TITLE 8 SOCIAL SERVICES
CHAPTER 281 MEDICAID ELIGIBILITY - INSTITUTIONAL CARE (CATEGORIES 081, 083, 084)
PART 500 INCOME AND RESOURCE STANDARDS

8.281.500.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.281.500.1 NMAC - Rp, 8.281.500.1 NMAC, 8/15/2015]

8.281.500.2 SCOPE: The rule applies to the general public.
[8.281.500.2 NMAC - Rp, 8.281.500.2 NMAC, 8/15/2015]

8.281.500.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq. NMSA 1978.
[8.281.500.3 NMAC - Rp, 8.281.500.3 NMAC, 8/15/2015]

8.281.500.4 DURATION: Permanent.
[8.281.500.4 NMAC - Rp, 8.281.500.4 NMAC, 8/15/2015]

8.281.500.5 EFFECTIVE DATE: August 15, 2015, unless a later date is cited at the end of a section.
[8.281.500.5 NMAC - Rp, 8.281.500.5 NMAC, 8/15/2015]

8.281.500.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs it administers. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD) medical assistance programs (MAP) eligibility rules manual, specifically Section 8.200.400 NMAC. Processes for establishing and maintaining MAP eligibility are detailed in the income support division (ISD) general provisions 8.100 NMAC.
[8.281.500.6 NMAC - Rp, 8.281.500.6 NMAC, 8/15/2015]

8.281.500.7 DEFINITIONS:

A. Actuarially sound: With respect to an annuity or promissory note, the payments made to the beneficiary must not exceed his or her life expectancy and returns to the beneficiary an amount at least equal to the amount used to establish the contract.

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

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

D. Assets: All income and resources of an applicant or recipient and his or her spouse, if applicable.

E. Authorized representative: The individual designated to represent and act on the applicant's or recipient's behalf during the eligibility process. The applicant or recipient or his or her authorized representative must provide formal documentation authorizing the named individual or individuals to access the identified case information for a specified purpose and time frame. An authorized representative may be an attorney representing a person or household, a person acting under the authority of a valid power of attorney, a guardian, or any other individual or individuals designated in writing by the claimant.

F. Bona fide: A bona fide agreement is made in good faith and is legally valid.

G. Community spouse: The spouse of an institutionalized applicant or eligible recipient who is residing in the community and is not in an institution.

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

I. Encumbrance: A general term for any claim or lien on a parcel of real property, including mortgages, deeds of trust and abstracts of judgments.

J. Fair market value: An estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria used in appraising the value of assets for the purpose of

determining a MAP category of eligibility.

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

L. Income: Anything that an applicant or recipient receives in cash or in kind that he or she can use to meet his or her needs for food and shelter. In-kind income is not cash, but is actual food or shelter, or something that the applicant or recipient can use to get one of these.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.281.500.8 [RESERVED]

8.281.500.9 NEED DETERMINATION: Applicants for and recipients of institutional care must apply for and take all necessary steps to obtain any income or resources to which they may be entitled. When an applicant or recipient is given notification by HSD to apply for and obtain specific income and resources they must take steps to do so within 30 calendar days.

A. Failure to apply for and take steps to determine eligibility for other benefits: Failure or refusal to apply for and take all necessary steps to determine eligibility for other benefits after notice is received results in an applicant or recipient becoming ineligible for a MAP category of eligibility for institutional care.

B. Exceptions to general requirement: Applicants or recipients who have elected a lower veterans administration (VA) payment do not need to reapply for veterans administration improved pension (VAIP) benefits. Crime victims are not required to accept victims compensation payments from a state-administered fund as a condition of MAP eligibility.

[8.281.500.9 NMAC - Rp, 8.281.500.9 NMAC, 8/15/2015]

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

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

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

[8.281.500.10 NMAC - Rp, 8.281.500.10 NMAC, 8/15/2015]

8.281.500.11 APPLICABLE RESOURCE STANDARDS: The resource criteria and eligibility standards of this section apply to all applicants for and recipients of a MAP category of eligibility for institutional care. An applicant or recipient is eligible for a MAP category of eligibility for institutional care on the factor of resources if countable resources do not exceed $2,000. Some of an applicant's or recipient's resources are counted in the eligibility determination and some resources are excluded. Any resource which is not specifically excluded in Section 8.281.500.13 NMAC is considered a countable resource for the purpose of determining a MAP category of eligibility for institutional care.

A. Liquid resources: A liquid resource is cash or something that can easily be converted to cash within 20 business days. The face or surrender value of liquid resources such as cash, savings or checking accounts, and other financial instruments are considered in determining a MAP category of eligibility. The countable value of liquid resources is based on their current fair market value.

(1) An applicant or recipient must provide verification of the value of all liquid resources. The resource value of a bank account is customarily verified by a statement from the bank showing the account balance as of the first moment of the first day of the month in question. If an applicant or recipient cannot provide this verification, the ISD worker provides the applicant or recipient with a detailed request of all documents needed to determine a MAP category of eligibility.

(2) If the applicant or recipient can demonstrate that a check was written and delivered to a payee but not cashed by the payee prior to the first moment of the first day of the month, the amount of that check is subtracted from the applicant or recipient checking account balance to arrive at the amount to be considered a countable resource.

B. Non-liquid resources: A non-liquid resource is something such as real property that cannot easily be converted to cash within 20 business days. The value of non-liquid resources is computed at current

market value minus encumbrances or financial penalties for early withdrawal.
[8.281.500.11 NMAC - Rp, 8.281.500.11 NMAC, 8/15/2015]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) if either the applicant or recipient or the other account holder is not capable of making a statement, the applicant or recipient or an authorized representative must obtain a statement

from a third party who has knowledge of the circumstances surrounding the establishment of the joint account.

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

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

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

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

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

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

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

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

H. Real property:

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

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

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

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

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

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

(2) If the promissory note is non-negotiable, and the applicant or recipient receives payments

on the note that could be used for food or shelter, then the amount of the payment retained in the month following receipt is a resource to the applicant or recipient.

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

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

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

N. Keogh plan: A Keogh plan is a retirement plan established by a self-employed applicant or recipient alone or for the self-employed applicant or recipient and his or her employees. If the Keogh plan was established for the self-employed applicant or recipient alone, the funds in the plan are counted as an asset in their entirety less the amount of penalty for early withdrawal. If the Keogh plan was established for employees other than the spouse of the applicant or recipient, the funds do not count as an asset.

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

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

(a) the outstanding principal balance is a resource of the applicant or recipient;

(b) the cash provided to the borrower is no longer the applicant or recipient lender's resource because he or she cannot access it for his or her own use; the loan agreement replaces the cash as the applicant or recipient lender's resource;

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

(d) interest income received by the applicant or recipient lender is unearned income.

(2) Non-negotiable loan. If the applicant or recipient owns a loan agreement or is a lender and the loan agreement is not a bona fide loan or is not negotiable:

(a) the agreement is not a resource of the applicant or recipient lender;

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

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

(d) interest income received by the applicant or recipient lender is unearned income.

(3) Bona fide loan. If the applicant or recipient is the borrower and the agreement is a bona fide loan:

(a) the loan agreement itself is not a resource for the applicant or recipient; and

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

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

(a) the loan agreement itself is not a resource of the applicant or recipient; and

(b) the cash provided by the applicant or recipient lender is income in the month received and is a resource if retained in the month following the month it was received.

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

(a) the agreement is enforceable under state law;

(b) the agreement is in effect at the time that the cash is provided to the borrower; money given to an applicant or recipient with no obligation to repay cannot become a loan at a later date;

(c) the obligation to repay the loan must be acknowledged by both the applicant or recipient lender and the borrower; when money or property is given and accepted based on any understanding other

than it is to be repaid by the receiver, there is no loan;

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

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

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

(g) if the applicant or recipient is the lender, the agreement is a countable resource starting in the month after the month that the applicant or recipient lender provides the proceeds to the borrower; and

(h) the agreement's resource value is the outstanding principal balance unless the applicant or recipient lender provides evidence that the loan has a lower value.

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

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

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

(1) burial funds;

(2) burial spaces;

(3) life insurance and other insurance products such as annuities;

(4) income-producing property; and

(5) other financial investment products.

[8.281.500.12 NMAC - Rp, 8.281.500.12 NMAC, 8/15/2015]

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

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

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

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

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

(a) eligibility terminates;

(b) part, or all, of the funds can no longer be excluded because the applicant or recipient purchased excluded life insurance or an irrevocable burial contract which partially or totally offsets the available burial fund exclusion; or

(c) the applicant or recipient uses the funds or any portion of the funds for another purpose; this action makes the funds countable; any designated burial funds used for another purpose will be counted as income in the month withdrawn and as a resource thereafter.

