



STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
HUMAN SERVICES REGISTER

I. DEPARTMENT

HUMAN SERVICES DEPARTMENT

II. SUBJECT

REGULATORY AMENDMENTS FOR ASPEN

III. PROGRAMS AFFECTED

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)
EDUCATION WORKS PROGRAM
GENERAL ASSISTANCE FOR DISABLED ADULTS (GA)
GENERAL ASSISTANCE FOR UNRELATED CHILDREN
BURIAL ASSISTANCE
ADULT RESIDENTIAL SHELTER CARE HOME (ARSCH)

IV. ACTION

FINAL REGULATION

V. BACKGROUND

The Department is promulgating final regulations proposed in the New Mexico Human Services Register Vol.36 No. 8. to amend regulations at 8.102 and 8.106 NMAC to reflect the technological abilities within the Automated System Program and Eligibility Network (ASPEN) and Your Eligibility System New Mexico (YES NM). The Department is adding definitions of notice, signature and electronic case file.

Additionally the Department promulgating final regulations to the General Assistance for Disabled Adults program to ensure the applicant for GA completes their interview within 30 days of the application.

The Department is promulgating the proposed language to the New Mexico Works Cash Assistance process for sanctions and compliance requirements. The final amendments clarify the language for good cause for reapplication for New Mexico Works cash assistance during the lock-out period after receiving a Diversion Payment.

A public hearing was held on May 15, 2013, there were no attendees. One entity provided written comments that were received after the deadline of 5:00 pm on the day of the public hearing. The comments and responses are summarized below:

The commenter noted the "various changes that allow for the incorporation of HSD's improved technology systems (ASPEN and YES-NM) are those we support at this time."

The commenter included the concern that many of the changes to the regulation would result in potential violations of Title II of the ADA and create significant barriers to individuals who are most at risk including the disabled population.

The Department is committed to providing appropriate accommodations for all participants in accordance with the ADA, Title VI of the Civil rights Act, President Clinton's Executive Order 13166 and the Dept. of Justice guidance. The amendments made to the regulations increase individuals ability to apply for services from anywhere in the state without the confinement of being served through the local county office through an antiquated paper based system.

The Department received one comment regarding the new definition for the "Date of Application" located in the proposed regulations at 8.102.100.7A(19) and 8.106.100.7A(21) NMAC.

Comment: Under these proposed regulations, applications received by any means - dropped off, or electronically submitted - would be considered as submitted the next business day, rather than on the actual submission date. The result of this change is that ISD would have an additional day to process the application and the applicant would lose a day of eligibility.

Response: The Department has considered this comment and has modified the definition to include clarifying language that applications received by the Income Support Division offices during regular business hours includes those that are dropped off or submitted electronically. Applications that are dropped off or submitted after regularly scheduled business hours will be considered received as of the next business day.

The Department received one comment regarding the amended definition of "Institution of Higher Education" located in the proposed regulations at 8.102.100.7A(57) NMAC.

Comment: This provision changes the definition to revolve around the degree awarded rather than the entrance requirements. It would make this definition inconsistent with that used in HSD's SNAP program see NMAC § 8.139.400.11. Such a change would create unnecessary confusion across the programs and it is unclear upon what for what purpose HSD bases this change. We note that it would potentially have a negative effect on students enrolled in community colleges such as CNM, which awards degrees but does not require a high school diploma to enroll.

Response: The Department has considered this comment and will proceed to promulgate the rule as proposed. The Department does not see it as contradictory as it defines the institution of higher education as certain college-level institutions regardless of the requirement of a high school diploma or GED to enroll.

The Department received one comment regarding the amended definition of "legal guardian."

Comment: Here HSD changes the definition to eliminate "parentally created" relationships to limit it to only "legally created" ones in which a guardian has acquired "legal decision making authority" for the child. Again it is unclear upon what and for what purpose HSD bases this change. It is likely that this will result in children losing critical benefits through no fault of their own. Indeed, many impoverished families lack the resources to go to court to establish a "legally created" guardianship for their children should the need arise. We know that HSD has the capacity to determine under current rules whether there is proper guardianship such that benefits are appropriately awarded. Please explain why there is a need for this change as we are unaware of any problem.

Response: The Department has considered this comment and will proceed to promulgate the regulation as proposed.

The Department received one comment regarding the new definition of "Notice" located at 8.102.100.7B(10) NMAC.

Comment: It appears that under this provision critical communications such as notice of adverse action could be handwritten. In such cases, there may be no record whatsoever of the notice in the participant's file and the notice is unlikely to properly include all of the elements that constitute a proper notice, such as the factual and regulatory basis for any action contemplated. The handwriting could be illegible and the communication would likely not be at the comprehensible reading level. There would also be no way to ensure that the handwritten notice is properly translated into a language other than English.

Response: The Department has considered this comment and will proceed to promulgate the regulation as proposed.

The Department received one comment regarding the amended definition of "Notice of Adverse Action" located at 8.102.100.7B(11) NMAC.

Comment: While this is intended to facilitate the shift to a more web-based system, there is potentially a problem for those recipients with only sporadic access to a computer - such as through the library. Such recipients will have less time to request a fair hearing with benefits unchanged than those who have regular computer and internet access. We are concerned that HSD will implement this policy without sufficiently considering whether a recipient has good cause to request a hearing with continuing benefits outside

of the 13 day limit. There are a variety of reasons why this might occur, including disability, transportation and child care problems.

Response: The Department has considered this comment and will proceed to promulgate the rule as proposed. As a clarification, this is a future provision that may be available to the State. The Department could offer to issue a participant's notice electronically if they opt to receive an electronic notice in lieu of a hard copy.

The Department received one comment regarding the amendment of 8.102.110.10D NMAC regarding "Where to file" and 8.106.110.10A NMAC regarding "Submission of an Application."

Comment: These changes eliminate the provision that if a person files by person or by email (as opposed to electronically) but does not file with the nearest ISD office the application is processed and referred to the nearest appropriate office. This change will create a barrier for anyone who has difficulty knowing which is the right office, or who is only familiar with one office, or who has previously applied and had no problem dropping their application at the most convenient location. Applicants who have disabilities, those who lack access to ISD information and those who have transportation barriers will have their right to apply compromised unnecessarily by this change. These barriers violate federal regulations that provide for the right to apply for TANF programs without delay, 45 CFR 206.10. Furthermore, they violate the provisions in Title II of the ADA that prohibit discrimination against people with disabilities that would prevent them from being able to participate in any public programs like TANF or GA.

Response: The Department has considered this comment and will remove the language at 8.102.110.10D NMAC regarding the submission of the application to the local county ISD office nearest to their residence.

The Department received one comment regarding the amendment to 8.102.110.10G NMAC "Application Registration."

Comment: Under these proposed regulations, applications received by any means - dropped off, or electronically submitted - would be considered as submitted the next business day, rather than on the actual submission date. The result of this change is that ISD would have an additional day to process the application and the applicant would lose a day of eligibility. This change falls on hardest on those who have a barrier of any kind that would prevent them from submitting an application to an ISD office during business hours; working people, those with child care concerns and those with transportation challenges. People with disabilities who might pick up an application during business hours, but who cannot - due to disability - tolerate completing it at the office would also be negatively affected.

Response: The Department has considered this comment and has modified the definition to include clarifying language that applications received by the Income Support Division offices during regular business hours includes those that are dropped off or submitted

electronically. Applications that are dropped off or submitted after regularly scheduled business hours will be considered received as of the next business day.

The Department received one comment regarding the amendment to 8.102.110.8B NMAC "Interviews."

Comment: This change allows for interviews to be conducted by phone or another reasonably accessible place, but appears to eliminate the possibility of conducting the interview in the applicant's home. This change falls hardest on applicants and recipients who are disabled, have child care or transportation barriers or other difficulties that make a home visit the most appropriate.

Response: The Department has considered this comment and will proceed to promulgate the rule as proposed. The Department has removed the option for a home visit as the regulation provides the option for a phone interview which is determined to be less invasive than a home visit. If it is determined that an applicant has significant barriers to attending the interview the Department will work with the applicant to determine a reasonably accessible location to conduct the interview, this does not preclude the option for a home visit. The intention of the rule is to offer an increased flexibility to conduct the interview rather than requiring the applicant to attend a face to face interview.

The Department received one comment regarding the amendment to 8.102.620.10C(14) NMAC "Sanctions."

Comment: This change imposes the length of time under which ISD may impose a sanction for non-compliance. Previously if a recipient had corrected the problem within the 13 day period after getting the adverse action, any sanction imposed would be lifted effective the following month. This change would require that there be a minimum of one month sanction period.

Response: The commenter referenced 8.102.110.8B NMAC, we believe the commenter intended to reference 8.102.620.10C(4) NMAC. The Department has considered the comment and will proceed to promulgate the regulation as proposed. The proposed regulation does not change the Notice of Adverse Action period of 13 days in which a participant has the opportunity to comply prior to the sanction being imposed. The proposed regulation ensures that if a participant has failed to comply within the time period, the sanction will be effective for a minimum of one month, unless the participant can show good cause for non-compliance.

The Department received one comment regarding the amendment to 8.102.110.9B and 8.106.110.9D NMAC "Availability of Applications."

Comment: We are most concerned about the change in application availability under proposed regulations NMAC § 8.102.110.9(B) and NMAC § 8.106.110.9D, which are no doubt aimed at encouraging the use of the web-based systems. Please explain the steps you will take to notify applicants and their assistants of this change and how you will

intend to ensure that paper applications will continue to be readily available when needed.

Response: The Department has considered this comment and will proceed to promulgate the rule as proposed. The Department is required to make paper applications available. 7 CFR 273.2(c)(iii)(3) requires the Department to make paper applications readily available and to ensure access to persons with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, as amended by the Rehabilitation Act Amendments of 1974, Public Law 93-516, 29 U.S.C. 794.

The Department received one comment regarding the amendment to 8.102.460.9B NMAC "NMW Compliance Requirements."

Comment: This change adds a requirement for "timely submission of documentation showing completed work hours." Failure to do this - not just the failure to complete the hours - is cause for sanction. This is an unduly harsh measure that will affect the well-being of New Mexico's neediest and most vulnerable families. Children in those families will be harmed even though they played no role in the failure to comply. It is particularly troubling that a person who has actually completed his or her work rules obligation can lose benefits simply because they missed a deadline.

Response: The Department has considered this comment and will proceed to promulgate the rule as proposed.

The Department received one comment to the amendment to 8.102.500.10F(2) NMAC regarding determining good cause for an applicant to re-apply for TANF with-in the 12 month lock out period after receiving a Diversion Payment.

Comment: This change provides that during the TANF 12-Month "lock out" period, a person re-applying under the good cause provisions as determined by the Incapacity Review Unit (IRU) may no longer be considered if his/her job loss resulted from "dismissal due to poor job performance or failure to meet a condition of employment or use of illegal substance or other drug..." Given that poor job performance" is highly subjective and that drug tests are notoriously inaccurate these represent poor reasons to presume that an applicant lacks good cause. For example, there is no way to know whether a person with multiple barriers, including disability, child care and transportation problems had difficulties on the job which are themselves considered "good cause" by HSD in many contexts.

Response: The Department has considered this comment and will proceed to promulgate the rule with a modification to remove IRU as the determiner of good cause as this is the duty of the Department.

The Department received one comment regarding the amendment to 8.106.110.11D NMAC "Scheduling an interview."

Comment: Previously GA interviews were to be completed within 60 days of the application being filed or the application would be denied. This change would shorten the time to 30 days. Given that GA is a program for people who live with a disability, this change is going to fall hardest on the population protected under Title II of the ADA and could violate the law. No doubt that the extra time (compared to 30 days in TANF) to complete the interview process was put in place in recognition of the difficulties such applicants might face.

Response: The Department has considered this comment and will proceed to promulgate the regulation as proposed. The Department's intent is to ensure timely processing of the General Assistance applications. The Department is committed to providing appropriate accommodations for all participants in accordance with the ADA, Title VI of the Civil rights Act, President Clinton's Executive Order 13166 and the Dept. of Justice guidance.

VI. EFFECTIVE DATE

July 1, 2013

X. PUBLICATION

Publication of these final regulations approved on 6/14/13 by:



SIDONIE SQUIER, SECRETARY
HUMAN SERVICES DEPARTMENT

This is an amendment to 8.102.100 NMAC, Section 7, effective July 1, 2013.

