



State of New Mexico  
Human Services Department  
**Human Services Register**



**I. DEPARTMENT**

NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

**II. SUBJECT**

**8.299.400 NMAC, Family Planning Services-Recipient Requirements**  
**8.299.500 NMAC, Family Planning Services-Income and Resource Standards**  
**8.299.600 NMAC, Family Planning Services-Benefit Description**

**III. PROGRAM AFFECTED**

(TITLE XIX) MEDICAID

**IV. ACTION**

FINAL RULE

**V. BACKGROUND SUMMARY**

New Mexico Human Services Register Vol. 40, No. 7, dated April 25, 2017, issued the proposed rules, 8.299.400 NMAC, 8.299.500 NMAC, and 8.299.600 NMAC.

A public hearing was held on May 25, 2017 to receive public comments and testimony on this proposed rule. The Human Services Department (the Department) received two verbal comments and two written comments.

**Summary of Comments:**

One commenter provided both oral and written comments strongly supporting the proposed rule changes stating that the Department is providing necessary support to low-income women and girls in New Mexico. The commenter stated that the rule change will help reduce the number of unintended pregnancies in the state.

A second commenter provided the following oral and written comments in response to the proposed rule changes:

**8.299.400.9(B) WHO CAN BE A RECIPIENT**

Public and written testimony asked for clarification for the phrase “meet the income eligibility requirements” found at 8.299.400.9(B). Specifically there is no information in Part 400 that describes the income eligibility requirements. The presumption is that this language is intended

to explain the requirement that applicants for family planning services must have income at or below 250% of the federal poverty level (FPL). If this is the case, at a minimum, the Department must include a reference to 8.299.500.10(B) NMAC which describes the applicable income FPL for the budget group.

**Response:** The Department agrees that a reference to the 250% FPL is needed and has added that reference in the final rule.

#### **8.299.400 RECIPIENT REQUIREMENTS**

Public and written testimony stated that the proposed language at 8.299.400 NMAC indicates that not being pregnant and meeting the income eligibility guidelines are the only two eligibility criteria for family planning services. This information is inconsistent with the proposed language at 8.299.400.6 which states that the processes for establishing this category of eligibility (COE) are found in Title 8, Chapter 291 of the NMAC (Affordable Care Medicaid). NMAC 8.291.410 lists multiple general recipient requirements including but not limited to, citizenship/alien status, enumeration, residence, and non-concurrent receipt of assistance in another state. The Department must clarify in 8.299.400.9 whether applicants for family planning services are subject to the general recipient requirements for Affordable Care Medicaid and, if so, must at a minimum, cross-reference the additional eligibility criteria.

**Response:** The Department agrees that a cross-reference to 8.291.410 is needed and has added that reference in the final rule.

#### **8.299.500 INCOME AND RESOURCE STANDARDS**

Public and written testimony requested that the Department must clarify the income standard for family planning Medicaid. The Department proposes language at 8.299.500.10(a) which states "an individual's financial eligibility is based on the rules of this chapter and 8.291.430 NMAC." It is unclear what the additional "financial eligibility" rules are, if any. The term "financial eligibility" does not appear elsewhere in Title 8 Chapter 299 nor does it appear in 8.291.430 NMAC. The Department must either remove this language in its entirety or clarify what the additional financial eligibility rules are.

**Response:** The Department agrees that the language found at 8.299.500.10(A) is unclear and has removed that sentence from the final rule.

#### **8.299.500.11 INCOME ELIGIBILITY**

Public and written testimony stated that the proposed rule at 8.299.500.11 does not provide sufficient information to describe how an applicant's income is calculated for purposes of the family planning services COE. Processes for establishing eligibility under this COE are subject to the Affordable Care Medicaid provisions. Income eligibility for Affordable Care Medicaid COEs is calculated based on an applicant's Modified Adjusted Gross Income (MAGI). The Department must include in 8.299.500.11 a cross reference to the methodology for calculating MAGI described in 8.291.430.15 NMAC to ensure that caseworkers understand what types of income are includable and what types of income are exempted from the calculation.

**Response:** The Department agrees that a cross reference to the methodology for calculating MAGI as described in 8.291.430.15 NMAC is needed and has added that reference in the final rule.

### **8.299.500.12 DISREGARD**

Public and written testimony identified a typographical error in the chapter number, incorrectly listing it as “8.296.500.12” rather than the correct “8.299.500.12.”

**Response:** The Department agrees and has corrected the typo.

### **8.299.600 BENEFIT DESCRIPTION**

Public and written testimony stated that the Department must include in its regulation a description of the limited services covered under the family planning services COE. The proposed language at 8.299.600.9 NMAC states “this category provides a limited range of Medicaid-covered services for family planning and family planning-related services for both men and women.” However, the covered benefits of “family planning” and “family planning-related services” are not described anywhere in the proposed regulation. The Department must implement into regulation at 8.299.600.9 a description of the limited family planning and family planning-related services covered under the COE. Providing a full description of covered services will ensure that participants are able to maximize the healthcare benefits to which they are entitled. It will also serve to protect an enrollee’s due process rights. In the event a covered service or treatment is illegally denied by a provider or the claim is not paid by Medicaid, an enrollee must be provided with sufficient information to be able to meaningfully appeal the decision.