(4) Reduction of burial fund exclusion: The one thousand five hundred dollars (one thousand five hundred dollars ($1500) burial fund exclusion is reduced by the following:

(a) the face value of excluded life insurance policies;

(b) assets held in irrevocable burial trusts; irrevocable means the value paid cannot be returned to the applicant or recipient;

(c) assets that are not burial space items held in irrevocable burial contracts;

(d) assets held in other irrevocable burial arrangements; and

(e) assets held in an irrevocable trust available to meet burial expenses.

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

(a) the original amount is excluded;

(b) the excluded burial fund is not commingled with non-excluded burial funds;

(c) the interest earned remains with the excluded burial funds.

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

(7) Life insurance policy designated as burial fund: An applicant or recipient can designate a life insurance policy as a burial fund at the time of application. The ISD caseworker must first analyze Subsection H of Section 8.281.500.13 NMAC of this rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

endowment or perpetual care.

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

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

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

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

(i) spouse;

(ii) natural or adoptive parents;

(iii) minor or adult children, including adoptive and stepchildren;

(iv) siblings, including adoptive and stepsiblings; and

(v) spouse of any of the above relatives.

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

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

(a) someone has title to or possesses a burial space intended for the use of the applicant or recipient or a member of his or her immediate family; or

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

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

(a) the applicant or recipient does not currently own the space;

(b) the applicant or recipient does not currently have the right to use the space; and

(c) the seller is not currently obligated to provide the space.

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

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

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

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

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

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

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

G. Income-producing property exclusion: To be excluded from consideration as a countable

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

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

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

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

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

(i) unforeseeable circumstances, such as a fire, cause a temporary reduction in the rate of return;

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

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

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

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

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

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

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

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

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

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

upon death.

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

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

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

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

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

(2) The applicant or recipient:

(a) must have been a beneficiary of a QSLTCIP that was purchased on or after August 15, 2015; or

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

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

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

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

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

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

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

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

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

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

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

(e) an applicant or recipient can spend or deplete a protected asset; the asset continues to be protected and is counted against the PAL even though the applicant or recipient no longer has it;

(f) once an asset is officially designated for protection, it cannot be undesignated in favor of designating another asset;

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

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

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

(i) special and or supplemental needs, pooled charitable trusts, irrevocable

trusts with a reversionary state interest, or income diversion trusts; and

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

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

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

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

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

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

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

(2) Income from segregated funds: Interest or dividend income received from segregated payment funds is not excluded from income, or, if retained, is not an excluded resource; this interest or dividend income must be kept separate from excludable payment funds.

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

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

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

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

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

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

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

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

(a) the fair market value of the note;

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

timely reinvested;

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

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

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

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

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

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

(3) items of personal property ordinarily worn or carried by the applicant or recipient; items may include but are not limited to clothing, shoes, bags, luggage, personal jewelry including wedding and engagement rings, and personal care items;

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

[8.281.500.13 NMAC - Rp, 8.281.500.13 NMAC, 8/15/2015]

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

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

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

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

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

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

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

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

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

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

(3) Restricted coverage: If a transfer of assets occurred within the applicable lookback period, or at any time subsequent to approval for a MAP category of institutional care eligibility, for which the applicant or recipient or his or her spouse did not receive fair market value, the ISD caseworker determines if a penalty period must be calculated. The penalty for transfers of assets for less than fair market value in a MAP category of eligibility for institutional care is restricted coverage. "Restricted coverage" means that the applicant or recipient is eligible for all MAD services except services furnished in a nursing facility or services considered to be long-term care services.

(a) Determine the current average monthly cost of nursing facilities for private patients. See Section 8.281.500.13 NMAC.

(b) Divide the total uncompensated value (amount) of the resources transferred for less than fair market value by the current average monthly cost of nursing facilities for private patients.

(c) The result is the number of months and partial months for which the applicant or recipient will be on restricted coverage.

(4) Calculating restricted coverage when the transferred asset is income: If income has been transferred as a lump sum, the period of restricted coverage is calculated based on the lump sum value. For transfers of the right to an income stream, the period of restricted coverage is calculated using the actuarial value of all payments transferred. See Section 8.200.520 NMAC.

C. Transfer rules based on date of transfer: Two sets of rules govern the calculation of penalty periods if a transfer of assets for less than fair market value has occurred. The date of transfer and approval date for the MAP category of institutional care medicaid applicant or recipient institutional care governs which set of rules is used to calculate the penalty period.

(1) For transfers made on or after August 11, 1993: Periods of restricted coverage are calculated as follows (Omnibus Budget Reconciliation Act of 1993):

(a) the period of restricted coverage begins the month the resources were transferred; the total uncompensated value of the transferred assets divided by the average cost to a private patient for nursing facility services in the state at the time of the applicant's or recipient's application is the methodology used to calculate a period of restricted coverage;

(b) transfers for less than fair market value made by an institutionalized SSI applicant or recipient or a community spouse of institutionalized applicant or recipient may subject the institutionalized applicant or recipient to a period of restricted coverage;

(c) penalty periods are now consecutive rather than concurrent; if multiple transfers occur in different months, the periods of restricted coverage begin with the month of the initial transfer and run consecutively; for example, if an applicant or recipient transfers an asset for less than fair market value in February causing four months of restricted coverage (i.e., February through May) and transfers another asset in April causing three months of restricted coverage, the second period of restricted coverage begins in June and lasts through August; and

(d) if an institutionalized applicant or recipient with a community spouse is placed on restricted coverage as the result of a transfer of assets for less than fair market value and the community spouse subsequently becomes eligible for a MAP category of eligibility for institutional care, any remaining months in the restricted coverage period must be divided equally between the spouses.

(2) For transfers made on or after February 8, 2006: Pursuant to the Deficit Reduction Act of 2005, otherwise eligible institutionalized recipients who transfer assets for less than fair market value after this date are penalized as follows:

(a) the period of restricted coverage begins the first day of the month in which the resources were transferred, or the date on which the individual applicant or recipient meets a MAP category of eligibility, and would otherwise be receiving institutional level of care but for the application of the penalty period, whichever is later, and does not occur during any other period of ineligibility as a result of an asset transfer; see Subsection B of Section 8.281.500.14 NMAC for the methodology used to calculate a period of restricted coverage;

(b) once eligibility has been determined and a penalty period has begun to run, it continues until expiration, whether or not there is a break in the institutionalized recipient's eligibility;

(c) the beginning date of restricted coverage is the first day of the month in which the resources were transferred provided the applicant or recipient is institutionalized and retains his or her MAP category of eligibility for institutional care; for current recipients who fail to report a transfer, the recipients will continue to receive benefits until the adverse action notice date, but HSD may seek to recover any MAD benefits paid for long-term care services during what should have been a period of restricted coverage; federal law does not provide a basis to impose a transfer penalty based on date of discovery;

(d) for a non-institutionalized applicant or recipient, the date restricted coverage begins is the month in which the applicant or recipient becomes institutionalized;

(e) transfers for less than fair market value made by an institutionalized SSI applicant or recipient or a community spouse of the institutionalized applicant or recipient may subject the institutionalized applicant or recipient to a period of restricted coverage; and

(f) multiple transfers occurring in different months are added together and calculated as a single period of ineligibility, that begins on the earliest date that would otherwise apply if the transfer had been made in a single lump sum.

D. Non-excludable transfers: Certain financial instruments must be evaluated before they can be considered a transfer of assets.

(1) Annuities: Annuities belonging to the applicant or recipient or to the spouse of the applicant or recipient must be declared. Annuities must be actuarially sound with no deferral and no balloon payments. Annuities purchased or issued after February 8, 2006 must meet the following additional requirements for exclusion as a transfer of assets:

(a) HSD is named as the remainder beneficiary in the first position for at least the total amount of MAD benefits paid on behalf of the institutionalized applicant or recipient; HSD may be named the remainder beneficiary in the second position if there is a community spouse, or a minor, or a disabled child and is named in the first position if the community spouse or an authorized representative of the child disposes of any such remainder for less than fair market value;

(b) when HSD is a beneficiary of an annuity, issuers of annuities are required to notify MAD of any changes in the disbursement of income or principal from the annuity as well as any changes to HSD's position as remainder beneficiary; and

(c) it is non-assignable and irrevocable.