8.102.100.7 DEFINITIONS:

A. Definitions A-L:

- (1) **Applicant:** means person applying for cash assistance on behalf of a benefit group.
- (2) **Application:** means a written or electronic request, on the appropriate ISD form, ~~signed by or on behalf of an individual or family, for assistance~~ with the signature of the applicant or on the applicant's behalf by an authorized representative, for assistance.
- (3) **Attendant:** means an individual needed in the home for medical, housekeeping, or child care reasons.
- (4) **Authorized representative:** means an adult, who is designated in writing by the applicant, who is sufficiently knowledgeable about the applicant/ benefit group's circumstances to complete the application form correctly and can represent the benefit group.
- (5) **Basic needs:** include food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.
- (6) **Beginning month:** means the first month for which a benefit group is certified after a lapse in certification of at least one calendar month ~~[in any project area].~~ Beginning month and initial month are used interchangeably. A benefit group is budgeted prospectively in a beginning month. ~~[A beginning month is also an initial month.]~~
- (7) **Benefit group:** ~~[means a pregnant woman or a group of people that includes a dependent child, all of that dependent child's full, half, step or adopted siblings living with the dependant child's parent or relative within the fifth degree of relationship and the parent with whom the children live]~~ means a group of people, either mandatory or optional, to be included in determining the monthly benefit amount.
- (8) **Benefit month:** means the month for which cash assistance benefits have been issued. This term is synonymous with issuance month defined below.
- (9) **Budget month:** means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.
- (10) **Capital gains:** means proceeds from the sale of capital goods or equipment.
- (11) **Cash assistance:** means cash payments funded by the temporary assistance for needy families (TANF) block grant pursuant to the federal act and by state funds; or state funded cash assistance in the general assistance program.
- (12) **Caretaker relative:** means an individual who assumes parental control over a child living in the home.
- (13) **Categorical eligibility (CE):** means a ~~[food stamp]~~ SNAP household that meets one of the following conditions is considered to be CE and have limited eligibility requirements.
 - (a) **Financial CE:** Any ~~[food stamp]~~ SNAP household in which all members receive Title IV-A assistance (TANF), general assistance (GA), or supplemental security income (SSI) benefits is considered to be categorically eligible for ~~[food stamp]~~ SNAP benefits.
 - (b) **Broad-based CE:** Any ~~[food stamp]~~ SNAP household, in good standing, in which at least one member is receiving a non-cash TANF/MOE funded benefit or service and household income is below 165% FPG.
- (14) **Certification:** means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.
- (15) **Certification period:** means the time period assigned to a benefit group that is approved to receive cash assistance benefits. The certification period shall conform to calendar months and include an interim report to be completed mid certification.
- (16) **Collateral contact:** means an individual or agency designated by the benefit group to provide information concerning eligibility.
- (17) **Conciliation process:** means a 30- day process prior to imposing a sanction during which the department and the individual have the opportunity to address barriers to compliance or to correct whatever failure has generated the noncompliance determination.
- (18) **Conversion factor:** means anticipated monthly income received on a weekly or bi-weekly basis shall be converted to a monthly amount.
- (19) **Date of application:** means the date the application is received by the income support division offices during regular business hours, this includes applications that are dropped off, submitted in person and electronically. Applications that are dropped off or submitted electronically after regularly scheduled business

hours, holidays and weekends will be considered received as of the next business day.

~~[(19)]~~ **(20) Date of admission:** means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

~~[(20)]~~ **(21) Date of entry:** means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

~~[(21)]~~ **(22) Department:** means the human services department.

~~[(22)]~~ **(23) Dependent child:** means a natural child, adopted child, stepchild or ward ~~[who]~~ that is:
(a) seventeen years of age or younger; or
(b) eighteen years of age and is enrolled in high school; or
(c) between eighteen and twenty-two years of age and is receiving special education services regulated by the public education department.

~~[(23)]~~ **(24) Director:** means the director of the income support division.

~~[(24)]~~ **(25) Diversion payment:** means a lump sum payment, which will enable the applicant to keep a job or to accept a bona fide offer of employment.

~~[(25)]~~ **(26) Documentation:** means a written statement entered in the paper or electronic case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

~~[(26)]~~ **(27) Earned income:** means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and 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.

~~[(27)]~~ **(28) Education works program (EWP):** provides state-funded cash assistance to a benefit group where at least one individual is enrolled in a ~~[post-secondary]~~ post-secondary institution. The applicant or recipient benefit group must be otherwise eligible for NMW cash assistance, but chooses to participate in the education works cash assistance program.

~~[(28)]~~ **(29) Emancipated:** means an individual under the age of 18 years who is legally recognized as no longer under parental control due to marriage or by a decision of a court.

~~[(29)]~~ **(30) Encumbrance:** means debt owed on property.

~~[(30)]~~ **(31) Equity value:** means the fair market value of property, less any encumbrances owed on the property.

~~[(31)]~~ **(32) Expedited services:** means the process by which benefit groups reporting little or no income or resources will be provided an opportunity to participate in the ~~[food-stamp]~~ SNAP program.

~~[(32)]~~ **(33) Expungement:** means the permanent deletion of cash benefits from an EBT account that is stale.

~~[(33)]~~ **(34) Fair hearing:** means an administrative proceeding which a claimant or ~~[his]~~ claimant's representative may request if:

- (a) an application is not acted on within a reasonable time after the filing of the application;
- (b) an application is denied in whole or in part; or
- (c) the cash assistance or services are modified, terminated or not provided.

~~[(34)]~~**(35) Fair market value (FMV):** means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or offer as a trade-in. It is not the amount the dealer would sell the vehicle for at retail.

~~[(35)]~~ **(36) Federal act:** means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.

~~[(36)]~~ **(37) Federal fiscal year:** October 1 through September 30 of the calendar year.

~~[(37)]~~ **(38) Federal means-tested public benefit:** means benefits from the ~~[food-stamp]~~ SNAP program; the food assistance block grant programs in Puerto Rico, American Samoa and the commonwealth of the Northern Mariana Islands, supplemental security income (SSI), and the TANF block grant program under Title IV of the Social Security Act; medicaid and SCHIP.

~~[(38)]~~ **(39) Federal poverty guidelines:** means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services.

~~[(39)]~~ **(40) Five-year bar:** means the federally imposed prohibition on receiving federal means-tested public benefits for certain qualified aliens who entered the United States (U.S.) on or after August 22, 1996, until they continuously lived in the U.S. for five years. The count for the five year bar begins on the date the non-citizen attains qualified alien status.

~~[(40)]~~ **(41) Food Stamp Act:** the Food Stamp Act of 1977 (P.L. 95-113), the Food and Nutrition Act of 2008 (P.L. 110-246), and subsequent amendments.

~~[(41)]~~ **(42) General assistance (GA) benefit group:** means a benefit group in which all members

receive cash assistance financed by state or local funds.

~~(42)~~ **(43) Government entity:** includes any federal, state, tribal or local unit of government as well as any non-government entity which receives public funds for the purpose of meeting the housing needs of its clientele.

~~(43)~~ **(44) Gross income:** means the total amount of income that a benefit group is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group, but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-employment income, and income excluded by federal law.

~~(44)~~ **(45) Gross income test (85 percent test):** for the benefit group to be eligible, the gross earned income of the benefit group must be less than 85 percent of the federal poverty guidelines as determined in 8.102.500.8 NMAC.

~~(45)~~ **(46) Hardship extension:** means an extension of the TANF/NMW 60-month lifetime limit due to specific conditions enumerated at 8.102.410.17 NMAC.

~~(46)~~ **(47) Head of household:** means the payee who is the responsible case head for the benefit group. The payee may be the parent, guardian, sole adult member, specified relative, pregnant woman, a GA recipient, or caretaker relative.

~~(47)~~ **(48) Immigrant:** means a non-citizen or an alien within the meaning found in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

~~(48)~~ **(49) Immigration and naturalization service (INS):** a division of the U.S. department of justice dealing with U.S. citizenship and immigration services.

~~(49)~~ **(50) Impairment:** means a condition resulting from anatomical, physiological, or psychological abnormalities evidenced by medically acceptable clinical and laboratory diagnostic techniques. Impairment has to do only with the medical, psychiatric, or both processes. To evaluate both physical and mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.

~~(50)~~ **(51) Incapacity review unit:** means a special unit in the department that determines the status of participants for the family violence option and limited work participation status. This is also known as the IRU.

~~(51)~~ **(52) Individual development account program:** means an account created for eligible individuals which is established and maintained by an authorized financial institution to be used for individual development.

~~(52)~~ **(53) Individual development program:** means a program that establishes and administers individual development accounts and reserve accounts in order to provide financial training required by the division for account owners.

~~(53)~~ **(54) Ineligible alien:** means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

~~(54)~~ **(55) Initial month:** means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one calendar month or longer.

~~(55)~~ **(56) Inquiry:** means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application.

~~(56)~~ **(57) Institution of higher education:** ~~[means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level]~~ means certain college-level institutions, such as vocational schools, trade schools, and career colleges, that award academic degrees or professional certifications.

~~(57)~~ **(58) Institution of post-secondary education:** means an institution of post-secondary education, any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located, regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or a program of training to prepare students for gainful employment.

~~(58)~~ **(59) Irrevocable trust funds:** means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

~~(59)~~ **(60) Issuance month:** means the calendar month for which cash assistance is issued. In prospective budgeting, the budget and issuance months are the same.

~~(60)~~ **(61) Legal guardian:** means a ~~[judicially or parental-created]~~ legally created relationship

between a child and appointed adult wherein the appointed adult acquires legal decision making authority for a child.

~~[(61)]~~ **(62) Limited work participation hours:** means the reduced work requirement hours approved by the IRU or the NMW service provider, as appropriate, after a participant has been approved for a limited work participation status.

~~[(62)]~~ **(63) Limited work participation status:** means a NMW participant has a verified condition or barrier as outlined at Subsection A of 8.102.420.11 NMAC that precludes the ability to meet the standard work requirement hours and has been approved for such status by the IRU or NMW service provider, as appropriate.

B. Definitions M-Z:

(1) Maintenance of effort (MOE): means the amount of general funds the state agency must expend annually on the four purposes of ~~[TANF]~~ temporary assistance for needy families (TANF) to meet a minimum expenditure requirement based on a ~~[states]~~ state's historical ~~[AFDC]~~ assistance to families with dependent children (AFDC) expenditures.

(2) Medicaid: medical assistance under title XIX of the Social Security Act, as amended.

(3) Minor unmarried parent: means an unmarried parent under the age of 18 years or is age 18 and enrolled in high school.

(4) Month of approval: means the month the action to approve a benefit group for cash assistance is taken.

(5) Net income tests: means for the benefit group to be eligible, the benefit group's net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

(6) Net monthly income: means gross non-exempt income minus the allowable deductions. It is the income figure used to determine eligibility and cash assistance benefit amount.

(7) Non-benefit group members: means persons residing with a benefit group who are specifically excluded by regulation from being included in the benefit group certification.

(8) Non-cash TANF/MOE benefit or service: means non-cash TANF/MOE benefit or services include programs or services that do not provide cash to recipients, but are funded by the TANF program, either by the federal TANF block grant or the state MOE share. These services may include transportation, childcare, counseling programs, parenting programs, pamphlets or referrals to other TANF/MOE-funded services.

(9) Non-citizen U.S. national: means a person who is not an U.S. citizen but was born in an outlying possession of the U.S. on or after the date the U.S. acquired the possession, or a person whose parents are non-citizen U.S. nationals. A person who resides on one of the following U.S. island territories is a non-citizen U.S. national: American Samoa, Swains island or the Northern Mariana islands.

(10) Notice: means written correspondence that is generated by any method including handwritten, typed or electronic, delivered to the client or their authorized representative by hand, U.S. mail, professional delivery or by any electronic means. The term "written notice" and "notice" are used interchangeably.

~~[(10)]~~ **(11) Notice of adverse action (NOAA):** means a written or electronic notice that includes a statement of the action the department has taken or intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for additional information, the availability of continued benefits, and liability of the benefit group for any ~~[overissuance]~~ over-issuance received if the hearing decision is adverse to the benefit group. This notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. Recipients have 13 days from the mailing date or the date of electronic transmittal of the notice to request a fair hearing and to have benefits restored to their previous level.

