



STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
HUMAN SERVICES REGISTER

I. DEPARTMENT

HUMAN SERVICES DEPARTMENT

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PARTICIPATION STATUS DETERMINATIONS

III. PROGRAMS AFFECTED

NEW MEXICO WORKS CASH ASSISTANCE

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V. BACKGROUND

“The purpose of the New Mexico Works Act is to increase family income through family employment and child support and, by viewing financial assistance as a support service to enable and assist parents to participate in employment rather than as an entitlement, to enable New Mexico to change the culture of the welfare office, both on the part of the department and on the part of the recipients, so that all parties can focus on addressing the barriers to participation in work activities and putting New Mexicans to work.” NMSA 1978, § 27-2B -2(F).

In accordance with the purpose of the New Mexico Works Act and guidance from our federal partner, the Administration for Children and Families (ACF), the Department is proposing regulations to ensure that all participants receiving cash assistance participate in work activities. Work activities include supports and training for those with barriers to getting jobs, help in finding jobs, and learning the skills to keep a job. The work activities help families succeed in becoming self sufficient, which is one of the goals of the New Mexico Works Act, the program for administering Temporary Assistance to Needy Families (TANF).

The Department is proposing in these regulations to revise waivers to the standard work participation rates for those that meet certain criteria. The level of participation for each participant is based on individual circumstances. Participants should comply with the standard work participation rate unless they meet one of the nine exemptions that may make them eligible for a “limited work participation rate.” The exemptions are stated in this proposed version under 8.102.420.11 (A) NMAC. Participants approved for limited work participation status will have a limited work participation rate based on their individual circumstances. Participants must still

complete the limited work participation rate as stated in their Work Participation Agreement, or be subject to sanction for failure to cooperate with program requirements.

The proposed regulations also revise the supportive services benefit to be provided subject to the appropriate of federal and state funds.

VI. PROPOSED REGULATIONS

This register and proposed regulations are available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/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 827-7274.

VII. PUBLICATION DATE

October 17, 2011

VIII. PUBLIC HEARING

A public hearing to receive testimony on this regulation will be held at 10:00 am on November 17, 2011.

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

X. PUBLICATION

Publication of these proposed regulations approved on 9/27/11 by:

Sidonie Squier

SIDONIE SQUIER, SECRETARY
HUMAN SERVICES DEPARTMENT

This is a proposed amendment to Sections 7 and 8 of 8.102.100 NMAC.

8.102.100.7 DEFINITIONS:

A. Definitions A-L:

- (1) **Applicant:** means person applying for cash assistance on behalf of a benefit group.
- (2) **Application:** means a written request, on the appropriate ISD form, signed by or on behalf of an individual or family, for assistance.
- (3) **Attendant:** means an individual needed in the home for medical, housekeeping, or child care reasons.
- (4) **Authorized representative:** means an adult who is designated in writing by the applicant who is sufficiently knowledgeable about the applicant/ benefit group's circumstances to complete the application form correctly and represent the benefit group.
- (5) **Basic needs:** include food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.
- (6) **Beginning month:** means the first month for which a benefit group is certified after a lapse in certification of at least one calendar month in any project area. A benefit group is budgeted prospectively in a beginning month. A beginning month is also an initial month.
- (7) **Benefit group:** means a pregnant woman or a group of people that includes a dependent child, all of that dependent child's full, half, step- or adopted siblings living with the dependant child's parent or relative within the fifth degree of relationship and the parent with whom the children live.
- (8) **Benefit month:** means the month for which cash assistance benefits have been issued. This term is synonymous with issuance month defined below.
- (9) **Budget month:** means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.
- (10) **Capital gains:** means proceeds from the sale of capital goods or equipment.
- (11) **Cash assistance:** means cash payments funded by the temporary assistance for needy families (TANF) block grant pursuant to the federal act and by state funds; or state funded cash assistance in the general assistance program.
- (12) **Caretaker relative:** means an individual who assumes parental control over a child living in the home.
- (13) **Categorical eligibility (CE):** means a food stamp household that meets one of the following conditions is considered to be CE and have limited eligibility requirements.
 - (a) **Financial CE:** Any food stamp household in which all members receive Title IV-A assistance (TANF), general assistance (GA), or supplemental security income (SSI) benefits is considered to be categorically eligible for food stamp benefits.
 - (b) **Broad-based CE:** Any food stamp household, in good standing, in which at least one member is receiving a non-cash TANF/MOE funded benefit or service and household income is below 165% FPG.
- (14) **Certification:** means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.
- (15) **Certification period:** means the time period assigned to a benefit group that is approved to receive cash assistance benefits. The certification period shall conform to calendar months.
- (16) **Collateral contact:** means an individual or agency designated by the benefit group to provide information concerning eligibility.
- (17) **Conciliation process:** means a 30- day process prior to imposing a sanction during which the department and the individual have the opportunity to address barriers to compliance or to correct whatever failure has generated the noncompliance determination. ~~[Prior to imposing the first sanction, if the department determines that a participant is not complying with the work participation requirement or child support requirements, the participant shall be required to enter into a conciliation process established by the department to address the noncompliance and to identify good cause for noncompliance or barriers to compliance. The conciliation process shall occur only once prior to the imposition of the sanction.]~~
- (18) **Conversion factor:** means anticipated monthly income received on a weekly or bi-weekly basis shall be converted to a monthly amount.
- (19) **Date of admission:** means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.
- (20) **Date of entry:** means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

- (21) **Department:** means the human services department.
- (22) **Dependent child:** means a natural child, adopted child, stepchild or ward who is:
- (a) seventeen years of age or younger; or
 - (b) eighteen years of age and is enrolled in high school; or
 - (c) between eighteen and twenty-two years of age and is receiving special education services regulated by the public education department.
- (23) **Director:** means the director of the income support division.
- (24) **Diversion payment:** means a lump sum payment, which will enable the applicant to keep job or to accept a bona fide offer of employment.
- (25) **Documentation:** means a written statement entered in the case record regarding the type of verification used and a summary of the information obtained to determine eligibility.
- (26) **Earned income:** means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.
- (27) **Education works program (EWP):** provides state-funded cash assistance to a benefit group where at least one individual is enrolled in a post secondary institution. The applicant or recipient benefit group must be otherwise eligible for NMW cash assistance, but chooses to participate in the education works cash assistance program.
- (28) **Emancipated:** means an individual under the age of 18 years who is legally recognized as no longer under parental control due to marriage or by a decision of a court.
- (29) **Encumbrance:** means debt owed on property.
- (30) **Equity value:** means the fair market value of property, less any encumbrances owed on the property.
- (31) **Expedited services:** means the process by which benefit groups reporting little or no income or resources will be provided an opportunity to participate in the food stamp program.
- (32) **Expungement:** means the permanent deletion of cash benefits from an EBT account that is stale.
- (33) **Fair hearing:** means an administrative proceeding which a claimant or his representative may request if:
- (a) an application is not acted on within a reasonable time after the filing of the application;
 - (b) an application is denied in whole or in part; or
 - (c) the cash assistance or services are modified, terminated or not provided.
- (34) **Fair market value (FMV):** means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or offer as a trade-in. It is not the amount the dealer would sell the vehicle for at retail.
- (35) **Federal act:** means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.
- (36) **Federal fiscal year:** October 1 through September 30 of the calendar year.
- (37) **Federal means-tested public benefit:** means benefits from the food stamp program; the food assistance block grant programs in Puerto Rico, American Samoa and the commonwealth of the Northern Mariana Islands, supplemental security income (SSI), and the TANF block grant program under Title IV of the Social Security Act; medicaid and SCHIP.
- (38) **Federal poverty guidelines:** means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services.
- (39) **Five-year bar:** means the federally imposed prohibition on receiving federal means-tested public benefits for certain qualified aliens who entered the United States (U.S.) on or after August 22, 1996, until they continuously lived in the U.S. for five years. The count for the five year bar begins on the date the non-citizen attains qualified alien status.
- (40) **Food Stamp Act:** the Food Stamp Act of 1977 (P.L. 95-113), and subsequent amendments.
- (41) **General assistance (GA) benefit group:** means a benefit group in which all members receive cash assistance financed by state or local funds.
- (42) **Government entity:** includes any federal, state, tribal or local unit of government as well as any non-government entity which receives public funds for the purpose of meeting the housing needs of its clientele.
- (43) **Gross income:** means the total amount of income that a benefit group is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group, but diverted

by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-employment income, and income excluded by federal law.

(44) Gross income test (85 percent test): for the benefit group to be eligible, the gross earned income of the benefit group must be less than 85 percent of the federal poverty guidelines as determined in 8.102.500.8 NMAC.

(45) Hardship extension: means an extension of the TANF/NMW 60-month lifetime limit due to specific conditions enumerated at 8.102.410.17 NMAC.

~~(45)~~**(46) Head of household:** means the payee who is the responsible case head for the benefit group. The payee may be the parent, guardian, sole adult member, specified relative, pregnant woman, a GA recipient, or caretaker relative.

~~(46)~~**(47) Immigrant:** means a non-citizen or an alien within the meaning found in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

~~(47)~~**(48) Immigration and naturalization service (INS):** a division of the U.S. department of justice dealing with U.S. citizenship and immigration services.

~~(48)~~**(49) Impairment:** means a condition resulting from anatomical, physiological, or psychological abnormalities evidenced by medically acceptable clinical and laboratory diagnostic techniques. Impairment has to do only with the medical, psychiatric, or both processes. To evaluate both physical and mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.

(50) Incapacity review unit: means a special unit in the department that determines the status of participants for the family violence option and limited work participation status. This is also known as the IRU.

~~(49)~~**(51) Individual development account program:** means an account created for eligible individuals which is established and maintained by an authorized financial institution to be used for individual development.

~~(50)~~**(52) Individual development program:** means a program that establishes and administers individual development accounts and reserve accounts in order to provide financial training required by the division for account owners.

~~(51)~~**(53) Ineligible alien:** means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

~~(52)~~**(54) Initial month:** means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one calendar month or longer.

~~(53)~~**(55) Inquiry:** means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application.

~~(54)~~**(56) Institution of higher education:** means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

~~(55)~~**(57) Institution of post-secondary education:** means an institution of post-secondary education, any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located, regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or a program of training to prepare students for gainful employment.

~~(56)~~**(58) Irrevocable trust funds:** means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

~~(57)~~**(59) Issuance month:** means the calendar month for which cash assistance is issued. In prospective budgeting, the budget and issuance months are the same.

~~(58)~~**(60) Legal guardian:** means a judicially or parental created relationship between a child and appointed adult.

~~(60)~~**(61) Limited work participation rate:** means the reduced work requirement rate approved by the IRU or the NMW service provider, as appropriate, after a participant has been approved for a limited work participation status. The limited work participation rate is based on a participant's individual circumstances and is stated in their work participation agreement, as approved by the IRU. A participant's failure to comply with the limited work participation rate can result in a sanction on the amount of benefits received by the household.

(62) Limited work participation status: means a NMW participant has a verified condition as outlined at 8.102.420.11(A) NMAC that precludes him or her from meeting the standard work requirement rate and has been approved for such status by the IRU or NMW service provider, as appropriate. Once approved for a

limited work participation status, the NMW participant will have a limited work participation rate based on his or her circumstances.

B. Definitions M-Z:

(1) **Maintenance of effort (MOE):** means the amount of general funds the state agency must expend annually on the four purposes of TANF to meet a minimum expenditure requirement based on a states historical AFDC expenditures.