**Response:** A description of family planning and related covered services is contained in the program rules and not the eligibility rules. The language stands as proposed.

### **8.299.600.6 OBJECTIVE**

Public and written testimony stated that the Department must explain that presumptive eligibility (PE) is not available for family planning Medicaid. According to the Department’s State Plan PE determinations are not allowed for this COE. However, this is not described in the proposed regulation. Further, the proposed language at 8.299.600.6 states that processes for establishing this category of eligibility are found in the Affordable Care general provision chapter. The Affordable Care chapter does not exempt the family planning services COE from PE determinations. The exemption must be clear in Part 600 of the proposed regulations.

**Response:** A description of what eligibility groups are applicable to have a presumptive eligibility determination is referenced in 8.291.400.13 NMAC. The Department does not reference whether presumptive eligibility is available within each COE. The language stands as proposed.

### **8.299.600.11 PERIODIC REDERTMINATIONS OF ELIGIBILITY**

Public and written testimony stated that the proposed language at 8.299.600.11(B) NMAC reads “changes in household income do not affect eligibility during the certification period” for the family planning COE. However, the proposed language at 8.299.600.11(C) states that “all changes that may affect eligibility must be reported within 10 calendar days of the date of the change as detailed in 8.291.410.” 8.291.410 NMAC does not provide any information about what changes a recipient is required to report during the certification period that might affect his or her eligibility. The Department must provide more information about what other changes, if any, a participant is required to report specific to this COE. Further to the extent that becoming pregnant is the only change affecting eligibility, we strongly encourage the Department to adopt into regulations that a woman need only report a pregnancy within 10 days of becoming aware of

the pregnancy.

**Response:** The Department is in agreement and has removed the reference to 8.291.410 NMAC with respect to change reporting. Additionally, the Department agrees to add a sentence that a woman need only report a pregnancy within 10 days of becoming aware of the pregnancy.

### **8.299.600 BENEFIT DESCRIPTION**

Public and written testimony stated that the Department must explain that the family planning COE is a fee-for-service program and does not require enrolling in a Managed Care Organization (MCO). The Department must include this information in Part 600 of the proposed regulations to ensure that covered members are aware that they are able to seek medical care from the provider of their choice without restriction.

**Response:** Managed care exemptions are contained in the managed care program rules and not the eligibility rules. The language stands as proposed.

Public and written testimony stated that the Department must create a comprehensive worker manual. Current NMAC along with various interim policy memoranda posted on the Department's website function as a manual for workers. This patchwork of interim policies and memoranda are stored on a shared drive that is not indexed or searchable, making it impossible for a worker to know what the correct and most up to date policy is. The Department is required to have uniformity in office application processing practices. The Department is urged to immediately invest in creating a comprehensive worker manual that is available electronically to caseworkers and can be easily updated to account for changes in state and federal law.

**Response:** Creation of a comprehensive worker manual is outside the purview of the family planning rules, but has been noted by the Department and is part of the Department's planned improvements for ISD field operations.

Public and written testimony stated that the Department must promulgate regulations which correctly explain the allowable income deductions for self-employed individuals. The Department's policy for the calculation of self-employed income does not allow for the full scope of income deductions allowed under federal law. The Department's policy is to only allow for deductions enumerated on the Schedule C tax form. However, federal law does not limit the allowable deductions to just those enumerated on the Schedule C. The Department must immediately amend the income calculation process described in 8.291.430.15 to include this information in order to prevent ongoing denial of eligible individuals.

**Response:** The promulgation of rules that explain allowable income deductions for self-employed individuals is outside the purview of the family planning rules, but has been noted by the Department.

Public and written testimony stated that the Department must explain that enrollees are not subject to cost-sharing requirements under the family planning COE. Federal law requires states to cover family planning and supplies without cost sharing. However, this is not described in the proposed regulations. The Department regulations must make clear that family planning services and supplies are not subject to cost-sharing to ensure that recipients know they can fully access these services without incurring out-of-pocket expenses.

**Response:** Cost-sharing requirements are contained in the program rules and not the eligibility rules. The language stands as proposed.

## **VI. RULES**

These amendments will be contained in 8.299.400 NMAC, 8.299.5000 NMAC, and 8.299.600 NMAC. The final register and rule languages are available on the HSD website at: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>.

If you do not have internet access, a copy of the final register and rules may be requested by contacting MAD at 505-827-6252.

## **VII. EFFECTIVE DATE**

This rule will have an effective date of September 1, 2017.

## **VIII. PUBLICATION**

Publication of these rules approved by:



BRENT EARNEST, SECRETARY  
HUMAN SERVICES DEPARTMENT