~~[(11)]~~ **(12) NMW compliance requirements:** means the various work program activities a TANF/NMW participant is expected to attend and ~~[completed]~~ complete in order to avoid conciliation or sanction.

~~[(12)]~~ **(13) ~~[Overissuance]~~ Over-issuance:** means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

~~[(13)]~~ **(14) Parent:** means natural parent, adoptive parent, or stepparent.

~~[(14)]~~ **(15) Participant:** means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority.

~~[(15)]~~ **(16) Payment standard:** means the amount of the cash assistance payment, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's standard of need, and prior to reduction by sanction, recoupment or both.

~~[(16)]~~ **(17) Permanent total disability:** means an individual must have a physical or mental impairment, expected to last at least 12 months, that prevents gainful employment in any employment position

within the individual's current employment capacity.

~~(17)~~ **(18) Person:** means an individual.

~~(18) Project area:~~ means the geographic area designated to a county office that is responsible for the administration of the department's programs.]

(19) Prospective budgeting: means the computation of a benefit group's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

(20) Qualified alien status: means a person lawfully admitted into the United States under INA guidelines as defined in PROWRA of 1996.

(21) Real property: means land, affixed improvements, and structures which include mobile homes. Grazing permits are also considered real property.

(22) Recertification: means a complete review of all conditions of eligibility which are subject to change and a redetermination of the amount of assistance payment for an additional period of time.

(23) Recipient: means a person receiving cash assistance benefits.

(24) Refugee: means a lawfully admitted individual granted conditional entry into the United States.

(25) Regular reporting: means a reporting requirement that requires a participating household to report a change within ten days of the date a change becomes known to the household.

(a) A financial change becomes known to the household when the household receives the first payment attributed to an income or resource change, or when the first payment is made for a change in an allowable expense.

(b) A non-financial change including but not limited to, a change in household composition or a change in address, becomes known to the household on the date the change takes place.

(26) Resource standard: means the financial standard with respect to resources and property, \$2,000 for non-liquid resources and ~~[\$1,500]~~ \$1,500 for liquid resources.

(27) Retrospective budgeting: means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

(28) Resource planning session: means a planning session to ascertain the applicant's immediate needs and to assess the applicant's financial and non-financial options.

(29) School age: means any dependent child who turns six years prior to September first and is under 18 years of age.

(30) Secretary: means the secretary of the department.

(31) Self-employed: means an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income.

(32) Semiannual reporting: means a reporting requirement that allows up to a 12-month certification period and requires a household to submit a report in the sixth month of a 12-month certification period or in the same month a ~~[food stamp]~~ SNAP semiannual report is due.

(33) Services: means child-care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment; education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to assist transition into employment.

(34) Shelter for battered women and children: means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(35) Single-parent benefit group: means any benefit group which does not include both parents of a child included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

(36) Sponsor: means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission to the United States as a permanent resident.

(37) Sponsored alien: means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a)(15) and 101(a)(2) of the Immigration and Nationality Act.

(38) Stale: means EBT accounts which have not been accessed, no withdrawal activity, by the household in the last 90 days from the most recent date of withdrawal.

(39) Standard of need: means an amount which is based on the number of individuals included in the benefit group and allows for financial standard and basic needs.

(40) Standard work requirement hours: means the minimum number of hours in applicable core and non-core total work activities a participant must complete.

(41) State-funded alien eligible: means an alien who entered the United States on or after August 22, 1996, as one of the classes of aliens described in Subsection B of 8.102.410.10 NMAC, is eligible with respect to citizenship requirements for state-funded assistance under NMW and GA without regard to how long the alien has been residing in the United States.

(42) Supplemental nutrition assistance program (SNAP): The Food and Nutrition Act of 2008 changed the federal name of the food stamp program to the supplemental nutrition assistance program. SNAP is synonymous with the food stamp program.

(43) Supplemental security income (SSI): means monthly cash payments made under the authority of:

- (a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;
- (b) Section 1616(a) of the Social Security Act; or
- (c) Section 212(a) of P.L. 93-66.

(44) Temporary total disability: means a physical or mental impairment, expected to last at least 30 days from date of determination, but less than one year from the date of application, that prevents gainful employment in any employment position within the individual's current employment capacity.

(45) Two-parent benefit group: means a benefit group which is considered to exist when both parents of any child included in the benefit group live in the home with the child and are included in the benefit group.

(46) Term limits: means NMW assistance (cash benefits and supportive services) is not provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime.

(47) 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.

(48) Vehicle: means a conveyance used for the transportation of individuals to or from employment, for the activities of daily living or for the transportation of goods; vehicle does not include any boat, trailer or mobile home used as the principal place of residence.

(49) Verification: means the use of third-party information or documentation to establish the accuracy of statements on the application, interim report and recertification.

(50) Vocational education: means an organized education program that is directly related to the preparation of a person for employment in a current or emerging occupation requiring training other than a baccalaureate or advance degree. Vocational education must be provided by an educational or training organization, such as a vocational-technical school, community college, or post-secondary institution or proprietary school.

(51) Wage subsidy program: means a subsidized employment training opportunity through which a TANF cash assistance recipient is hired into full-time employment.

[8.102.100.7 NMAC - N, 07/01/2001; A, 02/14/2002, A, 05/15/2003; A, 01/01/2004; A, 02/28/2007; A/E, 07/16/2007; A, 10/31/2007; A, 08/01/2009; A, 04/01/2010; A, 04/01/2012; A, 07/01/2013]

This is an amendment to 8.102.110 NMAC, Sections 8 – 13 and 15, effective July 1, 2013.

8.102.110.8 GENERAL

A. ~~[Project area:~~ The application for cash assistance or services shall be made to the human services department in the project area in which the applicant resides.

~~_____B.]~~ **Application form:** The application shall be ~~[in-writing]~~ submitted on a form designated by the ~~[Department]~~ department either electronically or in writing and is made under oath by an applicant with whom a dependent child resides. The department shall assist an applicant in completing the application for cash assistance or services. The application must contain a statement of the age of the child; residence; a statement of property in which the applicant has an interest; a statement of the income that the applicant or other benefit group members have at the time the application is filed; a signature under penalty of perjury from the applicant; and other information required by the department.

~~[C:]~~ **B. Interview:**

(1) A face-to-face interview with the applicant shall be required in order to obtain information needed to determine eligibility, verify, and record the facts supporting the application; and to give the applicant information about department programs and program requirements. When circumstances warrant, the household shall be interviewed by telephone or another place reasonably accessible and agreeable to by the applicant and the caseworker in accordance with 8.102.110.11 NMAC.

(2) The applicant must identify all individuals living in the residence whether or not the individuals are requesting assistance. The applicant and the department shall identify all individuals who must be included in the benefit group.

~~(3) [A home visit may be made to conduct the interview and obtain the information needed, as long as the department gives adequate prior notice of the visit.~~

(4) Other information, documents, and collateral contacts may be required to determine eligibility. Requests for verification are made in accordance with provisions set forth in 8.100.130 NMAC.

D. Resource planning session: The applicant shall be provided a resource planning session no later than 30 days after an application is filed. The department shall attempt to provide a resource planning session prior to approving the application, but it is not mandatory. Failure to provide a resource planning session shall not impede registration or processing of the application. The focus of the resource planning session is to ascertain the applicant's immediate needs, assess the applicant's financial and non-financial options, and to provide general information about departmental assistance programs. The caseworker shall assist the applicant in exploring and accessing any other financial or non-financial options that may meet the benefit group's needs. If there is any indication that the applicant might be eligible for SSI, the relative advantages of the SSI program shall be explained and the applicant shall be referred to the local social security office.

E EBT orientation: NMW cash assistance benefits shall be authorized and available through an electronic benefit transfer (EBT) account. The department shall provide EBT training to an applicant in order to be able to access cash assistance benefits.

F. Application processing time limit: An application for NMW cash assistance shall be processed no later than 30 days after an application is filed. No later than five days after the application is approved, a reimbursement for childcare shall be provided, subject to the appropriation and availability of state or federal funds. [8.102.110.8 NMAC - Rp 8.102.110.8 NMAC, 07/01/2001; A, 11/15/2007; A, 07/01/2013]

8.102.110.9 RIGHT TO APPLY

A. An individual has the right to make a formal application for any cash, food or medical assistance program administered by the department, regardless of whether the individual appears to meet the conditions of eligibility. Any individual requesting information or assistance, who wishes to apply for assistance, shall be encouraged to complete the application that same day. The individual shall be informed:

- (1) of the right to apply, whether or not it appears the individual may be found eligible; and
- (2) that the date of application affects the benefits.

B. Availability of applications: ~~[Application forms shall be readily available for cash assistance to anyone requesting an application, and to local agencies and organizations that have regular contact with the public. Each county office is responsible for providing program applications to local agencies and organizations. If an individual contacts the office by phone or mail and does not wish to come to the office to pick up an application, the individual shall be sent an application the same day the office is contacted]~~ The department shall provide the YES- New Mexico web portal address to submit an application online or paper applications for cash assistance to anyone requesting an application, and to local agencies and organizations that have regular contact with

the public. When the department receives a request for an application for assistance, the department will either mail or hand deliver a paper application, provide the web portal address for YES-New Mexico (for online applications), or provide both as indicated by the requestor.

[8.102.110.9 NMAC - Rp 8.102.110.9 NMAC, 07/01/2001; A, 11/15/2007; A, 07/01/2013]

8.102.110.10 SUBMISSION OF THE APPLICATION FORM

A. Items completed: To be accepted and registered, the cash assistance application, at a minimum, must be submitted on a form designated by the department either electronically or in writing, identify the benefit group member applying, the program applied for, and have a signature of a responsible benefit group member or authorized representative.

B. Who completes the application: The application form must be completed by the applicant, ~~the~~ an authorized representative, guardian, or another appropriate individual.

(1) Authorized representatives must be:

(a) designated in writing by the applicant/ head of household; and

(b) be an adult who has sufficient knowledge about the applicant's circumstances to complete the application form correctly.

(2) If an authorized representative or another appropriate individual completes an application form, the applicant must review and approve the completed form. The applicant is liable for improper payments resulting from erroneous information given by the authorized representative or another appropriate individual.

(3) The caseworker may assist in completing the form if there is no one else to help the applicant.

(4) **Application for minor children:** Application for cash assistance for minor children, including unemancipated minor parents, must be made by the adult with whom the child resides and who is assuming responsibility for the support and care of the child.

(a) If a minor parent is living in a second-chance home, maternity home, or other adult-supervised supportive living arrangement, the application must be made by the supervising adult as the authorized representative for the minor parent.

(b) An emancipated minor may file an application in the emancipated minor's own right.

C. Signature:

(1) The application form must be signed by the applicant and authorized representative if one is designated. A signature means that the applicant is verifying the information provided by the household and has read and agrees with all of the statements on the application or other form requiring a signature. A signature is the depiction of the individual's name either, handwritten, electronic or recorded telephonically. Electronic and telephonically recorded signatures are valid only if provided in a format or on a system approved by the department, which includes verification of the identity of the person providing the signature.

(2) If an applicant receives help from someone other than a caseworker in completing the form, that individual must also sign at the bottom of the form.

(3) An individual who cannot sign the individual's own name must sign the application with a mark and have it witnessed. A mark, which is not witnessed, shall not be accepted as a valid signature. A caseworker may not witness signatures on an application the caseworker will be processing.

(4) If the application is made on behalf of a child, the form shall be signed by the relative or caretaker with whom the child is living, or by the authorized representative.

(5) If the individual, relative, or caretaker has a legally appointed guardian, the guardian must complete and sign the form.

D. Where filed: ~~[An application may be filed either in person or by mail with the ISD office in the project area serving the community or county where the applicant lives. An applicant that files the application with the incorrect project area, shall be referred to the correct project area. If an applicant that completes an application that day, or has mailed an application to the incorrect project area, that project area shall accept the completed application, register it, and immediately transfer the form to the correct project area.]~~ An application may be submitted to the department in person, by mail, via facsimile or by other electronic means which may include the YES-New Mexico web portal.

E. Incomplete applications: If an application is incomplete, prompt action shall be taken by the department to notify the applicant. The individual who completed the application form must add the missing or incorrect information and initial and date the entries. All reasonable action shall be taken by the department to avoid any unnecessary delay of the applicant's eligibility determination.

F. Out-of-state applicants: An application mailed in from out of state shall be accepted, but shall not be registered until the applicant contacts ISD to confirm presence in the state. If the applicant does not contact the ISD within 30 days, the application shall be returned to the applicant.