(2) Life estates: If an applicant or recipient purchases a life estate in another individual's home, the applicant or recipient must live in that home for a period of at least 12 months after the date of purchase or the transaction will be treated as a transfer of assets for less than fair market value.

(3) Promissory notes: If an applicant or recipient uses funds to purchase a promissory note, the repayment terms must be actuarially sound, provide for equal payment amounts with no deferral or balloon payments, and it must contain a provision that prohibits cancellation of the balance upon the death of the applicant or recipient lender. A promissory note not meeting these requirements shall be treated as a transfer of assets for less than fair market value.

E. Excludable transfers: If certain conditions are met, an applicant or recipient is not placed on restricted coverage for transferring assets for less than fair market value.

(1) Transferred asset was home: The asset transferred was a home and title to the home was transferred to:

(a) the spouse of the applicant or recipient;

(b) the son or daughter of the applicant or recipient who is under 21 years of age or who meets the social security administration's definition of disability or blindness; if the child is receiving benefits based on disability or blindness from a program other than social security or SSI, or is not receiving benefits based on disability or blindness from any program, the ISD caseworker must request a determination of disability or blindness from disability determination services;

(c) sibling of the applicant or recipient who has an equity interest in the home and who was residing in the home for a period of at least one year immediately before the applicant or recipient was institutionalized; or

(d) son or daughter of the applicant or recipient who was residing in the home for a period of at least two years immediately before the applicant or recipient was institutionalized; for this exclusion to apply, the ISD caseworker must determine that the son or daughter provided care to the applicant or recipient which permitted the applicant or recipient to reside at home rather than in a medical facility or nursing home.

(2) Other asset transfers: Sufficient information must be given to the ISD caseworker to establish that either:

(a) the applicant or recipient intended to dispose of the asset at fair market value; or

(b) at the time of the transfer the applicant or recipient had no expectation of applying for a MAP category of eligibility and the resources were transferred exclusively for a purpose other than to qualify for a MAP category of eligibility as demonstrated by a preponderance of evidence; unless these conditions are met, the transfer is presumed to have been for the purpose of qualifying for a MAP category of eligibility; or

(c) HSD determines that the denial of eligibility would work an undue hardship.

(3) Asset transferred to or for the sole benefit of the community spouse: No transfer penalty is assessed when assets are transferred from one spouse to another (e.g., assets are transferred from an institutionalized spouse to a community spouse). Any asset transferred to a community spouse or to another individual for the sole benefit of the community spouse in excess of the CSRA is considered to be totally available to the institutionalized spouse and must be spent down before eligibility can be established. No transfer penalty is assessed when assets are transferred to another for the sole benefit of the community spouse if all of the conditions listed in Subparagraphs (a) through (c) below are met.

(a) a transfer is considered to be for the sole benefit of the community spouse if it is arranged in such a way that no individual or entity except the community spouse can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future;

(b) a transfer, or transfer instrument, that provides for funds or property to pass to a beneficiary who is not the community spouse is not considered to be established for the sole benefit of the community spouse; for a transfer to be considered to be for the sole benefit of the community spouse, the instrument or document must provide for the spending of the funds involved for the benefit of the community spouse on a basis that is actuarially sound based on the life expectancy of the community spouse or when the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void;

(c) to determine whether an asset was transferred for the sole benefit of the community spouse, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer; a transfer without such a document cannot be said to have been made for the sole benefit of the community spouse since there is no way to establish, without a document, that only the community spouse will benefit from the transfer.

(4) Asset transfers to or for the sole benefit of a blind or disabled child of the institutionalized individual: No transfer penalty is assessed when assets are transferred to a blind or disabled child of the institutionalized applicant or recipient, or to a trust established solely for the benefit of a blind or disabled child of the institutionalized applicant or recipient. For this exemption to apply, the child must meet the social security administration's definition of blindness or disability. The transfer must either meet the criteria set forth in Section 8.281.500.11 NMAC, or meets all of the conditions listed in this section, Subparagraphs (a) through (c) below to be excluded in the eligibility determination process.

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

(b) A transfer, or transfer instrument, that provides for funds or property to pass to a

beneficiary who is not the blind or disabled child of the institutionalized applicant or recipient is not considered to be established for the sole benefit of the blind or disabled child. For a transfer or trust to be considered to be for the sole benefit of a blind or disabled child, the instrument or document must provide for the spending of the funds involved for the benefit of the blind or disabled child on a basis that is actuarially sound based on the life expectancy of the child. When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void.

(c) To determine whether an asset was transferred for the sole benefit of the blind or disabled child of the institutionalized applicant or recipient, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the blind or disabled child since there is no way to establish, without a document, that only the blind or disabled child will benefit from the transfer.

(5) Asset transfers to a trust for the sole benefit of a disabled individual under age 65: No transfer penalty is assessed when assets are transferred to a trust established for the sole benefit of an individual under age 65 who meets the social security administration's definition of disability. The transfer must either meet the criteria set forth in Section 8.281.500.11 NMAC or meet all of the conditions listed in Subparagraphs (a) through (c) below to be excluded in the eligibility determination process.

(a) A transfer is considered to be for the sole benefit of a disabled individual under age 65 as described above if the transfer is arranged in such a way that no individual or entity except the disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

(b) A transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not a disabled individual under age 65 as described above, is not considered to be established for the sole benefit of the disabled individual. For a transfer or trust to be considered to be for the sole benefit of the disabled individual, the instrument or document must provide for the spending of the funds involved for the benefit of the disabled individual on a basis that is actuarially sound based on the life expectancy of the disabled individual. When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void.

(c) To determine whether an asset was transferred for the sole benefit of the disabled individual, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the disabled individual since there is no way to establish, without a document, that only the disabled individual will benefit from the transfer.

(6) Assets transfers and qualified state long-term care insurance partnerships (QSLTCIP) protected asset limits (PAL):

(a) No transfer penalty is assessed if at initial determination the applicant or recipient has indicated protection of the transferred asset and there is enough of the PAL to cover the value of the resource at the time of the transfer.

(b) No transfer of assets penalty is assessed if the applicant or recipient has previously indicated an asset for protection and there was enough of the applicant’s or recipient’s PAL to cover the value of the resource at the time of the transfer.

(c) No transfer penalty is assessed for the portion of a resource which has been partially protected. The unprotected portion of the resource is subject to all assets transfer provisions outlined in this section of this rule.

F. Re-establishing eligibility: If an asset is transferred for less than fair market value and the applicant or recipient is placed on restricted coverage, he or she has options to re-establish his or her past MAP category of eligibility.

(1) Reimbursement by transferee: The individual to whom the asset was transferred can reimburse the applicant or recipient for the asset at fair market value or liquidate or sell the asset and spend an amount equal to the uncompensated fair market value on the applicant’s or recipient’s care or other exempt assets as listed in Section 8.281.500.13 NMAC.

(2) Return asset to applicant: The asset can be transferred back to the applicant or recipient, liquated or sold. The applicant or recipient must determine the use of the asset; such use may include

spending down the resource limit on the applicant's or recipient's care, classifying the resource as exempt as listed in Section 8.281.500.13 NMAC, or having the asset become a countable resource.

(3) If the transferred asset is restored to an applicant or recipient, he or she may become totally ineligible for a MAP category of institutional care eligibility due to excess resources. The ISD caseworker must verify that the applicant's or recipient's countable assets do not exceed the standard for a MAP category of institutional care eligibility. If the transferred asset is restored to an applicant or recipient, he or she may no longer be eligible for a MAP category of institutional care due to the excess resources. The ISD caseworker must verify that the applicant's or recipient's countable assets meet the requirements to have a MAP category of institutional care eligibility.

[8.281.500.14 NMAC - Rp, 8.281.500.14 NMAC, 8/15/2015]

8.281.500.15 RESOURCE STANDARDS FOR MARRIED COUPLES:

A. Community property resource determination methodology: Community property resource determination methodology is used in the eligibility determination for a married applicant or recipient who began institutionalization for a continuous period prior to September 30, 1989.

(1) To determine the countable value of resources, the ISD worker must:

(a) add the total value of all resources owned by both spouses;

(b) exclude the separate property of the non- applicant or recipient spouse; and

(c) attribute one-half of the total value of the community property to the applicant or recipient spouse plus the value of his or her separate property;

(d) the resulting figure must be less than two thousand dollars ($2,000).