(2) **Medicaid:** medical assistance under title XIX of the Social Security Act, as amended.

(3) **Minor unmarried parent:** means an unmarried parent under the age of 18 years or is age 18 and enrolled in high school.

(4) **Month of approval:** means the month the action to approve a benefit group for cash assistance is taken.

(5) **Net income tests:** means for the benefit group to be eligible, the benefit group's net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

(6) **Net monthly income:** means gross non-exempt income minus the allowable deductions. It is the income figure used to determine eligibility and cash assistance benefit amount.

(7) **Non-benefit group members:** means persons residing with a benefit group who are specifically excluded by regulation from being included in the benefit group certification.

(8) **Non-cash TANF/MOE benefit or service:** means non-cash TANF/MOE benefit or services include programs or services that do not provide cash to recipients, but are funded by the TANF program, either by the federal TANF block grant or the state MOE share. These services may include transportation, childcare, counseling programs, parenting programs, pamphlets or referrals to other TANF/MOE-funded services.

(9) **Non-citizen U.S. national:** means a person who is not an U.S. citizen but was born in an outlying possession of the U.S. on or after the date the U.S. acquired the possession, or a person whose parents are non-citizen U.S. nationals. A person who resides on one of the following U.S. island territories is a non-citizen U.S. national: American Samoa, Swains island or the Northern Mariana islands.

(10) **Notice of adverse action (NOAA):** means a written notice that includes a statement of the action the department has taken or intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for additional information, the availability of continued benefits, and liability of the benefit group for any overissuance received if the hearing decision is adverse to the benefit group. This notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. Recipients have 13 days from the mailing date of the notice to request a fair hearing and to have benefits restored to their previous level.

(11) **NMW compliance requirements:** means the requirements a NMW participant must complete or comply with in order to avoid conciliation or sanction.

~~(11)~~(12) **Overissuance:** means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

~~(12)~~(13) **Parent:** means natural parent, adoptive parent, or stepparent.

~~(13)~~(14) **Participant:** means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority.

~~(14)~~(15) **Payment standard:** means the amount of the cash assistance payment, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's standard of need, and prior to reduction by sanction, recoupment or both.

~~(15)~~(16) **Permanent total disability:** means an individual must have a physical or mental impairment, expected to last at least 12 months, that prevents gainful employment in any employment position within the individual's current employment capacity.

~~(16)~~(17) **Person:** means an individual.

~~(17)~~(18) **Project area:** means the geographic area designated to a county office that is responsible for the administration of the department's programs.

~~(18)~~(19) **Prospective budgeting:** means the computation of a benefit group's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

~~(19)~~(20) **Qualified alien status:** means a person lawfully admitted into the United States under INA guidelines as defined in PROWRA of 1996.

~~(20)~~(21) **Real property:** means land, affixed improvements, and structures which include mobile homes. Grazing permits are also considered real property.

~~[(21)](22)~~ **Recertification:** means a complete review of all conditions of eligibility which are subject to change and a redetermination of the amount of assistance payment for an additional period of time.

~~[(22)](23)~~ **Recipient:** means a person receiving cash assistance benefits.

~~[(23)](24)~~ **Refugee:** means a lawfully admitted individual granted conditional entry into the United States.

~~[(24)](25)~~ **Regular reporting:** means a reporting requirement that requires a participating household to report a change within ten days of the date a change becomes known to the household.

(a) A financial change becomes known to the household when the household receives the first payment attributed to an income or resource change, or when the first payment is made for a change in an allowable expense.

(b) A non-financial change including but not limited to, a change in household composition or a change in address, becomes known to the household on the date the change takes place.

~~[(25)](26)~~ **Resource standard:** means the financial standard with respect to resources and property, \$2,000 for non-liquid resources and \$1500 for liquid resources.

~~[(26)](27)~~ **Retrospective budgeting:** means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

~~[(27)](28)~~ **Resource planning session:** means a planning session to ascertain the applicant's immediate needs and to assess the applicant's financial and non-financial options.

~~[(28)](29)~~ **School age:** means any dependent child who turns six years prior to September first and is under 18 years of age.

~~[(29)](30)~~ **Secretary:** means the secretary of the department.

~~[(30)](31)~~ **Self-employed:** means an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income.

~~[(31)](32)~~ **Semiannual reporting:** means a reporting requirement that allows up to a 12-month certification period and requires a household to submit a report in the sixth month of a 12-month certification period or in the same month a food stamp semiannual report is due.

~~[(32)](33)~~ **Services:** means child-care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment; education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to assist transition into employment.

~~[(33)](34)~~ **Shelter for battered women and children:** means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

~~[(34)](35)~~ **Single-parent benefit group:** means any benefit group which does not include both parents of a child included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

~~[(35)](36)~~ **Sponsor:** means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission to the United States as a permanent resident.

~~[(36)](37)~~ **Sponsored alien:** means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a)(15) and 101(a)(2) of the Immigration and Nationality Act.

~~[(37)](38)~~ **Spouse:** means either of two individuals who:

(a) are married to each other under applicable state law; or

(b) are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

~~[(37)](39)~~ **Stale:** means EBT accounts which have not been accessed, no withdrawal activity, by the household in the last 90 days from the most recent date of withdrawal.

~~[(38)](40)~~ **Standard of need:** means an amount which is based on the number of individuals included in the benefit group and allows for financial standard and basic needs.

~~[(40)](41)~~ **Standard work requirement rate:** means the number of monthly hours of approved work activities that a participant must complete to comply with NMW requirements. NMW participants granted a limited work participation status must comply with their individual limited work participation rate rather than the standard work requirement rate.

~~[(39)](42)~~ **State-funded alien eligible:** means an alien who entered the United States on or after August 22, 1996, as one of the classes of aliens described in Subsection B of 8.102.410.10 NMAC, is eligible with respect to citizenship requirements for state-funded assistance under NMW and GA without regard to how long the alien has been residing in the United States.

~~[(40)](43)~~ **Supplemental security income (SSI):** means monthly cash payments made under the authority of:

- (a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;
- (b) Section 1616(a) of the Social Security Act; or
- (c) Section 212(a) of P.L. 93-66.

~~[(41)](44)~~ **Temporary total disability:** means a physical or mental impairment, expected to last at least 30 days from date of determination, but less than one year from the date of application, that prevents gainful employment in any employment position within the individual's current employment capacity.

~~[(42)](45)~~ **Two-parent benefit group:** means a benefit group which is considered to exist when both parents of any child included in the benefit group live in the home with the child and are included in the benefit group.

~~[(43)](46)~~ **Term limits:** means NMW assistance (cash benefits and supportive services) is not provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime.

~~[(44)](47)~~ **Unearned income:** means old age, survivors, and disability insurance payments (social security), railroad retirement benefits, veterans administration compensation or pension payments, military retirement and allotments, pensions, annuities and retirement benefits; lodge or fraternal benefits, any other public or private disability or retirement benefit or pension, shared shelter payments, Individual Indian Money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

~~[(45)](48)~~ **Vehicle:** means a conveyance used for the transportation of individuals to or from employment, for the activities of daily living or for the transportation of goods; vehicle does not include any boat, trailer or mobile home used as the principal place of residence.

~~[(46)](49)~~ **Verification:** means the use of third-party information or documentation to establish the accuracy of statements on the application.

~~[(47)](50)~~ **Vocational education:** means an organized education program that is directly related to the preparation of a person for employment in a current or emerging occupation requiring training other than a baccalaureate or advance degree. Vocational education must be provided by an educational or training organization, such as a vocational-technical school, community college, or post-secondary institution or proprietary school.

~~[(48)](51)~~ **Wage subsidy program:** means a subsidized employment opportunity through which a TANF cash assistance recipient is hired into full-time employment.

This is an amendment to section 17 and 18 of 8.102.410 NMAC.

8.102.410.17 LIFETIME LIMITS:

A. NMW/TANF:

(1) NMW/TANF cash assistance shall not be provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime. The benefit group shall be ineligible if the benefit group contains at least one adult, minor head of household or spouse of the minor head of household who has received 60 or more months of NMW/TANF cash assistance, unless the lifetime limit has been waived pursuant to Subsection E of 8.102.410.17 NMAC.

(2) For purposes of determining the 60-month lifetime limit, the count of months of NMW/TANF cash assistance begins on July 1, 1997 and thereafter, and includes assistance received under PROGRESS, or the court-ordered AFDC program in effect until March 31, 1998, or NMW.

(3) Any month in which an adult, a minor head of household, or the spouse of a minor head of household, has received full, partial, prorated, or retroactive NMW/TANF cash assistance shall be considered a month of receipt and shall be counted towards the 60-month lifetime limit for the benefit group in which that individual resides.

(4) The count of months of NMW/TANF assistance shall include cash benefits, supportive services reimbursements, or other forms of benefits designed to meet a family's ongoing basic needs (for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). NMW/TANF cash assistance shall include supportive services such as transportation and childcare provided to a family who is unemployed.

(5) Receipt of TANF assistance from another state after July 1997, or from a tribal entity that does meet the criteria at Subsection C of 8.102.410.17 NMAC is counted as a month of receipt of TANF assistance for purposes of the term limit regulation.

B. Non-countable assistance:

(1) The department shall not count a month of receipt of NMW/TANF cash assistance or services toward the 60-month lifetime limit if the participant was a minor who was not the head of household or the spouse of the head of household.

(2) Support services, transportation reimbursements, or child care assistance received by a benefit group with earned income shall not be considered as a month of NMW/TANF assistance against the 60-month term limit, as long as the benefit group does not also receive NMW/TANF cash assistance to meet ongoing basic needs.

(3) Assistance shall not be considered a month of NMW/TANF cash assistance if the assistance is a:

(a) non-recurrent short term benefit that will not extend beyond four months, is not intended to meet ongoing basic needs, and is designed to meet a specific crisis situation or episode of need;

(b) work subsidy to an employer to cover the cost of employee wages, benefits, supervision and training and does not use TANF funds;

(c) refundable earned income tax credit;

(d) contribution to or distribution from an individual development account;

(e) service such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, or other employment related services that do not provide basic income support; and

(f) transportation benefit provided under a job access or reverse commute project to an individual who is not receiving NMW/TANF cash assistance.

(4) Under federal law, TANF funds may be transferred into the social services block grant and the child care development block grant. Benefits provided to individuals from these transferred funds are no longer characterized as TANF funds and do not count against the lifetime limits.

C. Excluded from the term limit count: Any month in which an adult or minor head of household receives NMW or tribal TANF cash assistance or services while residing in Indian country, as the term is defined in 18 U.S.C. subsection 1151, and where at least 50 percent of the adults are not working, shall not be counted toward the lifetime limit.

D. Extension of the term limit due to hardship: Up to twenty percent of the population of TANF participants to whom the term limit applies may be waived from the 60-month term limit based on hardship or being battered or subjected to extreme cruelty.

(1) An extension of NMW/TANF cash assistance shall not be granted to a benefit group prior to exhausting the 60-month lifetime limit.

(2) The term limit extension will end if the condition or situation allowing the extension ceases to

exist.

