



STATE OF NEW MEXICO  
HUMAN SERVICES DEPARTMENT  
**HUMAN SERVICES REGISTER**

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**I. DEPARTMENT**

HUMAN SERVICES DEPARTMENT

**II. SUBJECT**

REGULATORY AMENDMENTS FOR ASPEN  
FAIR HEARINGS  
ERRORS IN BENEFITS

**III. PROGRAMS AFFECTED**

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)  
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)  
STATE FUNDED CASH ASSISTANCE PROGRAMS  
MEDICAL ASSISTANCE PROGRAMS  
LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

**IV. ACTION**

PROPOSED REGULATION

**V. BACKGROUND**

This Human Services Register includes proposed amendments to several parts of 8.100 NMAC General Provisions For Public Assistance Programs. There are three main proposed amendments. First, proposed language to reflect the technological abilities within the Automated System Program and Eligibility Network (ASPEN) and Your Eligibility System New Mexico (YES NM). Second, the Department is proposing amendments for fair hearings. Finally, the Department is proposing the addition of a new Part within the General Provisions for Public Assistance Programs for the correction of errors in benefits.

ASPEN and YES NM Proposed Regulations:

The Department is proposing updated definitions of notice, date of application, and case record to reflect the technological capabilities within ASPEN and YES NM.

### Fair Hearings:

The Department is proposing amendments to the fair hearing regulations. In recent years, the Department has operated a fair hearing pilot to test innovative ways to address the concerns of claimant's regarding potential adverse actions towards their public assistance cases. The Department is proposing language to clarify the definitions of claimant, authorized representative, and claimant.

The Department is proposing to implement procedures outlined in the Fair Hearings Pilot that was implemented in the Bernalillo County ISD offices. These proposals include the following: the mandatory scheduling of an agency review conference within 10 days of receiving the request for fair hearing; implementation of the acceptance of a verbal withdrawal from a claimant for all programs; and updating the timeframes for submission of the Summary of Evidence by the ISD County offices.

### Corrections in Benefits:

The Department is proposing a new part of 8.100.640 NMAC Claims and Restorations. This new part is a compilation of the claims and restorations regulations from SNAP, TANF, State Funded cash assistance programs, LIHEAP and Medical Assistance Programs. This proposal will allow for ease of locating the proper procedure for all programs in one location.

The Department is also proposing a threshold when establishing claims for overpayment of SNAP, TANF, State Funded cash assistance programs, and LIHEAP. The Department is proposing to establish claims for all programs resulting from administrative errors with a cumulative claim greater than \$500; claims resulting from an inadvertent household error with a cumulative claim greater than \$250; and all claims resulting from fraud or intentional program.

## **VI. Proposed Regulations**

This register and proposed regulations are available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/registers/ISDRegisters.html>. If you do not have Internet access, a copy of the proposed regulations may be requested by contacting Income Support Division Policy and Program Development Bureau at 827-7219.

## **VIII. PUBLIC HEARING**

A public hearing to receive testimony on this regulation will be held on July 1, 2013 from 9:00 a.m. to 10:00 a.m. The hearing will be held at the Income Support Division Conference Room at Pollon Plaza, 2009 S. Pacheco St., Santa Fe, NM 87505. The Conference room is located in room 120 on the lower level. Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling toll free 1-800-432-6217.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing,

program, or service, please contact the New Mexico Human Services Department toll free at 1-800-432-6217, in Santa Fe at 827-9454, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

### IX. ADDRESS

Interested persons may address written or recorded comments to:

Sidonie Squier, Secretary  
Human Services Department  
P.O. Box 2348 Pollon Plaza  
Santa Fe, NM 87504-2348

Interested persons may also address comments via electronic mail to:

[Vida.Tapia-Sanchez@state.nm.us](mailto:Vida.Tapia-Sanchez@state.nm.us)

### X. PUBLICATION

Publication of these regulations approved on 5/21/13 by:

  
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SIDONIE SQUIER, SECRETARY  
HUMAN SERVICES DEPARTMENT

**This is a proposed amendment to 8.100.100 NMAC, Sections 14 and 15.**

**8.100.100.14 CLIENT INFORMATION**

**A. ISD case record**

(1) ISD case records, consisting of forms, records, narrative material, correspondence and documents, are ~~maintained in the ISD county offices~~ scanned into electronic format and maintained in the HSD secure electronic data management system. Documents submitted in person will be electronically scanned and returned to the individual. Documents mailed to or left with the office will be destroyed once successful completion of a scan into electronic format is confirmed. The purpose of the record is to document the current and historical eligibility of a recipient group and thereby to establish the validity of decisions to provide or deny assistance.

(2) Case records are the property of HSD and are established and maintained solely for use in the administration of HSD's assistance programs. Information contained in the records is confidential and is released only under the limited circumstances and conditions described in federal and state law and in 8.100.100.13-15 NMAC. Records and their contents must remain in the possession of HSD, or approved federal employees~~[, unless a court orders its release].~~ Copies of records may be released in accordance with federal and state laws or pursuant to a court order.

(3) ~~[ISD2]~~Electronic eligibility system information: ~~[Automated client]~~ Client information stored on [ISD2-]the department's automated system for client eligibility[)] is subject to the same guidelines for release of information as the ISD [county] case record.

**B. Persons with access to confidential information**

(1) **Client:** The name of an individual providing confidential information to the department regarding a client is not released to a client or his/her representative. The release of all other case information is subject to the following conditions:

(a) A client must complete a request for access to a case record ~~[form,]~~ each time he/she wishes to have access to the record. If the client wishes to have a representative review the record in his/her absence, the client must ~~[complete the proper form and indicate the representative's name]~~ provide a signed document authorizing the named individual to access the identified case information for a specified purpose and time frame. This includes individuals acting as the client's representative in a fair hearing. ~~[No one may sign the authorization on the client's behalf.]~~ Only the client or the client's legal guardian may authorize another individual to review the record.

(b) The record must be reviewed in the presence of the county director or designee.

(c) If a client disagrees with information contained in the case record, he/she may make a written rebuttal which is made part of the case record. No contested material may be removed from the case record.

(2) **Inquiries on client's behalf:** Inquiries made ~~[as the result of a client's complaint regarding his/her]~~ on behalf of a client regarding eligibility for or amount of assistance received are treated as coming from private individuals, regardless of whether they come from a private citizen, elected official, or public or private agency. ~~[The letter of complaint, or a signed form]~~ ISD must receive an authorization signed by the client or the client's legal guardian permitting ISD to release information~~[, must be received before the inquiry can be answered.~~

(3) **Department employees:** Confidential information is available to HSD employees or agents of HSD who need it in connection with the administration of HSD and its various services and assistance programs. This includes field and central office staff, representatives of the HSD child support enforcement bureau and medical assistance division, as well as private firms or other agencies under contract with HSD who perform work or provide services related to financial assistance programs. Confidential information is also available to employees of the federal government concerned with the administration of ISD programs.

(4) **Non-HSD employees:** Confidential information about applicants for and recipients of financial assistance may be released to other agencies or individuals including law enforcement officers who meet all of the following standards.

(a) Agency or individual is involved in the administration of a federal or a federally-assisted program which provides assistance in cash, in kind or in services directly to individuals on the basis of need.

(b) Information is to be used for the purpose of establishing eligibility, determining amount of assistance or for providing services for applicants or recipients.

(c) Agency or individual is subject to standards of confidentiality comparable to those of ISD.

(d) Agency or individual has actual or implied consent of the applicant or recipient to release the information. In an emergency, information may be released without permission, but the client must be informed of its release immediately thereafter. Consent may be considered as implied if a recipient or member of the assistance group has made application to the inquiring agency for a benefit or service.

(5) **Funding agencies/auditors:** ISD program funding agencies' and auditors' access to and use of client information is subject to the confidentiality requirements specified above and to all other relevant statutes and restrictions.

(6) **Employers:** To claim a tax credit on wages paid to financial assistance recipients, as provided under the Revenue Act of 1978, an employer may request and receive information from ISD as to whether an employee is a recipient who meets the criteria for either (1) the welfare tax credit (NMW recipient during the three month period consisting of the month hired and the two months immediately preceding the date of hire); or (2) the targeted jobs tax credit (recipient of general assistance who received GA for at least 30 days, ending within the 60-day period which ends on the hiring date). Such releases are to be made on a case by case basis and must be accompanied by a consent to release information signed by the client.

**C. Medical records:** Medical reports and medical information in HSD's possession, regardless of how they were obtained, may not be shown to a client, unless they are relevant to a fair hearing. Because of the potentially upsetting nature of the facts contained in some reports and because a physician's knowledge is frequently necessary to interpret those facts, a client ~~is always~~ shall be referred to his/her physician regarding any questions.

**D. Court proceedings**

**(1) Program-related court cases**

(a) Criminal or civil court proceedings involving establishment of paternity and enforcement of support for recipients, prosecution for fraud, suits for recovery of fraudulently obtained assistance benefits, third-party recovery, and custody hearings regarding custody of children for whom financial assistance is being provided are considered part of HSD's administration of financial assistance programs. HSD and/or its interests may be represented in such cases by an attorney from the office of general counsel, CSED, CYFD, by a local district attorney, by a representative of the attorney general's office or by a federal prosecutor.

(b) If information contained in a case record or known to an HSD employee is needed in preparation for or as part of a court proceeding, HSD employees cooperate in making sure that needed information is supplied. Although employees may receive a subpoena to testify in such a court proceeding, a subpoena is not needed if the court proceeding relates to the administration of the program. To the extent possible, attorneys responsible for a case, or other persons helping in preparing the case for court action, notify a worker, or other custodian of a case record, in advance and in writing, of the need for court testimony, whether the record should be brought, and of the time, date and place of hearing. If there is not enough time before the hearing to provide written notice, a phone call, which the worker logs in the narrative section of the record, is sufficient. If it is not clear whether a court proceeding relates to the administration of financial assistance programs, the field office may contact the office of general counsel or the income support division director's office for help.

**(2) ~~External~~ Non-program related court cases:**

~~(a) On occasion, an HSD employee may be contacted regarding clients about whom he/she has information which may be pertinent to a court proceeding, but which is not connected with the administration of HSD programs. While HSD's regulations would prohibit giving testimony in such cases, a refusal on the part of an employee who is expected to testify could result in his/her being jailed or fined. No employee is expected to do this. The following section clarifies the procedures for release of information in court proceedings not related to the administration of assistance programs. It also provides instructions for documenting the appropriate steps to avoid a breach of confidentiality.~~

~~(b) Disclosure of confidential information in connection with court proceedings may be requested in one of three ways: (1) the employee may be requested, without a subpoena, to appear as a witness and to testify to matters that include confidential information; (2) the employee may be subpoenaed to appear as a witness; or (3) a subpoena may be issued directing the employee both to appear as a witness and to produce the ISD records in court (subpoena duces tecum).~~

~~(c) **Request to appear:** A request to appear may come from the client or his/her attorney or from some third party. An HSD employee complies only if such an appearance is approved through appropriate HSD procedures. A request must be made by the client or his/her attorney, and must relate directly to that recipient. The written request must contain a statement that the client waives his/her right to confidentiality in making the request.~~

~~(d) **Subpoena as witness:** A subpoena is a written court order directing an individual to appear in court for the purpose of giving testimony.~~

~~(i) Upon receiving a subpoena to testify regarding confidential information, an HSD employee must immediately contact, in writing if time permits, the office of general counsel (OGC) and explain the particulars of the case.~~

~~(ii) OGC prepares a letter from the HSD secretary for the employee to present to the court. The letter requests that the employee be excused from testifying regarding confidential information.~~

~~(iii) The employee presents the letter to the court, with copies to all parties involved in the proceeding.~~

~~(iv) The employee follows the instructions of the court regarding the necessity for his/her testimony.~~

~~(v) The subpoena and a copy of the secretary's letter are kept in the case record as proof of HSD's actions to maintain confidentiality.~~

~~(vi) If time allows, the contacts with OGC are made in writing. If this is not possible, the contact may be made by telephone, to be followed up in writing.~~

~~(vii) Note: In cases where the OGC cooperates with state or federal law enforcement officials in the development of a court case connected with the administration of an HSD program, it is not appropriate to introduce the secretary's letter into the proceedings. In these cases, OGC notifies the employee that the letter is not necessary. The notification is retained in the record.~~

~~(e) Subpoena duces tecum: A subpoena duces tecum is an order directing the appearance of the custodian of records and the production of specified records in court. By law, the official custodian of all departmental records is the HSD secretary, however, custodianship of all county records is expressly delegated to each county director or the person in charge of the office in his/her absence. Other than situations where the court hearing is considered part of program administration, division records are not produced in court without a subpoena duces tecum. If such a subpoena is issued, the procedures explained below should be followed:~~

~~(i) A letter is sent to the employee who has been summoned to testify regarding confidential information. When the letter is received, a copy is sent to each attorney involved in the proceeding. (Attorneys' names are provided by the OGC staff).~~

~~(ii) At the time of the hearing, the employee should have with him/her the original of the letter and three copies, as well as the case record and/or other documents which have been subpoenaed (by subpoena duces tecum).~~

~~(iii) Following the oath or affirmation, the employee should give his/her name and make a statement similar to the following: "I am an employee of the New Mexico human services department and as such I would like to make a statement to the court. Under state and federal laws and regulations, employees of HSD are required to safeguard information to which they are a party as a result of their position. I would like to present the following letter to the court regarding the requirement to maintain confidentiality regarding our clients."~~

~~(iv) The employee should at this point give the original to the judge. The extra copies may be given to the attorneys if they have not received them. The judge then decides whether the employee may testify. The employee follows the instructions of the court regarding the necessity for his/her testimony. [07/01/97, 04/01/98; 8.100.100.14 NMAC Rn, 8 NMAC 3.ISD.031, 04/13/2001] Any person or attorney seeking confidential information from an ISD case file for a non-program related court case should direct a properly issued subpoena to the appropriate ISD office or ISD employee with a copy also sent to the HSD office of general counsel. HSD will seek to preserve the confidentiality of the records unless the release of the records is expressly authorized by federal or state law or is otherwise ordered by a court of competent jurisdiction.~~

## **8.100.100.15 PUBLIC INFORMATION ACT**

### **A. Policy and procedures manual**

~~(1) Issuing manual to public custodians: This manual is issued without charge to public custodians who make it available to a substantial number of the recipient population.~~

~~(2) Issuing manual to private custodians: This manual is available to private groups or individuals who request it. A nominal fee is charged to cover the cost of printing.~~

~~(3) Accessibility to applicants or recipients of assistance: This manual is available for inspection at the ISD central and county offices, during regular office hours, to individuals either applying for or receiving assistance. On request, the central or county office reproduces, without charge, limited specific policy material for an applicant or recipient, or representative, to decide whether a fair hearing should be requested or to prepare for a fair hearing.] The regulations for the programs administered by HSD are located on the official website of the New Mexico Administrative code located at <http://www.nmcp.state.nm.us/nmac/>. Procedures and policy guidance is located at the official HSD website under the specified division at <http://www.hsd.state.nm.us/>.~~

**B. State program and plan materials:** [HSD handbooks are available for inspection on request at each local ISD office as well as at the central office. State plan documents may be reviewed at the office of the

~~director of the division having responsibility for the plan.] HSD state plans are available at the official HSD website under the specified division at <http://www.hsd.state.nm.us/>.~~

**C. Other printed materials:** Additional printed materials, such as brochures and pamphlets describing basic financial and nonfinancial eligibility criteria, the application process, and participant rights and responsibilities, are available at local ISD offices, social security and state employment services offices, and other agencies providing human services and the official HSD website at <http://www.hsd.state.nm.us/>.