(2) Application of community property rules: Under community property rules, all property held by either spouse is presumed to be community property unless successfully rebutted by the applicant or recipient, or representative. To rebut community property status, the applicant or recipient, or representative must document that the property was:

(a) acquired before marriage or after a divorce or legal separation;

(b) designated as separate property by a judgment or decree of any court;

(c) acquired by either spouse as a gift or inheritance; or

(d) designated as separate property by a written agreement between the spouses, including a deed or other written agreement concerning property held by either or both spouses in which the property is designated as separate property.

(i) If one of the parties to this written agreement is incompetent, legal counsel must execute the agreement on behalf of the incompetent spouse.

(ii) Property designated as separate by written agreement is evaluated according to current rules regarding transfer of resources.

(iii) Income cannot be designated as separate by an agreement between spouses; income is considered separate only if it is derived from a resource that has been determined separate.

B. Spousal impoverishment: Spousal impoverishment provisions apply if one spouse of a married couple is institutionalized for a continuous period of at least 30 consecutive days beginning on or after September 30, 1989. See spousal impoverishment provisions of the Medicare Catastrophic Coverage Act of 1988 (MCCA). No comparable treatment of resources and income is required for non-institutionalized applicants or recipients who do not have a spouse remaining in the community. These provisions cease to apply as of the month following the month an applicant or recipient is no longer institutionalized or no longer has a community spouse. If a community spouse or other dependents apply for a MAP category of eligibility they are subject to the rules governing treatment of income and resources for the individual applicant or recipient.

(1) Resource assessment: A resource assessment must be completed to evaluate a couple's resources as of the first moment of the first day of the month one member of the married couple is institutionalized for a continuous period of at least 30 consecutive days beginning on or after September 30, 1989. This process is used to determine the amount of resources which may be protected for the community spouse. See Subparagraph (f) below for resources which must be included in the resource assessment. The resource assessment and computation of spousal shares occurs only once, at the beginning of the first continuous period of institutionalization beginning on or after September 30, 1989. A new resource assessment may be completed if it is later determined that the original resource assessment was inaccurate. Upon the death of the community spouse, the ISD worker may review the applicant's or recipient's resources.

(a) A MAP application does not need to be submitted at the time the assessment is

requested. A reasonable fee may be charged for completing assessments which are not made in conjunction with the applications. Applications for assessments are available at the ISD offices which determine eligibility for a MAP category of institutional care. Either member of the couple or their authorized representative may request an assessment application.

(b) The ISD worker must complete a resource assessment using the following criteria:

(i) one member of a married couple became institutionalized on or after September 30, 1989 in an acute care hospital or nursing facility for a continuous period of at least 30 consecutive days;

(ii) the institutionalized applicant or recipient has a spouse who remains in the community in a non-institutionalized setting; and

(iii) the institutionalized spouse remains, or is likely to remain, institutionalized for a period of at least 30 consecutive days based on a written statement from his or her physician and supporting medical documentation; the institutionalized applicant or recipient is considered "likely to remain" even if he or she does not actually remain in an institution for 30 consecutive days if he or she met this condition at the beginning of the period of institutionalization.

(c) The ISD worker explains exactly what verification is required to complete the assessment. If the ISD worker requires further information, the individual requesting the assessment is notified in writing and given a reasonable time period of at least 10 working days to provide the additional information.

(d) The institutionalized individual or his or her spouse or an authorized representative is responsible for providing all verification necessary to complete the assessment.

(e) The ISD worker completes the resource assessment within 45 calendar days of the date of receipt of the completed and signed assessment application unless verification is still pending by the 45th day. In that case, the assessment is not completed until all necessary information is provided by the institutionalized individual or his or her spouse or authorized representative.

(f) Assessments include the total value of the couple's countable resources held jointly or separately as of the first moment of the first day of the month one spouse became institutionalized for a continuous period of at least 30 consecutive days beginning on or after September 30, 1989. The assessment form identifies the spousal shares and the CSRA. The couple is entitled to all resource exclusions allowed in Section 8.281.500.13 NMAC except that value limits for the exempt vehicle and household goods of the community spouse do not apply. Assets excluded under the QSLTCIP program are counted in the spousal resource assessment. The disregarded assets are included in determining the amount of the CSRA. The disregarded asset is not counted in determining the applicant's or recipient's eligibility.

(g) When the assessment is complete, the ISD worker copies all documentation used to make the determination of countable resources and retains the documents in the case record. The ISD worker also provides complete copies of the assessment forms to the following parties:

(i) institutionalized applicant or recipient;

(ii) community spouse; and

(iii) authorized representative(s) if any.

(h) When the amount of the couple's total countable resources has been determined, the resulting amount is divided by two to determine the spousal shares. The community spouse is entitled to his or her spousal share or the MAD minimum resource allowance, whichever is greater, up to the applicable federal maximum standard or an amount determined at a HSD administrative hearing or an amount transferred pursuant to a district court order. The CSRA is the amount by which the greatest of the spousal shares or state minimum resource allowance exceeds the amount of resources otherwise available to the community spouse without regard to such an allowance. The CSRA remains in effect until one of the spouses dies. The remainder of the couple's total countable resources in excess of the CSRA is considered available to the institutionalized spouse. If either the institutionalized spouse or the community spouse is dissatisfied with the computation of the spousal share of the resources, the attribution of resources or the determination of the community spouse resource allowance, he or she can request a HSD administrative hearing pursuant to Section 8.352.2 NMAC. Refer to Section 8.352.2 NMAC for a detailed description of the HSD administrative hearing process.

(2) CSRA standards: The state minimum resource allowance and the federal maximum standards vary based on when the applicant or recipient became institutionalized for a continuous period of at least 30 consecutive days. See Section 8.281.500.10 NMAC for the applicable standards.

(3) CSRA revision: The CSRA can be revised if either of the following occurs:

(a) a different amount is determined by a HSD administrative hearing final decision or district court decision; or

(b) inaccurate information was provided to the ISD worker at the time the spousal share was calculated.

(4) Resource availability after computation of CSRA: Resources of a couple remaining after the computation of the CSRA are considered available to the institutionalized spouse. These remaining resources are compared to the resource limit.

(a) From the time of the initial determination of eligibility until the first regularly scheduled redetermination, the CSRA is not considered available to the institutionalized spouse.

(b) The CSRA may be applied retroactively for the three months prior to the month of application and is not considered available to the institutionalized spouse until the first periodic review following initial approval.

(5) Resource transfer after computation of the CSRA: When eligibility has been approved for an institutionalized spouse, resources equal to the amount of the CSRA may be transferred to the community spouse. This transfer is intended to assist the community spouse in meeting his or her needs in the community. Couples should transfer resources in the amount of the CSRA to the community spouse as soon as possible after approval for a MAP category of institutional care eligibility. The institutionalized spouse or authorized representative can complete this transfer at any time between the date of the assessment and the first periodic review 12 months after approval.

(6) Resource transfers which exceed the CSRA: Resources transferred to a community spouse at less than fair market value are not subject to transfer penalties. Resources transferred to the community spouse in excess of the computed CSRA are considered available to the institutionalized spouse and must be spent down to below the resource standard before eligibility can be established. Resources transferred to the community spouse may exceed the CSRA if an increased amount is ordered by any court having jurisdiction or by the MAD director as part of a HSD administrative hearing final decision.

(7) Transfer deadlines: If the resource transfer is not completed by the institutionalized spouse by the end of the initial period of eligibility, the resources are considered completely available to the institutionalized spouse beginning with the first periodic review after the initial determination of eligibility.

(8) Newly acquired assets: After a continuous period of institutionalization begins, newly acquired resources or increases in the value of resources owned by the institutionalized spouse are countable. Recalculations of eligibility for the institutionalized spouse based on countable resources are effective at the beginning of the month following the month in which new resources were received or an increase occurred in the value of resources already owned.

(a) The institutionalized spouse may transfer newly acquired resources to the community spouse without a penalty up to the difference between the CSRA and the state minimum resource standard in effect as of the date of institutionalization.

(b) After a continuous period begins, new resources acquired by the community spouse or increases in the value of resources which are part of the CSRA are not considered available to the institutionalized spouse.

[8.281.500.15 NMAC - Rp, 8.281.500.16 NMAC, 8/15/2015; A, 3/1/2018]

8.281.500.16 DEEMING RESOURCES: Deeming of resources applies only during periods when an eligible applicant/recipient under 18 years of age lives at home and during the month the eligible applicant or recipient enters an institution. After the initial month of entry into the institution, only those resources directly attributable to or available to the applicant or recipient are counted and compared to the two thousand dollars ($2,000) resource limit.