E. Hardship extension types: For purposes of establishing a hardship and eligibility for an extension of NMW/TANF cash assistance, an individual to whom the lifetime limit applies must demonstrate through reliable medical, psychological or mental reports, social security administration (SSA) records, court orders, department records or police reports that the individual:

- ~~(1) [is barred from engaging in a work activity because of a temporary or complete disability;~~
 - ~~(2) is the sole provider of home care to an ill or disabled family member;~~
 - ~~(3) does not have the ability to be gainfully employed because the individual is affected by domestic violence;~~
 - ~~(4) has been battered or subjected to extreme cruelty;~~
- is determined eligible for a limited work participation status due to one of the qualifying conditions listed in 8.102.460 NMAC.

~~(5)~~(2) has an application for supplemental security income (SSI) pending in the application or appeals process and:

- (a) is currently [fully waived from NMW work requirements] granted a limited participation status because of a temporary or complete disability; or
 - (b) was granted [a waiver of the work requirement] a limited participation status because of a temporary or complete disability in the previous twenty-four months;
- ~~(6)~~(3) has reached the age of 60 by the end of the last month of his or her term limit;
- ~~(7)~~(4) is otherwise qualified as defined by the department.

F. Determining hardship and eligibility for an extension:

(1) The incapacity review unit shall make a determination of hardship based on a temporary or complete disability or being the sole provider of home care to an ill or disabled family member based on criteria set forth at 8.102.420.11, 8.102.420.12 and 8.102.420.13 NMAC.

(2) The incapacity review unit may determine contingency requirements or conditions for continued participation of the individual under the applicable hardship type(s).

(3) **Hardship based on domestic violence, battery, or extreme cruelty:** A certification that an individual cannot be gainfully employed due to domestic violence, or has been battered or subject to extreme cruelty shall be made by a trained domestic violence counselor and shall be part of the case record.

(a) Supporting documentation shall be provided to the department and made part of the individual's case record. For purposes of determining a hardship, an individual has been battered or subjected to extreme cruelty if the individual can demonstrate by reliable medical, psychological or mental reports, court orders, department records or police reports that the individual has been subjected to and currently is affected by:

- (i) physical acts that result in physical injury;
- (ii) sexual abuse;
- (iii) being forced to engage in non-consensual sex acts;
- (iv) threats or attempts at physical or sexual abuse;
- (v) mental abuse; or
- (vi) neglect or deprivation of medical care except when the deprivation is based by

mutual consent on religious grounds.

(b) The incapacity review unit shall review the documentation provided to demonstrate a hardship type related to domestic violence, battery, or extreme cruelty, shall ensure that the documentation supports a finding of hardship, and shall determine review periods and contingency requirements if applicable.

(4) The department shall determine the eligibility of the individual for a hardship extension based on age or whether an application for SSI is pending or in the appeals process by reviewing department records or SSA files.

G. Participating benefit group:

(1) A NMW benefit group in active status at the time the benefit group reaches the 60-month term limit may ask for an extension of NMW/TANF cash assistance under hardship provisions. The benefit group must provide supporting documentation by the 15th day of the 60th month. If otherwise eligible and a hardship type is determined, the benefit group shall be authorized cash assistance from the first day of the 61st month.

(2) A NMW benefit group whose certification period expires in the 60th month of the term limit may be recertified, if otherwise eligible, under hardship provisions, but must provide supporting documentation by the end of the benefit group's certification period.

H. Closed benefit group: A benefit group shall be required to file an application for NMW cash assistance based on hardship under the following conditions:

- (1) a NMW benefit group in active status does not submit supporting documentation by the 15th day of the 60th month of receipt of cash assistance; or
- (2) a NMW case closes upon reaching the term limit;
- (3) a benefit group may file an application on the first day of the 61st month, or at anytime after, and if eligible, benefits shall be approved effective the date of authorization or 30 days from the date of application, whichever is earlier.

I. Automatic extension of cash assistance: A NMW benefit group shall be automatically extended NMW/TANF cash assistance based on hardship when the benefit group member who has received 60 months of cash assistance is:

- (1) an adult age 60 or over; or
- (2) an adult or minor head of household with an application for SSI pending or in the appeals process; or based on verification in the case record that is not older than three months, the benefit group member [~~is:~~
- ~~(3) waived from participation in work activities due to a complete disability, either permanently or temporarily; or~~
- ~~(4) the sole provider of home care to an ill or disabled family member; or~~
- ~~(5) unable to be gainfully employed because the benefit group member has been battered or subjected to extreme cruelty, or affected by domestic violence] is granted a limited work participation status based on the qualifying conditions as outlined at 8.102.460 NMAC; or~~
- ~~(6)~~(3) is otherwise qualified as defined by the department.

8.102.410.18 REQUIREMENTS FOR TANF HARDSHIP EXTENSIONS:

A. Benefit group: NMW cash assistance regulations at 8.102 NMAC continue to apply to a NMW/TANF benefit group that receives a cash assistance based on a hardship determination. A benefit group may be sanctioned at the appropriate level in compliance with regulations at 8.102.620.10 NMAC when a benefit group member fails to comply with the requirements at set forth in at 8.102.410.17 NMAC and 8.102.410.18 NMAC.

B. Certification period: In most cases the certification period for the case will be set at six (6) months, beginning with the 61st month of cash assistance. The incapacity review unit may set the certification period for a benefit group that is shorter or longer than six months when the condition for the hardship type warrants such a determination.

C. ~~[Waived individual]~~ Limited work participation status individuals:

(1) An individual granted [~~a waiver~~] an extension of the 60-month term limit due to a hardship determination shall be required to meet with the work program contractor. [~~An individual determined to be waived due to hardship~~] The individual shall be referred by the department to the work program contractor:

- (a) no later than the first day of the 61st month for a case in active status in the 60th month; or
- (b) by the end of the first month of the benefit group's hardship extension period for a benefit group whose certification period expires in the 60th month; or
- (c) upon approval of a hardship extension period for a benefit group whose case is closed.

(2) [~~The waived individual shall be required to comply with any contingency for eligibility~~] If approved for a limited work participation status, the participant shall be required to comply with the limited work participation rate determined by the [~~incapacity review unit~~] IRU under hardship, including but not limited to, counseling; substance abuse treatment; speech or physical therapy, continuing or follow up medical treatment; keeping doctor's appointments; family counseling; or engaging in programs or activities to address the hardship type.

D. Other benefit group members: Any other individual included in the NMW benefit group who is determined to be a mandatory work participant must comply with work program requirements set forth at 8.102.460 NMAC.

E. Case management:

(1) The individual and the work program contractor shall develop a case management plan that includes specific provisions for assessing barriers and determining actions or behaviors that will enhance the ability of the benefit group to become economically independent.

- (2) Case management includes, but is not limited to:
 - (a) making referrals to appropriate agencies and providing any follow up necessary to obtain the assistance needed by the benefit group;
 - (b) completing an in-depth assessment and identifying individual and family barriers, such as but not limited to, learning disabilities, cognitive disabilities, substance abuse, criminal history, transportation issues, child care, school attendance for dependent children, limited English proficiency; or limited work ability;

- (c) making appropriate referrals and seeking the assistance needed to address the barriers;
- (d) identifying support services needs; or
- (e) placement in appropriate and realistic work activities and follow up on work activity

progress.

This is a proposed amendment to 8.102.420, Sections 11, 12, and 13 NMAC.

8.102.420.11 ~~[DISABILITY—NMW WORK PARTICIPATION WAIVER REQUIREMENTS:~~

~~_____ A. _____ To be eligible for a NMW/TANF participation waiver due to disability, a person must have a physical or mental impairment which is expected to last at least 30 days. Severity of condition must prevent the participant from participating in any approved work program activities and from meeting applicable work program participation standards.~~

~~_____ B. _____ To be eligible for a hardship extension of the NMW/TANF lifetime limit due to disability, a person must demonstrate through reliable evidence that they are barred from a work activity due to temporary or complete disability; subject to extreme cruelty; or battery, or meets other criteria as indicated at 8.102.420 NMAC.~~

~~_____ C. _____ To be eligible for a NMW participation waiver, or hardship extension of the NMW/TANF time limit, as a caretaker a person must be the sole provider for an ill or incapacitated family member living in the home who does not attend school on a full time basis.]~~

NMW/TANF LIMITED PARTICIPATION STATUS DETERMINATION PROCESS

A. Eligibility: To be eligible for a NMW/Limited participation status, a participant must meet one of the criteria below as verified by the department:

(1) age 60 or older;

(2) a single parent, not living with the other parent of a child in the home, or caretaker relative with no spouse, with a child under the age of 12 months. A parent may be eligible for a limited participation status using this qualification for no more than 12 months during the parent's lifetime.

(3) a single custodial parent caring for a child less than 6 years of age or who is a medically fragile child if the parent is unable to obtain child care for one or more of the following reasons and the children, youth and families department (CYFD) certifies as to the unavailability or unsuitability of child care:

(a) the unavailability of appropriate child care within a reasonable distance from the parent's home or work site; or

(b) the unavailability or unsuitability of appropriate and affordable formal child care by a relative or under other arrangements; or

(c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

(4) A woman in her third trimester of pregnancy.

(5) A parent whose personal circumstances preclude participation for a period not to exceed one month in a calendar year.

(6) A parent who demonstrates by reliable medical, psychological or mental reports, court orders, police reports, or personal affidavits (if no other evidence is available), that family violence or threat of family violence effectively bars the parent from employment.

(7) A parent who is completely impaired, either temporarily or permanently, as determined by IRU in accordance with 8.102.420 (C)(1) NMAC.

(8) A parent may be entitled to the family violence option (FVO). This option allows for a parent in a domestic violence environment to be in a limited work participation status for the length of time certified by a trained domestic violence counselor. The certification shall indicate that the parent is in a domestic violence environment which makes them eligible for a limited work participation status.

(a) A parent's FVO waiver shall be reviewed every six months and shall be determined by IRU based on the domestic violence counselor's certification. The parent shall be temporarily waived from work program requirements pending the determination from IRU.

(b) A parent who can continue to comply with work requirements as certified by a trained domestic violence counselor may be eligible for a limited work participation status for 24 weeks as described in 8.102.461.15 NMAC.

(9) A parent who is the sole provider of the care for an ill or incapacitated household member. In order to meet this exception, the parent must show that the parent is the sole caretaker for a disabled household member and must demonstrate that the parent cannot be out of the home for the number of hours necessary to meet standard work participation rate. The following apply to caretaker conditions in determining if the standard work participation rate applies or if a limited work participation rate will be granted:

(a) Only those care activities around which work program activities cannot be scheduled are taken into consideration.

(b) Transportation to medical appointments, food purchase and preparation activities, home maintenance chores, etc. are activities which may be scheduled and performed at time other than work program participation hours and are not taken into consideration when determining the standard work participation rate.

(c) A requirement to be on call for the medical emergencies of a medically fragile person is taken into consideration in determining the standard work participation rate for the participant.

B. Determinations in General: The NMW/TANF disability determination is made independently of and using differing standards from those used for determining OASDI or SSI eligibility, general assistance, workman's compensation, veteran's compensation or in Americans with Disability Act (ADA) determinations. Medical and social information (as appropriate) used by the department's disability reviewers may differ between determinations for each type of program, and a participant's condition may improve or worsen over time. As a result, a participant may be classified disabled by one program, but not by another. A disability determination made for another program or purpose is immaterial to the NMW/TANF disability determination. NMW/TANF determinations shall be made by applying NMW/TANF regulations and medical and non-medical information (as appropriate) known to the department.