**D. Federal laws, regulations and other materials:** Federal materials should be obtained by contacting the responsible federal agency directly. The university of New Mexico is a federal repository. Many federal agencies post regulations, planning documents and requirements as well as program instructions on the internet.

[04/01/98; 8.100.100.15 NMAC - Rn, 8 NMAC 3.ISD.035, 04/13/2001]

This is a proposed amendment to 8.100.110 NMAC, Section 8, 9, 10, and 11.

**8.100.110.8 RIGHT TO APPLY:** Each individual wishing to do so shall have the opportunity to apply for assistance from programs administered by ISD or to have an authorized representative do so on his/her behalf. Application may be made whether or not it appears as if the applicant is eligible. Application is made ~~(on a form)~~ in a format prescribed by the department to include paper forms or electronic submissions.

**A. Screening:** Every applicant shall have the opportunity to meet, face to face or telephonically, with an HSD employee ~~[on the same day an application is submitted]~~ when an application is submitted during regular business hours. The employee will review the application, assist the applicant in completing the application if it is incomplete or assistance is otherwise necessary, and will assist in identifying the assistance programs for which the applicant wishes to apply.

~~**B. Screening for food stamp expedited service:** The employee will screen food stamp applicants for entitlement to expedited food stamp processing, using a standard form and stamp the application as appropriate.~~

~~(1) If the applicant is eligible for expedited service, the employee will process the food stamp application within twenty four hours of determining the household is expedited.~~

~~(2) If entitlement to expedited food stamp processing is denied, the applicant will be informed of the right to request an informal conference to be held within two days of the request unless the household asks for a later date.~~

~~**C. Proof checklist:** The employee will provide the applicant with a standard form, the proof checklist, which identifies the eligibility factors for each assistance program and the various methods by which each factor may be verified or established. The employee will explain why the information is needed, how to obtain the information and offer to help the applicant obtain the information.~~

~~**D. Scheduling the appointment:** The employee will schedule an application interview to be held within 10 working days of the date the application was submitted and which is, to the extent possible, convenient for both the applicant and the worker. The employee will provide the applicant with a written appointment letter which will include notice of the date, time and place of the appointment, the name and telephone number of the ISS assigned to the application, the consequences of missing an appointment, how to reschedule an appointment, the possibility of a waiver of the office interview (financial assistance and medicaid) or face to face interview (food stamps) and that another responsible person may attend the interview with the applicant or in the applicant's place.]~~

~~(1) **Screening for SNAP expedited service:** The employee will screen food stamp applicants for entitlement to expedited SNAP processing, using a standard form and document the application as appropriate.~~

~~(a) If the applicant is eligible for expedited service, the employee will process the SNAP application within twenty-four hours of determining the household is eligible for expedited service.~~

~~(b) If entitlement to expedited SNAP processing is denied, the applicant will be informed of the right to request an informal conference to be held within two days of the request unless the household asks for a later date.~~

~~(2). **Proof checklist:** The employee will provide or send the applicant a standard form, the proof checklist, which identifies the eligibility factors for each assistance program and the various methods by which each factor may be verified or established. The employee will explain why the information is needed, how to obtain the information and offer to help the applicant obtain the information.~~

~~(3). **Scheduling the appointment:** The employee will schedule an application interview to be held within 10 working days of the date of application and which is, to the extent possible, convenient for both the applicant and the worker. The employee will provide the applicant with a written appointment letter which will include: the date, time and place of the appointment, the name and telephone number of the ISD county office, the consequences of missing an appointment, how to reschedule an appointment, the possibility of a waiver of the office interview and that another responsible person may attend the interview with the applicant or in the applicant's place.~~

~~**[E.]B. Alternative Interviews:** Specific requirements for telephone and out of office interviews are outlined in each program's chapter on this topic.~~

~~**[F.]C. Screening by mail or drop box:** If an applicant mails in the application, leaves the application in a drop box, or is unwilling or unable to be screened in person, HSD will screen the application for all programs and for expedited SNAP eligibility upon receipt. An appointment letter and the proof checklist, with appropriate boxes marked, will be mailed to the applicant on the same day as the date of application.~~

~~**[G.]D. Resource planning session:** No later than 45 days after the date of application, the individual applying for benefits shall be provided a resource planning session. The session shall ascertain the immediate needs of the individual or family, shall help the individual to assess his or her financial and non-financial options and shall result in referrals to such other agencies or programs as the individual deems appropriate to his or her specific needs.~~

[07/01/97, 04/01/98; 8.100.110.8 NMAC - Rn, 8 NMAC 3.ISD.111, 04/13/2001]

**8.100.110.9 SUBMISSION OF FORMS:** Applicants may submit forms to a county office in person, through an authorized representative, through the YES NM web portal, by fax or by mail.

**A. Incomplete application:** An applicant has the right to file an incomplete form as long as the form contains the applicant's name, address and the signature of a responsible household or benefit group member or the household or benefit group's authorized representative if one is designated.

**B. Requesting application forms:** ~~[An applicant may request an application form by mail or by telephone. In either case, the ISD staff must mail the requested form to the applicant within 24 hours.]~~ When the department receives a request for an application for assistance, the department will either mail or hand deliver a paper application, provide the web portal address for YES-New Mexico (for online applications), or provide both as indicated by the requestor.

[07/01/97; 8.100.110.9 NMAC - Rn, 8 NMAC 3.ISD.112, 04/13/2001]

**8.100.110.10 INTERVIEWS:** Specific requirements for the interview are outlined in each program's chapter on this topic. Related verification issues for the interview are located in the verification section.

[07/01/97; 8.100.110.10 NMAC - Rn, 8 NMAC 3.ISD.113, 04/13/2001]

### **8.100.110.11 PROCESSING APPLICATIONS**

**A. FA(Financial Assistance)/[FS] SNAP (Supplemental Nutrition Assistance Program) combined cases:** To facilitate participation in ~~[the food stamp program]~~ SNAP, the Food Stamp Act requires that individuals applying for ~~[financial assistance (FA)]~~ FA be able to apply for ~~[food stamp]~~ SNAP benefits ~~[(FS)]~~ at the same time.

(1) **Application:** A household applying jointly for FA and [FS] SNAP is required to file only one application form. The form prescribed by the department contains the information necessary to complete the application process whether done in paper format or online. If it is unclear to the department whether the applicant intends to apply for [FS] SNAP, ~~[further information may be provided at]~~ the department will ask the applicant at the FA interview[-] or other contact may be made with the applicant. An application for [FS] SNAP will be processed in accordance with time standards and procedures set forth in federal regulations governing ~~[the food stamp program]~~ SNAP, including expedited processing provisions.

(2) **Single interview:** Whenever possible, a single interview will be held with an applicant who applies jointly for FA and [FS] SNAP benefits.

(3) **Categorical eligibility:** A [FS] SNAP household which meets criteria set forth in 8.139.420.8 NMAC is categorically eligible. If a household does not meet [FS] SNAP eligibility criteria, but is potentially categorically eligible, the caseworker must postpone denying the [FS] SNAP application until the 30th day.

(4) **Application processing:** As a result of differences in FA and [FS] SNAP application processing procedures and timeliness standards, eligibility for [FS] SNAP benefits may be determined prior to FA eligibility determination. Action on a [FS] SNAP application may be postponed until categorical eligibility is established to afford the household any benefits of this provision. However, [FS] SNAP approval may not exceed the applicable expedited or regular application processing timeliness standards for SNAP.

(5) **Application is denied:** If an FA application is denied, an applicant is not required to file a new [FS] SNAP application. [FS] SNAP eligibility will be determined on the basis of the original application filed jointly for FA and [FS] SNAP, as well as any other documentation and information obtained in the course of the FA determination which is relevant to [FS] SNAP eligibility and benefit amount. A [FS] SNAP application may not be denied based on an FA denial reason, but is based on the criteria for SNAP eligibility.

(6) **Denial retrieval:** A [FS] SNAP application which is denied on the 30th day must be readily retrievable if the household is later determined eligible for [financial assistance] FA or SSI (Supplemental Security Income) benefits. When this occurs, the [ISS] caseworker will use the original [FS] SNAP application, update any information and approve the [FS] SNAP case with prorated benefits as of the date of [financial assistance] FA or SSI approval or payment effective date, whichever is later. A second interview is not necessary, however, the applicant or authorized representative should initial all changes and ~~[re-date and re-sign the original FS application]~~ sign and date the verification of the changes.

**B. Reporting changes:** All participants in ISD programs are required to report any changed circumstances which relate to their eligibility for assistance or level of benefits. Each participant is provided with a list of the specific information he/she is required to report and the reporting time limits. Clients who report a change for FA are considered to have reported the change for [FS] SNAP purposes. When a change is reported, ISD must

ensure that adjustments are made in the client's eligibility status or allotment for those months in which the reported change is in effect, in accordance with each program's chapter on this topic.

(1) **Notice:** whenever a client's benefits are altered as a result of changes, or whenever a certification period is shortened to reflect changes in the household's circumstances, the client is notified of the action by ISD in accordance with the notice requirements. If the certification period is shortened, the household's certification period may not end any earlier than the second month following the month the [ISS] caseworker determines the certification period should end. This allows adequate time to send a notice of expiration and for the household to timely reapply. If FA benefits are terminated, but the household is still eligible for [food stamp] SNAP benefits, members of the household must be informed about [food stamp work registration and participation] SNAP employment, training, and ABAWD requirements, if applicable.

(2) **FA reduction or termination within [FS] SNAP certification period:** Whenever a reported change results in the reduction or termination of a client's FA benefits within the [FS] SNAP certification period, action will be taken to determine how the change affects the client's [FS] SNAP eligibility and benefit levels.

(a) **Sufficient information:** When there is sufficient information to determine how the change affects [FS] SNAP eligibility and benefit levels, the following actions will be taken:

(i) **Reduction/termination of [FS] SNAP benefits:** ~~[If the change requires a reduction or termination in either or both the FA, [FS] SNAP payment, a single notice of adverse action will be issued for both the FA and [FS] SNAP actions. If the client requests a fair hearing within the period provided by the notice, the household's [FS] SNAP benefits shall be continued on the basis authorized immediately prior to sending the notice. If a fair hearing is requested for both programs' benefits, the hearing is conducted according to FA procedures and time standards. However, the household must [reapply for FS] recertify for SNAP benefits if the [FS] SNAP certification period expires before the fair hearing process is completed. If the household does not appeal, the change is made effective in accordance with the procedures specified in the [FS program] SNAP chapter on reporting and recertification.]~~ A change that reduces or terminates either SNAP, FA or both payments will generate a notice of adverse action for each category of assistance to the household and authorized representative. The notice of adverse actions will inform the household of its fair hearing rights and method for requesting continuation of benefits.

(ii) **Increase in [FS] SNAP benefits:** If the reduction/termination of FA benefits results in the increase of [FS] SNAP benefits, the increase in [food stamps] SNAP benefits occurs after the FA notice period expires and the FA grant is actually reduced or terminated.

(b) **Insufficient information:** Whenever there is insufficient information to determine how the FA change affects the client's [FS] SNAP eligibility and benefit level, the following actions shall be taken:

(i) **FA notice of adverse action required:** Where an FA notice of adverse action has been sent and the client requests a fair hearing and FA benefits are continued pending the appeal, the household's [FS] SNAP benefits will be continued on the same basis. However, the household must [reapply for FS program] recertify for SNAP benefits if the [FS program] SNAP certification period expires before the fair hearing process is completed.

(ii) **FA notice of adverse action not required:** If an FA notice of adverse action is not required, or the client decides not to request a fair hearing and continuation of FA benefits, the household must be notified that its certification period will expire at the end of the month following the month the notice of expiration is sent, and that it must reapply if it wishes to continue to participate in the [the FS program] SNAP. The notice of expiration will also explain to the household that the certification period is expiring because of changes in its circumstances that may affect its [food stamp program] SNAP eligibility and benefit level.

(3) **Certification periods:** The [ISS] caseworker will assign FA and [FS] SNAP certification periods that expire at the same time. In no event are FA [FS] or SNAP benefits to be continued beyond the end of a certification period.

(4) **Recertification:** Households in which all members are contained in a single [financial assistance]FA grant or in a single [GA] general assistance (GA) grant will have their [FS] SNAP interviews for recertification, to the extent possible, at the same time they are redetermined for FA[].

(5) **Reopened cases:** If the FA and [FS] SNAP cases are closed or the [FS] SNAP certification expires, and the former recipient reapplies for one or both programs for the month following closure or expiration, benefits are prorated from the date of application for [food stamps] SNAP. If reapplication is made for FA or [food stamps] SNAP or both, following a break of one full month or more, [food stamp] SNAP and [financial assistance] FA benefits for the month of application will be determined prospectively under beginning month provisions.

### C. Other processing standards

(1) **SSI Households:** Households in which all members are applying for SSI benefits are handled in the same manner as ~~financial assistance~~ FA households with respect to the postponement of ~~[FS]~~ SNAP approval or denial and the retrieval of denied ~~[food stamp]~~ SNAP applications.

(a) Since the ~~[ISS does not have first hand knowledge of the]~~ caseworker cannot monitor the progress of the SSI application, and if the ~~[food stamp]~~ SNAP application is denied on the 30th day, the household must be advised to reapply for ~~[food stamps]~~ SNAP when it has been notified of SSI approval.