A. Deeming of resources for children who are blind or have a disability: If an applicant or recipient under 18 years of age who is blind or disabled enters an institution, the resources of the parent(s) are deemed to the applicant or recipient if the parent(s) live in the same household. If an ineligible parent receives temporary assistance to needy families (TANF), resources are not deemed to the applicant or recipient.

B. To determine the amount of resources deemed to the applicant or recipient, the following computation is made:

(1) determine parent(s) resources;

(2) allow parent(s) all the resource exclusions that an eligible applicant or recipient would receive;

(3) the remaining resources in excess of two thousand dollars ($2,000) for one parent or three thousand dollars ($3,000) for two parents are deemed to the applicant or recipient child; if there is more than one applicant or recipient child, the deemed resources are divided equally; and

(4) the deemed resources are added to whatever countable resources the applicant or recipient child has in his or her own right; the applicant or recipient child is eligible for a MAP category of institutional care eligibility on the factor of resources if countable resources do not exceed two thousand dollars ($2,000).

[8.281.500.16 NMAC - Rp, 8.281.500.17 NMAC, 8/15/2015]

8.281.500.17 INCOME: An applicant's or recipient's gross countable monthly income must be less than the maximum allowable monthly income standard. If an applicant's or recipient's monthly gross countable income is below fifty dollars ($50), the application can still be processed; however, the applicant or the recipient must be referred to the social security administration to apply for SSI. Income may be in the form of cash, checks, and money orders, or in-kind, including personal property or food. If income is not received in the form of cash, the cash value of the item is determined and counted as income. The ISD worker verifies all income and obtains appropriate documentation. Income is counted in the month received. Income is considered available throughout the month regardless of the date received.

A. Types of income: Countable income is the sum of unearned income or earned income, less disregards or exclusions, plus deemed income.

B. Earned income: Earned income consists of the total gross income received by an applicant or recipient for services performed as an employee or as a result of self-employment.

(1) Royalties earned in connection with the publication of an applicant's or recipient's work and any honorarium or fee received for services rendered are considered earned income.

(2) The self-employed applicant or recipient must provide an estimate of his or her current income based on the tax return filed for the previous year or current records maintained in the regular course of business. The estimate of net earnings for the entire previous taxable year is prorated equally among all months of the current year, even if the business is seasonal.

(a) Consideration is given to the applicant's or recipient's explanation as to why his or her believes the estimated net earnings for the current year vary substantially from the information shown on his or her tax return for past years.

(b) A satisfactory explanation is that the business suffered heavy loss or damage from fire, flood, burglary, serious illness or disability of the owner, or other such catastrophic events. Documentation must include copies of newspaper accounts or medical reports and must be filed in the case record to substantiate the need for a reduced estimate of current self-employment income.

C. Unearned income: Unearned income consists of all other income (minus exclusions and disregards) that is not earned in the course of employment or self-employment.

D. Deemed income: Deemed income is income considered available to a minor applicant or recipient from his or her parents.

E. Community property income methodology: If an applicant or recipient is married, community property income methodology shall be used in the eligibility determination, regardless of the living arrangements, if the one spouse has less income than the other spouse or if using the community property methodology would benefit both spouses. Under this methodology, one-half of the community property income is attributed to each spouse. Income is considered separate if it is earned in and is paid from a non-community property state. Proof of separate income is the burden of the applicant or recipient, spouse, or authorized representative.

[8.281.500.17 NMAC - Rp, 8.281.500.18 NMAC, 8/15/2015]

8.281.500.18 INCOME STANDARDS: The applicable income standard used in the determination of a MAP category of institutional care eligibility for an applicant or recipient who has not been institutionalized for a period of 30 consecutive days is the SSI federal benefit rate (FBR) for a non-institutionalized individual. Participation in the medicaid home and community based waiver program is considered institutionalization and counts toward the calculation of the 30-day period. All income, whether in cash or in-kind, shall be considered in the eligibility determination, unless such income is specifically excluded or disregarded.

A. Institutionalization period of 30 consecutive days: After the applicant or recipient has been institutionalized for 30 consecutive days, the application can be approved as of the first day of the 30-day period. Once an applicant or recipient has been institutionalized for 30 consecutive days, the higher income maximum as

specified in Section 8.200.520 NMAC is used.

B. Institutionalization period less than 30 consecutive days: If the applicant or recipient leaves the facility before 30 consecutive days, the lower income standard (SSI FBR) is used to establish eligibility.

C. Transfer or death: If an applicant or recipient transfers to another institution or dies prior to completing 30 consecutive days of institutionalization, the higher income maximum is used. See Section 8.200.520 NMAC.

(1) Income exclusions: Income exclusions are applied before income disregards. Exclusions are applied in determining eligibility whether the income belongs to the applicant or recipient or to an individual from whom income is deemed.

(2) Infrequent or irregular income: Exclude the first thirty dollars ($30) per calendar quarter of earned income; and the first sixty dollars ($60) per calendar quarter of unearned income. The following definitions apply:

(a) "Irregular income" is income received on an unscheduled or unpredictable basis.

(b) "Infrequent income" is income received only once during a calendar quarter from a single source and includes:

(i) proceeds of life insurance policies;
(ii) prizes and awards;
(iii) gifts;
(iv) support and alimony;
(v) inheritances;
(vi) interest and royalties; and
(vii) one-time lump sum payments, such as social security.

(c) "Frequency" is evaluated for the calendar quarter (i.e. January - March, April - June, July - September, October - December) but the dollar amount is considered in the month received.

(3) Foster care: Foster care payments are totally excluded if:

(a) the foster child is not eligible for SSI; and

(b) the child was placed in the applicant's or recipient's home by a public or private nonprofit child placement or child care agency.

(4) Domestic volunteer services exclusions: Payments to volunteers under domestic volunteer services (ACTION) programs are excluded from consideration as income in the eligibility determination process. These programs include the following:

(a) volunteers in service to America (VISTA);
(b) university year for action (UYA);
(c) special demonstration and volunteer programs;
(d) retired senior volunteer program (RSVP);
(e) foster grandparent program; and
(f) senior companion program.

(5) Census bureau employment: Wages paid by the census bureau for temporary employment related to the census bureau are excluded from consideration as income in the eligibility determination process.

[8.281.500.18 NMAC - Rp, 8.281.500.19 NMAC, 8/15/2015]

8.281.500.19 UNEARNED INCOME: Unearned income includes all income not earned in the course of employment or self-employment. If payment is made in the name of either or both spouses and another party, only the applicant's or recipient's proportionate share is considered available to him or her. If income is derived from property for which ownership is not established, such as unprobated property, one-half of the income is considered available to each member of a married couple.

A. Standards for unearned income: Unearned income is computed on a monthly basis. If there are no expenses incurred with the receipt of unearned income, such as annuities, pensions, retirement payments or disability benefits, the gross amount is considered countable unearned income.

(1) Social security overpayments: If the social security administration withholds an amount because of an overpayment, the gross social security payment amount is used to determine eligibility. See Subsection B of Section 8.281.500.22 NMAC for instructions regarding calculation of the medical care credit.

(2) Rental income: If an applicant or recipient has rental property, the ISD worker allows the cost of real estate taxes, maintenance and repairs, advertising, mortgage insurance and interest payments on the

mortgage as deductions from the amount received as rent.

(3) Interest on promissory note or sales contract: The portion of the payment representing interest received from a promissory note or sales contract is considered unearned income. The market value of promissory notes or sales contracts and the portion of the payment representing payment of the principal are considered resources. See also Subsection L of Section 8.281.500.13 NMAC.

(4) Income from annuities, pensions and other periodic payments: Payments from annuities, pensions, social security benefits, disability, veterans benefits, worker compensation, railroad retirement annuities and unemployment insurance benefits and other periodic payments are counted as unearned income.

B. Unearned income exclusions:

(1) Interest from an excluded burial fund: Interest from an excluded burial fund is not considered unearned income if the interest is applied toward the fund balance. If the interest is paid to the applicant or recipient, it is considered unearned income.

(2) Tax refunds and earned income tax credit: Tax refunds from any public agency for property taxes or taxes on food purchases are totally excluded. Any portion of a federal income tax return which constitutes an earned income tax credit is excluded.

(3) Grants, scholarships and fellowships: All grants, scholarships and fellowships used to pay tuition and fees at an educational institution, including vocational and technical schools, are totally excluded. Any portion of a grant, scholarship or fellowship used to pay any other expenses, such as food, clothing or shelter, is not excluded.

