may be subject to sanction for failure to complete a WPA if a new WPA has not been established by day 31.

(i) A participant with good cause for failure to meet the NMW requirements, who expects the cause of failure to continue for more than 30 days, must contact the department to review the participant's circumstances.

(ii) Under no conditions shall good cause be granted for more than 30 days during any given reporting period.

(3) Good cause shall be considered when the department has failed to submit a notice in accordance with the requirements of adverse action notices, to the participant or provide available support services that would adversely affect the participant's ability to timely meet work participation requirements.

(4) **Good cause for refusal to cooperate with the child support enforcement requirements:** In some cases it may be determined by the CSED that the TANF/NMW applicant's/recipient's refusal to cooperate is with good cause in accordance with 8.50.105.14 NMAC. Any person requesting a good cause exemption to a TANF/NMW requirement to cooperate must complete a request for a good cause exemption on a form provided by the CSED and provide any documentation requested by CSED. The request for a good cause exemption will be reviewed by the CSED and the requestor will be informed of the decision in writing. The requestor's failure or refusal to complete the form or provide the requested documentation will result in an automatic denial of the request. The department may offer assistance to complete the form or obtain the necessary documentation, as appropriate.

(5) It is the applicant's/recipient's responsibility to inform the department if they are unable to meet the NMW compliance requirements or CSED cooperation requirements.
[8.102.620.10 NMAC - Rp 8.102.620.10 NMAC, 07/01/2001; A, 02/14/2002; A, 11/15/2007; A, 04/01/2012; A, 07/01/2013; A, 09/01/2017; A, 1/1/2023]

8.102.620.11 NON-REPORTING SANCTIONS:

A. General: The eligibility determination and payment calculation process relies upon applicants and participants to provide accurate and timely reports of information affecting their eligibility and payment. Payment sanctions for non-reporting shall be established to encourage timely and accurate reporting and to offset benefits resulting from the reporting of inaccurate or misleading information, the untimely reporting of changes, or the failure to report any required information.

B. Non-reporting sanctions:

(1) **Length of sanction:** Each non-reporting sanction shall run for a period of four months beginning with the first month in which failure to report occurred. An additional month shall be added for each additional month of non-reporting until the payment is corrected.

(2) **Definition of an occurrence of non-reporting:** An occurrence of non-reporting exists when an applicant or participant who fails to report information or reports incorrect information which results in an overpayment of cash assistance benefits for which the participant is at fault.

(3) Amount of sanction:

(a) Reporting sanctions shall be calculated at twenty-five percent of standard of need for the size of the benefit group being sanctioned.

(b) Reporting sanctions are not progressive. If there is another occurrence of non-reporting prior to the end of a non-reporting sanction period, the next and any subsequent non-reporting sanctions shall be consecutive and at the twenty-five percent level.

(c) Reporting sanctions, child support sanctions and work program sanctions shall be integrated into a single calculation to determine the final sanction amount.

(d) If a case closes during a reporting sanction period for reasons other than sanctions, the non-reporting sanction shall be suspended and resumed at the same duration the next time the case is opened.

(4) Procedures: The following steps shall be taken in implementing a payment sanction.

(a) The caseworker shall document and establish an overpayment claim using the department overpayment claims procedures. The caseworker shall also determine whether the participant was at fault for the overpayment.

(b) The county director or a designated supervisor shall review the overpayment and determine the accuracy of the overpayment determination and appropriateness of the determination the participant was at fault for the overpayment. Upon determining that a non-reporting sanction is appropriate, the county director, or designated supervisor shall issue a notice of intent to sanction to be issued to the participant. Failure by the participant to contact the person issuing the notice within 10 working days allowed shall constitute waiver of conciliation rights.

(c) If the participant requests conciliation within the 10 working days of issuance of the notice, the county director or designated supervisor shall schedule a conciliation conference.

(d) The conciliation conference is conducted by the county director or designated supervisor.

(i) The caseworker shall describe the reporting error, how the amount of the overpayment is determined and the reasons for finding the participant at fault for the overpayment.

(ii) The participant shall have the opportunity to discuss the overpayment determination, the finding of fault and to show good cause why the sanction should not be imposed.

(iii) Based upon this determination, the county director or designated supervisor shall determine whether a sanction should be imposed.

(iv) The participant may represent himself or be represented by someone else. If the participant wishes to be represented by another individual, the participant must designate that individual in writing.

(e) Following the conference, the county director shall issue written notice stating whether or not the sanction is to be imposed, and the worker shall affect the sanction causing issuance of a notice of adverse action. The payment reduction takes effect in the month following expiration of the notice of adverse action.