(b) SSI households are also entitled to apply for ~~[food stamps]~~ SNAP and be recertified at SSA (Social Security Administration) offices. SSA will accept the application and forward the completed application, transmittal form, and any available verification to the designated ~~[food stamp]~~ ISD office. When SSA accepts and refers the application, the household is not required to appear at a second office interview, although the ~~[ISS]~~ ISD caseworker may request additional verification or information needed to make an eligibility determination. Processing time limits begin when the ~~[food stamp]~~ SNAP application is registered at the SSA office.

(2) **GA households:** Households in which all members are applying for state administered general assistance (GA) are to be processed jointly for GA and ~~[food stamp]~~ SNAP benefits. However, since these households are not nor will they become categorically eligible, the provisions to postpone approval or denial and to retrieve denied ~~[food stamp]~~ SNAP applications do not apply.

(3) **Mixed households:** Households in which some but not all of the household members are applying for NMW benefits will file separate applications for FA and ~~[food stamp]~~ SNAP benefits. Applications will be handled under the same processing provisions required for nonfinancial assistance households. However, if those not applying for financial assistance benefits are recipients of SSI, the ~~[food stamp]~~ SNAP application would be jointly processed, because SSI recipients are already considered FA recipients.

[07/01/97, 04/01/98; 8.100.110.11 NMAC - Rn, 8 NMAC 3.ISD.114, 04/13/2001; A, 04/01/2010]

**This is a proposed amendment to 8.100.140 NMAC, Sections 8-11.**

**8.100.140.8 PURPOSE OF CASE FILES:** An ISD case record, in electronic or paper format, [consisting] consists of forms, records, narrative material, correspondence, and documents [is maintained in ISD county offices] scanned into electronic format and maintained in the HSD secure electronic data management system. Documents submitted in person will be electronically scanned and returned to the individual. Documents mailed to or left with the office will be destroyed once successful completion of a scan into electronic format is confirmed. The case record documents the current and historical eligibility of the recipient group and thereby justifies assistance provided or denied.

**A.** The case record is the property of HSD and is established and maintained solely for use in the administration of HSD's assistance programs.

**B.** Information in the record is confidential and is released only under the limited circumstances and conditions [explained] as provided in federal and state laws and in 8.100.100.13 NMAC (confidentiality).

**C.** The record and its contents must remain in the possession of HSD, its contractors or approved federal employees [, unless it is required as evidence per court order].

[07/01/97; 8.100.140.8 NMAC - Rn, 8 NMAC 3.ISD.140.1, 04/13/2001]

**8.100.140.9 CONTENT OF CASE NARRATIVE:** The following narrative outline is used on all applications for assistance, and to record data and verification concerning all variable conditions of eligibility. After the initial determination of eligibility for assistance, no additional data are required in redeterminations except for those eligibility conditions which are subject to change.

**A.** The case narrative is used for the comprehensive recording of relevant factual information in the case record. Narrative entries must be made promptly, with dates of relevant contacts.

**B.** Recorded information should be limited to items which are applicable to the case, such as changes in eligibility factors since the last review. Information which does not change, such as social security numbers, is not repeated.

**C.** The items below are intended as a minimum requirement for case narratives. Each county office manager has the privilege of expanding it at his/her discretion.

[07/01/97, 04/01/98; 8.100.140.9 NMAC - Rn, 8 NMAC 3.ISD.140.2, 04/13/2001]

**8.100.140.10 ESSENTIAL INFORMATION AT INITIAL DETERMINATION**

**A. Heading:** Case name and number.

**B. Application and intake**

(1) date of application, program applied for and reason for application stated in terms of the client's circumstances;

(2) documentation of worker's explanation of client's rights and responsibilities;

(3) names of individuals for whom application is being made.

**C. ~~Home or field visit~~**

~~(1) date and address of home or field visit;~~

~~(2) reason for visit;~~

~~(3) conclusions;~~

~~(4) observations regarding household composition;~~

~~(5) discussion of purpose of contact with collateral source (see 8.100.130 NMAC);~~

**~~D.]C. Basic eligibility factors:~~** Explanation of how each basic eligibility factor has been established, including: residence; non-transfer of property; school attendance; non-concurrent receipt of assistance; living in the home of the specified relative; citizenship; parentage; and age.

**~~E.]D. Child support enforcement cooperation:~~** Status of cooperation with child support enforcement program.

**~~F.]E. Enumeration:~~** Status of enumeration (social security number) of each person.

**~~G.]F. Retroactive medical status:~~** Eligibility for retroactive medicaid bills claimed by applicant.

**~~H.]I. Work program status~~**

(1) current work program participation ~~[waiver]~~ status, NMW participation agreement, assessment certification or copy of assessment and **~~RFA]~~** individual responsibility plan for each benefit group member subject to work program requirements;

(2) disability determination request for those wishing to have ~~[participation waived]~~ a limited work participation status;

(3) determination of [~~exemption or postponement of participation~~] limited work participation status request;

(4) [~~explanation of participation waivers granted~~];

~~\_\_\_\_\_~~ (5) ~~current division of vocational rehabilitation (DVR) status~~;

~~\_\_\_\_\_~~ (6) ~~assessment certification~~] any other work program related documentation.

**[I.]J. Medical resources - third party liability:** type of insurance coverage, coverage available and verification of third party liability

~~\_\_\_\_\_~~ (1) ~~type of insurance coverage, coverage available and verification of third party liability~~;

~~\_\_\_\_\_~~ (2) ~~tot to teens (EPSDT) status of benefit group members (see Manual Section MAD 740); list of follow up dates according to periodicity requirements.~~]

**[J.]K. Need**

(1) documentation and discussion of all pertinent factors relating to [~~this~~]the condition of eligibility;

(2) list of amounts, verifications and dates of income and resources by individual;

(3) explanation of earned income computations.

**[K.]L. Shelter:** (for applicable programs). Documentation of shelter information, including whether housing is subsidized by the government.

**[L.]M. [Food stamps]-SNAP:** Status of the certification. Explanation of [~~any unusual~~] circumstances affecting [~~food stamp~~] SNAP certification[, such as reason for separate household status].

**[M.]N. Disposition of application:** Effective date of approval/denial. Reference to appropriate manual section for denials.

**[N.]O. Follow-up:** Necessary follow-ups.

[07/01/97, 04/01/98; 8.100.140.10 NMAC - Rn, 8 NMAC 3.ISD.140.21, 04/13/2001]

#### **8.100.140.11 REDETERMINATION/RECERTIFICATION**

**A.** date of interview and how household composition or living arrangements are established;

**B.** documentation of school attendance of children in benefit group;

**C.** documentation of current resources and income; accounting for all formerly reported income and resources;

**D.** updated information on non-custodial parents and status of child support, etc.;

**E.** review of work and work program participation and planning;

**F.** [~~updated tots to teens (automated)~~];

**[G.]F.** disposition of [~~food stamp~~]SNAP certification;

**[H.]G.** list of necessary follow-ups.

[07/01/97, 04/01/98; 8.100.140.11 NMAC - Rn, 8 NMAC 3.ISD.140.22, 04/13/2001]

This is a proposed new part.

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 100 GENERAL PROVISIONS FOR PUBLIC ASSISTANCE PROGRAMS**  
**PART 640 RESTORATION AND CLAIMS**

**8.100.640.1 ISSUING AGENCY:** New Mexico Human Services Department.

**8.100.640.2 SCOPE:** The rule applies to the general public.

**8.100.640.3 STATUTORY AUTHORITY:**

**A.** Section 27 NMSA 1978 (1992 Repl.) provides for the department to "...adopt, amend and repeal bylaws, rules and regulations..." It also provides for administration of public assistance programs.

**B.** The Income Support Division (ISD) of the Human Services Department (HSD) was created by the HSD Secretary under authority granted by Section 9-8-6-B-(3) NMSA 1978.

**8.100.640.4 DURATION:** Permanent.

**8.100.640.5 EFFECTIVE DATE:** July 1, 2013.

**8.100.640.6 OBJECTIVE:** The objective of these regulations is to provide general policy and procedures for Income Support Division (ISD) administered programs.

**8.100.640.7 DEFINITIONS:** Effective July 1, 2013, or a later date if stated at the end of a section.

**A. Agency error (AE) claim:** means any claim for an overpayment caused by an action or failure to take action by the State agency.

**B. Inadvertent eligibility determination group error (IHE) claim:** means any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the eligibility determination group.

**C. Intentional Program Violation (IPV) claim:** means any claim for an overpayment or trafficking resulting from an individual committing an IPV.

**D. Restoration:** means the supplement of lost benefits to a eligibility determination group due to:

(1) agency error;

(2) a fair hearing or administrative disqualification for intentional program violations that is later reversed; or

(3) an error of benefits to a eligibility determination group due to a loss of benefits due to an error.

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

**F. Supplement:** means the amount of benefits issued addition to the monthly benefit amount the eligibility determination group has already received.

**8.100.640.8 ERRONEOUS PAYMENT PROVISIONS:** An erroneous payment exists when an error is made by the client or the department that resulted in an underpayment or overpayment of program benefits. The difference between the amount issued and the corrected amount is the amount of the payment error. The human services department (HSD) shall take action to correct errors in the supplemental nutrition assistance program (SNAP), state SNAP supplement, New Mexico combined application project (NMCAP), New Mexico works (NMW) cash assistance, general assistance for disabled adults and unrelated children (GA), adult residential shelter care home (ARSCH), education works (EWP), refugee cash assistance, medical assistance, and LIHEAP benefits issued to a eligibility determination group regardless of the cause of the error. NMW cash assistance, GA, ARSCH, EWP, refugee cash assistance will be referenced as cash assistance programs throughout the regulations unless otherwise specified.

**A.** The department will correct the error by restoring benefits for an underpayment or establishing claims for an overpayment.

**B. SNAP:** The amount of the restoration or claim is determined by using the maximum SNAP benefit amount and applying the allowable deductions in place for a particular month, including any federal law

placing a restriction on the use of deductions.

**C. Cash assistance programs:** The amount of the restoration or claim is determined using the standard of need the case was eligible for on the first day of a month. If the standard of need increases during the month, the higher amount shall be allowed for the entire month.

#### **8.100.640.9 ESTABLISHING PERIOD OF ERROR:**

**A.** An erroneous payment occurs when an error is made by the client or the department that resulted in an underpayment or overpayment of program benefits or assistance.

**B. Restoration of benefits:** If benefits must be restored to an eligibility determination group, the caseworker shall determine each month for which the eligibility determination group was underpaid benefits. The month(s) may or may not be consecutive. In some cases, federal regulations mandate the restoration of SNAP benefits to eligibility determination groups for a specific time period.

##### **C. Overpayment of benefits:**

**(1) Establishing period of overpayment:** If benefits have been overpaid to an eligibility determination group, the caseworker shall determine each month in which the eligibility determination group received benefits to which it was not entitled. The months may or may not be consecutive.

**(a)** The first month in which a benefit is considered erroneous is the month in which the eligibility determination group received a benefit amount differing from the amount that the eligibility determination group was entitled to receive.

**(b)** The last month of an erroneous payment ends on the last day of the last month in which payment is discovered. In the case of an overpayment, if the period of overpayment has been extended while a proposed reduction or termination is the subject of an administrative hearing decision, it is included in the overpayment claim period.

**(2) Establishing a claim:** A claim will be established against any eligibility determination group for any month in which the eligibility determination group received an overpayment of benefits if it exceeds the claims establishment threshold as defined in 8.100.640 NMAC

**(a)** At a minimum, the caseworker shall take action on claims for which 12 months or less have elapsed between the month an overpayment occurred and the month the overpayment was discovered.

**(b)** The caseworker may choose to take action on claims for which more than 12 months have elapsed.

**(c)** No action will be taken on claims for which more than six years have elapsed between the month an overpayment occurred and the month an overpayment was discovered.

#### **8.100.640.10 RESTORATION OF BENEFITS:**

##### **A. Entitlement:**

**(1)** Program benefits will be restored to an eligibility determination group when the loss was caused by:

**(a)** agency error;

**(b)** SNAP administrative disqualification for intentional program violation that is later reversed; or

**(c)** a regulation specifically requiring restoration of lost benefits.

**(2)** Unless there is a specific regulation authorizing benefit restoration for a longer period, SNAP benefits will be restored for not more than the 12 months prior to whichever of the following occurred first:

**(a)** date HSD receives a request for restoration from an eligibility determination group; or

**(b)** date HSD is notified or otherwise discovers that a loss to an eligibility determination group has occurred; or

**(c)** if the resolution of a request extends beyond the 12 month limit, an eligibility determination group will be entitled to more than 12 months of restored benefits.

##### **B. Errors in benefits:**

###### **(1) ISD discovered errors:**

**(a)** If the caseworker determines that a loss of benefits has occurred, and that an eligibility determination group is entitled to a restoration of benefits, action will be taken automatically to restore lost benefits. No action by the eligibility determination group is necessary.

**(b)** Benefits will not be restored if benefits were lost more than 12 months before the month the loss was discovered in the normal course of business, or loss occurred more than 12 months before the month HSD was notified, in writing or orally, of a possible loss to a specific eligibility determination group.

**(c)** The caseworker shall notify the eligibility determination group of entitlement to lost

benefits; amount of benefits to be restored; any offsetting that will be done; method of restoration, and right to appeal through the fair hearing process if the eligibility determination group disagrees with any aspect of the proposed restoration.

**(2) Judicial action:**

(a) HSD shall restore benefits found by any judicial action to have been wrongfully withheld.

(b) If the judicial action is the first action the recipient has taken to obtain restoration of lost benefits, then benefits will be restored for a period of not more than 12 months from the date the court action was initiated.

(c) If the judicial action is a review of HSD's action, benefits will be restored for a period of not more than 12 months from the first of the following dates:

(i) date HSD receives a request for restoration;

(ii) if a request for restoration is not received, date the fair hearing action was initiated; but never more than one year from the date HSD is notified of, or discovers, the loss.

**(3) Disqualification for SNAP IPV:**

(a) For each month a eligibility determination group member is erroneously disqualified, not to exceed 12 months, the amount to be restored is determined by comparing the SNAP benefit amount the eligibility determination group received with the amount the eligibility determination group would have received if the disqualified member had been allowed to participate.

(b) Participation in an administrative disqualification hearing in which the eligibility determination group is contesting HSD's assertion of IPV is considered notification that the eligibility determination group is requesting continued SNAP benefits.