(4) Veteran's pensions: Allowances for aid and attendance (A&A) and unusual medical expenses (UME) are excluded from unearned income for determination of eligibility. If an applicant or recipient receives an augmented VA pension as a veteran or veteran's widow or widower, the pension amount may include an increment for a dependent. If so, the VA must be contacted to provide documentation of the portion of the pension which represents the dependent's increment. When verified, this amount of the VA pension is considered the dependent's income.

(5) Payments by a third party: Third party payments are excluded as income if made directly to the applicant's or recipient's creditor.

(a) Third party payments may include mortgage payments by credit life or credit disability insurance and installment payments by a family member on a burial plot or prepaid burial contract.

(b) Interest from a burial contract that is automatically applied to the outstanding balance is excluded from unearned income. If the payment or interest is sent to the applicant or recipient, it is counted as unearned income regardless of the sender's (third party's) intentions. This applies even if the sender specifies the purpose of the payment on the check. This provision does not apply if the signature of the creditor and the applicant or recipient must both be present in order to negotiate the check (two-party check).

(6) Indian tribe per capita payments: Funds held in trust by the secretary of the interior for an Indian tribe and distributed on a per capita basis and any interest and investment income from these funds, are excluded as income and resources in the eligibility determination process and the computation of the medical care credit.

(7) Plans for achieving self-support: Income derived from, or necessary to, an approved plan for achieving self-support for a blind or disabled applicant or recipient under 65 years of age is excluded.

(a) For an applicant or recipient who is blind or disabled and over 65 years of age, this exclusion applies only if he or she received MAD services for the month preceding his or her 65th birthday.

(b) The self-support plan must be in writing and contain the following:

(i) designated occupational objective;

(ii) specification of any savings (resource) or earnings needed to complete the plan, such as amounts needed for purchase of equipment or for financial independence;

(iii) identification and segregation of any income saved to meet the occupational goal;

(iv) designation of a time period for completing the plan and achieving the occupational goal.

(c) Plans for achieving self-support are developed by vocational rehabilitation counselors. If a self-support plan is not in place, the ISD worker makes a referral to the division of vocational rehabilitation (DVR).

(d) The ISD worker forwards the written plan and documentation to the MAD eligibility unit. The plan must be approved by that unit.

(e) An approved plan is valid for the following specified time periods:
(i) initial period of no more than 18 months;
(ii) extension period of no more than 18 months;
(iii) final period of no more than 12 months; and
(iv) total period of no more than 48 months.

(8) Agent orange settlement payments: Agent orange settlement payments made to applicant or recipient veterans or their survivors are excluded from consideration as income in determining eligibility.

(9) Radiation Exposure Compensation Act payments: Payments made under the Radiation Exposure Compensation Act are excluded from consideration as income in determining eligibility.

(10) Victims compensation payments: Payments made by a state-administered fund established to aid victims of crime are excluded from consideration as income in determining eligibility. These payments are included as countable income when calculating the medical care credit.

(11) Lump sums for retroactive periods: SSI lump sum payments for retroactive periods are excluded from consideration as countable income in the month received.

(12) Life insurance and other burial benefits: Life insurance and other burial benefits are unearned income to the beneficiary (not the owner). The ISD worker must subtract the amount spent on the insured recipient's last illness or burial up to one thousand five hundred dollars ($1500). Any excess is counted as unearned income.

(13) One hundred percent state funded assistance payment: Any one hundred percent-state-funded assistance payment based on need, such as general assistance (GA) is excluded. Any interim payments made by a state or municipality from all state or local funds while an SSI application is pending are excluded.

(14) National vaccine injury compensation program (NVICP) payment: The NVICP funds are excluded as income or a resource until they are actually disbursed by the issuing agent. However, they are counted as income in the month in which they are received and counted as a resource in the following months, provided that the funds in question are not specifically earmarked for medical expenses. If the payment is designated for both living expenses and medical care, a determination must be made to identify how much of the payment is for living expenses, and how much is for medical care. The only portion actually counted then is that amount which is for living expenses. Therefore, a determination must be made as to how the payment is apportioned before making an eligibility determination.

(15) Remembrance, responsibility and the future payments: Payments by the remembrance, responsibility and the future foundation to individual survivors forced into slave labor by the Nazis are excluded as income in determining eligibility.

[8.281.500.19 NMAC - Rp, 8.281.500.20 NMAC, 8/15/2015]

8.281.500.20 DEEMED INCOME:

A. Availability: Deemed income is income considered available to a minor applicant or recipient from his or her parents. Deeming of resources and income applies only during periods when an applicant or recipient under 18 years of age is living with his or her parents and during the month of entry into an institution.

B. Situations in which deeming occurs: Deeming of income occurs:
(1) from ineligible parent to eligible child; or
(2) if there is both a MAP eligible parent and a MAP eligible child in the home.

C. Computing deemed income: The ISD worker computes the total monthly amount of parental unearned and earned income and then computes the deemed income available to the applicant or recipient child. If the deemed income plus the child's separate income exceeds the applicable maximum, the child will not have a MAP category of institutional care eligibility for that month.

(1) Parents and children receiving aid: If one of the applicant or recipient child's parents is receiving any benefit or assistance paid by a governmental agency on the basis of economic need, that benefit plus all the income of that parent is excluded from the deeming process. This exclusion applies only to the income of the parent who receives the benefit. Even if the income of one parent is excluded, that parent is still considered a member of the household for purposes of determining the parental allocation. Provisions for deeming income do not apply to benefits under temporary assistance to needy families (TANF). No income is deemed to a parent or child(ren) if that parent or child(ren) is (are) receiving TANF assistance.

(2) Applicant or recipient parent and his or her child(ren): If a household is composed of an applicant or recipient parent and an applicant or recipient child(ren), the parent's income is determined

according to the methodology appropriate to the MAP category of eligibility which he or she receives.

(a) If there is enough income to make the applicant or recipient parent ineligible, the remainder of the income is carried over to be deemed to the child(ren).

(b) If there is more than one potentially eligible child, the deemed income is divided equally among them. If total countable income is less than the applicable maximum, the applicant or recipient has a MAP category of institutional care eligibility on the factor of income.

(c) If an applicant or recipient is determined to meet the MAP category of institutional care eligibility, the ISD worker must recompute available income for the following month based on separate income to establish the correct medical care credit. See 8.281.500.23 NMAC, *post-eligibility/medical care credit*.

[8.281.500.20 NMAC - Rp, 8.281.500.21 NMAC, 8/15/2015]

8.281.500.21 DISREGARDS: Income disregards are determined on an individual basis. Disregards may be applied to any appropriate month of assistance, regardless of which income maximum is used.

A. Twenty dollar ($20) disregard: The first twenty dollars ($20) of unearned or earned income received in a month is disregarded. This disregard is applied first to unearned income and, if any amount remains, to earned income. If there is no unearned income, the entire twenty dollars ($20) disregard is applied to earned income. This disregard is not applied to any payment made to the applicant or recipient through government assistance programs or private charitable organizations, where payments are based on need. These payments include financial assistance, TANF, assistance from catholic charities, salvation army, bureau of Indian affairs, and VA pension (not compensation) payments.

B. Additional earned income disregard: After applying the twenty dollars ($20) disregard as specified in Subsection A of Section 8.281.500.21 NMAC if appropriate, the first sixty five dollars ($65) of monthly earned income plus one-half of the remainder is also disregarded.

C. Work-related expenses of the blind: Work-related expenses of an employed applicant or recipient or couple who are legally blind are disregarded. The dollar amount of expenses which may be disregarded must be reasonable. Expenses are disregarded when paid and must be verified.

(1) This disregard does not apply to an applicant or recipient who is blind and is 65 years or age or older, unless he or she was receiving SSI payments due to blindness in the month before turning 65 or received payments under a state aid to the blind program.

(2) Types of work-related expenses which may be disregarded include:

(a) federal, state, and local income taxes;

(b) social security contributions;

(c) union dues;

(d) transportation costs, including actual cost of bus/taxi cab fare, or fifteen cents (15 cents) per mile for private automobile;

(e) lunches;

(f) child care costs, if not otherwise provided;

(g) uniforms, tools and other necessary equipment; and

(h) special expenses necessary to enable an applicant or recipient who is blind to engage in employment, such as a seeing-eye dog or Braille instructions.

D. Student earned income disregard: Up to one thousand two hundred dollars ($1,200) per quarter or a maximum of one thousand six hundred twenty dollars ($1,620) per calendar year of the earned income of certain students may be disregarded. To qualify for this disregard, the applicant or recipient must meet all of the following requirements:

(1) under 22 years of age;

(2) unmarried;

(3) not head of a household; and

(4) in regular attendance at a college or university, for at least 12 semester hours or vocational or technical training course for at least 20 hours per a calendar week.