C. Qualified Condition Determination

(1) **Medical conditions:** The IRU shall review all documentation and make determinations for participants requesting a limited participation status or hardship extension due to a medical condition. To be eligible for a limited participation status from the NMW/TANF standard work participation requirement rate or for a hardship extension of the NMW/TANF time limit, based on a medical condition, the department must find:

(a) evidence of a physical or mental impairment(s) supported by medical documentation, and

(b) determine that the severity of the impairment(s), as supported by appropriate medical documentation is sufficient to significantly restrict the participant's capacity to fulfill the standard work participation rate or capacity to work. Requests for limited participation status or hardship extension must be supported by medical documentation, but may be supplemented by non-medical documentation provided by the applicant as requested by the IRU.

(2) **Caretaker conditions:** The IRU shall review all documentation and make determinations for participants requesting a limited participation status or hardship extension due to caretaker conditions. To be eligible for a limited participation status from the NMW/TANF standard work participation rate or for a hardship extension of the NMW/TANF time limit, as a caretaker, the department must find the participant is:

(a) the sole provider for an ill or incapacitated family member living in the home who does not attend school on a full time basis; and

(b) providing necessary care to the extent that otherwise precludes the participant's capacity to fulfill standard work participation rates or capacity to work.

(3) **Non-medical conditions:** The NMW service provider shall review documentation and make determinations regarding requests for limited participation status for non-medical conditions. If a participant has a medical condition(s) in addition to non-medical conditions, the IRU shall review documentation and make determinations regarding requests for limited participation status for medical and non-medical conditions. To be eligible for a limited participation status from the NMW/TANF standard work participation rate based on conditions that are not medical in nature, the department must find the participant has:

(a) one of the qualifications for a limited participation status identified in Paragraph A above; or

(b) has a barrier(s) identified through the assessment conducted by the NMW service provider that may preclude the participant's capacity to fulfill the standard work participation rate or capacity to work.

D. Case development process: The caseworker shall be responsible for explaining hardship eligibility, work program requirements, standard work participation rates, and for referring all participants requesting a limited participation status to the IRU and NMW service provider, as appropriate. Participants must complete and return a packet requesting a limited participation status within thirty days of the request.

(1) **Limited participation status requests for medical conditions:** Requests for a limited participation status based on a medical condition shall be sent to the IRU for determination and contain the following:

(a) a completed assessment that has been conducted by the NMW service provider within the six months prior to the date of the request for a change in status;

(b) a completed individual responsibility plan conducted by the NMW service provider;

(c) copies of relevant medical reports made within the last six months;

(d) a draft work participation agreement with the proposed activity(ies); and

(e) additional documents for evidence of other work related factors (see 8.102.420.12(D) NMAC).

(2) Limited participation status requests for non-medical conditions: The NMW service provider shall utilize the following documents to determine eligibility for the limited participation status:

(a) a completed assessment that has been conducted by the NMW service provider within the six months prior to the date of the request for a change in status; and

(b) a completed individual responsibility plan conducted by the NMW service provider.

E. Provision of documentation: It shall be the responsibility of the participant requesting limited participation status or hardship extension due to a medical condition to provide all information necessary to make a determination. Non-medical evidence will not be considered in the absence of medical documentation for requests based on medical conditions. A participant, who has not provided the necessary information as requested by the IRU to make a determination within 30 days of the request for the limited participation status or hardship extension, shall be subject to meeting full participation requirements.

(1) Medical Documents: Written paperwork must be submitted to verify the existence of physical, mental impairment(s) or both; as well as the extent of the caretaking needs. It is the responsibility of the participant to get all information to the IRU for review. Determinations are based on the written evidence provided in a timely manner to IRU.

(a) **Source:** Medical documents must be obtained from approved source(s), limited to: medical doctors, physician assistants, doctors of osteopathy or podiatry, ophthalmologists, psychiatrists or psychologists, state-licensed providers, and individuals that meet the minimum mental health professional qualifications set by their community mental health services employer.

(b) **Department assistance:** When necessary the department shall assist the participant in obtaining medical documents.

(c) **Timeliness of report:** The participant shall provide medical records from the past six months. Medical documents over six months old from the date of the request for the limited participation status or hardship extension may be useful to support a pattern of recurring impairment, but must be accompanied by current medical documents.

(d) **Independent Medical Review:** The IRU may request additional documentation in order to make a determination regarding a participant's request for limited work participation status. The IRU may request additional documentation in the form of an independent medical review of the participant's condition(s). If the participant is also a recipient of medicaid, the IRU will assist with a referral to a medicaid provider, as appropriate.

(2) Non-medical information: Non-medical information may not be used for medical condition determinations without the provision of medical documents. Non-medical information may be submitted when requested by the IRU or the NMW service provider and will be considered if the source is public and private agencies, schools, participants and caregivers, social workers and employers, and other relevant and independent sources to assist in the determination of whether the barriers are of sufficient severity to restrict the participant's capacity to fulfill the standard work participation rate, or that the need to care for an individual are so great as to limit or exclude participation.

F. Case disposition:

(1) Medical based conditions: The IRU shall have sole responsibility for reviewing all medical documents. When making a determination regarding a participant's capacity to fulfill the standard work participation rate, the IRU will:

(a) conduct a thorough review of the documentary evidence;

(b) make a determination as to whether a medical condition or caretaking need is supported by the evidence provided by the participant;

(c) determine the anticipated duration of the impairment;

(d) adopt or propose participation activities based on the work participation agreement submitted with the participants request packet; and

(e) establish the reduced limited work participation rate if a limited participation status or hardship exemption is granted.

(2) Non-medical based impairments: The NMW service provider shall review all non-medical information and make a determination that a participant is eligible for a limited work participation status. The determination shall identify one of the criteria qualifying for a limited work participation status. The NMW service provider shall identify the non-medical barrier and establish the participation activity(ies) and the limited work participation rate to be included in the approved work participation agreement. All of the non-medical information is considered in assessing the participant's capacity to fulfill the standard work participation rate. Case disposition shall include:

(a) a thorough review of documentary evidence;

(b) a determination as to whether the claim of a non-medical impairment is supported;

(c) the anticipated duration of the impairment; and

(3) **Duration of condition(s):** The duration of the condition shall be evaluated based on documentation provided and must be expected to last at least thirty days in order to grant a limited work participation status.

(4) **Evaluation of report(s):** Reports shall be reviewed by the IRU for completeness and detail sufficient to identify the caretaking needs, limiting effects of impairment(s), probable duration of the impairment(s), and capacity to perform work program participation standards.

(a) Anatomical and physiological reports shall be reviewed for a description of the medical history, clinical findings, laboratory findings, diagnosis, prescribed treatment and prognosis, and to identify the participant's ability to sit, stand, move, lift, carry, handle objects, hear, speak and travel.

(b) Psychological assessments shall be reviewed for a description of the participant's behavior, affect, orientation, capacity for appropriate decision-making, response to stress, cognitive function (awareness, memory and intellectual capacity), contact with reality and need for occupational, personal and social adjustment(s).

G. Reevaluation of status: A participant's limited participation status shall be re-evaluated on a periodic basis, as determined by IRU. At the time of reevaluation, it shall be necessary to get an update of the medical or non-medical impairment, caretaking need, and any changes in other work-related factors. The IRU shall remain responsible for deciding whether a medical impairment or caretaking need still exists, and the date of the next re-evaluation for continued approval of limited work participation status. The NMW service provider shall remain responsible for deciding whether the non-medical impairment still exists and the date of the next evaluation for continued approval of limited work participation status.

H. Determining the limited work participation rate: After a participant is approved for limited work participation status, at the initial determination or re-evaluation the IRU may prescribe conditional work program activities and requirements designed to assist the participant to help eliminate barriers as defined at 8.102.461.9 NMAC. The participant may be assigned to core and non-core activities which may include, but not be limited to, one of the contingencies below:

(1) follow treatment plans as prescribed by a physician or mental health provider;

(2) seek and utilize available community based resources;

(3) accept treatment as recommended by a physician or mental health provider;

(4) pursue a referral for DVR, or other available services;

(5) apply for SSI, if applicable; or

(6) any other activity specific to the participants circumstance and conditions.

[8.102.420.12 — DETERMINING DISABILITY

A. Process:

(1) Determination of disability requires a finding by the IRU that a participant does not have the capacity for meeting approved work participation activities.

(2) IRU shall determine that an participant has a physical, mental or psychological impairment. IRU shall consider the following for each participant:

(a) "non-work related factors" including a participant's age, education, work experience, vocational training, ability to speak English, and similar matters;

(b) work related factors are considered in deciding whether employment exists which could be performed by the participant, given the participant's physical or mental impairment(s); and

(c) medical findings are evaluated to determine the level of activity the participant can perform.

(3) The NMW/TANF disability determination is made independently of and using differing standards from those used for determining OASDI or SSI eligibility, general assistance, workman's compensation, veteran's compensation or in Americans with Disability Act (ADA) determinations. Medical and social information used by disability reviewers may differ between determinations, and an participant's condition may improve or worsen over time. As a result, an participant may be classified disabled by one program but not by another. A disability determination made for another program or purpose is immaterial to the NMW/TANF disability determination. NMW/TANF determinations shall be made considering only NMW/TANF policy and medical and non-medical information known to ISD.

B. Impairment: Impairment is a condition resulting from anatomical, physiological, or psychological abnormalities evidenced by medically acceptable clinical and laboratory diagnostic techniques.

~~Impairment has to do only with the medical, psychiatric process or both. To evaluate physical or mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.~~

~~(1) **Obtaining medical information:**~~

~~(a) Record or narrative reports resulting from examination, diagnostic or both procedures shall be used to evaluate an impairment.~~

~~(b) Existing medical information or knowledge shall be used. Copies of relevant existing medical reports shall be obtained and used in making a disability determination.~~

~~(c) Current medical information, dated within six months of the waiver request, is required for a disability determination. Reports over six months old may be useful in providing a history of the impairment, but must be accompanied by current medical information.~~

~~(2) **Contents of reports:**~~

~~(a) Medical reports should include medical history, clinical findings, laboratory findings, diagnosis, prescribed treatment and prognosis, and the practitioner's medical assessment. The medical report must be complete and detailed enough to allow a determination of the limiting effects of the impairment; probable duration of the impairment; and capacity to perform work related activities.~~

~~(b) Medical assessments should discuss abilities such as sitting, standing, moving, lifting, carrying, handling objects, hearing, speaking and traveling.~~

~~(c) Psychiatric assessments should discuss the participant's judgment and occupational, personal, and social adjustments.~~

~~(3) **Assessing medical reports:**~~

~~(a) Symptoms shall be the first item to be evaluated. These are a description by the practitioner of the mental or physical impairment. Obvious impairments such as recent fractures do not require extensive reporting. Chronic or complex ailments require more extensive reporting. Symptoms alone shall not be used to make a determination of impairment.~~

~~(i) **Symptoms/signs:** Signs are the observations made by the practitioner regarding anatomical, physiological, or psychological abnormalities through medically acceptable clinical techniques. In psychiatric impairments, signs are medically demonstrable abnormalities of behavior, affect, thought, memory, orientation and contact with reality.~~

~~(ii) **Laboratory findings:** Laboratory findings are objective demonstrations of anatomical, physiological or psychological abnormalities. They include X rays, blood tests, and psychological tests.~~

~~(b) The physical ability of the participant to do work at a certain level shall be assessed. Below are categories of work as defined in the "dictionary of occupational titles". Many physicians use these definitions in medical reports.~~