**(4) Agency errors:**

(a) If an eligible eligibility determination group's application has been erroneously denied, the month the loss initially occurred will be the month of application; or for an eligible eligibility determination group filing a timely reapplication, the month following the expiration of its certification period.

(b) If an eligible eligibility determination group's application was delayed, the months for which benefits were lost will be calculated in accordance with application processing guidelines for delayed eligibility determinations in Subsection D of 8.139.110.13 NMAC, Subsection D of 8.102.110.13 NMAC and Subsection C of 8.106.110.12 NMAC.

(c) If a eligibility determination group's benefits were erroneously terminated, the month the loss initially occurred will be the first month that benefits were not received as a result of the erroneous action.

**C. Processing the restoration:**

(1) SNAP: Regardless of whether an eligibility determination group is currently eligible or ineligible, the caseworker shall restore lost benefits to an eligibility determination group by issuing an amount equal to the amount of benefits that were lost. The amount restored is issued in addition to the benefit amount a currently eligible eligibility determination group is entitled to receive.

(a) For each month affected by the loss, the caseworker shall determine if the eligibility determination group was actually eligible.

(b) In cases where there is no information in the eligibility determination group's case record to document that the eligibility determination group was actually eligible, the caseworker shall notify the eligibility determination group in writing of what information is necessary to determine eligibility for these months. For each month the eligibility determination group cannot provide the necessary information to demonstrate its eligibility, the eligibility determination group will be determined ineligible.

(2) Cash assistance programs: The caseworker shall restore lost cash assistance benefits for eligibility determination groups who are currently eligible under the cash assistance program in which the error occurred or would be eligible except for the error causing the underpayment.

(a) A restoration to a denied applicant or to a former participant who is not eligible at the time the error is discovered shall be corrected if the applicant is, or participant becomes, eligible at a later date.

(b) Before issuing a benefit correcting an underpayment, the department subtracts from the amount owed to the participant any outstanding claim against the participant in the cash assistance program for which the error is being corrected.

(3) Medical assistance programs: The caseworker shall restore months of eligibility for individuals who are currently eligible under the medical assistance program in which the error occurred or would be eligible except for the error causing the ineligibility.

**8.100.640.11 OVERPAYMENTS (CLAIMS AGAINST ELIGIBILITY DETERMINATION GROUPS):**

HSD shall take action to establish a claim against any eligibility determination group that received more benefits than it was entitled to receive, including LIHEAP benefits paid to a vendor on behalf of the eligibility determination group, whether or not the overpayment occurred because of an inadvertent eligibility determination group error, an administrative (agency) error, or an intentional program violation (IPV).

**A. Claim Recovery:**

(1) All adult eligibility determination group members will be jointly liable for any overpayment of benefits to the eligibility determination group.

(2) A claim will be established against any or all of the adult members of a eligibility determination group at the time an overpayment occurred.

(3) A claim will be established against any eligibility determination group which contains an adult member who was an adult member of another eligibility determination group that received more benefits than it was entitled to receive.

(4) The earned income deduction of 20 percent is not allowed when determining an overpayment due to the failure of a eligibility determination group to report earned income in a timely manner.

**B. Types of Claims for all programs:**

**(1) Inadvertent eligibility determination group error claims:**

(a) A claim will be handled as an inadvertent eligibility determination group error claim if the overpayment was caused by:

(i) misunderstanding or unintended error on the part of the eligibility determination group; or

(ii) misunderstanding or unintended error on the part of a categorically eligible eligibility determination group, provided that a claim can be calculated based on a change in the eligibility determination group's net income, eligibility determination group size, or both; or

(iii) social security administration action, or failure to take action, resulting in a eligibility determination group becoming or continuing categorical eligibility, provided that a claim can be calculated based on a change in net income, eligibility determination group size, or both.

(b) Instances of inadvertent eligibility determination group errors which may result in a claim include, but are not limited to, the following:

(i) eligibility determination group unintentionally failed to provide HSD with correct or complete information; or

(ii) eligibility determination group unintentionally failed to report changes in its circumstances; or

(iii) eligibility determination group unintentionally received benefits or received more benefits than it was entitled to receive pending a fair hearing decision because the eligibility determination group requested a continuation of benefits based on the mistaken belief it was entitled to them; or

(iv) eligibility determination group received benefits solely because of categorical eligibility, but was later determined ineligible for cash assistance; or

(v) social security administration took action or failed to take appropriate action, resulting in the eligibility determination group improperly receiving SSI.

**(2) Administrative errors:**

(a) A claim will be handled as an administrative error claim if the overpayment was caused by HSD action or failure to take action.

(b) In the case of a SNAP categorical eligibility, a claim will be handled as an administrative error if action by an agency of the state or local government resulted in the eligibility determination group's improper eligibility for cash assistance.

**C. IPV claims established for SNAP:**

**(1) A claim will be handled as an IPV claim only if:**

(a) administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a eligibility determination group member committed an IPV; or

(b) an individual is disqualified as a result of signing a waiver of disqualification hearing in a case referred for prosecution; or

(c) an individual has signed a disqualification consent agreement in a case of deferred adjudication; or

(d) an individual has signed a waiver of an administrative disqualification hearing in a case referred for disqualification.

**(2) Before the determination of an IPV or the signing of either the waiver of right to a disqualification**

hearing or a disqualification consent agreement, the claim against an eligibility determination group is handled as an inadvertent eligibility determination group error claim.

**D. Claims for medical assistance benefits:** Upon a determination that the individual is not eligible for the category of assistance in which they were enrolled, the caseworker shall determine if the individual is eligible for any category of assistance. If the individual is ineligible for any category, the caseworker shall determine which months the individual was not eligible and forward the documentation to the medical assistance division for the determination of repayment of fee for service payments or the capitation payments made to the health maintenance organization on behalf of the individual. The department will pursue the repayment of capitation amounts paid to the health maintenance organization for the months the individual was ineligible for any medical assistance programs.

**E. Development of information:** When quality control review findings, or information reported or received indicate, that benefits may have been issued incorrectly; the caseworker shall attempt to obtain and development of first-hand information to determine whether benefits were provided in error.

**F. When claims are not established:** Overpayment claims for administrative errors or inadvertent eligibility determination group errors will not be established when the caseworker did not ensure procedural requirements were followed.

**G. Claim establishment threshold:** Claims for SNAP, cash assistance and LIHEAP will not be established when the cumulative amount of the claim is less than the establishment thresholds.

(1) Claims for all programs resulting from an administrative error will not be established if the cumulative claim is less than \$500.

(2) Claims resulting from an inadvertent eligibility determination group error will not be established if the cumulative error is less than \$250.

(3) Claims resulting from fraud or intentional program violation will always be established.

#### **8.100.640.12 CALCULATING THE AMOUNT OF THE ERROR (CALCULATING CLAIMS) ELIGIBILITY DETERMINATION GROUPS**

##### **A. SNAP**

**(1) Calculating the claim for inadvertent eligibility determination group and administrative errors:** For each month that benefits have been over-issued to an eligibility determination group because of an inadvertent or administrative error, the caseworker shall determine the correct benefit amount the eligibility determination group was entitled to receive.

(a) The total amount of the claim is calculated, based at a minimum, on the monthly overpayment amount which occurred during the 12 months preceding the date the overpayment was discovered.

(b) The caseworker shall calculate the amount of the claim back to the month the error occurred regardless of the length of time that elapsed until the error was discovered.

(c) The caseworker shall not include in the calculation any overpayment amount which occurred in a month more than six years before the date the overpayment was discovered.

##### **(2) Intentional program violation (IPV):**

(a) For each month that benefits have been over-issued to an eligibility determination group because of an IPV the caseworker shall determine the correct amount of benefits, if any, the eligibility determination group was entitled to receive.

(b) The amount of the IPV claim will be calculated back to the month the intentional violation occurred, regardless of the length of time that elapsed until the determination of an IPV was made.

(c) The caseworker may not include in the calculation any amount of the overpayment that occurred in a month more than six years prior to the date the overpayment was discovered.

(d) If an eligibility determination group member is determined to have committed an IPV by intentionally failing to report a change in eligibility determination group circumstances, the first month affected by the failure to report will be the first month in which the change would have been effective if it had been timely reported.

(e) In no event shall the caseworker determine as the first month in which the change would have been effective any month later than two months after the month in which the change in eligibility determination group circumstances occurred.

(f) If an eligibility determination group received a larger benefit amount than it was entitled to, a claim will be established against the eligibility determination group equal to the difference between the benefit amount the eligibility determination group received and the amount the eligibility determination group should have received.

(g) **Earned income deduction penalty:** When determining the amount of benefits the eligibility determination group should have received, the 20 percent earned income deduction is not applied to that portion of earned income that the eligibility determination group intentionally failed to report. A claim must be recomputed if it was initially handled as an inadvertent eligibility determination group error claim.

(3) **Offsetting the claim:** Once the amount of the claim for IPV, inadvertent eligibility determination group, and administrative errors is established, the caseworker offset the amount of the claim against any benefit amount not yet restored to the eligibility determination group. Action must be taken to initiate collection of the remaining balance, if any.

**C. Cash assistance programs**

(1) **Claims for administrative and client caused errors:** Claims are established when the department issues more than the eligibility determination group was eligible to receive due to an administrative error or if the eligibility determination group fails, either intentionally or unintentionally, to report correct information at application or while receiving benefits.

(a) For each month of eligibility the grant determinations are made using the standard of need, case information and policy in effect for that month.

(b) The department shall recover all cash assistance overpayments, including overpayments resulting from an administrative error, and any assistance paid while pending a fair hearing decision.

(c) A historical change, which results in a lower payment than was originally issued, results in an overpayment and the establishment of a claim if it exceeds the claims establishment thresholds listed in Subparagraph A of this section.

(d) If a change occurs which makes the eligibility determination group eligible for a lower benefit payment for a month, the adult member(s) of the eligibility benefit group is responsible for paying the difference back to the department.

(e) If a change occurs which lowers the standard of need for which the eligibility determination group is eligible, the eligibility determination group shall be allowed the amount for which they were eligible on the first day of the month.

**(2) Overpayments to sponsored aliens:**

(a) Aliens and sponsors are jointly liable for overpayments caused by failure of the sponsor to provide correct information, unless the sponsor is without fault or has good cause. "Without fault" or "good cause" exists when:

(i) the agency failed to request information from the sponsor; or

(ii) the sponsor can show that the sponsor provided all information available to the sponsor at the time the information was provided;

(iii) the alien provided incorrect information without the knowledge of the sponsor; or

(iv) the sponsor can show that the giving of incorrect information was not intentional on the part of the sponsor.

(b) If good cause is found to exist, the alien has sole responsibility for repayment.

**(3) Developing substantiating information:**

(a) Upon receiving indication that a possible error exists, the caseworker shall investigate whether an erroneous payment has occurred. Pertinent information shall be requested from the participant. Because this information may be used to prosecute the participant for fraud, the participant shall not be required to provide such information; however, if the participant declines to provide information crucial to the determination of overpayment, the participant shall be ineligible for the period in question because of failure to provide information.

(b) The same standards shall be used in determining erroneous payments as are used to determine initial and ongoing eligibility and payment.

(c) The participant must be periodically reminded of the reporting responsibilities and must indicate, no less frequently than at every certification, that the participant understands these requirements. This requirement is met by the use of a department form which reminds participants at each certification of their reporting responsibilities. This form also serves as the participant's statement that the participant understands the reporting responsibilities. If it is determined that a participant may have difficulty understanding the reporting responsibilities because of language, literacy, or mental or emotional problems, the caseworker shall supplement the written notice with an oral explanation. All such oral explanations must be documented in the case record.

(d) The participant shall become ineligible on a continuing basis if there is a continuing failure to provide information affecting the participant's current eligibility.

(4) **Offsetting the claim:** Once the amount of the claim for IPV, inadvertent eligibility determination group and administrative errors is established, any restoration the eligibility determination group is eligible to

receive is reduced or offset by the amount of the claim. Action must be taken to initiate collection of the remaining balance, if any.

**D. LIHEAP:**

(1) A claim shall be established for LIHEAP benefits that have been overpaid regardless of the reason of the overpayment.

(2) The department may establish a claim that exceeds the claim establishment threshold, as identified in Subsection A of this Section, for LIHEAP benefits overpaid up to six years prior to the date the overpayment occurred.

(3) **Offsetting the claim:** A benefit amount may be offset during the issuance process in order to recover a LIHEAP overpayment. The amount that is offset shall be conveyed to the restitutions bureau to be applied to the eligibility determination group's overpayment.

**E. Claims involving reported changes:** In cases involving reported changes, the caseworker shall determine the first month the overpayment occurred as follows:

(1) **Eligibility determination group inadvertent error:** If caused by an inadvertent error on the part of the eligibility determination group (failure to report a change in circumstances within the required time frames), the first month affected by the eligibility determination group's failure to report is the first month in which the change would have been effective if it had been reported timely. In no event will the caseworker determine as the first month in which the change would have been effective any month later than two months from the month in which the change in eligibility determination group's circumstances occurred.

(2) **Agency error:** If an eligibility determination group reported a change timely but the caseworker did not act on the change within the required time frame, the change should have taken effect the first month following the reported change, if it had been acted upon within the time frame. In no event shall the caseworker determine as the first month in which the change would have been effective any month later than two months from the month in which the change in eligibility determination group circumstances occurred. If an adverse action notice was required but was not provided, the caseworker shall assume for the purpose of calculating the claim that the maximum advance notice period would have expired without the eligibility determination group requesting a fair hearing.

**8.100.640.13 Recovery (collection action):** HSD shall initiate collection action by sending the eligibility determination group an overpayment notice.

**A. Adverse action notice:** If the amount of the claim was not established by a fair hearing decision, the eligibility determination group will be provided with an adverse action notice. The adverse action notice is sent on all claims established after March 26, 1990 and on any preexisting claims if at any time after March 26, 1990 a follow-up demand letter is sent on the claim. A one-time adverse action notice which informs the eligibility determination group that it has 90 days to appeal the amount of the claim will satisfy notice requirements.

**B. Demand letter:** Collection action is initiated by sending the eligibility determination group a demand letter. The demand letter informs the eligibility determination group of the claim amount, the reason for the claim, time period for which there is a claim, any offset which reduces the claim and how the eligibility determination group may pay the claim. The first demand letter to a participating eligibility determination group shall inform the eligibility determination group:

(1) that unless the eligibility determination group selects an acceptable method of payment and informs HSD within the specified time limit, or timely requests a fair hearing and continued benefits, their SNAP benefit amount will be reduced;

(2) that benefit reduction will affect the eligibility determination group's monthly benefits, only if HSD has not otherwise informed the eligibility determination group;

(3) that if the eligibility determination group timely selects an acceptable benefit reduction amount, the reduction will begin with the first benefit month that is issued after the selection;

(4) that if the eligibility determination group fails to make a timely selection or fails to request a fair hearing and continued benefits, the benefit reduction will be effective with the first benefit issued after timely notice of such selection or request for hearing is due to HSD; and

(5) advise the eligibility determination group of any individual or organization that provides free legal representation.