(a) This disregard applies only to a student's own earned income and includes all payments made as compensation for services, such as wages from employment or self-employment, or payments from programs such as neighborhood youth corps or work-study.

(b) This disregard is available in addition to any exclusions applied to grants, scholarships or fellowships and in addition to any other allowable disregards.

E. Child support payments: One-third of the amount of child support payments made to a child applying for a MAP category of institutional care eligibility is disregarded. The remainder is considered unearned income, subject to the appropriate disregards outlined below.
[8.281.500.21 NMAC - Rp, 8.281.500.22 NMAC, 8/15/2015]

8.281.500.22 POST ELIGIBILITY/MEDICAL CARE CREDIT: Once financial eligibility for a MAP category of institutional care has been established, the ISD worker must determine the following.

A. Medical care credit: The medical care credit is the amount of the applicant's or recipient's income used to reduce the MAD payment to the institution where he or she reside. An applicant or recipient must make this payment directly to the institution. Applicants or recipients eligible for a MAP category of institutional care due to institutionalization in an acute care hospital or an in-state in-patient rehabilitation center are not charged a medical care credit. The amount of the medical care credit is always determined prospectively. The ISD worker computes a medical care credit starting with the first full month of institutional care. No medical care credit is required for the month the recipient enters the institution if he or she is admitted after the first moment of the first day of the month.

(1) No medical care credit for the month of discharge or death: An applicant or recipient is not required to pay a medical care credit for the month of discharge from the institution. The medical care credit must be paid if the applicant or recipient is transferred to another institution or makes a short visit outside the institution. No medical care credit is charged for the month in which a recipient who received MAD institutional care services dies. This will prevent a deficit for the institution when a benefit, such as social security, must be returned due to the death of a beneficiary.

(2) Application delay: If there is a delay between application and approval, an applicant or recipient incurs a liability for a medical care credit. The ISD worker notifies the applicant or recipient of this liability during the application process and informs him or her of the amount of the medical care credit he or she should pay. The applicant or recipient is encouraged to pay the medical care credit to the institution before approval of the application.

(3) Medical care credit during retroactive months: No medical care credits are applied for any period of retroactive eligibility under this provision.

B. Computing the medical care credit: The current personal needs amount (PNA) of an applicant or recipient monthly income is protected for his or her personal use in a nursing facility. Each year thereafter, the amount of an applicant's or recipient's monthly income shall be adjusted according to the consumer price index as indicated in Section 8.200.510 NMAC. The excess over the amount protected, subject to other deductions, is applied toward payment for care in the nursing facility as a medical care credit.

(1) See Paragraph (6) of Subsection B of Section 8.281.500.22 NMAC for personal needs allowance for veterans or surviving spouses.

(2) An applicant's or recipient's total income, including amounts disregarded in determining eligibility, is used to compute the medical care credit with the following exceptions:

(a) Indian tribe per capita payments (see Subsection B of Section 8.281.500.19 NMAC);

(b) German reparation payments; and

(c) social security administration overpayments.

(i) When the social security administration withholds an amount due to an overpayment, the social security gross payment amount is used to determine eligibility per Subsection A of Section 8.281.500.19 NMAC. To determine the amount used in calculating the medical care credit, the ISD worker ascertains whether a social security (Title II) overpayment is being recouped or whether an SSI overpayment is being recouped from a social security benefit check (a cross-program recoupment). Cross-program recoupments are at the recipient's option so the gross benefit amount is used to calculate the medical care credit.

(ii) Recoupment of a social security overpayment from a social security benefit check is mandatory. In such cases, the net social security benefit amount is used to calculate the medical care credit.

(d) payments from the Radiation Exposure Compensation Act.

(e) 'remembrance, responsibility and the future' payments.

(3) Dependent children at home: If an institutionalized applicant or recipient with no spouse has dependent children at home who are ineligible for TANF or assistance from any other program, or are eligible for an amount less than the TANF need standard, an allowance for each child of up to the current TANF

standard of need may be deducted from the institutionalized applicant's or recipient's income which is in excess of the applicant's or recipient's personal allowance.

(4) Health insurance premiums and non-covered medical expenses: An applicant or recipient is allowed a deduction in the medical care credit computation for the full amount of any health insurance premiums paid by the applicant or recipient. A deduction for the full amount of long-term care insurance and qualified state long-term care insurance partnership premiums are also allowed. A deduction of up to the medicare part B premium amount is allowed for medical expenses currently being paid by an applicant or recipient which are not covered by a MAP category of institutional care eligibility. This includes other medical care recognized under state law but not covered by institutional care medicaid. The deduction for medical and remedial care expenses that were incurred as the result of imposition of a transfer of assets penalty period is limited to zero.

(5) Court-ordered support: A deduction for the full amount of court-ordered child or spousal support is also allowed for the applicant or recipient.

(6) Personal needs allowance for recipients in an ICF-IID: If an applicant or recipient who is institutionalized in an intermediate care facility for individuals with intellectual disabilities (ICF-IID) has a monthly income from employment in a sheltered workshop or other work activity program, up to the first one hundred dollars ($100) of this earned income is protected for the applicant's or recipient's personal needs. This amount is in addition to the applicant's or recipient's personal needs allowance protected from income from any source. If the applicant's or recipient's income is from any other source, the personal needs allowance is set at the amount as set forth in Section 8.281.500.12 NMAC.

(7) Veterans administration (VA) benefits: The ISD worker must contact the VA on each veteran's case to verify how much of the benefit is for pension, aid and attendance (A&A) or unusual medical expenses (UME).

(a) For MAP eligible veterans with no spouse or dependent children, and for surviving spouses of veterans without dependent children who do not reside in a state veteran's home (Fort Bayard or Truth or Consequences):

(i) exclude the A&A and UME in the medical care credit computation;

(ii) allow the personal needs allowance as set forth in Section 8.281.500.12 NMAC;

(iii) the benefit for applicant or recipient will be reduced to ninety dollars ($90) per month effective the latest of the following;

(iv) the last day of the calendar month in which medicaid coverage begins;

(v) the last date of the month following 60 calendar days after issuance of a reduction notice;

(vi) the earliest date on which payment may be reduced without creating an overpayment;

(vii) when the benefit is reduced to ninety dollars ($90), recomputed the medical care credit to allow ninety dollars ($90) for personal needs.

(b) For MAP eligible veterans with no spouse or dependent children, and for surviving spouses of veterans without dependent children who do reside in a state veteran's home (Fort Bayard or Truth or Consequences):

(i) include the A&A and UME in the medical care credit computation;

(ii) allow ninety dollars ($90) for his or her personal needs;

(iii) the benefit for the applicant or recipient is not reduced to ninety dollars ($90).

(c) Benefits for the following applicants or recipients are not reduced to ninety dollars ($90) a month, regardless of whether or not they reside in a state veteran's home:

(i) veterans who have a spouse or dependent child(ren);

(ii) surviving spouses of veterans who have dependent child(ren).

(d) The ISD worker allows these applicants or recipients the allowance as set forth in Section 8.281.500.12 NMAC, for personal needs.

C. Computing medical care credits for married institutionalized applicants or recipients: To calculate the medical care credit for a married institutionalized applicant or recipient, the "name-on-the-check" rule applies. The ISD worker uses only the income belonging to the institutionalized applicant or recipient to compute his or her medical care credit. Total gross income before any deductions is used in this process.

(1) Treatment of VA aid and attendance (A&A) and unusual medical expenses (UME):

Allowances for A&A and UME are considered when computing the medical credit in accordance with Subsection B of Section 8.281.500.22 NMAC.

(2) Court-ordered support: A deduction for the full amount of court-ordered child or spousal support is also allowed for the applicant or recipient.

D. Computing medical care credits for an institutionalized couple: To compute medical care credits for each of an eligible institutionalized couple, the ISD worker totals the couple's gross income and divides by two. The personal needs allowance as set forth in Subsection B of Section 8.281.500.22 NMAC is subtracted from each amount for each applicant's or recipient's personal needs and added to any allowable amount(s) paid by that applicant or recipient for noncovered medical expenses.