~~(i) **Sedentary work:** Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one that involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and sedentary standards are met.~~

~~(ii) **Light work:** Light work involves lifting no more than 20 pounds at a time, with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category if it requires a good deal of walking or standing, or if it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, a participant must have the ability to do substantially all of these activities. If an participant can do light work, it is assumed that he can also do sedentary work, unless there are additional limiting factors, such as loss of fine dexterity or inability to sit for long periods of time.~~

~~(iii) **Medium work:** Medium work involves lifting no more than 50 pounds at a time, with frequent lifting or carrying of objects weighing up to 25 pounds. If a participant can do medium work, it is assumed that the participant can also do sedentary and light work.~~

~~(iv) **Heavy work:** Heavy work involves lifting no more than 100 pounds at a time, with frequent lifting or carrying of objects weighing up to 50 pounds. If a participant can do heavy work, it is assumed that the participant can also do medium, light, and sedentary work.~~

~~(v) **Very heavy work:** Very heavy work involves lifting objects weighing more than 100 pounds at a time, with frequent lifting or carrying of objects weighing 50 pounds or more. If a participant can do very heavy work, it is assumed that the individual can also do heavy, medium, light and sedentary work.~~

~~C. **Psychological impairment:** If psychological impairment is being assessed, an a participant's mental ability to function at one of the above mentioned levels shall be evaluated in the following areas:~~

~~_____ (1) **Judgment:** A participant's ability to exercise appropriate decision-making processes in a work situation consistent with the participant's abilities.~~

~~_____ (2) **Stress reaction:** Participant's ability to handle stress consistent with the level of employment.~~

~~_____ (3) **Cognitive function:** Participant's awareness, memory, intellectual capacity and other cognitive functions.~~

~~_____ **D. Determining duration of NMW work participation waiver:** The duration of the NMW/TANF work participation waiver shall be determined based on the nature of the impairment.~~

~~_____ **E. Other work-related factors:**~~

~~_____ (1) Other factors which may affect the participant's work participation shall be taken into consideration only if an impairment materially affecting the participant's work participation has been determined to exist. The caseworker shall develop and submit a summary describing the participant's health history, appearance, work and personal situation. For a finding of disability, a significant impairment must exist; a finding of disability cannot be made based solely on other work-related factors. Other work-related factors shall be used to evaluate the ability of the participant to engage in work participation with respect to the impairment. Such factors as age, education, training, work experience, language ability, appearance, marital status, living situation, and relevant social history shall be considered. Different evaluations of disability may be made for two participants with the same impairment, based on the other work factors affecting the participants; such as, one participant may be found to be disabled by the program definition and the other participant may not.~~

~~_____ (2) In determining complete disability with respect to work program participation, partial disabilities and other work-related factors, such as education and educational achievements, work history, job experiences, and language ability, shall not be considered. While these may present an impediment to obtaining employment, they are problems which can be overcome through work program participation. Where such impediments exist, the participant shall be expected to participate in activities which will overcome these barriers.~~

~~_____ (a) **Age:** Age is a factor in the determination process. The older an participant is, the less potential there is for overcoming an impairment. Recovery is more difficult and, often, total recovery may not be achieved. There may be very little chance that the participant will ever return to functioning effectively in the participant's previous job duties.~~

~~_____ (b) **Education:** A participant's educational level is a factor in the determination process. A participant who lacks a high school degree or GED may be hampered in an ability to get a job that does not require strenuous effort. Education is defined at four levels:~~

~~_____ (i) **Illiteracy:** Inability to read or write English. Illiterate participants are considered suitable for the general labor work force.~~

~~_____ (ii) **Marginal:** Eight years of education or less. Marginally educated participants are considered suitable for the semi-skilled work force.~~

~~_____ (iii) **Limited:** Lack of a high school diploma but more than eight years of education. Participants with limited education are considered suitable for the semi-skilled to skilled work force.~~

~~_____ (iv) **High school, GED and above:** Indicates a participant's ability to compete in all levels of the job market.~~

~~_____ (v) **Training:** Completion of training in a particular field of employment indicates an participant is capable of doing the job if the participant is not hindered in the performance of it by the impairment(s). Completion of a training course may offset the education factor in some instances.~~

~~_____ (c) **Job experience:** Experience in a job field can overcome a lack of education or training. Jobs held in the last ten years shall be considered. Work experience shall be evaluated on the type of work previously performed, the length of employment and the potential for the experience to be transferred to other types of employment. Inability to continue working in one's prior field of work does not constitute a disability. Jobs and job experience are classified into the following categories:~~

~~_____ (i) **General labor:** Does not require the ability to read or write. Such work includes, but is not limited to, field labor, construction labor, housework, and motel cleaning.~~

~~_____ (ii) **Semiskilled labor:** Requires a minimal ability to read, write and do simple calculations. Such work includes, but is not limited to, security guard, taxi driver, cashier and janitor.~~

~~_____ (iii) **Skilled labor:** Ability to do work where the ability to read, write and do calculations of a complex nature is needed. Specialized training in the area is also considered. Such work includes, but is not limited to, that of an accountant, mechanic, plumber, and other areas requiring some degree of skill.~~

~~_____ (d) **Language ability:** Inability to speak, read and write English limits an participant's choice of jobs.~~

~~_____ (c) **Appearance:** A participant's appearance may be a factor in a disability determination. On rare occasions, an impairment is disfiguring and may interfere with employment. For example, an participant with psoriasis covering the face, arms and hands might have a problem getting a job working with the public, such as cashier or waitress.~~

~~_____ **F. Assessing the disability:**~~

~~_____ (1) Disability shall be determined by evaluating the impairment and other work related factors. An impairment must exist for there to be a finding that a participant is disabled. If an impairment does not exist, a person shall not be found disabled.~~

~~_____ (2) When an impairment is substantiated, the other work related factors shall be considered. Existence of an impairment does not necessarily result in a finding of disability. Many participants with impairments are able to work and thus cannot be considered disabled according to the disability standards set forth in the NMW program. Impairments, together with a combination of other work related factors which prevent working, shall be considered in determining a work participation waiver.~~

~~_____ **G. Modified work and limited participation:** IRU shall make the final determination when placing a recipient into limited or modified work participation in accordance with 8.102.460.12 NMAC.]~~

~~**[8.102.420.13 RESPONSIBILITY FOR DETERMINATION OF DISABILITY:**~~

~~_____ **A. Caseworker responsibility:** The caseworker shall be responsible for obtaining medical reports and social information, and for preparing the medical social summary. This packet shall be submitted to the IRU for all work program participation waiver requests. After the IRU decision concerning the work participation waiver, the caseworker shall inform the NMW participant of the IRU determination.~~

~~_____ **B. IRU responsibility:** The responsibility for deciding that a disability exists or a modified work requirement. Based upon the medical reports and social summary, and according to the guidelines in 8.102.420.11, 8.102.420.12 and 8.102.420.13 NMAC, IRU shall decide whether a disability exists.~~

~~_____ **C. Reevaluation of disability:** A participant's disability shall be reevaluated on a periodic basis, as specified by IRU. At the time of reevaluation, it shall be necessary to get an update of the medical condition, as well as any changes in other work related factors. IRU shall remain responsible for deciding whether a disability still exists, and the date, if applicable of the next reevaluation.]~~

8.102.420.12 ASSESS CAPACITY FOR WORK

A. General: A medical or mental health condition that precludes a participant's capacity to fulfill the standard work participation rate or capacity to work shall be determined by evaluating the extent of the impairment and other work-related factors. A participant is eligible for a limited work participation status if there is a determination of impairment by the IRU or NMW service provider, as appropriate.

B. Capacity to perform NMW program participation standards: If the participant is determined by IRU or the NMW service provider to have an impairment, the other work-related factors shall be considered. Although a participant may be determined to have some type of impairment, the existence of impairment does not necessarily result in a finding that the participant is incapable of fulfilling the standard work participation rate. A determination that a participant is a caretaker does not necessarily result in a finding that the need to care for an incapacitated or ill household family member is so great as to limit or exclude participation.. Many participants with impairments are able to work and thus are not consider to have a medical condition requiring the granting of a limited work participation status according to the standards set forth in the NMW program.

(1) Sedentary work: Sedentary work involves lifting no more than ten pounds at a time and occasionally lifting or carrying articles like docket files, ledgers and small tools. Although a sedentary job is defined as one that involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and sedentary standards are met.

(2) Light work: Light work involves lifting no more than twenty pounds at a time, with frequent lifting or carrying of objects weighing up to ten pounds. Even though the weight lifted may be very little, a job is placed in this category if it requires a good deal of walking or standing, or if it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities

(3) Medium work: Medium work involves lifting no more than 50 pounds at a time, with frequent lifting or carrying of objects weighing up to 25 pounds.

(4) Heavy work: Heavy work involves lifting no more than 100 pounds at a time, with frequent lifting or carrying of objects weighing up to 50 pounds.

(5) **Very heavy work:** Very heavy work involves lifting objects weighing more than 100 pounds at a time, with frequent lifting or carrying of objects weighing 50 pounds or more.

C. Capacity for gainful employment: A participant's verified employment status shall be taken into consideration in determining impairment based on the type, nature, and duration of employment. Impairment may still be determined where the participant is employed minimally or for rehabilitative purposes.

(1) **Minimal employment:** An individual who is minimally employed may still be considered impaired if the individual cannot reasonably be expected to be self-supporting by at least the standard of need for the size of the benefit group.

(2) **Rehabilitative employment:** Work made available to an individual through the interest or compassion of others, or to rehabilitate an individual (as in a sheltered workshop), but which would not ordinarily exist on the open labor market, shall not be considered employment in an impairment determination.

D. Other work-related factors: Impairments together with other work-related factors may be considered to establish the participant's capacity to perform basic work program participation standards and engage in gainful employment. While these factors may present an impediment to obtaining employment, they are problems which can be overcome through work program participation. Where such impediments exist, the participant shall be expected to participate in activities which will overcome these barriers. Other work-related factors include but are not limited to the following:

(1) **Language barriers:** A participant's ability to speak, read, and write English.

(2) **Educational level:**

(a) **Illiteracy:** Inability to read or write English. Illiterate individuals are considered suitable for the general labor work force.

(b) **Marginal:** Eight years of education or less. Marginally-educated individuals are considered suitable for the semi-skilled work force.

(c) **Limited:** Lack of a high school diploma or GED, but more than eight years of education. Individuals with limited education are considered suitable for the semi-skilled to skilled work force.

(d) **High school, GED and above:** Indicates an individual's ability to compete in all levels of the job market.

(e) **Training program:** Completion of training in a particular field of employment may offset limited education in some instances.

(3) **Job experience:** Experience in a job field can overcome a lack of education, training or both. Jobs held in the last ten years shall be considered. Work experience shall be evaluated based on the type of work previously performed, the length of employment, and the potential for transferring the experience to other types of employment. Inability to continue working in one's prior field of work does not constitute a disability. Job experience is classified in the following categories.

(a) **General labor:** Does not require the ability to read or write.

(b) **Semi-skilled labor:** Requires a minimal ability to read, write and do simple calculations.

(c) **Skilled labor:** Ability to do work in which the ability to read, write and do calculations of a complex nature is needed. Specialized training in the area is also considered.