**C. Collection action:**

(1) **Initiating action:** HSD shall initiate collection action on all claims unless the claim is collected through an offset or one of the following conditions applies:

(a) The total amount of the claim is less than the established claims threshold outlined in

Subsection F of 8.100.640.11 NMAC, and the claim cannot be recovered by reducing the eligibility determination group's SNAP benefit amount.

(b) HSD has documentation that establishes the eligibility determination group cannot be located.

(2) **Postponing action:** Collection action will be postponed on claims where a eligibility determination group is being referred for possible prosecution or for administrative disqualification, and the determination is made that collection action will prejudice the case.

(3) **Collection action:** Restitution bureau shall pursue collection as specified in 8.100.640 NMAC.

**D. SNAP Intentional program violation (IPV):**

(1) **Initiating collection:** If a eligibility determination group member is found to have committed an IPV or has signed either a waiver or a disqualification consent agreement, HSD shall initiate collection action against the individual's eligibility determination group. Personal contact with the eligibility determination group is made, if possible. HSD is required to initiate such collection unless:

(a) the eligibility determination group has repaid the overpayment already; or

(b) HSD has documentation establishing that the eligibility determination group cannot be located; or

(c) HSD determines that collection action will prejudice the case against a eligibility determination group member referred for prosecution.

(2) **Partially paid claim:** HSD shall initiate collection action for an unpaid or partially paid claim, even if collection action was previously initiated while the claim was being handled as an inadvertent eligibility determination group error claim.

(3) In cases where a eligibility determination group member has been found guilty of misrepresentation or fraud by a court or has signed a disqualification consent agreement in a case referred for prosecution, HSD shall request that the matter of restitution be brought before the court or be addressed in the agreement reached between the prosecutor and the accused individual.

(4) **Changes in eligibility determination group composition:**

(a) Collection action will be initiated by the restitution bureau against the eligibility determination group containing the member found to have committed an IPV.

(b) If a change in eligibility determination group composition occurs, collection action is pursued against any or all of the adult members of a eligibility determination group at the time an overpayment occurred.

(c) Collection action is pursued against any eligibility determination group which has a member who was an adult member of the eligibility determination group that received the overpayment.

**E. Fraud exception:** Notice of overpayment and administrative hearings rights shall not be given if the department has decided to pursue criminal prosecution for fraud. In such cases the participant's notice rights are limited to those afforded by state criminal statutes. No attempt shall be made by ISD staff to recover overpayments in such cases, nor shall any offers to refund the overpayment be accepted by the county office.

**F. Recovery action:**

(1) **Overpayments of less than \$1,000:** Overpayments of less than \$1,000 to currently eligible cases shall be immediately processed by the caseworker for recoupment.

(2) **Overpayments over \$1,000:** Overpayments of more than \$1,000 to currently eligible cases shall be referred to the office of inspector general (OIG) for a fraud action decision

(3) **Response to referral:**

(a) The caseworker shall be notified by the office of inspector general within 30 days whether fraud action has or will be taken on an open case. If no fraud action is contemplated, the case shall be immediately processed for either recoupment or cash recovery.

(b) If a response is not received from the OIG within 30 days of referral, the county will initiate recoupment from currently eligible cases.

**G. Fraud referral:**

(1) **Fraud elements:**

(a) By state statute, Section 30-16-6, NMSA 1978, fraud is the intentional misappropriation or taking of anything of value that belongs to another by means of fraudulent conduct, practices or representations.

(b) Fraud exists when:

(i) a person, by words or conduct misrepresents, facts to the department with the intention to deceive the department; and

(ii) because of the misrepresentation and the department's reliance upon it, the eligibility

benefit group has obtained benefits from the department to which they were not entitled.

**(2) Referral for investigation:** If a caseworker decides that fraud may exist, the case is referred to the office of inspector general for further investigation or possible prosecution.

### **8.100.640.13 METHODS FOR COLLECTING OVERPAYMENTS:**

**A. Recoupment:** HSD shall retain the value of benefits collected to repay a claim against a participating eligibility determination group, whether or not the claim occurred because of an inadvertent eligibility determination group error, an administrative (agency) error, or an IPV. The eligibility determination group's monthly SNAP or cash assistance benefit amount will be reduced to recover any amount of a claim which was not repaid through a lump sum, cash and/or SNAP benefit payment, unless a payment schedule has been negotiated with the eligibility determination group. Collection of a claim by HSD may also be obtained through recoupment of unemployment compensation benefits, federal pay, income tax intercepts, or any other method established by HSD.

**(1) Recoupment from monthly benefit allotments:** A claim may be recovered from a eligibility determination group currently participating in SNAP or cash assistance programs by reducing the eligibility determination group's monthly benefit allotment.

**(2) Recoupment amount:** The amount of benefits that will be recovered each month through benefit reduction will be determined by one the following methods.

**(a) SNAP Inadvertent eligibility determination group and administrative errors:** The amount of reduction will be ten percent of the eligibility determination group's monthly SNAP benefit amount, or \$10 per month, or the agreed amount, whichever is greater.

**(b) SNAP IPV claims:** The SNAP benefit amount to be recovered will be 20 percent of the eligibility determination group's monthly SNAP benefit amount, or \$20 per month, or the agreed amount, whichever is greater.

**(c) Cash assistance errors:** The cash assistance benefit amount to be recouped is equal to 15 percent of the eligibility determination group's payment standard.

**(d)** Recoupment is the last step in the calculation prior to determining the monthly benefit amount.

### **B. Cash payment methods:**

#### **(1) Lump sum cash:**

**(a)** If the eligibility determination group asks to make a lump sum cash payment or is financially able to repay the claim at one time, the restitution bureau shall collect a lump sum cash payment.

**(b)** An eligibility determination group will not be required to liquidate all of its resources to make a lump sum payment.

**(c)** If a eligibility determination group is financially unable to pay the entire amount of the claim at one time and prefers to make a lump sum cash payment as partial payment of the claim, HSD shall accept this method of payment.

**(d)** If an eligibility determination group chooses to make a lump sum payment of benefits from their EBT account as full or partial payment of the claim, HSD shall accept this method of repayment, to include:

**(i)** SNAP benefits to repay a SNAP claim or

**(ii)** Cash benefits to repay a cash assistance programs; or

**(iii)** Cash benefits to repay a SNAP claim.

#### **(2) Installment payment schedules:**

**(a)** HSD shall negotiate a payment schedule with the eligibility determination group for repayment of any amounts of the claim not repaid through a lump sum payment.

**(b)** Payments will be accepted in regular installments.

**(c)** A eligibility determination group may use its SNAP or cash assistance benefits as full or partial payment of any installment repayment to include:

**(i)** SNAP benefits to repay a SNAP claim or

**(ii)** Cash benefits to repay a cash assistance programs or Medical Assistance claims or

**(iii)** Cash benefits to repay a SNAP claim.

#### **(3) Repayment of SNAP overpayments:**

**(a)** If a eligibility determination group is currently receiving benefits, and a payment schedule is negotiated for repayment of a claim, the negotiated amount to be repaid each month in installment payments may not be less than the amount that could be recovered through benefit reduction.

**(b)** The amount to be repaid each month through installment payments will remain unchanged regardless of subsequent changes in the eligibility determination group's monthly SNAP benefit amount.

**(4) Repayment of cash assistance overpayments:**

**(a)** Repayments are used to recover cash assistance overpayments from cases no longer receiving cash assistance or where recovery of an overpayment from an active cash assistance case cannot be liquidated within 20 months by recoupment.

**(b)** The amount the department tries to recover monthly through repayment is based on the following schedule, or, if a court order for repayment exists, in accordance with the court order. If the level of payment sought would cause an extreme hardship on the participant, the restitution bureau may agree to accept a lesser amount. Arrangements for repayments are made by the restitution bureau in all cases, except those where the participant is willing to repay the entire overpayment in a single payment.

**(c) Repayment schedule:**

<u>Overpayment Amount</u>	<u>Monthly Repayment Payment</u>
<u>\$ 35 - \$100</u>	<u>\$ 5</u>
<u>\$101 - \$200</u>	<u>\$10</u>
<u>\$201 - \$300</u>	<u>\$15</u>
<u>\$301 - \$400</u>	<u>\$20</u>
<u>\$401 - \$500</u>	<u>\$25</u>
<u>\$501 - \$600</u>	<u>\$30</u>
<u>\$601 - \$700</u>	<u>\$35</u>
<u>\$701 - \$800</u>	<u>\$40</u>
<u>\$801 - \$900</u>	<u>\$45</u>
<u>\$901 or more</u>	<u>\$50</u>

**(6) Repayment of LIHEAP benefits:**

**(a)** The eligibility determination group will have 45 days from the date of notification of the claim amount to repay the claim in full or make arrangements to make regular installments to repay the claim.

**(b)** HSD will initiate collection action to recover the claim amount on day 45 if the eligibility determination group does not repay or make arrangements to repay the amount owed.

**(5) Renegotiating payments:** The restitution bureau, the eligibility determination group, or both, have the option to initiate renegotiation of the payment schedule if either or both believes that the eligibility determination group's economic circumstances have changed enough to warrant such action.

**(a) Failure to pay:** If an eligibility determination group fails to make a payment in accordance with the established repayment schedule, (either a lesser amount is paid, or no payment is made), the restitution bureau shall send the eligibility determination group a notice explaining that no payment or insufficient payment was received.

**(i)** The notice informs a eligibility determination group that renegotiation of the payment schedule may be discussed with the restitution bureau.

**(ii)** The notice also informs a eligibility determination group that unless the overdue payments are made or the restitution bureau is contacted to discuss renegotiation of the payment schedule, the SNAP benefit amount of a currently participating eligibility determination group against which a claim has been established will be reduced without an adverse action notice.

**(b)** If the eligibility determination group responds to the notice, one of the following actions will be taken by the restitution bureau:

**(i)** If the eligibility determination group makes the overdue payments and wishes to continue making payments based on the previous schedule, the eligibility determination group is permitted to do so.

**(ii)** If the eligibility determination group requests renegotiation, and if the restitution bureau concurs, a new payment schedule will be negotiated.

**(iii)** If the eligibility determination group requests renegotiation of the amount of its repayment schedule, but the restitution bureau believes that the eligibility determination group's economic circumstances have not changed enough to justify the requested settlement, renegotiation will continue until a settlement can be reached.

**(c)** The restitution bureau has the option to invoke SNAP benefit reduction against a currently participating eligibility determination group for repayment of a claim if a settlement cannot be reached.

**(d)** If a currently participating eligibility determination group against which a claim has been established fails to respond to the notice, a benefit reduction will be initiated. If benefit reduction is initiated, no

notice of adverse action will be required.

**C. Other payment methods:**

**(1) Federal tax intercept:** HSD may offset an eligibility determination group's federal income tax return following notification to the eligibility determination group, and apply the offset to the oldest established SNAP claim.

**(2) Unemployment compensation benefit reduction:** HSD may offset the unemployment compensation benefits of an adult eligibility determination group member, following notification to the eligibility determination group, and apply the offset to the oldest established active SNAP claim.

**(3) Federal pay:** HSD may offset an eligibility determination group member's federal pay, following notification to the eligibility determination group, and apply the offset to the oldest established active SNAP claim.

**(4) Any other means:** HSD may invoke collections by any other means available, and following notification to the eligibility determination group.

**(5) State tax intercept:** HSD may offset a household's state income tax return following notification to the household, and apply the offset to the oldest established active cash claim.

**8.100.640.14 TERMINATING OVERPAYMENT CLAIMS:** A terminated claim is a claim in which all collection action has ceased. HSD may terminate a claim for any of the reasons described in Subsections A through E of this section. SNAP, LIHEAP, TANF, AFDC, GA and refugee cash assistance and support services for participation in the SNAP and TANF work programs can be terminated.

**A. Invalid claims:** The overpayment is determined to be invalid based on a hearing decision, a court decision or a case worker determination that the claim was established in error.

**B. Death:** All adult members responsible for repayment of the claim are deceased.

**C. Cost effectiveness:** HSD has determined that the cost of further collection action is likely to exceed the amount that can be recovered because:

**(1)** the cumulative amount of all existing claims against the eligibility determination group equals \$25.00 or less; and

**(2)** a payment on the claim has not been received by HSD in at least 90 days.

**D. Failure to locate:** There is documentation establishing that the eligibility determination group cannot be located and the existing claim has been delinquent for at least six years.

**E. Inability to pay:** There is written documentation establishing the eligibility determination group has filed for bankruptcy and HSD is named as creditor.

**F.** A terminated claim may be reinstated when a new collection method or a specific event substantially increases the likelihood of further collections.

**G. Uncollectible claims:**

**(1)** A claim may be determined uncollectible after being held in suspense for three years.

**(2)** A suspended or terminated claim may be offset against any SNAP benefit amount to be restored.

**H. Overpaid claims:**

**(1)** If a household has overpaid a claim, HSD shall reimburse any overpaid amounts as soon as possible after the overpayment becomes known.

**(2)** The household may be reimbursed by whatever method HSD deems appropriate after considering the household's circumstances.

**I. Compromising the claim:**

**(1)** If the full or remaining amount a claim cannot be liquidated in three years, the Restitution Bureau may compromise the claim by reducing it to an amount that will allow the household to make restitution within three years.

**(2)** A compromised claim will be offset by any benefit which has not yet been resorted to the household.

**(3)** Claims caused by a SNAP IPV will not be compromised.

**8.100.640.15 WRITING OFF A CLAIM:** Writing off a claim means that the claim is no longer considered a receivable subject to any federal or state collection requirements such as the Treasury Offset Program at 31 CFR 285 or the Supplemental Nutrition Assistance Program at 7 CFR 273.18. A claim may be written off if the claim is at least six years old and at least one of the provisions of 8.100.640.14 NMAC apply. Only SNAP, LIHEAP and NMW cash assistance may be written off.

**8.100.640.16 DORMANT BENEFIT ACCOUNTS:** Stale benefit accounts are those SNAP and cash assistance accounts that have not been accessed for 90 days from the most recent date of withdrawal.