G. Application registration: Completed and signed in-state applications shall be registered effective the date on which the application is received during regular business hours; this includes applications that are dropped off, submitted in person and electronically. Applications that are dropped off or submitted electronically after regular scheduled business hours, holidays and weekends will be considered received as of the next business day.

H. Tribal TANF programs: An application for NMW benefits received from an applicant residing in a tribal TANF service delivery area shall be accepted by ISD and registered as of the date the application was received during regular business hours. Applications that are dropped off or submitted electronically after regular scheduled business hours, holidays and weekends will be considered received as of the next business day.

(1) Effective upon implementation of a tribal TANF program, the applicant shall be required to apply for the tribal TANF program in the service delivery area in which the applicant resides.

(2) Prior to finalizing an application for NMW benefits received from an applicant residing in a tribal TANF service delivery area, the applicant shall be informed he or she must apply for tribal TANF.

(a) The applicant shall be informed in writing that the applicant must provide verification of the disposition of the applicant's tribal TANF application.

(b) The applicant shall be referred to the appropriate tribal TANF ~~[project area]~~ service delivery area serving the community or county in which the benefit group lives.

[8.102.110.10 NMAC - Rp 8.102.110.10 NMAC, 07/01/2001; A, 02/14/2002; A, 11/15/2007; A, 07/01/2013]

8.102.110.11 INTERVIEWS

A. Application interview: All applicants shall be interviewed in person at the local office or, when circumstances warrant, at another place reasonably accessible and agreeable to both the applicant and the caseworker. The applicant may bring any individual to the interview.

B. [Office interview waivers: Waiver of the requirement that the interview be conducted in the ISD office shall be determined on a case-by-case basis for any individual who is unable to appoint an authorized representative, has no one able to come to the office because of transportation difficulties, or similar hardships which the county office manager decides warrant a waiver of the office interview. These hardship conditions include, but are not limited to: illness, care of benefit group member, prolonged severe weather, or work hours which prevent an in-office interview during work hours.]

Alternative interviews:

(1) A cash assistance applicant shall not be required to have a face-to-face interview if the applicant is unable to appoint an authorized representative and the household has no member(s) able to come to the department due to one of the hardship conditions listed in Paragraph (2) of Subsection B this Section.

(2) **Hardship conditions:** The face-to-face interview for cash assistance households shall be waived when the applicant meets one of the following conditions:

(a) over the age of 60;

(b) disabled;

(c) employed 20 or more hours per week;

(d) has transportation difficulties;

(e) prolonged severe weather;

(f) other hardship identified as situations warrant; as authorized by the county director.

(3) A face-to-face interview must be granted to any recipient who requests one. If the recipient is unable to come to the office due to the issues listed in Paragraph 1 or 2 of this Subsection, then an interview may be scheduled at a location agreed upon by the caseworker and the applicant.

C. [~~Alternatives to office interviews:~~ If an office interview is waived, the caseworker shall conduct a telephone interview or a home visit. Home visits shall be scheduled in advance with the benefit group as provided for at 8.100.180.17 NMAC. Waiver of the office interview shall not be justification for extending the eligibility determination deadlines.] **Home visits: A home visit may be made to conduct the interview and obtain the information needed, as long as the department gives adequate prior notice of the visit.**

D. Scheduling interviews: An interview shall be scheduled upon receipt of the application. The interview shall take place within 10 working days of the date an application is filed and, to the extent possible, at a time that is convenient for the applicant.

E. Missed interviews: The applicant shall be responsible for scheduling a second appointment. If the applicant does not contact the office or does not appear for the rescheduled interview, the application shall not be denied until the 30th calendar day (or the next workday if the 30th is not a workday) after the application was filed.

F. Purpose and scope of interview

(1) Prior to approval there shall be an interview with the applicant. The purpose and scope of the interview shall be explained to the applicant. The interview is an official and confidential discussion of benefit group circumstances between the applicant and the caseworker. The interview allows the caseworker to explore and clarify unclear or incomplete information reported on the application and is intended to provide the applicant with information regarding the work program, child support benefits and requirements, the temporary nature of the program, eligibility requirements, and to provide the caseworker with the necessary facts to make an accurate eligibility determination.

(2) For cash assistance cases, at initial application, a brief history shall be required in the case narrative explaining the circumstances, which led to the application. The narrative shall include information clearly describing the child's situation with respect to child support from a non-custodial parent or parents.

G. Applicant information: During the course of the interview all reasonable steps shall be taken to make the applicant feel at ease and protect the applicant's right to privacy. The interviewer shall tell the applicant about the following:

(1) services available and requirements which must be met under the cash assistance program and the child support enforcement programs;

(2) school attendance and reporting requirements;

(3) complaint and hearing procedures;

(4) work program procedures;

(5) work requirements;

(6) application processing standards;

(7) procedures in cases of overpayment or underpayment;

(8) responsibility to report changes;

(9) non-discrimination policy and procedures;

(10) timeliness standards; and

(11) semiannual reporting requirements.

[8.102.110.11 NMAC - Rp 8.102.110.11 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 11/15/2007; A, 07/01/2013]

8.102.110.12 APPLICATION PROCESSING TIME LIMITS

A. Timeliness: The caseworker shall explain time limits and the applicant's right to request an administrative hearing if the application is not processed within the applicable time limits.

B. Processing time limit: Cash assistance applications shall be completed within 30 calendar days from the date of application.

C. "Clocking" of time limits: "Clocking" of time limits begins on the day after ~~[the completed and signed application is received]~~ the date of application.

D. Delayed assistance: If an eligibility determination is not made within the required time limits, the applicant shall be notified in writing of the reason for the delay. The notice shall also inform the applicant of the applicant's right to request an administrative hearing regarding the issue of ISD's failure to act within the time limits.

[8.102.110.12 NMAC - Rp 8.102.110.12 NMAC, 07/01/2001; A, 11/15/2007; A, 07/01/2013]

8.102.110.13 DISPOSITION OF APPLICATION/NOTICE

A. Denials: If an application is denied, ISD shall issue a written notice to the applicant of a denial. The denial notice shall include the date of denial, reason for denial, the regulation section under which the denial was made, the applicant's right to a fair hearing concerning the denial, and the time limits for filing a fair hearing request. The notice shall also explain that the applicant may discuss the decision with the caseworker, supervisor, or county director.

B. Approvals: If the application is approved, the applicant shall be notified by mail or by electronic means which may include the YES-New Mexico web portal. The notice shall report the initial month of eligibility, amount of payment, how the payment is calculated, and the members who have been determined eligible.

C. Application withdrawal: An applicant may voluntarily withdraw the application at any time before eligibility determination. An effort shall be made to confirm the applicant's desire to withdraw the application. Applicants shall be advised that withdrawal of the application has no effect upon the right to apply for

assistance in the future.

D. Tribal TANF requirements:

(1) If an applicant fails to ~~[provided]~~ provide documentation of denial for tribal TANF within thirty days, the NMW application shall be:

(a) held for thirty days beginning with the day after the date of application.

(b) denied on the thirtieth day or on the next ~~[working]~~ business day if the thirtieth is not a ~~[workday]~~ business day.

(2) If the applicant provides documentation of denial for tribal TANF within thirty days, ISD shall determine the cause for denial prior to processing the NMW application. Applicants who verify denial of tribal TANF within thirty days shall be processed according to current NMW policy.

(a) An applicant denied tribal TANF benefits for the following reasons shall be immediately denied NMW cash assistance:

(i) failure to provide information;

(ii) failure to cooperate with the application process;

(iii) failure to comply with any tribal TANF non-financial eligibility criteria; or if

(iv) the benefit group is currently within a sanction period involving total benefit group

ineligibility.

(b) Individuals qualifying for or receiving tribal TANF benefits shall be denied NMW cash assistance.

[8.102.110.13 NMAC - Rp 8.102.110.13 NMAC, 07/01/2001; A, 02/14/2002; A, 07/01/2013]

8.102.110.15 [CASE RECORDS]

~~A. Transfer of case records: If a recipient moves to another county in New Mexico or to an area administered by another project area, case records shall be transferred as follows:~~

~~(1) Responsibilities of sending county:~~

~~(a) If it is learned that a recipient has moved or plans to move to another county, the project area where the recipient is moving shall be promptly notified. The record shall not be transferred to the new project area until a definite address for the client is established.~~

~~(b) When it has been determined that the record should be transferred, the sending county shall review the case record to be sure it is complete and updated, and enters the new address and county number on the system. If all benefit groups representing separate grants or categories included in the case record do not transfer, the portion of the case record of those leaving the project area shall be transferred.~~

~~(2) Responsibilities of receiving county: As soon as the project area to which the recipient is moving learns from the sending county or the recipient of the recipient's plans, the receiving project area shall implement transfer-in procedures and contact the recipient to update documentation of current circumstances.~~

~~(3) Recertification: A transfer indicates a change in a family's living arrangements which may affect eligibility or amount of payment. The case is reviewed for changes at the time of the transfer. A complete recertification shall be completed within 30 days after the transfer-in is completed.~~

~~(4) Transfer pending approval of application: If transfer of a case record is necessary before eligibility has been determined on an application, the sending county shall transfer the pending application and associated documents to the receiving county. The receiving county shall continue the determination of eligibility based on the new circumstances. The application shall be completed based on the original application date.~~

~~B.] ~~[[Reserved]]~~ **ELECTRONIC CASE FILE:**~~

~~A. Documents in paper format will be imaged into an electronic case file (ECF). The ECF is located within the automatic system program and eligibility network (ASPEN). ASPEN will digitize the volume of paper documents received from individuals and manage them electronically in a centralized repository.~~

~~B. Implementation of the electronic document management solution provides ISD the capability to administer and manage eligibility related processes and tasks.~~

~~C. Once the existing paper case files are imaged the electronic record will be considered the official record.~~

[8.102.110.15 NMAC - N, 07/01/2001; A, 07/01/2013]

This is an amendment to 8.102.410 NMAC, Section 12, effective July 1, 2013.

8.102.410.12 NONCONCURRENT RECEIPT OF ASSISTANCE:

A. To be eligible for inclusion in a NMW benefit group, the individual cannot already be included in or receiving benefits from:

- (1) another department cash assistance benefit group;
- (2) an SSI grant;
- (3) a tribal TANF program or BIA-GA program;
- (4) a government-funded adoption subsidy program;
- (5) a TANF program in another state; or
- (6) foster care payments as defined in Title IV of the Social Security Act.

B. An individual may not be the payee for more than one NMW cash assistance payment.

C. Supplemental security income:

(1) **Ongoing SSI eligibility:** A person eligible for SSI on an ongoing basis is not eligible for NMW or refugee assistance benefits on the basis of concurrent receipt of assistance. The SSI recipient is not included in the benefit group for purposes of financial assistance eligibility and benefit calculation. The income, resources, and needs of the SSI recipient are excluded in determining benefit group eligibility and payment.

(2) **SSI applicants:** An individual receiving cash assistance benefits from the department may apply for and receive SSI benefits for the same months for which the department has already issued benefits. Cash assistance benefits issued by the department are considered in determining the amount of retroactive SSI benefits. NMW ineligibility or overpayments shall not be established for any month for which SSI issues a retroactive benefit. When verification is received that a benefit group member is approved for SSI on an ongoing basis, that member shall be immediately removed from the benefit group.

D. Subsidized adoptions: Children in receipt of state or federal adoption subsidy payments are included as benefit group members, and their income is counted in determining eligibility and payment.

E. Other department programs: Non-concurrent receipt of assistance limitations apply to departmental programs authorized in 8.102 NMAC, 8.106 NMAC, 8.119 NMAC, tribal TANF programs, ~~and~~ SSI, and payments for foster care under Title IV of the Social Security Act. ~~[The food stamp program]~~ SNAP, medicaid, LIHEAP and other similar programs are not considered concurrent assistance and shall not make an individual ineligible for cash assistance and tribal TANF programs.

[8.102.410.12 NMAC - Rp 8.102.410.12 NMAC, 07/01/2001; A, 11/15/2007; A, 07/01/2013]

This is an amendment to 8.102.460 NMAC, Section 9, effective July 1, 2013.

8.102.460.9 NMW COMPLIANCE REQUIREMENTS: Work program requirements apply to each adult and minor head of households benefit group member whether the benefit group is a two-parent or single-parent benefit group.