(4) **Appearance:** An individual's appearance is generally not the sole reason for an impairment determination. On rare occasions, an impairment is disfiguring and may interfere with employment.

(5) **Age:** Age may affect participants with impairments. The older an individual is, generally, the harder it is for the person to overcome or recover from an impairment. A participant's age may be considered when determining the extent of an impairment and the support needed to assist a participant.

J. WPA following IRU determination of limited work participation status. After the IRU or NMW service provider, as appropriate, makes a determination to either grant or deny a request for a limited work participation status, the participant must follow the WPA.

(1) **Limited work participation status granted and adoption of the draft WPA:** If the participant is approved for a limited work participation status, the participant shall continue to participate in the assigned core or non-core activities or contingencies identified on the draft WPA submitted to IRU for determination. If the IRU did not modify the WPA, the WPA will be finalized and the participant shall follow the WPA until the next evaluation date determined by the IRU or NMW service provider. If the IRU proposed modifications, the changes will take into consideration the participant's impairment(s) and provide a limited work participation rate and suggested core and non-core work activities.

(2) **Limited work participation status granted and modification of the draft WPA:** If the participant is approved for a limited work participation status, and the IRU does not accept the draft WPA, the

participant and the NMW service provider shall meet no later than 15 days following date of the approval of the limited work participation status to modify the WPA in accordance with the determination of the IRU.

(3) **Limited work participation status denial:** If the IRU or NMW service provider, as appropriate, denies the participant's request for limited work participation status, the participant is required to develop a WPA with the NMW service provider within 15 days of the denial by the IRU or the NMW service provider. Failure to develop a WPA and following the WPA within the 15 days may be considered non-compliance in accordance with 8.102.460 NMAC.

This is a repeal and replace of all sections of 8.102.460 NMAC.

TITLE 8 SOCIAL SERVICES
CHAPTER 102 CASH ASSISTANCE PROGRAMS
PART 460 RECIPIENT POLICIES - COMPLIANCE REQUIREMENTS

8.102.460.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.102.460.1 NMAC - Rp/E, 8.102.460.1 NMAC.]

8.102.460.2 SCOPE: The rule applies to the general public.
[8.102.460.2 NMAC - Rp/E, 8.102.460.2 NMAC.]

8.102.460.3 STATUTORY AUTHORITY:

A. New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

B. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the temporary assistance for needy families (TANF) block grant under Title IV of the Social Security Act. Through the New Mexico Works Act of 1998, NMSA 1978, § 27-2B-1, et seq., the New Mexico works program was created.

C. In coordination with the NMW program, the department administers the food stamp employment and training program (E&T) pursuant to the Food Security Act of 1985 and federal regulations at Title 7, Code of Federal Regulations.

[8.102.460.3 NMAC - Rp/E, 8.102.460.3 NMAC.]

8.102.460.4 DURATION: Permanent.
[8.102.460.4 NMAC - Rp/E, 8.102.460.4 NMAC.]

8.102.460.5 EFFECTIVE DATE: July 16, 2007, unless a later date is cited at the end of a section.

8.102.460.6 OBJECTIVE:

A. The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, resources and support. Family income is increased through family employment and child support and by utilizing cash assistance as a support service to enable and assist parents to participate in employment.

B. The objective of education works program (EWP) is to provide cash assistance to a benefit group where at least one participant is enrolled in a post-secondary, graduate or post-graduate institution. Education and training are essential to long-term career development. The applicant or recipient benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

[8.102.460.6 NMAC - Rp/E, 8.102.460.6 NMAC.]

8.102.460.7 DEFINITIONS: [Reserved]

8.102.460.8 [Reserved]

8.102.460.9 NMW COMPLIANCE REQUIREMENTS: Work program requirements apply to each benefit group member whether the benefit group is a two-parent or single-parent benefit group.

A. All participants are required to complete an assessment, individual responsibility plan (IRP), work participation agreement (WPA) and applicable work requirement rates.

B. Non-compliance with the NMW requirements: Participants who are in non-compliance with any of the NMW requirements are subject to conciliation and sanction as outlined at 8.102.620 NMAC.

8.102.460.10 ORIENTATION:

A. General:

(1) Participants of NMW shall be provided a work program orientation, which explains the work program and its objectives to the participant.

(2) Participants shall be given information concerning their rights, supportive services provided

during participation, and transitional services available after the NMW case closes because of earnings from employment.

(3) Participants shall be informed of their responsibilities for complying with work program requirements and that failure to do so, without good cause, shall result in the reduction or loss of NMW benefits.

B. Elements: The orientation session provides each participant with the following information:

(1) an explanation that NMW is a temporary program intended to briefly assist the family while preparing themselves for employment;

(2) an explanation of the opportunities available to the participant through the program, including education, training, work experience, and help in job search;

(3) reminder of participant's rights and responsibilities, program regulations and requirements, and the consequences for failure to meet requirements;

(4) overview of supportive services currently available;

(5) explanation of participant's obligation to obtain an assessment from the NMW service provider and return it to ISD within 15 days of the date of approval of application;

(6) explanation of participant's obligation to request approval in writing of participant's work participation activities and secure approval of activities by the department or the NMW service provider; and

(7) overview of transitional services available to participants whose NMW case closes due to employment/earnings.

8.102.460.11 ASSESSMENT:

A. Requirements: No later than 15 calendar days after an application is approved, participants shall have an assessment done by the NMW service provider of their education, skills, prior work experience, barriers, and employability. The assessment is a necessary pre-cursor to the IRP, development of WPA, and is a crucial and necessary element in meeting work program requirements. The assessment is also used in making determinations for requests for limited participation status. Failure to participate in or to complete the assessment may result in work program noncompliance and payment sanctions, unless good cause exists.

B. Elements: The assessment includes the following elements:

(1) a referral by the caseworker to a local agency or agencies that act on behalf of the department to carry out the assessment; and

(2) a face-to-face meeting between the participant and the agency no later than 15 calendar days following approval of assistance for the participant in which the assessment is carried out. There are a variety of assessment tools and forms that may be used, provided that they address the participant's education, skills, prior work experience and employability.

C. Participants must provide a copy of the assessment or a certification of completion of the assessment to the department by the expiration of the 15 day time period.

8.102.460.12 INDIVIDUAL RESPONSIBILITY PLAN (IRP):

A. Requirement: All participants are required to develop an IRP with the assistance of the NMW service provider no later than 15 days from the date of approval of assistance.

B. General purpose: The IRP is:

(1) a personal planning tool, intended to assist the participant in long-term career planning, address barriers and secure and maintain employment;

(2) intended to assist the participant in setting realistic long-term employment goals and to identify those steps which must be taken to achieve the stated goals;

(3) not intended to fulfill the limited purpose of identifying work activities which will meet NMW work program participation requirements. The participant is encouraged to use the IRP to choose work activities which will meet work program participation requirements and, at the same time, will assist in setting long-term employment goals; and

(4) designed to move the participant into whatever employment the participant is capable of handling, and to provide the support services necessary to increase the responsibility and amount of work the participant will handle over time.

C. Elements: The IRP shall include the following:

(1) a specific achievable employment goal or goals and a plan for securing and maintaining employment;

(2) commitments by the participant which will assist in meeting long-term goals. Such commitments may include, but are not limited to: school attendance, maintaining certain grades, keeping school-age children in

school, immunizing children, undergoing substance abuse treatment, or any other activity that will help the participant become and remain employed;

(3) a signature by the participant acknowledging the importance of the IRP, the identified activities and goals which will assist in achieving self-sufficiency and the commitment to participate in activities which will achieve the stated goals; and

(4) a signature by the department's representative certifying that there was a discussion of the activities and goals with the participant, and that the department shall provide on-going support services as needed so that the participant may achieve the participant's stated goals.

D. IRP reviews: The department, the NMW service provider and the participant shall review and update the IRP at least every six months. The review consists of a meeting to review the activities and goals set forth in the IRP, to review and document the participant's progress in achieving the stated goals, and to amend activities and goals as determined necessary and appropriate by the participant. The participant and NMW service provider must initial or sign the updated IRP.

E. Conciliation and sanction: Failure or refusal to develop, sign or attend the six-month review of the IRP may result in conciliation or sanction, unless good cause exists. See 8.102.620 NMAC.

F. HUD family self-sufficiency agreements: Some housing authorities administer self-sufficiency programs under which residents develop a self-sufficiency plan and agreement with the housing authority. A participant with a HUD family self-sufficiency plan may use the plan for his or her IRP. The participant must supply a copy of the plan to the department.

8.102.460.13 WORK PARTICIPATION AGREEMENT (WPA):

A. General: The purpose of the WPA is to assure the participant and the department that the work activities in which the participant is engaged meet the standard or limited work requirement rates and the participant is referred to receive all available support services.

B. Contents of the agreement: At a minimum, the WPA shall:

- (1) identify the participant's proposed work activities;
- (2) identify the level of effort for each activity;
- (3) identify the support services to be provided by the department;
- (4) be signed by the participant; and
- (5) upon approval of the activities and support services, signed by the NMW service provider.

C. Submission of a proposed agreement: The participant must submit a signed proposed WPA to the department:

- (1) no later than 15 calendar days from date of approval for benefits; or
- (2) prior to requesting support services associated with such activity;
- (3) no later than 30 calendar days from approval for benefits only if good cause criteria applies to untimely completion; or
- (4) no later than five days after the expiration of an existing WPA.

D. Review and approval:

- (1) The department shall approve the WPA if:
 - (a) the proposed activities meet the participant's work program participation rate; and
 - (b) the requested support services allowable under department rules, are appropriate to the activity proposed and funding is available to support the reimbursement; and
 - (c) the participant has provided the department with a copy of the participant's IRP.

(2) A copy of the agreement shall be sent to the participant no later than three working days after receipt of the proposed WPA indicating if the WPA is approved or denied.

E. Denial:

(1) In the event that work activities or support services are denied, the NMW service provider shall provide the participant with a short explanation of the reason for denial. Any change in the type of work activities or requested support services requires a new WPA.

(2) If the proposed agreement has been denied in any part, the participant shall discuss with the NMW service provider the necessary changes to the agreement that will allow approval. The participant must submit a revised WPA to the NMW service provider that meets work program requirements no later than 30 days from the date of approval of benefits. Failure to have an approved agreement on file by the deadline may subject the benefit group to work program sanctions.

F. Conciliation and sanction: Failure or refusal to develop, sign or attend the six-month review of the IRP may result in conciliation or sanction, unless good cause exists. See 8.102.620 NMAC.

G. Reopened cases: A participant whose NMW/TANF case is approved for benefits with less than a 12-month break in certification, shall have his or her case reopened and shall be required to:

- (1) submit a revised WPA within 15 calendar days of approval for benefits;
- (2) be engaged in an allowable work activity as specified on the participant's WPA at the participation standard specified in 8.102.460.14 NMAC within 15 calendar days of approval for benefits; and
- (3) submit the participation report to the NMW service provider no later than the fifth calendar day of the month following the month in which the 15-day time limit expires.

8.102.460.14 NMW STANDARD WORK PARTICIPATION RATES: The following work participation rates apply to all participants unless the participant is granted a limited work participation status.

A. General: Participation activities may be met through those activities listed in 8.102.461. NMAC.

(1) A parent subject to participation shall maintain the participation standards based on their status and provide verification of participation at a rate at least equaling the applicable participation standard, as outlined in Subsections B-G of this Section.