**A. Offline accounts:** If EBT accounts are not accessed for 90 days, the agency may store such benefits in an offline account.

(1) **Notification:** The department shall notify the eligibility determination group of this action before storing benefits in an offline account and how to reactivate the account.

(2) **Reinstatement:** An adult eligibility determination group member or authorized representative may contact the department or the EBT customer service help desk and request reinstatement of their EBT account.

(a) **SNAP:** SNAP benefits may be restored within 364 days of the initial date of benefit activity. Initial date of benefit activity is the first deposit made to the account upon initial approval of the eligibility determination group's benefits.

(b) **Cash assistance:** Cash assistance benefits may be restored within 364 days of the initial date of benefit activity. Initial date of benefit activity is the first deposit made to the account upon initial approval of the eligibility determination group's benefits.

**B. Expungements:** SNAP and cash assistance benefits that have not been accessed in excess of the threshold for each program will be expunged. All benefits will no longer be available to the eligibility determination group. The eligibility determination group loses all rights to expunged benefits.

(1) **Stale benefit threshold:**

(a) **SNAP:** SNAP benefits will be expunged after no activity within 364 days of the initial date of benefit activity

(b) **Cash assistance:** Cash assistance benefits which have had no activity within 180 days of the initial date of benefit activity will be expunged.

(2) **Notification:** The contractor shall notify the department no less than five days prior to expungement of the SNAP benefits. The department shall identify any SNAP claims against the eligibility determination group and shall apply upon expungement.

(a) **SNAP:** The department shall notify the eligibility determination group no less than 30 days prior to the expungement of the SNAP benefits. Request from the participant to reinstate any benefit must be received prior to date of expungement.

(b) **Cash assistance:** The department shall attempt to notify the eligibility determination group no less than 45 days prior to the expungement of the cash assistance benefits.

(3) **Payments of claims against the eligibility determination group.** The contractor shall notify the department no less than five days prior to expungement of the SNAP or cash assistance benefits and any claims against the eligibility determination group shall be removed from the account and applied to the claims upon expungement.

**This is a proposed amendment to 8.100.970 NMAC, Sections 7 through 15**

**8.100.970.7 DEFINITIONS:** [Reserved]

**A. Authorized representative:** means an individual for whom a claimant has provided a formal consent to ISD that authorizes the individual to access the claimant's case records to prepare for, and represent the claimant during the fair hearing process. The formal consent may be in the form of a specified ISD document or a signed and dated letter from the claimant that identifies the representative and authorizes the representation. An authorized representative may be an attorney or a lay individual.

**B. Agency review conference:** means a conference held prior to a fair hearing among the agency, the claimant and the claimant's representative to informally review the agency action, proposed action or inaction that is being appealed by the claimant for the purpose of determining whether the claimant's issues can be resolved, in whole or in part, by mutual agreement. The parties may also use the agency review conference to clarify or further define the outstanding issues prior to the fair hearing.

**C. Claimant:** means, for purposes of requesting a fair hearing, an applicant for, or recipient of, public assistance benefits or services, whether as an individual or household.

**8.100.970.8 FAIR HEARINGS:**

**A.** HSD has established a hearing process that provides for impartial review of HSD actions that adversely affect public assistance program applicants and recipients. For purposes of these regulations, an applicant or recipient requesting a hearing, whether as an individual or household, is referred to as a claimant. Any claimant that is aggrieved by an action of the agency that affects the claimant's participation in a public assistance program may appeal the action by requesting a fair hearing.

**B.** For purposes of the fair hearing process, a claimant may seek the assistance of an authorized representative. For each hearing requested, a claimant shall be required to submit a "request for access to case record" (Form ISD 121), which has been signed and dated by the claimant, and authorizes the individual named on the form ISD 121 to have access to the claimant's case file for purposes of preparing for the hearing and to represent the claimant during the hearing process. formal documentation authorizing the representative access to the case file for purposes of preparing for the hearing and representing the claimant throughout the hearing process.

**C.** The right of a claimant to a hearing includes the right:

- (1) To be advised of the nature and availability of a hearing and an agency review conference;
- (2) To be represented by counsel or other authorized [person] representative of the claimant's choice;
- (3) To receive [needed help] reasonable assistance in completing procedures necessary to start the hearing process;
- (4) To receive a copy of any document, not specifically prohibited by rule, contained in the claimant's record in order to prepare for the hearing;
- (5) To have a hearing which safeguards the claimant's opportunity to present a case;
- (6) To continue to receive the current level of benefits, provided the request for hearing is received by HSD in [a timely manner. For the purpose of continuing benefits, "timely manner" means an oral or written request for a hearing has been received by the Department by the end of the 13th day after the date on the notice] accordance with the time limits set forth in Paragraphs G and H below, as applicable. A claimant that elects to continue to receive the same level of benefit pending the hearing decision shall be informed that a hearing decision in favor of the department may result in an overpayment of benefits and a requirement that the household repay the benefits;
- (7) To have prompt notice and implementation of the hearing decision; and
- (8) To be advised that judicial review may be invoked, to the extent such review is available under state law.

**D.** HSD [does not] will neither provide representation for, [or] nor pay for any costs incurred by, [the] a claimant or any authorized representative in preparation for, or attendance at, agency review conferences, [program participation] fair hearings or [in] judicial appeals. Upon the filing of a notice of appearance in a matter with the fair hearings bureau, the department shall forward all hearing-related documentation to the claimant's legal counsel.

**E. Notice of Rights:**

(1) At the time of application for assistance, HSD shall give notice to each [an] applicant, [shall be informed] in writing or via electronic notice, of the applicant's right to request a hearing [and the method by which a hearing may be requested (either orally or in writing)] if the applicant disagrees with an action taken by the department.

(2) ~~[An]~~ The notice shall inform the applicant [shall be informed] of the procedure by which a hearing may be requested and that the claimant's presentation may be made by the claimant[~~, a household member~~] or authorized representative[~~, such as legal counsel, a relative, friend or other spokesperson~~].

(3) The department shall provide a claimant with [A] written or electronic [reminder] notice of the right to request a hearing [is provided] any time [a] the [client or household] claimant expresses disagreement with an HSD adverse action.

(4) Each county office shall post a notice [Notice] of the right to a fair hearing and an agency review conference [shall be posted in each county office], and a copy shall be given upon request to any person who has requested a hearing.

(5) [A] Each notice provided to a claimant pursuant to this section shall [be informed] include a statement that free legal assistance may be available to assist [the household] with the hearing process.

(6) A claimant may use an individual of the claimant's choice to serve as an interpreter at a fair hearing or agency review conference or, upon prior request of not less than two business days, an interpreter shall be provided by HSD at no cost to claimant.

F. Special provisions apply in situations involving mass changes. These provisions are contained at 8.100.180.15 NMAC and [8.139.120.10.E] 8.139.120 NMAC.

G. **Continuing benefit for [NMW] cash assistance:** [If a hearing request is made in a timely manner by a NMW cash assistance benefit group, the amount of cash assistance and services issued prior to the adverse action will be continued until the hearing is resolved.] If a claimant who is a cash assistance recipient requests a fair hearing before the close of business of the 13<sup>th</sup> day immediately following the date of the notice of adverse action, the amount of cash assistance and services issued immediately prior to the notice of adverse action will continue until the hearing is resolved. The household is required to comply with the reporting and renewal provisions at 8.102.120 NMAC and 8.106.120.NMAC. Cash assistance recipients are to continue compliance with the NMW compliance requirements at 8.402.460 NMAC.

H. **Continuing food stamp SNAP benefits:** If a claimant who is a SNAP recipient requests a hearing [request is made in a timely manner by a Food Stamp recipient,] before the close of business of the 13<sup>th</sup> day immediately following the date of the notice of adverse action, the amount of [food stamp] SNAP benefits issued immediately prior to the adverse action will [be] continue[d] until the hearing is resolved, provided that the household complies with re-certification provisions at 8.139.120.8 NMAC, if applicable to the household during the hearing process] a final decision is issued. The claimant is required to comply with the reporting and renewal provisions at 8.139.120 NMAC.

[07/01/97, 04/01/98; 8.100.970.8 NMAC - Rn 8 NMAC 3.ISD.970, 04/13/2001, A, 01/01/2003]

## **8.100.970.9 THE HEARING PROCESS**

### **A. Initiation of the Hearing Process:**

(1) A request for hearing can be made by the claimant or an authorized representative orally or in writing.

~~[(2)—HSD staff shall consider an oral or written expression by an applicant, recipient or authorized representative that he/she wishes to appeal a decision as a request for hearing.]~~

~~[(3)]~~ (2) If a [recipient or applicant] claimant requests a hearing orally [makes an oral request for a hearing], the HSD staff shall [complete the procedures] take such actions as are necessary to [start] initiate the hearing process.

~~[(4)]~~ (3) The fair hearings bureau shall promptly send written acknowledgement to the claimant or the authorized representative upon its [Receipt] receipt of a written or oral hearing request[~~, either orally or in writing,~~ shall be acknowledged in writing to the claimant by the Hearings Bureau].

### **B. Time Limits:**

(1) [An applicant or recipient has 90 days from the date of notice of action to request a hearing either orally or in writing. To be considered timely, the request must be received by the HSD hearing bureau or the local county office no later than the close of business on the 90th day.] A claimant or authorized representative shall request a fair hearing no later than close of business on the 90th day following the date of the notice of adverse action. If the 90<sup>th</sup> day falls on a weekend, holiday or other day HSD offices are closed, a request received the next business day will be considered timely.

(2) [Hearings must be conducted and a written decision issued by the appropriate HSD division director or designee to the claimant within 60 days from the date that the department receives the hearing request.] HSD shall make reasonable best efforts to issue its final fair hearing decision to the claimant or the authorized representative within the specified program time limit set forth below, except in instances in which the time limit

may be extended pursuant to Paragraph B of 8.100.970.10 NMAC, Paragraph G of 8.100.979.12 NMAC, or the time limit has been waived by all parties to the hearing.

(a) SNAP program: the final hearing decision shall be issued to the claimant or the authorized representative within 60 days from the date that HSD receives the hearing request.

(b) Cash assistance programs: the final hearing decision shall be submitted to the claimant or the authorized representative within 60 days from the date that HSD receives the hearing request.

(c) LIHEAP: the final hearing decision shall be submitted to the claimant or the authorized representative within 60 days from the date that HSD receives the hearing request.

(d) Medical assistance programs: the final fair hearing decision shall be submitted to the claimant or the authorized representative within 90 days from the date that HSD receives the hearing request.

**C. ~~Requesting a hearing~~ Jurisdiction of the Fair Hearing Bureau:** An applicant for, or recipient of, assistance ~~can~~ may request a hearing, and the HSD fair hearings bureau shall have jurisdiction over the matter, if:

(1) An application for benefits or services is denied or not processed timely;

(2) Assistance or services are reduced, terminated or suspended, or the form of payment is changed;

(3) A good cause request for not participating in the work program or child support enforcement program is denied in whole or in part;

(4) The department refuses or fails to approve a work program participation plan, or the supportive services related to it, that have been developed by a participant [or supportive services related to it]; or

5) ~~[He or she]~~ the claimant is aggrieved by any other action affecting benefit level or participation in an assistance program administered by HSD~~[-];~~

~~[(6) a hearing is provided to all applicants or recipients who timely request one in accordance with these regulations.]~~ Fair hearing requests submitted to the local county office shall be immediately forwarded to the fair hearings bureau for scheduling. The HSD fair hearings bureau shall inform the applicable local county office within one (1) business day of receipt of a hearing request submitted directly to the bureau to ensure timely scheduling of an agency review conference.

**D. Dismissal or Denial of hearing request:** ~~[HSD may]~~ The fair hearings bureau shall deny or dismiss, as applicable, a request for a hearing when:

(1) The request is not received by the close of business on the 90th day from the date ~~[of]~~ on the notice of action. In instances in which the hearing officer schedules a hearing prior to becoming aware of the lateness of the hearing request, the hearing officer shall, upon learning of the late request, promptly dismiss the matter and provide notice thereof to all parties;

(2) The request is withdrawn or canceled, in writing or, for SNAP, cash assistance or LIHEAP cases, either orally or in writing, by the claimant or claimant's authorized representative. If withdrawn orally, the claimant or the authorized representative shall be provided written verification of the withdrawal and given 10 calendar days from the date of the notification to request reinstatement of the hearing;

(3) The sole issue presented concerns a federal or state law requiring an adjustment of assistance for all or certain classes of clients, including but not necessarily limited to a reduction, suspension or cancellation of benefits, unless the reason for the hearing request involves alleged error in the computation of benefits;

(4) The claimant fails to appear, without good cause, at a scheduled hearing; ~~[of]~~

(5) The same issue has already been appealed and a hearing decision made ~~made[-];~~

(6) there is no adverse action or delay of benefits or services for which a hearing may be requested;  
or

(7) the issue is one over which HSD hearings bureau does not have jurisdiction as provided by federal or state regulation or statute.

**E. Good cause for failing to appear:**

(1) [A request for a hearing may] Unless the claimant or authorized representative presents good cause, if the claimant or the claimant's authorized representative fails to appear for a hearing at the scheduled time and place, the claimant's appeal will be considered abandoned and [therefore dismissed] the hearing officer shall dismiss [if the claimant or the claimant's authorized representative fails to appear at the time and place of the hearing unless the claimant presents good cause] the matter. A claimant or authorized representative may present good cause for the failure to appear at any time [during the hearing process and until] prior to close of business on the [ten days after] tenth calendar day immediately following the scheduled hearing date. If the tenth calendar day falls on a weekend, holiday or other day on which HSD offices are closed, a request received the next business day will be considered timely. If good cause is timely submitted, the hearing officer shall reschedule the hearing or, where appropriate, reinstate a matter previously dismissed.

(2) If the agency fails to appear due to circumstances beyond its control, the agency may present good cause within ten calendar days after the scheduled hearing. If good cause is timely submitted, the hearing officer shall reschedule the hearing.

(3) Good cause includes, but is not limited to, a death in the family, disabling personal illness, or other significant emergencies. At the discretion of the hearing officer, other exceptional circumstances may be considered good cause.