A. All adult and minor head of household participants are required to complete an assessment, individual responsibility plan (IRP), work participation agreement (WPA) [and], applicable work requirement hours and timely submission of documentation showing completion of required work hours.

B. Non-compliance with the NMW requirements: Participants who are in non-compliance with any of the NMW requirements are subject to conciliation and sanction as outlined at 8.102.620 NMAC. [8.102.460.9 NMAC - Rp, 8.102.460.12 NMAC, 04/01/2012; A, 07/01/2013]

This is an amendment to 8.102.500 NMAC, Section 10, effective July 1, 2013.

8.102.500.10 DIVERSION PAYMENTS TO A NMW BENEFIT GROUP:

A. Purpose: The diversion payment is a [~~one-time~~] one-time cash assistance payment, that is intended to assist the benefit group alleviate a specific short-term need: to accept a bona fide offer of employment, retain employment, remedy an emergency situation or an unexpected short-term need.

B. Eligibility criteria:

(1) Applicant: Eligibility for a diversion payment shall be limited to an applicant making an initial application for cash assistance. Initial application shall not include a NMW cash assistance case which is within a six-month mandatory closure because of a third sanction. For the purposes of diversion payments, an initial applicant is one who has never received cash assistance, or one whose cash assistance case has been closed for one or more calendar months.

(a) An applicant for NMW cash assistance who meets all NMW eligibility criteria may volunteer to accept a NMW diversion payment in lieu of monthly cash assistance payments if there is no need for long-term cash assistance to meet basic needs.

(b) The caseworker shall explain the diversion program is not a supplement to other assistance but is in place of it and screen the applicant for eligibility for a diversion payment.

(c) Final approval for all diversion payments shall be made by the county director and documentation submitted to income support division central office.

(2) NMW eligibility is established:

(a) The applicant must be otherwise eligible for NMW cash assistance, except that the applicant demonstrates that monthly cash assistance to meet basic needs is not required by the benefit group because there is a means of on-going financial support, and the applicant chooses to accept a diversion payment in lieu of cash assistance to meet ongoing needs.

(b) An applicant who cannot demonstrate that monthly cash assistance to meet basic needs is not needed shall not be eligible for a diversion payment.

(3) Specific need: The applicant must make an informed choice whether cash assistance is needed to meet a specific short term need. The applicant may demonstrate a need for a specific item or type of assistance which will allow the applicant to keep a job or accept a bona fide offer of employment, remedy and emergency situation or alleviate a short term need. Such assistance may include, cash, support services, housing, transportation, car repairs, and uniforms.

(4) Eligibility for support services: A recipient of a diversion payment shall remain eligible for support services such as child care and transportation until the end of the 12-month lock-out period, until closure of the case is requested or the participant moves out of state. A referral to the NMW work program service provider and to CYFD shall be made after the applicant signs the agreement to accept a diversion payment and payment is authorized.

(5) Verification and documentation:

(a) The applicant shall be required to provide verification of the specific item or type of assistance which will allow the applicant to meet the basic short-term need.

(b) Documentation shall be required to establish that a diversion payment may be authorized in lieu of cash assistance to meet ongoing needs. An agreement signed by the applicant shall include a description of a diversion payment, terms and conditions, lifetime limitations, availability of work program services, reason for accepting a diversion payment, any prior assistance received in or out of the state.

C. Amounts: Diversion assistance is a one time, lump sum payment. The amount of the diversion payment is as follows:

(1) one to three benefit group members: may be entitled to an amount of up to \$1,500 non-recurring payment; or

(2) four or more benefit group members: may be entitled to an amount of up to \$2,500 non-recurring payment.

D. Countable assistance: The effects a diversion payment on other categories of assistance is as follows:

(1) the receipt of a diversion payment shall be excluded from income considerations in the medicaid program; and

(2) categorical eligibility is extended to the food stamp benefit group for the lockout period, unless the benefit group requests closure or moves out of New Mexico; and

(3) an applicant who accepts a diversion payment shall be eligible for TANF funded child care

assistance for the lockout period, unless the benefit group requests closure or moves out of New Mexico.

E. Limitations and conditions: An applicant may receive a diversion payment a maximum of two times during a participant's 60-month term limit.

(1) Receipt of a diversion payment does not count toward the NMW 60-month term limit for any adult included in the benefit group, unless the benefit group also receives monthly NMW cash assistance during the period covered by the diversion payment.

(2) The acceptance of a diversion payment does not reduce the number of months in a participant's 60-month lifetime limit; however, a diversion payment can only be authorized a maximum of two times during the 60-month lifetime limit. The 60-month lifetime limit began on July 1, 1997 for any adult or minor head of the benefit group, or spouse of the minor, who received TANF since July 1997.

(3) A participant who has reached the 60-month lifetime limit is not eligible for a diversion payment. A participant who has never received a month of TANF is eligible for a diversion payment.

(4) **Cash assistance lockout period:**

(a) **Acceptance of a diversion payment:** An applicant who accepts a diversion payment shall be prohibited from participating in the NMW cash assistance program for a period of 12 months beginning in the month the diversion payment is authorized. A written agreement that defines the terms and expectations of the diversion grant; documents the reason why cash assistance to meet basic needs is not required; identifies the need for a specific type of short-term assistance; and describes the support services available to diversion participants must be signed by the participant.

(b) **Receipt of a diversion payment from another state:** An applicant who has accepted a diversion payment in any other state shall be prohibited from receiving NMW cash assistance or a diversion payment in New Mexico for a period of 12 months, beginning in the month the diversion payment in the other state was authorized, or for the length of the lockout period in the other state, whichever is shorter.

(5) A participant of a diversion payment is not required to comply with work program or child support enforcement requirements.

F. Re-application: A participant may apply for cash assistance during the lockout period based on the following criteria.

(1) **Applying during lock-out period:** An applicant who determines an inability to adhere to the terms and conditions for receipt of a diversion payment may apply for cash assistance to meet ongoing basic needs.

(a) An applicant is ineligible for cash assistance payment regardless of good cause within the first four months of receiving a diversion payment.

(b) An applicant is eligible for cash assistance payment if good cause is met at least five months after receipt of diversion payment.

(2) **Good cause:** Good cause must apply in order for an applicant to re-apply for cash assistance during the lockout period. Good cause can only be considered for applicants applying at least five months after initial receipt of a diversion payment. Good cause is not considered to exist for the first four months from initial receipt of a diversion payment. Good cause must be approved by ~~[IRU]~~ the department and may include, loss of employment, but not a voluntary quit or dismissal due to poor job performance or failure to meet a condition of employment; or use of an illegal substance or other drug; catastrophic illness or accident of a family member which requires an employed participant to leave employment; a victim of domestic violence; or another situation or emergency that renders an employed family member unable to care for the basic needs of the family.

G. Claims:

(1) A benefit group that receives monthly cash assistance within the 12-month lock out period shall not be subject to an overpayment if the household meets good cause.

(2) A benefit group may be subject to an overpayment if the diversion payment was issued in error and subject to recoupment as specified in 8.102.640 NMAC.

[8.102.500.10 NMAC - Rp 8.102.500.10 NMAC, 07/01/2001; Repealed, 7/17/2006; 8.102.500.10 NMAC - N, 11/15/2007; A, 08/14/2009; A, 07/01/2013]

This is an amendment to 8.102.510 NMAC, Section 10, effective July 1, 2013.

8.102.510.10 RESOURCE EXCLUSIONS:

A. Real property:

(1) **The home:** The value of the benefit group's home and certain other property, as defined below, is not considered in determining eligibility. The "home" is the dwelling place occupied by the benefit group. The home is considered to be occupied by the benefit group during a temporary absence from the home when there is a definite plan to return to the home and no one else is occupying it. "Home" includes, in addition to the residence building and the land upon which it is constructed, the following:

- (a) a reasonable amount of land within reasonable proximity to the residence building if that land is currently used by and useful to the client;
- (b) outbuildings within reasonable proximity to the residence building, such as barn, garage and well, if the well is a principal source of water;
- (c) buildings used for rental purposes if located on land contiguous to the land upon which the residence building is constructed and if these buildings cannot be divided from the residence land and sold separately;
- (d) grazing permits currently being used to graze livestock owned by the client;
- (e) furniture, equipment and household goods necessary for the operation and maintenance of the home.

(2) **Other real property - burial plots:** One burial plot for each person included in the benefit group; a burial plot shall consist of the space needed to bury members of the immediate family.

B. Exempt personal property: The value of the following items of personal property shall not be considered in determining eligibility for financial assistance.

(1) Vehicles:

(a) **Transportation to or from work/daily living:** Vehicles used for transportation of benefit group members to or from work or work activities, for daily living activities, or for transportation of goods or services shall not be considered in the determination of resources attributed to the benefit group.

(b) **Specially equipped vehicles:** A vehicle that is specially equipped for [the handicapped] those with physical impairments shall not be considered in the determination of resources attributed to the benefit group.

(2) **Exempt income:** Any income which is exempt under income provisions is also exempt from consideration as a resource. To maintain its exempt status, exempt income which is accumulated must be kept separately from non-exempt savings.

(3) **Funeral agreements:** The equity value of funeral agreements owned by a benefit group member. Funeral agreements include any arrangement under which prepaid funeral services are provided or cash benefits which are intended to pay for funeral services are paid upon the death of the person. Included as such agreements are contracts with funeral homes, life or burial insurance, or trust or escrow accounts in financial institutions or banks, provided that the trust or escrow accounts contain provisions making the funds payable only upon the death of a named individual. There is no limit on the amount which can be disregarded.

(4) **Contingent and unliquidated claims:** A "contingent and unliquidated claim" is an as yet undetermined right of the client to receive, at some future time, a resource such as an interest in an estate not probated or damages or compensation resulting from an accident or injury. Such a claim is not considered a resource to meet requirements if the benefit group member can demonstrate that the client has consulted an attorney, or that under the circumstances, it is reasonable not to have consulted an attorney, and that the benefit group member is making every reasonable effort to prosecute the benefit group member's claim or to proceed with the probate. If the benefit group member can demonstrate that the client's share in an estate not probated would be less than the expense of the proceedings to probate the estate, the value is not considered a resource.

(5) **Work-related equipment exclusion:** Work-related equipment, such as the tools of a trades person or the machinery of a farmer, which are essential to the employment or self-employment of a benefit group member, are excluded, in an amount not to exceed \$1000 per individual, and remain excludable, if the trades person becomes disabled. Farm machinery retains this exclusion for one year if the farmer ends self-employment.

(6) **Livestock:** The value of livestock is an excluded non-liquid resource.

C. Individual development account (IDA): As defined in the Individual Development Account Act 58-30 NMSA, 1978, funds in an IDA are exempt from consideration as resources in determining benefit group eligibility are subject to certain requirements. To be disregarded, the IDA must be designated for a qualified use and meet all requirements as follows.

(1) IDA requirements:

(a) the benefit group member must establish the IDA for one of the purposes listed in Paragraph (2) of this subsection;

(b) in order for such accounts to be excludable, the IDA must be a trust created or organized in the United States, with trust language restricting use of account funds to the qualified uses as designated in this section; and

(c) the IDA must be funded exclusively with income earned by a benefit group member or by contributions made by a non-benefit group member;

(d) funds withdrawn from the account and used for any purpose other than those specified under this section, will cause the account to lose its status as an excluded resource, starting with the month in which the funds are so used; the amounts withdrawn also constitute an overpayment of assistance, and must be reported and shall be recouped.

(2) IDA qualified uses: Allowable uses of the money withdrawn from an IDA are listed in Subparagraph (a) thru (f) of this subsection.

(a) **Post-secondary education expenses:** In order to be considered used for the qualified purpose, the post-secondary education funds must be paid from an IDA directly to an eligible education institution, as set forth in this section. For purposes of this regulation, post-secondary education expenses include:

(i) tuition and fees required for the enrollment or attendance of a student at an eligible education institution; an eligible institution is an institution described in section 481(a)(1) or 1201(a) of the Higher Education Act of 1965 (20 USC 1088(a)(1) or 1141(a)); an area vocational education school (as defined in section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) which is in any state; or

(ii) books, fees, supplies, and equipment required for courses of instruction at an eligible educational institution.

