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TITLE 8 SOCIAL SERVICES
CHAPTER 202 MEDICAID ELIGIBILITY - JUL MEDICAID
PART 500 INCOME AND RESOURCE STANDARDS

8.202.500.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.202.500.1 NMAC - Rp, 8.202.500.1 NMAC, 1-1-14]

8.202.500.2 SCOPE: The rule applies to the general public.
[8.202.500.2 NMAC - Rp, 8.202.500.2 NMAC, 1-1-14]

8.202.500.3 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 NMSA 1978, Section 27-1-12 et seq.
[8.202.500.3 NMAC - Rp, 8.202.500.3 NMAC, 1-1-14]

8.202.500.4 DURATION: Permanent.
[8.202.500.4 NMAC - Rp, 8.202.500.4 NMAC, 1-1-14]

8.202.500.5 EFFECTIVE DATE: January 1, 2014, unless a later date is cited at the end of a section.
[8.202.500.5 NMAC - Rp, 8.202.500.5 NMAC, 1-1-14]

8.202.500.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD) eligibility policy manual, specifically 8.200.400 NMAC, *General Medicaid Eligibility*. Processes for establishing and maintaining medicaid eligibility are detailed in the income support division (ISD) general provisions 8.100 NMAC, *General Provisions for Public Assistance Programs*.
[8.202.500.6 NMAC - Rp, 8.202.500.6 NMAC, 1-1-14]

8.202.500.7 DEFINITIONS: [RESERVED]

8.202.500.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.202.500.8 NMAC - N, 1-1-14]

8.202.500.9 ESTABLISHING NEED - GENERAL REQUIREMENTS:

A. **Financial need:** An individual's eligibility is based on financial need pursuant to section 1931 of the Social Security Act, NMSA 1978, Section 27-2B-15(B), the rules in this chapter and 8.200.520 NMAC.

B. **Financial eligibility:** Pursuant to Section 1931 of the Social Security Act, enacted by Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), a new medicaid financial eligibility standard was created.

(1) **Income eligibility criteria:** The income eligibility criteria are based on New Mexico's aid to families with dependent children (AFDC) program as of July 16, 1996. This is defined as the standard of need (SON) used in AFDC as of July 16, 1996.

(a) As a state option, New Mexico may increase income and resource eligibility criteria in medicaid over a period (beginning after July 16, 1996) by a percentage that does not exceed the percentage increase in the consumer price index for all urban consumers all items, United States city average over such period.

(b) Pursuant to NMSA 1978, Section 27-2B-15(B), income eligibility criteria for JUL medicaid shall be the same as the New Mexico temporary assistance to needy families (TANF) program. The SON for TANF has increased since July 16, 1996; therefore the SON for JUL medicaid has increased to match TANF.

(2) **Less restrictive income and resource methodology:** Pursuant to Section 1931 of the Social Security Act, as a state option, New Mexico may use income and resource eligibility methodologies that are less restrictive than the AFDC methodologies used as of July 16, 1996. This chapter defines less restrictive methodologies used by New Mexico for resources, countable and excluded earned or unearned income, available or unavailable income and income deductions or disregards.

C. **Determining need is a two-step process:** When the countable gross or net income is exactly

equal to the income eligibility standards, eligibility does not exist.

(1) Gross income test: The first step is determining the countable gross income of the budget group. Gross income includes all countable income before taking taxes or deductions. Only self employment deductions are allowed in the gross income test. The calculated gross income must be less than 85 percent of the federal poverty limit (FPL) for the size of the budget group (not including the ineligible parent due to citizenship or alien status or enumeration). If the budget group's income is more than 85 percent FPL, the assistance unit is not eligible.

(2) Net income test: The second step is determining the countable net income of the budget group. From the countable gross income in step one, deduct all allowable work related expenses (WRE) and unearned income deductions or disregards. The countable net income must be less than the SON appropriate to the size of the budget group (not including the ineligible parent due to citizenship or alien status or enumeration). If the budget group's income is more than the SON, the assistance unit is not eligible.

[8.202.500.9 NMAC - Rp, 8.202.500.9 NMAC, 1-1-14]

8.202.500.10 RESOURCES/PROPERTY - RESOURCE STANDARDS: There are no resource standards.

[8.202.500.10 NMAC - Rp, 8.202.500.10 NMAC, 1-1-14]

8.202.500.11 INCOME - GENERAL - Income eligibility: Income consists of money received by a person whose income is considered available to the budget group as described in this chapter.

A. Income from a 30 calendar day period: Income from a 30 calendar day period is used to determine eligibility. The 30 calendar day period may be any consecutive 30-day period that is prior to the date of the application through the date of timely disposition. The applicant or the eligible recipient and the caseworker must agree on the 30 calendar day period. Income from a terminated source is not counted.