(f) Participants who disagree with the sanction determination shall have fair hearing rights and access to legal adjudication through the fair hearing process.
 [8.102.620.11 NMAC - Rp 8.102.620.11 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 11/15/2007; A, 07/01/2013; A, 09/01/2017]

8.102.620.12 RECOUPMENT: Participants and applicants with an outstanding claim for overpayment of cash assistance benefits shall be required to repay the claim. Claim and recoupment situations and procedures are detailed in 8.100.640 NMAC.
 [8.102.620.12 NMAC - Rp 8.102.620.12 NMAC, 07/01/2001; A, 11/15/2007; A, 09/01/2017]

8.102.620.13 PAYMENT:

A. The grant amount remaining after deduction of sanction and recoupment amounts, if any, shall be the amount issued as payment. Any month for which a payment is issued shall be a month counted against the 60-month lifetime limit of each adult or minor head of household included in the benefit group.

B. Payment issuance: The payment for the benefit group shall be issued to the head of household, unless a protective payee has been designated by the head of household. In the event the head of household is unable or unwilling to select a protective payee, ISD shall designate the protective payee on the benefits group's behalf.

[8.102.620.13 NMAC - Rp 8.102.620.13 NMAC, 07/01/2001; A, 11/15/2007]

8.102.620.14 SUPPORTIVE SERVICES:

A. An explanation of the supportive services available through the NMW work program, provided funding is available, shall be given to NMW participants during orientation. Participants who need supportive services to participate in the program are eligible for such services.

B. NMW work program participants are eligible to receive an initial supportive services payment in accordance with 8.102.620.15 NMAC. The support services payment may be used by the participant to cover travel, child care costs incurred or both.

C. Ongoing supportive services:

(1) Necessary ongoing supportive services are identified on the WPA, which identifies the services needed and the start and end dates for the services.

(2) If additional supportive services are needed after the initial assessment, the WPA shall be modified to reflect the changes.

[8.102.620.14 NMAC - Rp 8.102.620.14 NMAC, 07/01/2001; A, 11/15/2007; A, 09/01/2017]

8.102.620.15 CALCULATING THE SUPPORTIVE SERVICES BENEFIT: If state or federal funds are specifically appropriated, the department may issue supportive services benefits.

A. Child care: The caseworker may authorize child care reimbursement for persons for a period not to exceed 30 days. All other child care shall be authorized by CYFD. The caseworker shall authorize child care in compliance with CYFD program requirements and standards. Child care payments shall not be paid for with federal TANF funds and shall not count towards the TANF term limits.

B. Transportation: NMW participants may receive a standard transportation reimbursement.

(1) **Reimbursement:**

(a) The NMW allows travel reimbursement for mandatory and voluntary participants traveling to offices for orientation, assessment, reassessment, or employment planning activities. In addition, travel costs are reimbursed for approved NMW activities identified and developed in the WPA.

(b) Mileage costs for paid employment are met through the cash assistance earned income deduction. Except for the one-time only advance, travel reimbursement shall not be made for any NMW activity for which the individual is paid.

(2) **Reimbursement standards:**

(a) NMW reimbursement for NMW participants using private automobiles shall be at a standard rate based on monthly mileage, as set forth below.

(i) The caseworker shall decide whether the claimed mileage is reasonable and, if the amount claimed is excessive, may adjust the amount downward.

Monthly Mileage	Monthly Reimbursement
1 - 499	\$25

500 - 1499	\$50
1500 - 2499	\$100
2500 or More	\$150

(ii) Mileage shall be allowed only if the activity takes place in the individual's home community. Travel may be allowed outside the individual's home community only if the NMW activity is not available in the community or if the NMW activity involves participation in an educational or vocational training program which is not available in the individual's home community.

(b) Bus tokens/passes are issued in lieu of the travel allowance and may not exceed \$25 for the month. A participant shall be eligible to receive bus tokens or a one-month bus pass on an interim basis, provided that:

(i) the participant has no access to private transportation; and

(ii) public transportation is a reasonable alternative.

C. Vocational training and education: If state or federal funds are specifically appropriated, the department may issue supportive services benefits.

(1) Reimbursement for vocational training and educational expenses, but not tuition, shall be available to NMW participants.

(2) NMW participants requesting reimbursement for various vocational training and educational expenses must provide receipts or request letters stating the amount of educational expenses. In addition, NMW participants must provide verification that financial assistance from other sources is unavailable or insufficient to cover the expenses for which the reimbursement is being requested.