[07/01/97, 04/01/98; 8.100.970.9 NMAC - Rn, 8 NMAC 3.ISD.971, 04/13/2001, A, 01/01/2003]

### **8.100.970.10 PRE-HEARING PROCEDURE**

**A. Notice of Hearing:** ~~[Not less than ten days before a hearing, written notice shall be given to all parties involved, of the time, date and place of the hearing. With the hearing notice, claimants are also given an explanation of the hearing process and of the procedures to be followed so that they have an understanding of what is needed to give an effective presentation of their case. The county office provides information concerning resources in the community that might provide legal representation or other help concerning the hearing. Claimants are advised that HSD does not pay for their representation or legal counsel.] Unless the claimant or authorized representative requests an expedited scheduling of a hearing, the fair hearings bureau shall provide written notice of the scheduling of a hearing to all parties not less than ten calendar days prior to date of the hearing. The notice of hearing shall include:~~

(1) the date, time and place of the hearing;

(2) the name, address and phone number of the fair hearings bureau's contact person;

(3) information regarding the hearing process and the procedures to be followed by the respective parties;

(4) the right of the claimant and the authorized representative to access the case record prior to the hearing;

(5) notice that the appeal will be dismissed if the claimant or the authorized representative fails to appear without good cause;

(6) information concerning sources in the community that may provide legal representation or other help concerning the hearing process; and

(7) notice that HSD will not pay for any costs of the claimant or authorized representative, including legal counsel, that are incurred in the preparation for, or attendance at, an agency review conference, fair hearing or judicial appeal.

**B. Postponement:** ~~[A claimant or a claimant's authorized representative may request and be approved for one postponement of the scheduled hearing, as long as it does not interfere with the decision time frames, except that in food stamp cases, the time limit for action on the decision is extended for as many days as the hearing is postponed. In financial or medical assistance cases, the hearing may be postponed, but must be re-scheduled to assure that a final decision is made no more than 45 days after the hearing was initially scheduled. Requests for more than one postponement are considered, at the discretion of the hearing officer, on a case-by-case basis.] A claimant or authorized representative is entitled to, and the hearing officer shall grant, one postponement of a scheduled fair hearing for which no reason need be provided. The agency may request and be approved for one postponement at the discretion of the hearing officer due to the unavailability of any agency witness to appear at the scheduled hearing. Requests for more than one postponement are considered at the discretion of the hearing officer, on a case-by-case basis. A request for postponement must be submitted not less than one business day prior to the scheduled hearing and is subject to the following limitations:~~

(1) SNAP cases: a postponement may not exceed 30 days and the time limit for action on the decision is extended for as many days as the hearing is postponed.

(2) Cash and medical assistance cases: the hearing may be postponed, but must be rescheduled to assure a final decision is made no more than 45 days after the initial scheduled hearing.

(3) The fair hearings bureau shall issue notice of the rescheduling of a postponed hearing not less than ten calendar days before the rescheduled date, unless oral agreements are obtained from all parties to reschedule the hearing with less notice in an effort to meet the required timeframes. Documentation of the oral agreement shall be maintained in the hearing record.

(4) Except in SNAP cases, if a postponement results in the inability to meet the required timeframe, the postponement shall be granted only after the agency, the claimant and their representatives have been informed and agree to waive the time limit for the decision.

**C. Expedited Hearing:** Hearing requests from ~~[food stamp]~~ SNAP households, such as migrant farm workers~~[-]~~ ~~[that]~~ who plan to move out of the State before the hearing decision would normally be made ~~[are]~~ should be scheduled on an expedited basis.

**D. Group Hearings:** A hearing officer may respond to a series of individual requests for hearings by conducting a single group hearing. Group hearing procedures apply only to cases ~~[where]~~ in which individual issues of fact are not disputed and ~~where~~ related issues of state and/or federal law, regulation or policy are the sole issues being raised. In all group hearings, the regulations governing individual hearings are followed. Each individual claimant is permitted to present ~~[his/her]~~ the claimant's own case or to be represented by ~~[his/her]~~ ~~[an]~~ authorized ~~[attorney or other authorized person]~~ representative. If a group hearing is ~~[arranged]~~ scheduled, any individual claimant ~~[has the right to]~~ may withdraw from the group hearing and request an individual hearing.

**E. Agency review conference:** The agency and the claimant are encouraged to meet for an agency review conference before the scheduled hearing to discuss the agency action(s) that the claimant wishes to appeal. The conference is optional and does not delay or replace the hearing process. An agency review conference will be held within 10 calendar days from the date of the fair hearing request. If the claimant submits a hearing request at the office or on the telephone, the agency review conference may, at the claimant's option, be conducted at that time. An appeal may not be dismissed by the agency by the failure of the claimant or authorized representative to appear at a scheduled agency review conference.

(1) ~~[At the claimant's request, an agency conference may be scheduled before the hearing to discuss the issues involved in the hearing.]~~ The agency shall send [the] written or electronic notice of a scheduled agency review conference to the claimant.

(2) ~~Conference participants may include the claimant [and/or] or the claimant's authorized representative, the case worker, [and] either the supervisor or the county [manager] director, and other agency interested parties. [The purpose of the conference is to informally review the agency action and to determine whether the issues can be resolved by mutual agreement. The issues to be decided at the hearing may also be clarified or further defined. Regardless of the outcome of the agency conference, a hearing is still held, unless the claimant makes a written withdrawal of the request for the hearing.]~~

(3) The purpose of the conference is to informally review the agency action and to determine whether the issues can be resolved by mutual agreement. The issues to be decided at the hearing may also be clarified or further defined. Regardless of the outcome of the agency review conference, a hearing shall be held unless the claimant withdraws the fair hearing request.

~~[(3)](4)~~ ~~[In]~~ For cases [where] in which [an applicant] the claimant [contests] appeals a denial of expedited [food stamp] SNAP service, the agency review conference shall be scheduled within two working business days of the request for a conference, unless the applicant requests that it be scheduled at a later date.

~~[(4)](5)~~ ~~[Applicants or recipients]~~ Claimants may request agency review conferences in order to discuss actions which they claim have adverse effects on them or their [household] households, regardless of whether or not they request a hearing

**F. Summary of Evidence:** ~~[A summary of evidence is a document prepared by the HSD staff which provides [the background information needed for the hearing. The summary of evidence is to be prepared by the case worker, supervisor or other appropriate HSD staff, within seven days of receipt of the oral or written notice of a hearing request, and forwarded to the HSD hearings bureau] A summary of evidence shall be prepared by the HSD staff and submitted to the fair hearings bureau and the claimant or authorized representative not less than 10 calendar days prior to the date of the fair hearing. Failure to provide the summary of evidence within the prescribed timeframe may result in its exclusion or a continuance of the hearing at the discretion of the hearing officer pursuant to subsection D of 8.100.970.12 NMAC. Unless the hearing request is withdrawn by the claimant or authorized representative, a summary of evidence shall be prepared and submitted in accordance with this paragraph, regardless of the results of an agency review conference. The summary of evidence shall [contains] contain at least the following information:~~

(1) Identifying information, including but not limited to claimant's name, social security number, ~~the~~ clients individual identification number or case identification number, address, and the type of assistance involved;

(2) The action, proposed action, or inaction being appealed [~~(for example, rejection of application, proposed reduction in benefits, notice of overpayment, or discontinuance of benefits);~~]

(3) ~~[The question or issue that must be decided at the hearing]~~ The issue(s) on appeal;

(4) ~~[Information on]~~ Documentation in support of [which] the HSD action, proposed action or inaction, including any~~[is based and the]~~ facts and agency findings related to the hearing issues~~[-, along with supporting documentation];~~

~~(5) [All the applicable manual section(s) used; and]~~ Applicable manual sections, regulations and additional legal support;

~~(6) [Other facts, information, etc. which affected the decision.]~~ Additional facts or information [on which HSD based its actions] that are relevant to resolution of the claimant's appeal; and

~~(7) Results of the agency review conference, if completed at the time of submission of the summary of evidence.~~

**G. Availability of Information:** HSD staff shall:

(1) Provide, ~~on~~ upon request ~~of the claimant or authorized representative,~~ in a timely manner and without charge, copies of the case file documents necessary for a claimant or authorized representative to decide whether to request a hearing, or to prepare for a hearing;

(2) Provide an interpreter to explain the hearing procedure and interpret at the hearing if the claimant speaks a language other than English ~~[and the project area in which claimant lives is required to provide bilingual staff or interpreters who speak the appropriate language]; and~~

(3) Allow the claimant or claimant's representative to examine the contents of the case file and all documents to be used at the hearing at a reasonable time before the date of the hearing, as well as during the hearing[-]; ~~[except] [provided, however,] that certain confidential information, such as the nature and status of pending criminal prosecutions, is protected from inspection and [release] disclosure[-. Confidential information protected from release, and other documents or records which the claimant would not otherwise have an opportunity to challenge or contest, may not be introduced at the hearing or affect the hearing officer's decision]; and,~~

~~[(4) Provide the claimant or the claimant's authorized representative a copy of the summary of evidence.]~~

**8.100.970.11 HEARING STANDARDS**

**A. Rights at Hearing:** The claimant ~~[is]~~ or authorized representative shall be given an opportunity to:

(1) examine the case file prior to[-] and during ~~[and after]~~ the hearing, in accordance with Paragraph 3 of Subsection G of 8.100.970.10 NMAC;

(2) ~~[Present his/her case or have it presented by a an authorized representative; bring]~~ introduce witnesses to present information that is relevant to the case and submit evidence to establish ~~[all]~~ pertinent facts and circumstances in the case;

(3) Advance rational arguments without undue interference; and

(4) Question or contradict any testimony or evidence, including an opportunity to confront and cross-examine HSD's witnesses.

**B. Hearing Officer:** Hearings are conducted by an impartial official who:

(1) Does not have any personal stake or involvement in the case;

(2) Was not directly involved in the determination or the action which is being contested; ~~[and]~~

(3) Is/was not a supervisor of the eligibility worker who took the action[-] being appealed; and

~~(4) [If the hearing officer had any involvement with the action in question, including giving advice or consultation on the points in issue, or is related in any relevant degree to the claimant or local office worker, he/she shall disqualify him/herself as the hearing officer for that case.]~~ May not discuss the merits of any pending administrative hearing unless both parties or their representatives are present.

**C. Disqualification and Withdrawal:** If the appointed hearing officer had any involvement with the agency action being appealed, including giving advice or consulting on the issues presented, or is related in any relevant degree to the claimant or local office worker, the appointed hearing officer shall be disqualified as the hearing officer for that case. In addition, an appointed hearing officer shall, prior to the date of the hearing, withdraw from participation in any proceedings in which the hearing officer determines that he cannot afford a fair and impartial hearing.

~~[C.]~~**D. Authority and Duties of the Hearing Officer:** ~~[The hearing officer shall]~~ The authority and duties of the hearing officer are to:

(1) Explain how the hearing will be conducted to participants at the start of the hearing, before administering oaths;

(2) Administer oaths and affirmations;

(3) Make sure that all relevant issues are considered during the hearing;

(4) Request, receive and make part of the record all evidence necessary to decide the issues being raised;

(5) Regulate the content, conduct and the course of the hearing to ensure an orderly hearing[?]. [if] If a claimant, the claimant's authorized representative, any witness or other participant in the hearing refuses to cooperate or comply with rulings on the procedures and issues as determined [at the discretion of] by the hearing officer, or acts in such a manner that an orderly hearing is not possible, the hearing officer may take appropriate measures to ensure that order is fully restored so that the claimant's opportunity to [amply and] fairly present his or her case is safeguarded. Such measures shall include, but not be limited to, excluding or otherwise limiting the presentation of irrelevant evidence, or terminating the hearing and making the recommendation based on the record that has been made up to the point [in time that order was lost] of the termination;

(6) Limit cross-examination that is repetitive or harassing;

~~(6)~~(7) Request, if appropriate, an independent medical assessment or professional evaluation from a source mutually satisfactory to the claimant and HSD; and

~~(7)~~(8) Provide a hearing report and recommendation for review and final decision.

**D.]E. Appointment of Hearing Officer:** A hearing officer is appointed by the Hearings Bureau Chief upon receipt of the request for hearing.

**E.]F. [Evidence] Process:** Formal rules of evidence and civil procedure do not apply to the fair hearing process. ~~[A free, orderly exchange of information is necessary for the decision making process.]~~ All relevant evidence is admissible, subject to the hearing officer's authority to limit evidence that is repetitive, [or] unduly cumulative [evidence and] [conduct an orderly hearing,] or otherwise unreliable or of little probative value. ~~[Evidence that is not available to the claimant, due to availability or confidentiality, may not be presented to the hearing officer or used in making the final hearing decision.]~~

(1) **Confidentiality:** The confidentiality of client records is to be maintained. ~~[Information which is not available to the claimant may not be presented to the hearing officer or used in making the hearing decision.]~~

(2) **Administrative Notice:** The hearing officer may take administrative notice of any matter for which ~~[courts]~~ judges of this state may take judicial notice.

(3) **Privilege:** The ~~[rule]~~ rules of privilege ~~[applies]~~ apply to the extent that ~~[it is]~~ they are requested and recognized in civil actions in ~~[the district courts of ]~~ New Mexico.

(4) **Medical Issues:** In a case involving medical care or a medical condition, the claimant waives confidentiality and both parties shall have the right to examine any medical documents [which may influence the decision] that are admitted into evidence. ~~[Any medical reports are made available to HSD and the claimant. If HSD has the reports, copies are provided to the claimant or his representative, without charge if and as requested.]~~

(5) When the evidence presented at the hearing does not adequately address the relevant medical issues, additional medical information may be obtained at the discretion of the hearing officer. The additional medical information may include, but is not limited to, a medical evaluation or analysis obtained at HSD's expense, from a source satisfactory to the claimant.

**G. Motions:** Motions shall be decided by the hearing officer without a hearing, unless permitted by the hearing officer upon written request of the agency, the claimant or an authorized representative.

**F.]H. Burden of Proof:** HSD has the burden of proving the basis ~~to support~~ for its action, proposed action or inaction by a preponderance of the evidence. ~~[The action or proposed action being appealed will be upheld if the evidence supporting the action is more convincing than the evidence offered in opposition to the action.]~~

**G.]I. Record of the Hearing:** ~~[A hearing is electronically recorded. The recording is kept on file in the hearings bureau for 60 days after the date of the hearing decision. In addition to the recorded proceedings, the record of the hearing includes any pleadings, documents or other exhibits admitted into the record. If a hearing decision is appealed, a written transcript of the hearing is prepared by HSD and a copy of the transcript shall be supplied to the claimant, or his/her representative, free of charge.]~~ A record of each fair hearing shall be made by the hearing officer, in accordance with the following:

(1) The hearing proceedings shall be recorded electronically. The recording shall be kept on file at the HSD fair hearings bureau.

