



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT
NEW MEXICO HUMAN SERVICES DEPARTMENT

II. SUBJECT
8.290.400 NMAC, MEDICAID ELIGIBILITY-HOME AND COMMUNITY-BASED
SERVICES WAIVER (CATEGORIES 090, 091, 092, 093, 094, 095 AND 096), RECIPIENT
POLICIES

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
EMERGENCY RULE

V. BACKGROUND SUMMARY

The Human Services Department (the Department), has filed an emergency rule at 8.290.400 NMAC, *Medicaid Eligibility-Home and Community-Based Services Waiver (categories 090, 091, 092, 093, 094, 095 and 096), Recipient Policies*. The emergency rule is being filed to revise the eligibility definition under the Developmental Disabilities Waiver, specific to intellectual disability and related condition. The Department is revising the definition from a categorical definition of developmental disability to a functional definition based on adaptive abilities which is a national best practice. The definition change has been approved by the Centers for Medicare and Medicaid Services (CMS) and has been included in Home and Community Based Waiver public notices. An emergency rule is being filed as the expectation is that the definition change may provide health care coverage to more New Mexicans with developmental disabilities, protecting their health, safety, and welfare especially during the COVID-19 public health emergency.

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

Notice Date: December 15, 2020

Adoption Date: December 15, 2020

Technical Citations: 42 CFR 435 subpart B and C

The Department has amended the rule as follows:

8.290.400 NMAC

Section 7 was revised to delete the word “specific.”

Section 8 is revised to include the Department’s current mission statement.

Section 10 pertaining to the Developmental Disabilities Waiver was revised to add language regarding what constitutes an “intellectual disability.”

Specific language was added to intellectual disability to define general intellectual functioning as the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning. Significantly sub-average is defined as an intelligence quotient (IQ) of 70 or below. Adaptive behavior is defined as the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for age and cultural group. The developmental period is defined as the period of time between birth and the 18th birthday.

Revisions were made to add language as to what constitutes a “related condition” and delete language that was no longer applicable.

Language was added to define related condition as attributable to a condition, other than mental illness, found to be closely related to an intellectual disability (ID) because this condition results in limitations in general intellectual functioning or adaptive behavior similar to that of persons with an intellectual disability and requires similar treatment or services.

A related condition is manifested before the person reaches age twenty-two (22) years; is likely to continue indefinitely and results in substantial functional limitations (Adaptive Behavior scores less than or equal to 70) in three or more of the following areas: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

VI. RULES

These amendments will be contained in 8.290.400 NMAC. The emergency register and rule languages are available on the HSD website at:

<https://www.hsd.state.nm.us/LookingForInformation/registers.aspx>. If you do not have internet access, a copy of the final register and rules may be requested by contacting the Medical Assistance Division at (505) 827-1337.

VII. EFFECTIVE DATE

This rule will have an effective date December 15, 2020.

VIII. PUBLICATION

Publication of this rule approved by:

DocuSigned by:

David R. Scrase, M.D.

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DAVID R. SCRASE, M.D., SECRETARY
HUMAN SERVICES DEPARTMENT