B. Income received less frequently than monthly: If an amount of gross income is received less frequently than monthly, that amount is converted to a monthly amount to determine financial eligibility. The conversion is dividing the total income by the number of months the income is intended to cover. For the purposes of this calculation, a partial month is considered to be one full month. This includes, but is not limited to, income from sharecropping, farming, and self-employment. It includes contract income as well as income for a tenured teacher who may not have a contract.

C. Use of conversion factors: Whenever a full month's income is received on a weekly or biweekly basis, the income is converted to a monthly amount. Income is rounded down to the nearest whole dollar prior to application of the conversion factor. Weekly income is multiplied by four and biweekly income is multiplied by two.

[8.202.500.11 NMAC - Rp, 8.202.500.11 NMAC, 1-1-14]

8.202.500.12 AVAILABLE INCOME:

A. Determination of eligibility for the assistance unit is made by considering income that is available to the assistance unit and budget group. The amount of countable income is determined using allowable income exemptions, deductions, and disregards.

B. Available income includes:

(1) the income of an ineligible member due to citizenship or alien status or enumeration must be prorated and deemed available to the assistance unit; income is prorated and deemed as follows:

(a) from the countable gross earned and unearned income, allow all income exemptions, deductions and disregards; the result is the individual's net income;

(b) divide the individual's net income by the number of individuals in the budget group; the result is the prorated income amount that is deemed to each eligible assistance group member; and

(c) multiply the prorated income amount by the number of eligible assistance group members; the result is the total countable prorated income that is deemed to the assistance unit;

(2) income received and made available by someone not included in the budget group (payee) for someone included in the budget group;

(3) income that is withheld as a result of a garnishment or wage withholding; and

(4) income withheld by a source at the budget group's request.

[8.202.500.12 NMAC - N, 1-1-14]

8.202.500.13 UNAVAILABLE INCOME:

A. Individuals included in the budget group may have a legal right to income but not access to it. The following are not counted as available income:

(1) received by someone for the budget group and not made available to the budget group; or
 (2) income that is not listed as available in this chapter where the budget group cannot gain access to the income; this includes wages withheld by an employer that refuses to pay.

B. Individuals may receive payment of funds “passed through” the individual for the benefit of someone other than themselves. Such pass through payments are not considered available.

C. A recipient of supplemental security income (SSI) is not part of the budget group. This income is not available to the budget group.

D. The income of a step-parent or spouse of a specified relative is not counted to the assistance unit.

E. Alien sponsor deeming is not applicable pursuant to 8.200.410 NMAC.

[8.202.500.13 NMAC - N, 1-1-14]

8.202.500.14 EARNED INCOME: Earned income includes wages, salaries, tips, and other employee pay from employment and net earnings from self-employment. Earned income of a dependent child is not counted.

[8.202.500.14 NMAC - N, 1-1-14]

8.202.500.15 EARNED INCOME DEDUCTIONS/DISREGARDS:

A. Self employment: Certain self-employment deductions allowed by the federal internal revenue service (IRS) are allowed in the net and gross income test.

(1) Self-employment income will be annualized for income projection purposes. If the IRS Form 1040 form has been filed, the previous year’s tax return is used to anticipate future income, if no significant changes in circumstances have occurred. An alternative method of income anticipation should be used when the amount of self-employment income reported on tax returns would no longer be a good indicator of expected income, i.e., loss of cattle or crops due to disease.

(2) If tax returns are used for annualized projected income, self-employment expenses listed on the return are allowable except for:

(a) the mileage allowance is the New Mexico department of finance and administration (DFA) rate as detailed in 2.42.2 NMAC unless proof that the actual expense is greater; and

(b) no deduction is allowed for rent or purchase of the place of business if the individual operates the business out of his or her residence, unless the individual can demonstrate that the expense has been allowed under federal income tax guidelines;

(c) the following deductions are not allowed: (i) depreciation; (ii) personal business and entertainment expenses; (iii) personal transportation to and from work; (iv) purchase of capital equipment; and (v) payments on the principal of loans for capital assets or durable goods.

B. WRE income disregards: The WRE is disregarded from countable earned income for each earner during the net income test as follows:

(1) single parent: \$125.00 and one-half of the remainder (not including the ineligible parent due to citizenship or alien status or enumeration);

(2) two parents: \$225.00 and one-half of the remainder for each parent, step-parent or spouse of a specified relative (not including ineligible individuals due to citizenship, alien status or enumeration); or

(3) ineligible parent due to citizenship/alien status or enumeration: \$125.00 only (income is subject to proration).