(2) The hearing officer's recording shall be the official recording of the hearing.

(3) The record of the hearing includes: the recorded hearing; any pleadings; and any admitted evidence. The documents will be maintained in an electronic case record.

(4) If a final hearing decision is appealed, a written transcript of the hearing shall be prepared by HSD and a copy of the transcript shall be provided to the claimant or authorized representative, free of charge.

[07/01/97; 8.100.970.11 NMAC - Rn, 8 NMAC 3.ISD.973, 04/13/2001]

**8.100.970.12 CONDUCTING THE HEARING:** A hearing is conducted in an orderly manner and in an informal atmosphere. The hearing is not open to the public. The hearing is conducted by telephone, unless the claimant makes a special request for the hearing to be held in person~~[,]~~ and the request is justified by special circumstances, as determined by the hearing officer on a case-by-case basis. ~~The final decision as to whether the hearing shall be in person is made by the HSD hearings bureau chief.~~

**A. Opening the Hearing:** The hearing is opened by the hearing officer. ~~[Before]~~ Prior to commencing a telephonic hearing ~~[by telephone]~~, the claimant or authorized representative is ~~[given]~~ read a statement explaining the telephone procedures. Individuals present are asked to identify themselves for the record. The hearing officer explains his/her role in the proceedings, and that the final decision on the ~~[hearing request]~~ appeal will be made by the appropriate HSD division director after review of the hearing officer's report and recommendation. The order of testimony is ~~[described]~~ explained and the oath is administered to all witnesses who will testify at the hearing. ~~The hearing officer then identifies the issue on appeal.~~

**B. Order of Testimony:** ~~[The order of testimony at the hearing proceeds as follows:]~~ The following procedures shall be followed regarding the order of testimony:

(1) ~~[HSD representative explains the department's action with reference to the applicable HSD regulations and presents evidence in support of the action;]~~ **Presentation of HSD's case:** The HSD representative explains the department's actions and presents evidence in support of the action:

~~(a) the claimant or authorized representative may cross-examine the HSD representative;~~  
~~(b) if HSD presents other witnesses, the order of examination of each such witness is as follows:~~

~~(i) direct testimony by the witnesses;~~  
~~(ii) cross-examination by the claimant or the authorized representative; and~~  
~~(iii) examination or further questions by the hearing officer or, if requested, follow up questions from the HSD representative.~~

(2) ~~[Claimant is given the opportunity to cross-examine the HSD representative(s);]~~ **Presentation of the claimant's case:** If the claimant calls witnesses, the order of examination of each witness is the following:

~~(a) direct testimony by the claimant or claimant's witnesses;~~  
~~(b) cross-examination by the HSD representative; and~~  
~~(c) examination or further questioning by the hearing officer or, if requested, follow up questions by the claimant or the claimant's representative.~~

(3) ~~[If HSD presents other witnesses, the order of examination of each witness is:~~

~~(a) Direct testimony of the witness;~~  
~~(b) Cross examination by claimant or the claimant's representative;~~  
~~(c) Examination or further questions by the hearing officer or, if requested, the HSD representative.]~~ The claimant may offer relevant evidence on the points at issue without undue interference, may request proof or verification of evidence or statements submitted by the agency or made by its witnesses, and may present evidence in rebuttal.

(4) ~~[Presentation of claimant's case. If claimant calls witnesses, the order of examination of each person is:~~

~~(a) Direct testimony of claimant and/or witness;~~  
~~(b) Cross examination by HSD representative;~~  
~~(c) Examination or further questions by the hearing officer or, if requested, by the claimant or the claimant's authorized representative.~~  
~~(d) The claimant may give evidence on the points at issue without interference, may request proof or verification of evidence or statements made by others, and may present evidence in rebuttal.]~~ The hearing officer may direct further questions to the HSD representative, the claimant or any witness to clarify inconsistencies or to obtain an adequate evidentiary record.

(5) ~~[The hearing officer may direct further questions to the HSD representative, the claimant or any witnesses to clarify inconsistencies or obtain an adequate evidentiary record;]~~ The hearing officer may request both parties to summarize and present closing arguments

~~[(6) The hearing officer may ask both parties to summarize and present closing arguments.]~~

**C. Written Closing Argument:** If the claimant or HSD is represented by counsel or an authorized representative, the hearing officer may request that the closing argument be submitted in writing to the hearing officer.

**D. Continuance:** The hearing officer may continue the hearing upon the request of either party, or on ~~[his/her] the hearing officer's~~ own motion, for admission of additional testimony or ~~[other]~~ evidence. A party seeking a continuance in order to obtain additional evidence must make a showing that the evidence was not available at the time of the hearing despite a reasonable attempt having been made to obtain it. The granting of a continuance is at the discretion of the hearing officer; provided that the granting of a continuance ~~[and can only be allowed]~~ is contingent upon ~~[when]~~ the timeliness of a decision ~~[is]~~ not being jeopardized by the ~~[continuance]~~ delay or upon agreement of the parties ~~[have agreed]~~ to an extension or waiver of the decision time frames. The reasons for the continuance shall be stated for the record. If not set at the time of the continuance, the hearing officer shall send all parties ~~[Written]~~ written or electronic notice of the date, time and place of the continued hearing ~~[is sent to the parties if these are not set at the time of the continuance].~~

**E. Additional Documentary Evidence:** If the hearing officer ~~[needs further documentary]~~ requests additional evidence, ~~[he/she] the hearing officer~~ may close the hearing but keep the record open ~~[and direct the parties to submit such]~~ subject to production of the additional evidence by the parties. ~~[Each party shall receive a copy of the documentary evidence being submitted and is allowed an opportunity to respond to the submission, in writing, within ten days of its receipt.]~~

(1) The hearing officer shall set a date and time for production of the evidence; the party producing the additional evidence shall submit copies to the hearing officer and the other party.

(2) Within ten calendar days of its receipt of the additional evidence, the non-producing party may submit a written response on the record to the hearing officer and the other party.

(3) The hearing officer shall close the record at the close of business on the tenth calendar day following its receipt of the additional evidence.

(4) The hearing officer may only request additional evidence pursuant to this paragraph if to do so will not result in a violation of a time limit set forth in 8.100.970.0 NMAC or alternatively, the claimant or authorized representative and the agency have agreed to an extension or waiver of the applicable time limit.

**F. Re-opening a Hearing:** The hearing officer, at ~~[his/her] the hearing officer's~~ discretion, may re-open a hearing when the evidentiary record fails to address an issue that is relevant to resolution of a hearing request. The hearing can only be re-opened if the parties have agreed to an extension of the time frames. Written notice of the date, time and place of the re-opened hearing is sent to the parties, not less than ten days before the date of the re-opened hearing.

**G. Remand:** If an HSD division director determines that the fair hearing record is insufficient to enable the director to make a reasoned final decision on the issue(s) submitted by the claimant on appeal, the director may remand the matter to the hearing officer for further evidence or testimony. The remand by the director shall contain a clear explanation as to the deficiencies in the record.

(1) Upon remand, the hearing officer shall set a hearing date as expeditiously as possible; provided, however, that the fair hearings bureau shall provide written or electronic notice to all parties not less than ten days prior to the date of the final decision.

(2) Notwithstanding the time limits set forth in 8.100.970.9 NMAC, the final hearing decision shall be issued to the claimant or the authorized representative by HSD within 45 days of the date of the remand. [07/01/97, 04/01/98; 8.100.970.12 NMAC - Rn, 8 NMAC 3.ISD.974, 04/13/2001]

**8.100.970.13 HEARING DECISION:** With the exception of the denials of hearings and dismissals of matters by the fair hearings bureau as authorized by these regulations, the ~~[The]~~ final decision concerning the hearing ~~[is]~~ shall be made by the appropriate HSD division director after review of the record and the hearing officer's report and recommendation.

~~[A. — Decision Based on the Record: The hearing decision is based solely on the evidence introduced during the hearing. This includes evidence, the record of the testimony, all reports, documents, forms, etc., presented at the hearing, provided that the claimant had an opportunity to examine them as part of the hearing process.]~~

**[B.]A. Hearing officer recommendation:** The hearing officer reviews the record of the hearing and all appropriate regulations, and evaluates the evidence ~~[submitted]~~ admitted at the hearing. The hearing officer submits the complete record of the hearing, along with ~~[his/her] the hearing officer's~~ recommendation, in a standard format to the appropriate division director(s). The recommendation ~~[is]~~ shall be made by the hearing officer within 15 days of the hearing.

**[C.]B. Content of recommendation:** The hearing officer specifies the reasons for ~~[his/her]~~ all factual conclusions~~[Conclusions]~~, identifies the supporting evidence, references the relevant manual sections and

regulations, and responds to the arguments of the parties in a written ~~report and~~ recommendation. The hearing officer shall ~~recommends~~ submit a recommendation:

(1) In favor of the claimant when the action or proposed action at issue is not supported by a preponderance of the evidence available as a result of the hearing;

(2) In favor of HSD when the preponderance of the evidence, available as a result of the hearing, supports the conclusion that the action or proposed action at issue is in accordance with regulations, policy and law; or

(3) Any other result supported by the record.

~~D]C.~~ **Review of recommendation:** The hearing ~~file~~ record and recommendation are reviewed by the appropriate HSD division director(s) or ~~his/her~~ designee to ensure conformity with applicable federal and state law, regulations and policy.

~~E]D.~~ **Final decision:** The hearing officer's recommendation may be adopted or rejected, in whole or in part, in a final written decision by the appropriate HSD division director ~~on the issues that were the subject of the hearing~~. The HSD division director, or ~~his/her~~ designee, specifies the reasons for the decision and identifies the evidence supporting the decision. No person who participated in the original action under appeal may participate in arriving at a final decision.

~~F]E.~~ **Notice to claimant:** A claimant and the HSD representative ~~is~~ shall be notified in writing of the final decision and its effect on ~~his/her~~ the benefits. If a claimant is represented by legal counsel, the legal counsel is mailed a copy of the decision. ~~When a final decision is adverse to the claimant, the notice of the decision includes a statement that the claimant has exhausted all administrative remedies open to him/her and is free to pursue judicial review of the claim. General information concerning the place, time and manner for requesting judicial review is provided with the statement.~~ When a final decision is adverse to the claimant, the decision shall include:

- (1) a statement that the claimant has exhausted all administrative remedies available to them;
- (2) the claimant's right to pursue an appeal of the final decision; and
- (3) information on how to request an appeal, the timeframe for requesting and where the appeal may be filed.

[07/01/97, 04/01/98; 8.100.970.13 NMAC - Rn, 8 NMAC 3.ISD.975, 04/13/2001]

**8.100.970.14 IMPLEMENTATION OF DECISION:** Unless stayed by court order, HSD's final decision is binding on all issues that have been the subject of a hearing as to that ~~client~~ claimant ~~unless stayed by court order~~. The local county office is responsible for ~~making sure~~ assuring that decisions are ~~carried out. The decision is~~ implemented within the time frames specified below. The hearing decision serves as advanced notice for changes in benefits or services.

**A. Decision Favorable to HSD** If assistance or benefits have been continued while the hearing decision was pending~~[-]~~ and the decision is favorable to HSD, the case worker shall take immediate action to adjust the payment and file an overissuance/overpayment claim for the excess amounts paid while the decision was pending. ~~A request for a hearing concerning this overissuance/overpayment claim is limited to alleged computation errors. The hearing decision serves as advance notice for the resulting benefit termination, reduction or adjustment.~~

(1) A request for hearing concerning an overpayment claim as a result of a final decision is limited to alleged computation errors.

(2) If a final hearing decision determines the household received benefits to which it was not entitled, HSD shall begin the collection proceedings as specified in 8.102.640., 8.106.640 and 8.139.640 NMAC.

~~B. If the hearing decision is that the household received benefits to which it was not entitled, HSD starts collection proceedings as specified in 8.102.640 NMAC and 8.139.640 NMAC.]~~

~~C.]B.~~ **Decision favorable to claimant**

(1) ~~Financial]Cash~~ **Cash or medical assistance programs:** When a fair hearing decision is favorable to the claimant, the HSD worker authorizes corrective payment and/or retroactive medical assistance. For incorrectly denied cases, corrected benefits are issued retroactively in the following manner:

(a) to the date of adverse action or to the 30th day from the application date, whichever is earlier; or

(b) to the first day of the month in which the case is actually eligible for benefits;

(c) for ongoing cases, the corrected ~~financial]cash~~ or medical assistance payments are retroactive to the first day of the month in which the incorrect action became effective.

(2) ~~Food stamps] SNAP:~~ **SNAP:** Decisions which result in benefit changes are reflected in the claimant's next authorized ~~coupon~~ allotment. The decision serves as verification for increased benefits.

[07/01/97; 8.100.970.13 NMAC - Rn, 8 NMAC 3.ISD.976, 04/13/2001]

~~[8.100.970.14]~~ **8.100.970.15 JUDICIAL REVIEW:**

**A. Right of appeal:** If a final hearing decision upholds HSD's original action or proposed action, the claimant has the right to pursue judicial review of the decision and is so notified of that right in the agency decision.

**B. Timeliness:** Unless otherwise provided by law, within 30 days of the division director's decision notice, a claimant may appeal the decision by filing a notice of appeal with the clerk of the court of appeals ~~and sending a copy to the HSD office of general counsel~~.

**C. Jurisdiction and standard of review**

(1) The court of appeals' jurisdiction is defined by statute at Section 27-3-1 to 27-3-5 NMSA 1978 (Repl. Pamp. 1992). All appeals to the court of appeals are on the record made at the administrative hearing. The HSD office of general counsel files three copies of the hearing record with the clerk of the court of appeals and furnishes one copy to the claimant within 20 days after ~~receipt~~ complete and proper service of the notice of appeal.

(2) The court of appeals may set aside the HSD hearing decision if it finds the decision to be arbitrary, capricious or an abuse of discretion; not supported by substantial evidence in the record as a whole; or otherwise not in accordance with the law.

**D. Benefits pending appeal:** Upon motion of claimant, the court of appeals decides whether the filing of the appeal shall operate as a stay of the HSD decision. If a stay is granted, the HSD office of general counsel notifies the appropriate staff concerning benefit issuance.

**E. Effect of appeal:** If the court of appeals decides in favor of the claimant, the HSD office of general counsel immediately notifies the county office as to the appropriate benefit issuance and adjustments, if any. If the decision is in favor of HSD, and a reduction has been pending the decision on appeal, an overpayment claim retroactive to the date the change should have been made is filed.