(2) Participants granted a limited work participation status must meet the participation rate on their WPA and provide verification of participation.

B. Two-parent participation requirement rates: Two parent families must meet either the all family or two parent participation requirement rate to avoid being subject to conciliation or sanction, unless one parent is granted a limited work participation status.

(1) **Two-parent family receiving CYFD child care:** Listed below are the family's total monthly work participation hours that are required in a two parent family to be considered meeting the two parent rate. This standard work participation rate also applies to families where one participant is disqualified, sanctioned, or granted a limited work participation status.

(a) **Total combined monthly hours:** 237

(b) **Minimum core hours:** 215

(2) **All family rate:** Individual monthly work participation hours are required in a two participant family to be considered meeting the all family rate.

(a) **Total combined monthly hours:** 129

(b) **Minimum core hours:** 86

(3) **Two-parent family not receiving CYFD child care:** This standard applies to families where one parent is disqualified, sanctioned, or granted limited work participation requirements by the IRU.

(4) **Two parent rate:** The family's total monthly work participation hours are required in a two parent family to be considered meeting the two parent rate.

(a) **Total combined monthly hours:** 151

(b) **Minimum core hours:** 129

(5) **Two-parent family where one parent is granted a limited work participation status:** In order to be considered meeting monthly participation hours one parent must meet the all family rate and one parent must meet the limited participation rate or be subject to conciliation or sanction.

(a) **All family rate:** Individual monthly work participation hours are required in a two parent family to be considered meeting the all family rate.

(i) **Total combined monthly hours:** 129

(ii) **Minimum core hours:** 86

(b) **Limited participation rate:** Hours of participation are subject to family circumstances and conditions and are prescribed by the IRU.

(6) **Two parent family not meeting the definition of two parent:** A two-parent family where one parent receives SSI, is an ineligible alien, or is a caretaker for a household member as determined by the IRU, must meet the work participation standard as prescribed by the single parent work participation rates based on the age of the child.

(7) **Two parent family where both parents are under age 20:** The participation standard shall be met for each parent if the parent is maintaining satisfactory attendance in secondary school or its equivalent during the month. Satisfactory attendance shall be based on the requirements of the school and on enrollment in sufficient course work to assure completion of secondary education before turning age 20.

C. Single-parent benefit group: Each parent in a single-parent or caretaker relative benefit group shall participate in work activities as prescribed below or be subject to conciliation or sanction.

(1) **Single parent with a child age six or older:**

(a) **Total monthly hours:** 129

- (b) Minimum core hours: 86
- (2) **Single parent with a child under age six:**
 - (a) Total monthly hours: 86
 - (b) Minimum core hours: 86
- (3) **Single parent under age 20:** A single parent under age 20 shall meet the single parent's total program participation standard, as outlined above when the parent:
 - (a) is enrolled in school with enough hours to ensure graduation prior to turning age 18; and
 - (b) reports on a monthly basis attendance at a secondary school or in a GED program; or
 - (c) participates in education directly related to employment for at least the average number of hours per week specified above based on the child's age.
 - (d) Compliance with attendance requirements is deemed during school breaks lasting no longer than four consecutive weeks.

8.102.460.15 LIMITED WORK PARTICIPATION STATUS: A participant may request a limited work participation status reducing their individual standard work participation rate as determined by the department at 8.102.420 NMAC. Participants granted a limited work participation status must still have an IRP and a WPA. Failure to follow the approved WPA or develop the WPA within the required timeframes may be considered non-compliance with program requirements.

8.102.460.16 Calculating hours:

- (1) Total monthly hours are calculated by a weekly average of core and non-core hours.
- (2) Time spent traveling to and from the work-site, location where child care is provided, or both, do not count as hours of participation.
- (3) For paid work activities:
 - (a) paid leave and holiday time count as actual hours;
 - (b) hours shall be anticipated prospectively and verification provided no more than every six months.
- (4) For non-paid activities allowable excused absences count as actual hours when:
 - (a) the absence occurs on a day that the participant is scheduled to participate in an activity; and
 - (b) is considered excused by the institution or sponsoring agency.
- (5) For non-paid activities allowable holiday absences count as actual hours when:
 - (a) the absence scheduled holiday occurs on a day that the participant would have been scheduled to participate in an activity; and
 - (b) the absence is a scheduled holiday as recognized by the department and determined at the beginning of each federal fiscal year.
- (6) A participant may be granted no more than 80 hours of excused absences during a calendar year and no more than 16 hours in any one month. Any excused absence cannot exceed the number of hours the participant was scheduled to work during the period of the absence.
- (7) Non-paid work experience and community service participation hours are limited to the Fair Labor Standards Act (FLSA) rules. The Fair Labor Standards Act (FLSA) standards are used to determine the maximum number of hours the department can require a participant to meet. Upon receipt and verification of meeting the maximum number of hours required by the FLSA calculation and the number is less than the core work hour requirement, the remaining hours may be deemed up after verification the maximum hourly requirement has been met is received. The maximum amount of weekly hours required by the FLSA is calculated as follows:
 - (a) **Single parent:** Add the monthly TANF cash assistance grant amount (prior to any reductions) to the monthly food stamp benefit and divide by the federal or state minimum wage, whichever is higher, and divide by 4.3.
 - (b) **Two-parent:** The calculation of participation requirement hours is the same as a single parent.

This is a new part in Chapter 102 of Title 8 NMAC.

TITLE 8 **SOCIAL SERVICES**
CHAPTER 102 CASH ASSISTANCE PROGRAMS
PART 461 **WORK PROGRAM ACTIVITIES**

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

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

8.102.461.3 **STATUTORY AUTHORITY:**

A. New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

B. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the temporary assistance for needy families (TANF) block grant under Title IV of the Social Security Act. Through the New Mexico Works Act of 1998, NMSA 1978, § 27-2B-1 et seq., the New Mexico works program was created.

C. In coordination with the NMW program, the department administers the food stamp employment and training program (E&T) pursuant to the Food Security Act of 1985 and federal regulations at Title 7, Code of Federal Regulations.

[8.102.461.3 NMAC - N,]

8.102.461.4 **DURATION:** Permanent.

[8.102.461.4 NMAC - N,]

8.102.461.5 **EFFECTIVE DATE:** September 1, 2011 or unless a later date is cited in this section.

[8.102.461.5 NMAC - N,]

8.102.461.6 **OBJECTIVE:**

A. The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, resources and support. The further purpose of the program is to increase family income through family employment and child support and by utilizing cash assistance as a support service to enable and assist parents to participate in employment.

B. The objective of education works program (EWP) is to provide cash assistance to a benefit group where at least one participant is enrolled in a post-secondary, graduate or post-graduate institution. Education and training are essential to long-term career development. The applicant or recipient benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

[8.102.461.6 NMAC - N,]

8.102.461.7 **DEFINITIONS:** [RESERVED]

8.102.461.8 **[Reserved]**

8.102.461.9 **PROGRAM ACTIVITIES:** The following sections describe the various work program activities in which participants may participate. A participant may participate in multiple work program activities at the same time or one after the other. The activities to be completed during an established period are identified in a work participation agreement by the participant and approved by ISD.

[8.102.461.9 NMAC - N,]

8.102.461.10 **WORK ACTIVITIES - CORE AND NON-CORE:**

A. **Core work activities:** Core activities are allowable for a participant to meet the standard work participation rates for a single or two parent household or to meet the minimum standard work participation rate as defined at 8.102.460.17 NMAC. For purposes of meeting the participant's standard work participation rate core work activities are defined in sections 8.102.461.11 NMAC thru 8.102.461.19 NMAC.

B. **Non-core work activities:** Non-core activities are allowable for a participant to address barriers or to meet the work requirement rate. A non-core activity may include, but is not limited to, an activity as defined in

8.102.461.20 NMAC thru 8.102.461.22 NMAC.

C. Limited participation status: Participants with limited participation status shall participate in the qualified activities best suited to their abilities as listed on their work participation agreement. The activities will be based upon the participant's individual circumstances as per 8.102.460.9 NMAC.
[8.102.461.19 NMAC - N.]

8.102.461.11 UNSUBSIDIZED EMPLOYMENT:

A. Unsubsidized employment is full- or part-time employment in the public or private sector that is not funded directly or in part by TANF or any other public program. Unpaid apprenticeships and unpaid internships are included as unsubsidized employment.

B. General:

(1) Hours for participants who are employed for wages at or above minimum wage will be determined by actual hours worked and will include paid leave and holidays.

(2) Hours for participants who are self-employed will be determined by subtracting business expenses from gross income for the term reported and divided by the federal minimum wage.

C. Component activities: The following shall be considered as qualified participation hours for unsubsidized employment.

(1) A participant who is employed less than 30 hours per week in unsubsidized employment is considered to be participating in the part-time employment.

(2) A participant who is employed 30 or more hours per week is considered to be participating in the full-time employment.

(3) A participant whose employer claims a tax credit for hiring economically disadvantaged workers in lieu of public sector subsidies, will be considered unsubsidized.

(4) Child care as self-employment: Participants may meet the standard work requirement rate by providing child care services as self-employment. Participants choosing to provide child care for income shall meet the requirements as indicated below:

(a) A participant electing to participate as a child care provider is referred to CYFD to enroll in the family nutrition program and to become a registered child care provider with the state prior to placement of any children there by the department. Participants must also agree to obtain 20 hours of child care training within six months of approval.

(b) The participant is considered employed, upon placement of any child for pay, by CYFD or by a parent.

D. Supervision and documentation: Hours of participation in an employment-related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.
[8.102.461.11 NMAC - N.]

8.102.461.12 SUBSIDIZED PRIVATE SECTOR EMPLOYMENT:

A. Employment for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a participant is considered to be subsidized private sector employment.

B. General: New Mexico will use TANF funds to offset the wages of employing a TANF participant for an established period of time. Upon expiration of the subsidized term of employment, the employer is expected to hire the participant.

C. Component activities: The following shall be considered as qualified participation hours for subsidized private sector employment.

(1) Employment will be considered subsidized if the employer receives TANF or other public sector funding for an employee.

(2) Public sector paid apprenticeships and paid internships shall be considered subsidized employment.

D. Supervision and documentation: Hours of participation in an employment-related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.
[8.102.461.12 NMAC - N.]

8.102.461.13 SUBSIDIZED PUBLIC SECTOR EMPLOYMENT:

A. Employment for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a participant is considered subsidized employment. The employment will be considered subsidized if an employer receives a TANF or other public sector subsidy for an employee.

B. **General:** A participant is ineligible for NMW/TANF cash assistance while participating in subsidized public sector employment. Subsidized public sector employees will be paid no less than the greater of federal or state minimum wage.

C. **Component activities:** The following shall be considered as qualified participation hours for subsidized public sector employment:

(1) Paid apprenticeships and paid internships.

(2) Participation in various support services designed to remove barriers towards employment shall be considered countable hours as long as the participant is paid for involvement.

D. **Supervision and documentation:** Hours of participation in an employment-related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

[8.102.461.13 NMAC - N.]

8.102.461.14 ON-THE-JOB TRAINING (OJT):

A. Training in the public or private sector that is given to a paid employee that provides knowledge and skills essential to the full and adequate performance of the job shall be considered on-the-job training. On-the-job training may be subsidized or unsubsidized. The employer of an OJT participant will retain the employee after the successful completion of the OJT contract and the existence of a written training plan; these plan requirements distinguish OJT from other subsidized employment.