C. Child care expenses: Out of pocket expenses for child care that are necessary due to employment of an assistance unit member shall be allowed as follows:

(1) from earned income remaining after allowing the WRE, deduct an amount not to exceed \$200.00 per month for a child under the age two and \$175.00 per month for a child age two or older;

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

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

[8.202.500.15 NMAC - N, 1-1-14]

8.202.500.16 UNEARNED INCOME: Unearned income includes benefits, pensions, etc.

A. The following types of unearned income are counted:

(1) old age, survivors, and disability insurance (OASDI);

(2) railroad retirement benefits (RRB);

(3) veterans administration (VA) benefits:

- (a) income available to veterans and their dependents from the VA as compensation for service-connected disability;
- (b) pension for non-service connected disability;
- (c) dependency and indemnity compensation; and
- (d) death benefits paid from a government issue (GI) life insurance;
- (4) unemployment compensation benefits (UCB);
- (5) military allotments;
- (6) worker's compensation;
- (7) pension, annuity, and retirement benefits;
- (8) union benefits;
- (9) lodge or fraternal benefits;
- (10) real property income that is not earned income;
- (11) shared shelter and utility payments when the budget group shares shelter with others:
- (a) payments which exceed the budget group's cost are considered income;
- (b) payments which are less than the budget group's cost are not considered; these are the others' share of the shelter cost and are treated as pass-through payments;
- (12) income from the sale of goods or property which are obtained in finished condition;
- (13) child support payments received directly by the budget group and retained for its use;
- (14) settlement payments which are received from worker's compensation settlements, insurance claims, damage claims, litigation, trust distributions which are made on a recurring basis;
- (15) individual Indian monies (IIM) payments received and distributed by the bureau of Indian affairs (BIA) as a trustee for an individual member of a tribe;
- (16) bureau of Indian affairs (BIA) or tribal general assistance (GA) payments; and
- (17) lump sum payments are considered income in the month received, unless specifically excludable under medicaid regulations; lump sum payments are considered as a resource, if retained, as of the first moment of the first day of the following month.
- B. The following types of unearned income are not considered in determining eligibility:
- (1) cash assistance from HSD or a tribal entity;
- (2) supplemental nutritional assistance program (SNAP);
- (3) low income home energy assistance program (LIHEAP);
- (4) foster care or adoption subsidy;
- (5) supplemental security income (SSI);
- (6) Child Nutrition and National School Lunch Act;
- (7) nutrition programs for the elderly, including meals on wheels and lunches at senior citizen's centers;
- (8) bona fide loans from private individuals and commercial institutions as well as loans for the purpose of educational assistance;
- (9) work study funds paid by an educational institution, when the purpose is to assist with educational expenses, regardless of the actual use of the funds;
- (10) domestic volunteers compensation or any other payments made to or on behalf of volunteers under the Domestic Volunteers Services Act of 1973 including:
- (a) volunteers in service to America (VISTA);
- (b) university year for action (UYA);
- (c) special volunteer programs (SVP);
- (d) retired senior volunteer program (RSVP);
- (e) foster grandparents program (FGP);
- (f) older American community service program (OACSP);
- (g) service corps of retired executives (SCORE); and
- (h) active corps of executives (ACE);
- (11) state and federal income tax returns;
- (12) American Indian and Alaskan native payments including:
- (a) per capita payments distribution of tribal funds to an American Indian or Alaskan native tribal member by the tribe or by the secretary of the US department of the interior;
- (b) interest derived from retained per capita payments (if kept separately identifiable); and
- (c) tribal land claims payments settled by means of case payments;
- (13) Job Training Partnership Act of 1982 (JTPA) payments made to dependent children;

- (14) Title II Uniform Relocation Assistance and Real Property Acquisition Act of 1970 payments;
 - (15) supportive service payments made for reimbursement of transportation, child care, or training related expenses under New Mexico works (NMW) work programs, tribal work programs, and other employment assistance programs;
 - (16) division of vocational rehabilitation (DVR) training payments made by the for training expenses;
 - (17) gifts, donations or contribution from other agencies which are intended to meet needs not covered as a medicaid benefit; to be exempt, the payment must:
 - (a) be paid under the auspices of an organization or non-profit entity; and
 - (b) be for a specific identified purpose, to supplement not duplicate medicaid covered benefits for the intended beneficiary of the donation or contribution;
 - (18) educational loans and grants intended for educational expenses regardless of actual utilization of the funds;
 - (19) agent orange settlement fund payments or any fund established pursuant to the agent orange product liability litigation settlement;
 - (20) radiation exposure compensation settlement fund payments;
 - (21) Nazi victim payments made to individuals per Public Law 103-286, August 1, 1994;
 - (22) vendor payments made on behalf of a budget group member when an individual or organization outside the budget group uses its own funds to make a direct payment to a budget group's service provider.
- [8.202.500.16 NMAC - N, 1-1-14]

8.202.500.17 UNEARNED INCOME DEDUCTIONS/DISREGARDS: For an eligible recipient of TANF or New Mexico works (NMW), the child support enforcement division (CSED) pass-through payment of up to \$100.00 is disregarded for the purposes of determining medicaid eligibility.
[8.202.500.17 NMAC - N, 1-1-14]

HISTORY OF 8.202.500 NMAC:

History of Repealed Material:

8.202.500 NMAC, Income and Resource Standards, filed 9-17-01 - Repealed effective 1-1-14.