E. Medical care credit deductions: The ISD worker applies the deductions listed below in the following order when determining the medical care credit:

(1) institutionalized spouse's personal needs allowance as set forth in Section 8.281.500.12 NMAC;

(2) community spouse monthly income allowance (CSMIA); the CSMIA deduction is permitted only to the extent that the income is available and is actually contributed to and accepted by the community spouse or other dependent family members:

(a) the CSMIA is calculated by starting with the minimum monthly maintenance needs allowance (MMMNA) and subtracting the community spouse's total gross income;

(b) both spouses shall be given notice of the amount of the CSMIA;

(c) if either spouse is dissatisfied with the amount of the CSMIA, he or she can request a HSD administrative hearing pursuant to Section 8.352.2 NMAC, to establish that the community spouse needs income above the minimum monthly maintenance needs allowance; the spouse must demonstrate that the community spouse needs the additional income above the level otherwise provided by the minimum monthly maintenance needs allowance due to exceptional circumstances resulting in significant financial duress; if the spouse establishes that the community spouse needs additional income due to exceptional circumstances resulting in significant financial duress, there shall be substituted for the CSMIA such amount as is necessary to alleviate the financial duress and for so long as the exceptional circumstances exist; if as a result of a HSD administrative hearing final decision or district court hearing, additional income is granted to the community spouse for a specified period of time, when that time expires, the original CSMIA, as calculated by the ISD worker is reinstated; the exceptional circumstances can include medical, remedial or other support expenses that jeopardize the ability of the community spouse to remain self-sufficient in the community;

(d) if as a result of a district court hearing or a HSD administrative hearing final decision, a request for a revision of the CSMIA is granted, the revised amount shall be substituted for the CSMIA calculated by the ISD worker; and

(e) when the institutionalized applicant's or recipient's income is insufficient to provide the minimum authorized deduction for the community spouse, either spouse can request a HSD administrative hearing pursuant to Section 8.352.2.NMAC if either spouse establishes that the CSRA (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the MMMNA, there shall be substituted, for the CSRA, an amount adequate to provide the MMMNA;

(3) an excess shelter allowance for allowable expenses of the community spouse which exceed thirty percent of the MMMNA standard up to a specified maximum; the following expenses are allowed for the primary residence of the community spouse:

(a) rent or mortgage payment, including interest or principal;

(b) home taxes and insurance;

(c) maintenance charges for a condominium or cooperative; and

(d) amount equal to the standard utility allowance used by the food stamp program if the community spouse incurs a heating or cooling expense; utility expenses included in the rent or the basic maintenance fee for a condominium or cooperative, are not allowed.

(4) The total CSMIA and excess shelter allowance combined may not exceed the standard amount per month, unless the MAD director or a district court orders the institutionalized spouse to pay an increased amount.

(5) An allowance for each eligible family member equal to one-third of the balance obtained after deducting the family member's gross income from the MMMNA. Family members include the couple's minor child(ren) under the age of 18 years, disabled adult child(ren) of the couple who meet the social security administration's definition of disability and dependent sibling(s) or parent(s) of the couple. These family members

must reside with the community spouse. The dependency requirements are met if either member of the couple could claim the family member as a dependent for tax purposes.

(6) The deductions for the community spouse and dependent family members apply only so long as there is a community spouse. Deductions for the community spouse and other family members shall cease in the first full calendar month after the community spouse dies, becomes divorced, or is institutionalized.

(7) Health insurance premiums and non-covered medical expense deduction.

F. Reporting requirements: An applicant or recipient, spouse, or authorized representative is required to report to the ISD worker any change in circumstances which may affect eligibility or the medical care credit amount within 10 working days after the date the change occurs. Changes which cause adjustments in an applicant's or recipient's medical care credit amount are effective the month after the change occurs. Family members receiving allowances must also report all changes of gross income and residence within 10 working days after the date the change occurs. Changes must be reported when the institutionalized spouse stops making all or part of a maintenance allowance available to the community spouse or other family member(s), or when the recipient of a maintenance allowance begins to refuse all or part of the income.

G. Changes in income and recipient medical care credit: Payments received by an applicant or recipient, such as social security, VA, retirement or other benefits, are applied to billing for services for the same month in which the payment is received. If the income increases, the institution must continue to collect the amount indicated on the medical care credit report in the eligible recipient's file and immediately advise the ISD worker of the change. The ISD worker processes the change, notifies the institution and the eligible recipient of the new medical care credit amount and indicates the month in which the higher amount is to be collected. The difference between the medical care credit amounts is deposited in the eligible recipient's personal fund account until the change is effective.

[8.281.500.22 NMAC - Rp, 8.281.500.23 NMAC, 8/15/2015]

8.281.500.23 UNDUE HARDSHIP: An applicant or recipient subject to a penalty for transfer of assets for less than fair market value may apply for a waiver of the regulation regarding transfer of assets as constituting an undue hardship. The facility where an institutionalized applicant or recipient resides may file an application for waiver of the requirement on behalf of the applicant or recipient with the applicant's or recipient's or authorized representative's consent.

A. The transfer must have been made to someone other than a family member. "Family member" includes son, daughter, grandson, granddaughter, step-son, step-daughter, in-laws, mother, father, step-mother, step-father, half-brother, half-sister, niece, nephew, grandmother, grandfather, aunt, uncle, sister, brother, step-sister, step-brother.

B. The applicant or recipient must demonstrate that the application of the transfer of assets regulation would deprive the applicant or recipient of:

(1) medical care such that the applicant's or recipient's health or life would be endangered; or

(2) food, clothing, shelter or other necessities of life.

C. The applicant or recipient or the facility where the applicant or recipient resides must submit any documentation to support the claim that application of the transfer of assets requirement would constitute an undue hardship within 30 calendar days of the date of the notice regarding the penalty to the ISD county office.

D. Undue hardship does not exist when the application of a transfer penalty causes an applicant or recipient or his or her family members inconvenience or restricts their lifestyle.

E. The county director of the ISD office will make a decision regarding an application for waiver of the transfer of assets requirements within 30 calendar days of receipt of the application.

(1) Notice of the decision shall be mailed to the applicant or recipient or his or her authorized representative.

(2) MAD may make payments to the nursing facility for an applicant or recipient who is a resident of the facility while an application for waiver of the requirement is pending to hold the bed for the applicant or recipient. HSD may make payments for no more than 30 calendar days.

F. If the applicant's or recipient's application for waiver of the transfer of assets requirement is granted, MAD shall pay for long-term care services prospective from the date of the application. MAD shall pay for long-term care services as long as the circumstances constituting the basis for waiver of the application of the requirement exist. If the applicant's or recipient's application for waiver of the transfer of assets requirement is denied, the applicant or recipient can request a HSD administrative hearing pursuant to Section 8.352.2 NMAC

within 90 calendar days of the date of the notice of denial.

G. The applicant or recipient or his or her authorized representative must notify the ISD worker of any change in circumstances which affects the application of the undue hardship waiver exception within 10 working days of the change in circumstances. MAD will review the change of circumstances and determine the next appropriate action, which may include withdrawal of the waiver.

[8.281.500.23 NMAC - Rp, 8.281.500.24 NMAC, 8/15/2015]

HISTORY OF 8.281.500 NMAC: The material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:
ISD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, 12/29/1983.
ISD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, 8/11/1987.
MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, 2/5/1988.
MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, 2/25/1988.
MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, 6/1/1988.
MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, 1/31/1989.
MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, 6/21/1989.
MAD Rule 880.0000, Medical Assistance for Persons Requiring Institutional Care, 3/21/1990.
MAD Rule 880, Medical Assistance for Persons Requiring Institutional Care, 5/3/1991.
MAD Rule 880, Medical Assistance for Persons Requiring Institutional Care, 6/12/1992.
MAD Rule 880, Medical Assistance for Persons Requiring Institutional Care, 11/16/1994.
MAD Rule 889, Spousal Impoverishment, 8/17/1992.
MAD Rule 889, Spousal Impoverishment, 2/17/1994.
MAD Rule 882, Resources - Medical Assistance for Persons Requiring Institutional Care, 3/9/1993.
MAD Rule 882, Medical Assistance for Persons Requiring Institutional Care, 11/16/1994.
MAD Rule 882, Resources, 12/29/1994.
MAD Rule 883, Income - Medical Assistance for Persons Requiring Institutional Care, 3/18/1993.
MAD Rule 883, Income - Medical Assistance for Persons Requiring Institutional Care, 11/16/1994.
MAD Rule 883, Income, 12/29/1994.
MAD Rule 888, Medicare Catastrophic Coverage Act of 1988 Regarding Transfers Of Assets, 3/10/1994.
MAD Rule 888, Transfers of Assets, 12/27/1994.
MAD Rule 885, Medical Care Credit, 11/16/1994.

History of Repealed Material: 8.281.500 NMAC, Income and Resource Standards, filed 2/15/2001 - Repealed effective 8/15/2015.