(3) To be eligible for reimbursement of vocational training and educational expenses, the NMW participant must:

(a) meet NMW participation requirements;

(b) have an approved WPA which identifies and approves supportive services for further training; a NMW participant is not eligible for reimbursement of vocational training or educational expenses incurred prior to development of the WPA;

(c) apply and be denied for any educational assistance from such other sources as scholarships, PELL grants, WIA, student loans, etc. for which the participant might be eligible;

(d) provide "letters of denial" for the financial assistance listed previously; and

(e) repeat steps (a) through (c) at the beginning of each educational period (semester, quarter, trimester etc. as applicable).

(4) Reimbursable vocational training and education costs shall include only those for which a student is normally responsible, such as book and laboratory fees, special laboratory or shop clothing, work book fees, testing, registration, or graduation fees. In addition, personal classroom supplies, not to exceed \$15 per semester, may be reimbursed.

(5) Participants enrolled in a post-graduate studies shall not be not eligible for supportive service reimbursement with respect to their post-graduate studies.

(6) Education and vocational training supportive services cannot be guaranteed beyond the end of the WPA expiration date.

(7) **Test fees:** Fees for completing either the scholastic aptitude test (SAT) or the American college test (ACT) may be reimbursed, provided one of the tests is required for admission into a given educational training institution.

D. Employment-related expense: If state or federal funds are specifically appropriated, the department may issue supportive services benefits.

(1) A NMW participant may receive assistance to help pay the cost for certain personal items necessary to accept a bona fide job offer, or to retain employment. The assistance shall be limited to no more than \$300, and shall be available only once during the individual's lifetime.

(2) **Payment method:**

(a) Payment shall be made as a reimbursement for verified costs already incurred. Reimbursement must be requested within 60 days of employment.

(b) Payment may be issued prospectively, based on a billing statement or a detailed estimate of costs.

(3) **Allowable costs:** Allowable costs include, but are not limited to:

(a) special clothing, licensing and drug testing fees which an employer requires an employee to pay and which are a condition of employment;

(b) vehicle repairs, but not a vehicle purchase or insurance payment;

(c) tools which the employer requires an employee to pay for; or
(d) costs of bringing a home into compliance with certification requirements of the child care food program administered by CYFD, if the full cost is not available from the child care food program or CYFD.

(4) **Costs not allowed:** Costs associated with the start-up of a business or self-employment venture are not allowed. Such costs must be met through an IDA.
[8.102.620.15 NMAC - Rp 8.102.620.15 NMAC, 07/01/2001; A, 04/01/2012]

8.102.620.16 SUPPORTIVE SERVICES BENEFITS:

A. Issuance schedule: If state or federal funds are specifically appropriated, the department may issue supportive services benefits.

(1) Participants assigned to a NMW activity may receive reimbursement on a monthly basis. Participants must submit participation reports to receive the standard month's reimbursement, timely submission is required to receive the reimbursement. Reimbursement shall be authorized within five working days after receipt of all required verification. Support services shall be issued within 10 working days after authorization.

(2) Participants must submit the monthly participation report to be received no later than the fifth calendar day after a participation month's end. Reports received on the first workday after the fifth shall be considered timely if the fifth occurred on a weekend or holiday. Participants shall not be eligible to receive reimbursement if the report verifying participation is received 30 days or more following the end of the month for which participation is being reported.

B. Retroactive benefit coverage:

(1) Benefit coverage which provides supportive services may be issued retroactively to a participant if, upon individual case review, it is determined that:

- (a) the participant was eligible to receive supportive services;
- (b) the participant requested supportive services timely; and
- (c) NMW staff inadvertently failed to process the reimbursements in a timely manner.

(2) NMW participants must have signed a WPA, which has been approved by the NMW service provider, which identifies the supportive services. Under no circumstances shall NMW participants be eligible to receive supportive service reimbursement for costs incurred prior to enrollment in the NMW.
[8.102.620.16 NMAC - Rp 8.102.620.16 NMAC, 07/01/2001; A, 04/01/2012]

8.102.620.17 SUPPORT SERVICES PAYEE: Supportive services reimbursements shall be made payable to the head of household for all travel and educational reimbursement.

[8.102.620.17 NMAC - Rp 8.102.620.17 NMAC, 07/01/2001; A, 11/15/2007]

HISTORY OF 8.102.620 NMAC:

History of Repealed Material: 8 NMAC 3.FAP, Financial Assistance Program - Repealed, 07/01/1997.
8.102.620 NMAC Description of Program Benefits - Benefit Determination/General - Repealed, 07/01/2001.