(b) **Business capitalization:** In order to be considered used for the qualified purpose, for business capitalization, the funds have to be paid directly from the IDA to a business capitalization account established in a federally insured financial institution that is restricted to use solely for qualified business capitalization expenses. A qualified business means any business that does not contravene any law or public policy. Qualified business capitalization expenses include capital, plant, equipment, working capital, and inventory expenses. To be a qualified business, there must be a business-plan which:

(i) is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity;

(ii) includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

(iii) may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(c) **First-time home purchase by a qualified buyer:** The purpose of the IDA is to assist a qualified first-time home buyer to accumulate part of the cash necessary to initiate purchase of the individual's first home.

(i) Only IDA's established by qualified first-time home buyers shall be disregarded. A qualified first-time home buyer is one who has never had an ownership interest in a principal residence.

(ii) The IDA may be used only for the purchase of a qualified principal residence. A qualified principal residence is one which qualifies as the principal home under Subsection 1034 the federal internal revenue [services] service's code, and the costs for which do not exceed 100 percent of the average area purchase price applicable to such residence, determined in accordance with paragraphs (2) and (3) of Subsection 143(e) of the internal revenue [services] service's code.

~~[(iii) No more than \$1500 may be accumulated in an IDA for first time home purchase. Any amount in excess of \$1500 is considered in determining whether the benefit group meets the cash resource limit.]~~

(d) **Home improvements:** Costs of major home improvements or repairs on the home of the account owner.

(e) **Death of account owner:** The amount deposited by the deceased account owner held in an IDA shall be distributed directly to the account owner's spouse. If the spouse is deceased or there is no spouse the amount shall be distributed to a dependent or other named beneficiary of the deceased. The account and matching funds designated for that account from a reserve account may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

(f) **Vehicle acquisition:** Acquisition of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner.

D. **Federally excluded resources:** Certain resources are excluded pursuant to federal law. For a listing of federally excluded resources see 8.139.527 NMAC.
[8.102.510.10 NMAC - Rp 8.102.510.10 NMAC, 07/01/2001, A, 05/15/2003; A/E, 07/16/2007; A, 10/31/2007; A, 07/01/2013]

This is an amendment to 8.102.620 NMAC, Section 9, 10 and 11, effective July 1, 2013.

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 using the following methodology:

- (1) subtract the benefit group's net countable income from the payment standard applicable to the benefit group; and
- (2) further subtract the following budgetary adjustment amounts to establish the monthly benefit amount:

- | | | |
|-----|---------------|-------|
| (a) | one person | \$ 39 |
| (b) | two persons | \$ 53 |
| (c) | three persons | \$ 67 |
| (d) | four persons | \$ 80 |
| (e) | five persons | \$ 94 |
| (f) | six persons | \$108 |
| (g) | seven persons | \$121 |
| (h) | eight persons | \$138 |

(i) for households with nine or more benefit group members, subtract an additional \$14 for each member.

[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]

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 be sanctioned for failure to meet the work participation requirement rates 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 [for a one-parent benefit group];

(ii) more than one participant in the benefit group have failed to comply with either the NMW and/or 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'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]~~ 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]~~ 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 tenth 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 ~~[thirtieth]~~ 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.

~~[(5) A sanction shall be removed effective the month following the month in which the determination is made that the participant has complied with requirements.]~~

(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 25 percent of the

standard of need. The benefit group shall be given notice of the imposition of the sanction.

~~(b) [If the first level lasts for more than three months, or a participant has a second occurrence of failure to comply with NMW or CSED requirements, the sanction shall advance to a second level sanction, as described below.]~~ 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 50 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) [If the second level lasts for more than three consecutive months, the sanction shall advance to level three as described below.]~~ 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.

(b) 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.

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 ~~timely~~ 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/recipients 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]

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 25 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 25 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 [~~on a form ISD-121~~] 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 ~~effect~~ 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.

C. **Semiannual reporting:** A benefit group subject to semiannual reporting shall be subject to non-reporting sanctions as specified in Subsection L of 8.102.120.11 NMAC.

[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]

This is an amendment to 8.106.100 NMAC, Section 7, effective July 1, 2013.

8.106.100.7 DEFINITIONS:

A. Definitions A-L:

- (1) **Adult residential shelter care home (ARSCH):** means a shelter care home for adults that is licensed by the department of health.
- (2) **Alien:** means an individual who is not a United States citizen.
- (3) **Application:** means a written request for assistance, on the appropriate ISD form, signed by or on behalf of an individual or family.
- (4) **Attendant:** means an individual needed in the home for medical, housekeeping or child care reasons.
- (5) **Authorized beneficiary:** means the surviving spouse of a disabled adult or the caretaker of an unrelated child, who has the ability to use a deceased recipient's issued payment.
- (6) **Authorized representative:** means an adult who is designated in writing by the applicant and is sufficiently knowledgeable about the applicant/benefit group's circumstances to complete the application form correctly and represent the benefit group.
- (7) **Basic needs:** means food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.
- (8) **Benefit group:** means an individual or group of individuals authorized to receive cash assistance financed by state or local funds.
- (9) **Benefit month:** means the month for which cash assistance benefits are issued.
- (10) **Budget month:** means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.
- (11) **Capacity to work:** means the ~~[affects]~~ effects of impairment(s), work-related factors, functionality on the ability for an individual to engage in gainful employment.
- (12) **Capital gains:** means the proceeds from the sale of capital goods or equipment.
- ~~(13) **Caretaker:** means an adult who has assumed primary responsibility for the care of an unrelated child; outside the fifth degree of relationship.]~~
- ~~(14)~~ (13) **Cash assistance:** means state-funded cash assistance in the general assistance program, the adult residential ~~[home care]~~ shelter care home program (ARSCH), or the burial assistance program for the indigent.
- (15) (14) **Categorical eligibility (CE):** means a ~~[food stamp]~~ SNAP household that meets one of the following conditions is considered to be CE and have limited eligibility requirements.
 - (a) **Financial CE:** Any ~~[food stamp]~~ SNAP household in which all members receive Title IV-A assistance (TANF), general assistance (GA), or supplemental security income (SSI) benefits is considered to be categorically eligible for ~~[food stamp]~~ SNAP benefits.
 - (b) **Broad-based CE:** Any ~~[food stamp]~~ SNAP household, in good standing, in which at least one member is receiving a non-cash TANF/MOE funded benefit or service and household income is below 165% FPG.
- ~~(16)~~ (15) **Certification:** means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.
- ~~(17)~~ (16) **Certification period:** means the time period in calendar months that is assigned to a benefit group that is approved to receive cash assistance benefits.
- ~~(18)~~ (17) **Collateral contact:** means an individual or agency designated to provide information concerning eligibility.
- ~~(19)~~ (18) **Contingency:** means requirement(s) an individual must accept as a condition of ~~[eligibility]~~ eligibility such as, treatment available outside the GA program, unless a determination is made that good cause exists for the individual's inability to comply.
- ~~(20)~~ (19) **Conversion factor:** means anticipated monthly income received on a weekly or bi-weekly basis shall be converted to a monthly amount.
- ~~(21)~~ (20) **Date of admission:** means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.
- (21) **Date of application:** means the date the application is received by the income support division offices during regular business hours, this includes applications that are dropped off, submitted in person and electronically. Applications that are dropped off or submitted electronically after regularly scheduled business hours, holidays and weekends will be considered received as of the next business day.

- (22) **Date of authorization:** means the date when action is taken to approve a cash payment for a benefit group.
- (23) **Date of entry:** means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.
- (24) **Day(s):** means working days, unless otherwise defined in this chapter.
- (25) **Department:** means the human services department.
- (26) **Dependent child:** means an individual who is seventeen years of age or younger; eighteen years of age and enrolled in high school; or between eighteen and twenty-two years of age and is receiving special education services regulated by the state public education department.
- (27) **Director:** means the director of the income support division.
- (28) **Disability:** means the definitions of disability related to the general assistance program and the disability determination process found at 8.106.420.7 NMAC.
- (29) **Earned income:** means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and 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.
- (30) **Emancipated:** means an individual under the age of 18 who is legally recognized as no longer under parental control due to the individual's marriage, active duty in the armed forces or by ~~a decision of~~ the order of a court.
- (31) **Encumbrance:** means debt owed on property.
- (32) **Equity value:** means the fair market value of property, less any encumbrances owed on the property.
- (33) **Essential person:** means an individual responsible for the care of a disabled general assistance recipient to the extent that placement into institutional care would be required were it not for care provided by this individual.
- (34) **Expungement:** means the permanent deletion of cash benefits from an EBT account that is stale.
- (35) **Fair hearing:** means an administrative proceeding that a claimant or ~~his~~ the claimant's representative may request if:
- (a) an application is not acted on within the application time limits at 8.106.110.12 NMAC; or
 - (b) an application is denied in whole or in part; or
 - (c) cash assistance or services are modified, terminated or not provided.
- (36) **Fair market value (FMV):** means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or as a trade-in, not the amount the dealer would sell the vehicle for at retail.
- (37) **Federal act:** means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.
- (38) **Federal fiscal year:** means the time period beginning on October 1 and ending on September 30 of the calendar year.
- (39) **Federal poverty guidelines:** means the level of income defining poverty by family size, published annually in the federal register by the United States department of health and human services.
- (40) **Gainful employment:** means any job or class of jobs in the state that would provide an income equaling or exceeding 85% of the federal poverty guidelines to the benefit group.
- (41) **Government entity:** means any federal, state, tribal or local unit of government as well as any non-government entity that receives public funds for the purpose of meeting the needs of its clientele.
- (42) **Gross income:** means the total amount of earned or unearned income before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-employment income and income excluded by federal law.
- (43) **Gross income test:** means the income test applied to the maximum income eligibility limit for participation in a particular cash assistance program based on the size of the household or benefit group.
- (44) **Head of household:** means an individual who is the responsible case head for the benefit group. The head of household may be the parent, guardian, sole adult member, specified relative, pregnant woman, a recipient of general assistance, or caretaker.
- (45) **Immigrant:** means an individual who is an alien as defined in title IV of the federal Personal Responsibility and Work Opportunity Reconciliation Act (PROWRA) and within the technical meaning at 8 U.S.C.

1101(a)(15).

(46) **Ineligible alien:** means an individual who does not meet the eligible alien requirements or has not been admitted for permanent residence.

(47) **Initial month:** means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one calendar month or longer.

(48) **Inquiry:** means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application for that program.

(49) **Interim assistance reimbursement:** means the program within the social security administration that will reimburse the state through [~~HSD~~] the department for payments made to an individual receiving GA disability during the period the individual's application for SSI was pending.

(50) **Institution of higher education:** means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

(51) **Institutionalized:** Living in a facility licensed as an adult residential shelter care [~~facility~~] home (ARSCH) by the New Mexico department of health.

(52) **Irrevocable trust funds:** means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

(53) **Issuance month:** means the calendar month in which cash assistance is issued.

(54) **Limited state funds:** means that the standard of need for a one person benefit group is calculated at \$150.00 per month or less.

B. Definitions M-Z:

(1) **Maintenance of effort:** means the amount of general funds the state agency must expend annually on the four purposes of [~~TANF~~] temporary assistance to needy families (TANF) to meet the minimum expenditure requirement based on a state's historical [~~AFDC~~] assistance for families with dependent children (AFDC) expenditures

(2) **Mandatory benefit group member:** The income and resources of mandatory members will always be considered to determine need, but not payment. In order to be included in the assistance group, members must individually meet eligibility requirements. Members mandatory for inclusion are: spouses residing in the home with the applicant, a caretaker of the applicant, and the father of an unborn child residing in the home with the applicant.

(3) **Medicaid:** means medical assistance under title XIX of the Social Security Act, as amended.

(4) **Minor unmarried parent:** means an unmarried parent who is under the age of 18 years or is age 18 and enrolled in high school.

(5) **Month of approval:** means the first month in which a benefit group is eligible for cash assistance.

(6) **Net income test:** means the income test applied to eligibility for a particular program, after all allowable deductions are taken from the gross income for the household or benefit group. To be eligible, the benefit group's net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

(7) **Net monthly income:** means gross non-exempt income minus the allowable deductions. Net monthly income is the figure used to determine eligibility and cash assistance benefit amount.

(8) **New Mexico works:** means the federally funded temporary cash assistance program for needy families that carries a sixty-month term limit for adults in the state.

(9) **Non-benefit group members:** means persons residing with a benefit group but who are specifically excluded by regulation from being included in the benefit group certification.

(10) **Non-cash TANF/MOE benefit or service:** means a non-cash TANF/MOE benefit or services including programs or services that do not provide cash to recipients, but are funded by the TANF program, either by the federal TANF block grant or the state MOE share. These services may include transportation, childcare, counseling programs, parenting programs, pamphlets or referrals to other TANF/MOE-funded services.

(11) **Notice:** means written correspondence that is generated by any method including handwritten, typed or electronic, delivered to the client or their authorized representative by hand, U.S. mail, professional delivery or by any electronic means. The term "written notice" and "notice" are used interchangeably.

~~(11)~~ (12) **Notice of adverse action (NOAA):** means a written or electronic notice sent 13 days in advance of an action to reduce, suspend or terminate benefits that includes a statement of the action the department intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for additional

information, the availability of continued benefits, and liability of the benefit group for any overpayment received if the hearing decision is adverse to the benefit group.

~~[(12)]~~ **(13) Overpayment/overissuance/over-issuance:** means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

~~[(13)]~~ **(14) Parent:** means a natural parent, adoptive parent, or stepparent.

~~[(14)]~~ **(15) Payment:** means the amount of the cash assistance benefit, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's standard of need, and before any reduction by sanction or recoupment.

~~[(15)]~~ **(16) Permanently residing under color of law (PRUCOL):** means aliens lawfully admitted for permanent residence or permanently residing in the United States under color of law as follows.

(a) The individual may be eligible for medicaid if the individual is an alien residing in the United States with the knowledge and permission of the immigration and naturalization services (INS) and the INS does not contemplate enforcing the alien's departure. The INS does not contemplate enforcing an alien's departure if it is the policy or practice of INS not to enforce the departure of aliens in the same category, or if from all the facts and circumstances in a particular case it appears that INS is otherwise permitting the alien to reside in the United States indefinitely, as determined by verifying the aliens status with INS.

(b) Aliens who are permanently residing in the United States under color of law are listed below. None of the categories include applicants for an immigration and naturalization service status other than those applicants listed in Item (vi) of Subparagraph (b) of Paragraph (2) of Subsection A of 8.200.410.11 NMAC or those covered under Item (xvi) of Subparagraph (b) of Paragraph (2) of Subsection A of 8.200.410.11 NMAC. None of the categories allow medicaid eligibility for non-immigrants; for example, students or visitors. Also listed are the most commonly used documents that the INS provides to aliens in these categories[-]:

(i) aliens admitted to the United States pursuant to 8 U.S.C. 1153(a)(7)(Section 203(a)(7) of the Immigration and Nationality Act); ask for a copy of INS Form I-94 endorsed "refugee-conditional entry";

(ii) aliens, including Cuban/Haitian entrants, paroled in the United States pursuant to 8 U.S.C. 1182(d)(5)(Section 212(d)(5)) of the Immigration and Nationality Act; for Cuban/Haitian entrant (Status Pending) reviewable January 15, 1981; (although the forms bear this notation, Cuban/Haitian entrants are admitted under section 212(d)(5) of the Immigration and Nationality Act);

(iii) aliens residing in the United States pursuant to an indefinite stay of deportation; ask for an immigration and naturalization [services] service's letter with this information or INS Form I-94 clearly stated that voluntary departure has been granted for an indefinite period of time;

(iv) aliens residing in the United States pursuant to an indefinite voluntary departure; ask for an immigration and naturalization [services] service's letter or INS Form I-94 showing that voluntary departure has been granted for an indefinite time period;

(v) aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi)) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for a copy of INS Form I-94 or Form I-210 or a letter clearly stating that status;

(vi) aliens who have filed applications for adjustment of status pursuant to Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that the immigration and naturalization services has accepted as properly filed (within the meaning of 8 CFR 245.2(a)(1) or (2) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for a copy of INS Form I-94 or I-181 or a passport appropriately stamped;

(vii) aliens granted stays of deportation by court order, statute, or regulation, or by individual determination of the immigration and naturalization services pursuant to Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105 a) or relevant immigration and naturalization [services] service's instructions, whose departure that agency does not contemplate enforcing; ask for a copy of INS Form I-94 or a letter from the immigration and naturalization service, or a copy of a court order establishing the alien's status;

(viii) aliens granted asylum pursuant to Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158); ask for a copy of INS Form I-94 and a letter establishing this status;

(ix) aliens admitted as refugees pursuant to Section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or Section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)); ask for a copy of INS Form I-94 properly endorsed;

(x) aliens granted voluntary departure pursuant to Section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) or 8 CFR 242.5 whose departure the Immigration and Naturalization Service does not contemplate enforcing; ask for a Form I-94 or Form I-210 bearing a departure date;

(xi) aliens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1(a)(ii) prior to June 15, 1984 or 242.1(a)(22) issued June 15, 1984 and later; ask for a copy for INS Form I-210 or a letter showing that departure has been deferred;

(xii) aliens residing in the United States under orders of supervision pursuant to Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252(d)); ask for a copy of Form I-220 B;

(xiii) aliens who have entered and continuously resided in the United States since before January 1, 1972, (or any date established by Section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259); ask for any proof establishing this entry and continuous residence;

(xiv) aliens granted suspension for deportation pursuant to Section 244 of the Immigration and Naturalization Act (8 U.S.C. 1254) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for an order from an immigration judge showing that deportation has been withheld;

(xv) aliens whose deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)); ask for an order from an immigration judge showing that deportation has been withheld;

(xvi) any other aliens living in the United States with the knowledge and permission of the immigration and naturalization service and whose departure the agency does not contemplate enforcing (including permanent non-immigrants as established by Public Law 99-239, and persons granted extended voluntary departure due to conditions in the alien's home country based on a determination by the secretary of state).

~~(16)~~ (17) **Person:** means an individual.

~~(17) — Project area: means the geographic area designated to a county office that is responsible for the administration of the department's programs.]~~

(18) **Prospective budgeting:** means the computation of a benefit group's eligibility and benefit amount based on an estimate of income and circumstances that will exist in the current month and future months.

(19) **Qualified alien:** includes any of the classes of immigrant status granted by USCIS below:

(a) an alien who is lawfully-admitted for permanent residence (LPR) under the Immigration and Nationality Act (INA);

(b) an alien granted asylum under section 208 of the INA;

(c) an alien admitted into the United States as a refugee under section 207 of the INA;

(d) an alien paroled into the United States for a period of at least one year under section 212(d)(5) of the INA;

(e) an alien whose deportation has been withheld under section 243(h) of the INA as in effect prior to April 1, 1997, who whose removal has been withheld under section 241(b)(3) of the INA;

(f) an alien who has been granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(g) an alien who was a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980;

(h) an alien, an alien parent or alien child, who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent or by a member of the spouse or parent's family residing in the same home as the alien at the time of the abuse and there is a petition pending under 204(a)(1)(A) or (B) or 244(a)(3) of the INA, as long as the alien has begun the process of becoming a lawful permanent resident under the Violence Against Women Act;

(i) an alien who is a victim of a severe form of trafficking, regardless of immigration status, under the Trafficking Victims Protection Act of 2000.

(20) **Real property:** means land and affixed improvements and structures, which include mobile homes. Grazing permits are also considered real property.

(21) **Recertification:** means a complete review of all conditions of eligibility and a redetermination of the amount of the cash assistance benefits for an additional period of time.

(22) **Recipient:** means a person receiving cash assistance benefits.

(23) **Reconsideration:** means a re-evaluation of disability based on additional medical evidence provided by the client.

(24) **Refugee:** means a lawfully admitted individual granted conditional entry into the United States.

(25) **Resource standard:** means the financial standard with respect to an applicant's/recipient's resources and property, which is set at \$2,000 for non-liquid resources and ~~[\$1,500]~~ \$1,500 for liquid resources.

(26) **Retrospective budgeting:** means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

- (27) **Secretary:** means the secretary of the human services department.
- (28) **Self-employed:** means an individual who engages in a self-managed enterprise for the purpose of providing support and income.
- (29) **Semiannual reporting:** means a requirement for a benefit group to file a report of information in the sixth month of a 12-month certification period to determine if eligibility for benefits can continue.
- (30) **Set term GA:** The certification period shall be for a set length of time dependent upon conditions, beginning from the month of approval and is not subject to review.
- (31) **Shelter for battered women and children:** means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.
- (32) **Single-parent benefit group:** means a benefit group that does not include both parents of a child who is included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.
- (33) **Sponsor:** means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.
- (34) **Sponsored alien:** means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a)(15) and 101(a)(2) of the Immigration and Nationality Act.
- (35) **Spouse:** means an individual legally bound by marriage.
- (36) **Stale:** means EBT accounts which have not been accessed (no withdrawal activity) by the household in the last 90 days from the most recent date of withdrawal.
- (37) **Standard of need:** means the amount provided to each GA cash assistance benefit group on a monthly basis and is based on legislative funding, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR case number and expenditures, and number of pending applications.
- (38) **Supplemental nutrition assistance program (SNAP):** The Food and Nutrition Act of 2008 changed the federal name of the food stamp program to the supplemental nutrition assistance program. SNAP is synonymous with the food stamp program.
- ~~(38)~~ (39) **Supplemental security income (SSI):** means monthly cash payments made under the authority of:
- (a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;
 - (b) Section 1616(a) of the Social Security Act; or
 - (c) Section 1382 of the Social Security Act.
- ~~(39)~~ (40) **Unavailable state funds:** means the funds are not sufficient to provide all GA benefit groups with a one dollar monthly cash payment.
- ~~(40)~~ (41) **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; other public or private disability or retirement benefits 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.
- ~~(41)~~ (42) **Unrelated caretaker:** means an individual who is not a specified relative within the fifth degree of relationship of a dependent child and has assumed responsibility for care, support and supervision of an unrelated child and for meeting the child's physical and emotional needs.
- ~~(42)~~ (43) **Unrelated child:** means a minor, under 18 years of age, residing with a caretaker who is not a specified relative within the fifth degree of relationship.
- ~~(43)~~ (44) **Variable term GA:** The certification period shall be set for a length of time, not to exceed 12 months, beginning from the month of approval and is subject to review.
- ~~(44)~~ (45) **Verification:** means the use of third-party information or documentation to establish the accuracy of statements on the application or recertification.
- ~~(45)~~ (46) **Work related factors:** means factors taken into account in the disability determination process such as age, education, training, work experience, language ability, appearance, marital status, living situation, as well as relevant social history and minimal employment and activities that would be required in a work setting such as sitting, standing, walking, lifting, carrying, handling, seeing, hearing, communicating and understanding and following directions.
- [8.106.100.7 NMAC - Rp, 8.106.100.7 NMAC, 12/01/2009; A, 04/01/2010; A, 07/01/2013]

This is an amendment to 8.106.110 NMAC, Sections 8, 9, 10 and 11, effective July 1, 2013.

8.106.110.8 GENERAL:

~~[A. — Project area: The application for cash assistance shall be made to the human services department in the project area in which the applicant resides.~~

~~B. — Application form:]~~ The application shall be submitted ~~[in writing]~~ on a form designated by the department either electronically or in writing and shall be made under oath by an applicant or an applicant on behalf of a dependent child who resides in the home. The application must contain a statement of the age of the applicant or, dependent child, residence in New Mexico, all property in which the applicant has an interest, the income of the applicant or other benefit group members at the time the application is filed; the signature of the applicant, and other information required by the department.

[8.106.110.8 NMAC - N, 07/01/2004; A, 12/01/2009; A, 07/01/2013]

8.106.110.9 RIGHT TO APPLY

A. An individual has the right to make a formal application for any cash, food or medical assistance program administered by the department, regardless of whether or not the individual appears to meet the conditions of eligibility. Any individual requesting information or assistance, or who wishes to apply for assistance, shall be encouraged to complete an application that same day.

B. An individual shall be informed of the right to apply, whether or not it appears the individual will be found eligible.

C. An individual shall be informed that the date of application affects the benefit amount for the first month of issuance.

D. **Availability of applications:** ~~[The department shall make application forms for general assistance programs readily available to anyone requesting an application, and to certain local agencies and organizations that have regular contact with the public. If an individual contacts the office by phone or mail and does not wish to come to the office to pick up an application, the individual shall be mailed an application on the same day the office is contacted.]~~ The department shall provide the YES-New Mexico web portal to submit the application online or paper applications for general assistance to anyone requesting an application and to local agencies and organizations that have regular contact with the public. Requests, written, electronic or by phone, for an application for assistance shall be provided with a mailed paper application or the YES-New Mexico web portal address to submit an online application.

[8.106.110.9 NMAC - N, 07/01/2004; A, 12/01/2009; A, 07/01/2013]

8.106.110.10 THE APPLICATION [FORM]:

A. **Submission of an application:** ~~[An application may be submitted in person, by mail, via facsimile or by other electronic means, with the ISD office in the project area where the applicant lives.]~~ An application may be submitted to the department in person, by mail, via facsimile or by other electronic means which may include the YES-New Mexico web portal.

~~(1) — If an applicant submits the application in the wrong project area the department shall refer the applicant to the correct project area and shall complete the application process prior to transferring to the correct project area.~~

~~(2)~~ **(1) Out-of-state applicants:** An application ~~[mailed in]~~ received from out-of-state shall be accepted, but shall not be registered until the applicant contacts ISD to confirm his or her presence in the state. If the applicant does not contact the ISD within 30 days from receipt of the application, the application shall be returned to the applicant.

~~(3)~~ **(2) Application for minor children:** An application for assistance for minor children, including an un-emancipated pregnant minor, must be made by the adult with whom the child or children reside and who is assuming responsibility for the support and care of the child or children.

(a) If a pregnant minor is living in a second-chance home, maternity home or other adult-supervised supportive living arrangement, the application must be made by the supervising adult as the authorized representative for the minor pregnant woman.

(b) An emancipated minor may submit an application in the emancipated minor's own right.

B. **Completeness of an application:** To be accepted and registered, the cash assistance application, at a minimum, must identify the individual or individuals applying, the program(s) applied for, and must contain the signature of a responsible benefit group member, caretaker, authorized representative, or other legally responsible individual. The signature is defined as the depiction of the individual's name either handwritten, electronic or

recorded telephonically. Such signature serves as intention to execute or adopt the sound, symbol, or process for the purpose of signing the related record.

(1) The application form must be completed and signed by the applicant, the authorized representative or other responsible individual.

(2) If an authorized representative or another appropriate individual completes an application form on behalf of an applicant, the actual applicant must review and approve the completed form. The applicant is liable for improper payments resulting from erroneous information given by the authorized representative or other appropriate individual.

(3) The caseworker shall assist in completing the form if there is no other individual who can help the applicant. If an application is incomplete, ISD shall take action to notify the applicant. The individual who completed the application form must add the missing or incorrect information and initial and date the entries.

C. Application registration: A signed application shall be registered effective the date in which the application is received by the ~~[project-area]~~ department during regular business hours; this includes applications that are dropped off, submitted in person and electronically. Applications that are dropped off or submitted electronically after regular business hours or on weekends or holidays will be considered received as of the next business day.

[8.106.110.10 NMAC - N, 07/01/2004; A, 12/01/2009; A, 07/01/2013]

8.106.110.11 INTERVIEWS:

A. Application interview:

(1) All applicants shall have a face to face interview [~~in the project area in which the applicant resides~~].

(2) The interview may take place at a location reasonably accessible and agreeable to both the applicant and the caseworker.

(3) The applicant may bring any individual to the interview.

(4) The interview shall take place within ten days of the date an application is filed and, to the extent possible, at a time that is convenient for the applicant.

B. Alternatives to an office interview: Waiver of the requirement that the interview be conducted in the ISD office shall be determined on a case-by-case basis for any individual who is unable to appoint an authorized representative, has no one able to accompany the applicant to the office because of transportation difficulties, or similar hardships that the county director determines warrants a waiver of the office interview. These hardship conditions include, but are not limited to: illness, care of benefit group member, prolonged severe weather, or work hours which prevent an in-office interview during work hours. If an office interview is waived, the caseworker shall conduct a telephone interview or a home visit. Home visits shall be scheduled in advance with the benefit group as provided for at 8.100.180.17 NMAC. Waiver of the office interview, in and of itself, shall not be justification for extending the eligibility determination deadlines.

C. Scheduling an interview: An interview shall be scheduled upon receipt of the application. The interview shall take place within ten working days of the date an application is filed and, to the extent possible, at a time that is convenient for the applicant. Applications that are dropped off or submitted electronically after the close of business or on weekends or holidays will be considered received as of the next business day.

D. Missed interview: An applicant who fails to appear for the first interview shall be responsible for scheduling a second appointment for an interview. If the applicant does not contact the office or does not appear for a rescheduled interview, the application shall be denied on the [60th] 30th day (or the next workday if the [60th] 30th day is not a workday) after the application was filed.

E. Purpose and scope of interview: The interview is an official and confidential discussion of benefit group circumstances between the applicant and the caseworker.

(1) Prior to processing an application, there shall be a face-to-face interview with the applicant. The purpose and scope of the interview shall be explained to the applicant.

(2) The interview is intended to provide the applicant with information regarding eligibility requirements for the program and to provide the caseworker with the necessary information and documentation to make an accurate eligibility determination. In addition, the interview allows the caseworker to clarify unclear or incomplete information reported on the application.

F. Applicant information: During the course of the interview steps shall be taken to make the applicant feel at ease and protect the applicant's right to privacy. The interviewer shall inform the applicant about the following:

(1) the requirements that must be met by the applicant under the requested cash assistance program;

- (2) responsibility to report changes;
- (3) complaint [~~and fair~~] and fair hearing procedures;
- (4) application processing standards;
- (5) procedures in cases of overpayment or underpayment of benefits;
- (6) non-discrimination policies and procedures;
- (7) timeliness standards.

[8.106.110.11 NMAC - N, 07/01/2004; A, 12/01/2009; A, 07/01/2013]

This is an amendment to 8.106.230 NMAC, Section 8, effective July 1, 2013.

8.106.230.8 PAYMENT ISSUANCE:

A. EBT: The department issues cash assistance benefits through an electronic benefit transfer (EBT) system. ~~[In no instance shall the department restrict or dictate the use of the money paid.]~~

B. Warrants: In some circumstances a payment can be issued by warrant.

C. Death of a recipient: An authorized beneficiary may access and use payments issued on behalf of a recipient who died before an EBT withdrawal was made if the recipient:

- (1) was alive on the first day of the month for which cash assistance benefits were issued; and
- (2) met all eligibility conditions at the time of death.

[8.106.230.8 NMAC - Rp, 8.106.120.8 & 9 NMAC, 12/01/2009; A, 07/01/2013]

This is an amendment 8.106.400 NMAC, Section 10, effective July 1, 2013.

8.106.400.10 CONSTRUCTING THE BENEFIT GROUP:

A. General: To be eligible for inclusion in a GA benefit group, a person must be individually eligible according to requirements set forth in 8.106.410 NMAC, 8.106.420 NMAC and 8.106.430 NMAC and not otherwise disqualified from participation. The person or persons meeting individual eligibility requirements and for whom an application has been or must be made constitute the benefit group.

B. Disability: The benefit group for the GA-disabled adult program consists of the disabled adult and may include the needs of other adults living in the home. An adult who shares custody of his or her biological child may apply for GA-disabled adults in his or her own right, provided that the adult who is applying has less than half time custody of the child.

(1) Spouse: The spouse, residing in the home with the disabled adult must be included in the benefit group to determine need, but not payment. The spouse may be included in payment if the spouse is determined disabled.

(2) Essential person: An individual, regardless of relation, is considered essential to the well being of a disabled GA applicant and may be included in the GA benefit group to determine need and payment. An essential person is capable of providing the physical care needed by the GA disabled recipient to the extent that placement into institutional care would otherwise be required without this care.

(3) Pregnant individual: An emancipated unmarried pregnant woman, age 17 or younger, or a pregnant adult, who has not reached her third trimester and has been determined to be disabled, may be considered a benefit group member in the GA disabled adult program. The father of the unborn child that resides in the home, must be included in the benefit group to determine need, but not payment.

(4) SSI: An individual receiving SSI, or who would be receiving SSI except for recovery by the social security administration of an overpayment, is not eligible to be included in a GA benefit group.

C. State supplement for adult residential care: To be eligible for inclusion in an ARSCH supplemental payment benefit group, an individual must be eligible for SSI. The benefit group consists of the SSI recipient. Two SSI recipients who would constitute a family if living at home, but who reside in an adult residential shelter care facility, are considered to be two separate benefit groups.

D. Unrelated child: The benefit group for the GA-dependent child program consists of a dependent child who lives in a family setting with a non-related adult caretaker, and all of that dependent child's full, half, step- or adopted siblings living in the home. An adult caretaker may be an individual who is not a specified relative within the fifth degree of relationship and who is not eligible for NMW in his or her own right.

(1) Caretaker: The unrelated caretaker shall be included in the benefit group upon request. The spouse of the unrelated caretaker, if living in the home, shall be included in the benefit group when the unrelated caretaker is included in the benefit group.

(2) Need and payment: The unrelated caretaker and spouse shall be included in the benefit group to determine need and payment only if they request inclusion.

(3) Fifth degree of relationship: The following relatives are within the fifth degree of relationship to the dependent child:

(a) father (biological or adoptive);
(b) mother (biological or adoptive);
(c) grandfather, great grandfather, great-great grandfather, great-great-great grandfather;
(d) grandmother, great-grandmother, great-great-grandmother, great-great-great grandmother;
(e) spouse of child's parent (stepparent);
(f) spouse of child's grandparent, great grandparent, great-great grandparent, great-great-great grandparent (step-grandparent);

(g) brother, half-brother, brother-in-law, stepbrother;

(h) sister, half-sister, sister-in-law, stepsister;

(i) uncle of the whole or half-blood, uncle-in-law, great uncle, great-great uncle;

(j) aunt of the whole or half blood, aunt-in-law, great aunt, great-great aunt;

(k) first cousin and spouse of first cousin;

(l) son or daughter of first cousin (first cousin once removed);

(m) son or daughter of great aunt or great uncle (first cousin once removed) and spouse;

(n) nephew/niece and spouses.

(4) A second cousin is a child of a first cousin once removed or child of a child of a great aunt or uncle and is not within the fifth degree of relationship.

(5) **Effect of divorce or death on relationship:** A relationship based upon marriage, such as the "in-law", or "step-" relationships, continues to exist following the dissolution of the marriage by divorce or death.

(6) **Unrelated child adult only benefit group:** An adult only benefit group may consist of the non-related adult caretaker when all of the dependent children are receiving SSI.

[8.106.400.10 NMAC - Rp, 8.106.400.11, 12 & 16 NMAC, 12/01/2009; A, 07/01/2013]

This is an amendment to 8.106.500 NMAC, Section 8, effective July 1, 2013.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Limited state funds may result in a suspension or reduction in general assistance benefits without eligibility and need considered.

B. Need determination process: Eligibility for the GA program based on need requires a finding that the:

- (1) countable resources owned by and available to the benefit group do not exceed either the ~~[\$1500 liquid or \$2000]~~ \$1,500 liquid or \$2,000 non-liquid resource limit;
- (2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent (85%) of the federal poverty guideline for the size of the benefit group; and
- (3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

C. GA payment determination: The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

D. Gross income test: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent (85%) of the federal poverty guidelines for the size of the benefit group.

- (1) Income eligibility limits are revised and adjusted each year in October.
- (2) The gross income limit for the size of the benefit group is as follows:

(a) one person	\$791
(b) two persons	\$1,072
(c) three persons	\$1,352
(d) four persons	\$1,633
(e) five persons	\$1,913
(f) six persons	\$2,194
(g) seven persons	\$2,474
(h) eight persons	\$2,755
(i) add \$281 for each additional person.	

E. Standard of need:

(1) As published monthly by the department, the standard of need is an amount provided to each GA cash assistance benefit group on a monthly basis and is based on availability of state funds, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR caseload number and expenditures, and number of pending applications.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

(3) **Notice:** The department shall issue prior public notice identifying any change(s) to the standard of need amounts for the next quarter, as discussed at 8.106.630.11 NMAC.

F. Net income test: The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group. After the countable net income is determined it is rounded down prior to the comparison of the household's income to the standard of need to determine the households monthly benefit amount.

G. Special clothing allowance for school-age dependent children: A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age nineteen (19) by the end of August.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group, subject to the availability of state or federal funds.

- (3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

H. Supplemental issuance: A ~~one-time~~ one-time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services department and the availability of state funds.

(1) The one time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.
[8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008; A, 07/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 12/01/2009; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A, 07/01/2013]