B. **General:**

(1) Hours in an on-the-job-training activity will be determined by actual hours worked or upon the contract the HSD has with the employer including paid leave and holidays and projected for up to six months.

(2) The department will coordinate with the department of workforce solutions, Workforce Investment Act (WIA), one-stops or the New Mexico in-plant-training program to engage TANF participants in this work activity.

(3) To qualify as OJT there must be a contractual agreement with the employer and HSD may pay no more than 50 percent of the participant's wage and benefit package.

C. **Component activities:** The following shall be considered as qualified participation hours for OJT:

(1) on-the-job training as paid employment; or

(2) professional certification; or

(3) practicum, internship, and clinical training.

D. **Supervision and documentation:**

(1) Hours for this activity will be projected for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

(2) This activity must be supervised by an employer, work site sponsor, or other responsible party on a daily basis.

[8.102.461.14 NMAC - N.]

8.102.461.15 JOB SEARCH AND JOB READINESS ASSISTANCE:

A. Job search includes the acts of seeking or obtaining employment, and preparation to seek or obtain employment.

B. **General:**

(1) Countable hours for looking for job openings, making contact with potential employers, applying for vacancies and interviewing for jobs, and in labor market training will be determined by actual hours spent engaged in these activities. Travel time between these activities does count as actual hours of participation, except the travel time to and from home.

(2) Job search hours are countable in meeting the core work requirement rate for an individual with the following limitations:

(a) a single parent with a child under the age of six cannot participate for more than 80 consecutive hours and not to exceed 120 hours in the preceding 12 months; or

(b) a single parent with a dependent child over age six cannot participate for more than 120

consecutive hours and not to exceed 180 hours in a preceding 12 months;

(c) in either of the above circumstances participation shall not exceed four consecutive weeks of engagement in job search and job readiness; and

(d) in either of the above circumstance participation shall not exceed six weeks of engagement in job search and job readiness.

(e) **Needy state status:** If New Mexico is determined to be a needy state as determined by the United States department of health and human services the maximum number of hours allowed for participation is as follows:

(i) a single parent with a child under age of six cannot participate for more than 240 consecutive hours; and

(ii) a single parent with a dependent child over age six cannot participate for more than 240 consecutive hours.

C. Component activities: The following shall be considered as qualified participation hours for job search and job readiness.

(1) Participation in parenting classes, money management classes or life skills training.

(2) Participation in an alcohol or drug addiction program where a qualified health or social professional provides verification that such treatment or activity is necessary.

(3) Participation in job search including searching for job openings, applying for jobs and interviewing for positions.

(4) **Domestic violence**

(a) Participants who have significant barriers to employment because of domestic violence or abuse may participate in domestic violence work activity to receive services focused on assisting the participant to overcome the effects of domestic violence and abuse. Participants engaged in this activity may reside in a domestic violence shelter or may receive services while residing elsewhere. The primary focus of such services is on helping the participant to move into employment. Domestic violence is a temporary work-readiness activity limited to no more than 24 weeks.

(b) The need for domestic violence services can be identified at any point, starting with the resource planning session up to the point at which the case is scheduled for closure. Services are provided by local agencies or programs through referral.

(c) Domestic violence activity can include a mix of domestic violence services and other work program activities. At no point shall a victim of domestic violence be required to carry out any activity which puts the participant at risk of further violence. Domestic violence participation can include:

(i) emergency shelter or re-location assistance;

(ii) child care;

(iii) personal, family and career counseling; and

(iv) participating in criminal justice activities directed at prosecuting the perpetrator.

D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has satisfactorily completed the hours by participating in one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a monthly timesheet.

(3) Job search and job readiness assistance activities must be supervised by the NMW service provider or other responsible party on an ongoing basis no less frequently than daily.

[8.102.461.15 NMAC - N.]

8.102.461.16 WORK EXPERIENCE:

A. The purpose of work experience is to improve the employability of those who cannot find employment. Work experience may be in a public or private sector setting.

B. General

(1) The type of work experience placement needed by a participant may be identified during the assessment or the development of the IRP. Participants in a work experience placement can either be subsidized employees or trainees, depending upon the nature of the placement.

(2) **Sponsoring agencies:** Participants may be placed in either a public or private sector work site. The work site is selected based on a participant's individual needs. Sponsoring agencies provide supervision in a safe and healthy work environment and must ensure that the environment is free of discrimination based on race, gender, national origin, handicap, age, religion, or political affiliation.

(a) The sponsoring agency must enter into an agreement with the department which details the expectations and responsibilities of each party and ensures an appropriate work setting.

(b) The sponsoring agency may not displace any current employee in layoff status or infringe on the promotional opportunities of any current employee.

(c) The sponsoring agency shall be encouraged to give a hiring preference consideration to participants assigned to their agency.

(3) **Liability insurance:** All work providers must sign a work experience agreement and provide trainees with liability insurance. Participants in a trainee activity are covered by Medicaid except for injuries caused on the job not covered by Medicaid. Work-site accidents must be reported to the ISD office within 24 hours of occurrence. A written accident report must be obtained from the work site by the ISD office and submitted to the department's central office within five working days.

C. Component activities: Placement provides a participant with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment. Unpaid apprenticeships and unpaid internships are included as work experience.

D. Supervision and documentation:

(1) This activity must be supervised by an employer, work site sponsor, or NMW service provider on an ongoing basis no less frequently than daily.

(2) The Fair Labor Standards Act (FLSA) standards are used to determine the maximum number of hours the department can require a participant to meet. When the participant meets the maximum number of hours required by the FLSA calculation and the number is less than the core work hour requirement, the remaining hours may be deemed up. The maximum amount of weekly hours required by the FLSA are calculated as follows:

(a) **Single parent:** Add the monthly TANF cash assistance benefit to the monthly food stamp benefit and divide by the federal or state minimum wage, whichever is higher, and divide by 4.3.

(b) **Two-parent:** The initial calculation of participation requirement hours is the same as a single parent. Both parents can simultaneously participate in an activity subject to FLSA NMW standard work participation rates.

(c) **Limited participation status:** A participant in a limited work participation status may not use the FLSA calculation to meet the hours prescribed in their work participation agreement.
[8.102.461.16 NMAC - N.]

8.102.461.17 COMMUNITY SERVICE PROGRAMS:

A. Community service is a non-paid work activity. Participants provide services needed by their community. Sponsoring agencies may be either public sector or private nonprofit entities such as libraries, charities, churches, and schools. The department will review each placement and take into account, to the extent possible, the prior training, experience, and skills of a participant in making appropriate community service assignments.

B. General: To qualify as a community services placement, the activities carried out must be similar to those which would normally be carried out by a volunteer working with the agency rather than those carried out by an employee. Federal guidelines for determining whether a placement is a "volunteer" versus an "employee" must be followed by the sponsoring agency.

C. Component activities: The following shall be considered as qualified participation hours for community service programs.

(1) Community service programs will be limited to projects that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and child care.

(2) **Head-start, schools and child care centers:** Some educational and child care programs allow, or require, parents to contribute time in the classroom or on class activities outside the classroom. Time spent in such activities is considered to be community service time and is countable as a core work activity.

(3) **Liability insurance:** All work providers must sign a community service agreement and provide trainees with liability insurance. Participants in a trainee activity are covered by Medicaid and additional medical insurance for injuries caused on the job that may not be covered by Medicaid. Work-site accidents must be reported to the ISD office within 24 hours of occurrence. A written accident report must be obtained from the work site by the ISD office and submitted to the department's central office within five working days.

D. Supervision and documentation:

(1) This activity must be supervised by an employer, work site sponsor, or NMW service provider on an ongoing basis no less frequently than daily.

(2) The Fair Labor Standards Act (FLSA) standards are used to determine the maximum number of

hours the department can require a participant to meet. When the participant meets the maximum number of hours required by the FLSA calculation and the number is less than the standard work participation rate requirement, the standard work participation rate requirement may be deemed as met due to compliance with FLSA standards. The maximum amount of monthly hours required by the FLSA is calculated as follows:

(a) Single parent: Add the monthly TANF cash assistance benefit to the monthly food stamp benefit and divide by the federal or state minimum wage, whichever is higher, and divide by 4.3.

(b) Two-parent: The initial calculation of standard work participation rate hours is the same as a single parent. Both parents can simultaneously participate in an activity subject to FLSA NMW standard work participation rates.

(c) Limited participation status: A participant in a limited work participation status may not use the FLSA calculation to meet the hours prescribed in their WPA.
[8.102.461.17 NMAC - N,]

8.102.461.18 CHILD CARE FOR COMMUNITY SERVICE PARTICIPANTS:

A. NMW participants may meet the NMW standard work participation rates by providing child care services, at no cost, to other NMW participants engaged in community services.

B. General: Use of a child care provider by a participant, as provided in this section, is at the sole discretion of the participant.

(1) The department will make a good faith effort to assure the provision of quality care and a safe environment by referring community service participants only to childcare providers who have been certified by CYFD. The department makes no claim as to the quality of care which will be provided, and assumes no liability, for the physical or emotional condition of children referred to a home certified by CYFD.

(2) The minimum number of children a participant may care for is determined based on the number of families needing child care while participating in a community service component. However, at no time will the number exceed child-care standards established by CYFD. A participant electing to participate as child care provider is referred to CYFD to enroll in the family nutrition program and to become a registered child care provider with the state prior to placement of any children there by the department. Participants must also agree to obtain 20 hours of child care training within six months of approval.

(3) After successful registration, meeting safety regulations, and receiving training, NMW participants shall become registered child care providers. NMW participants shall then become eligible to receive payments from CYFD for providing child care services.

(4) Hours of participation are based on the number of hours each day the participant is actually providing care for the children, plus one hour before and one after the children leave for the purposes of clean-up and preparation.

(5) Upon placement of any child for pay, by CYFD or by a parent, the participant is considered to be employed.

C. Supervision and documentation:

(1) The provider is required to maintain attendance records to verify the hours of work. Also included in participation hours is time spent registering with CYFD, time spent correcting any deficiencies necessary to complete registration as well as any time spent in attendance at child care training activities.

(2) The NMW service provider or ISD office shall maintain a list of registered child care providers who are providing non-paid child care and refer to them any participant in community services who needs child care in order to participate.

[8.102.461.18 NMAC - N,]

8.102.461.19 VOCATIONAL EDUCATION AND TRAINING:

A. Organized career and technical educational programs that are directly related to the preparation of a participant for employment in current or emerging occupations requiring training, to include a baccalaureate or advanced degree are considered to be vocational education and training. Engagement shall be reported as core participation for not more than 12 months in a lifetime.

(1) A course of vocational education or training is one whose purpose is to provide the specific knowledge and skills needed by a participant to carry out the functions and activities of an occupation or class of occupations listed in the DOT (dictionary of occupational titles). A participant will be granted a degree or certificate at the end of the program which names the occupation.

(2) Vocational educational training must be provided by education or training organizations, which may include, but are not limited to, vocational-technical schools, community colleges, postsecondary institutions,

proprietary schools, non-profit organizations, and secondary schools that offer vocational education and are certified to provide the participant a certificate of completion by an accredited agency.

B. Approval of vocational education training:

(1) A fixed number of vocational education training education slots shall be authorized by the department and shall not exceed 30 percent of the total number of persons subject to work program participation. For a participant in a slot, all approved hours of participation in vocational education activities shall count in meeting the participant's core work participation requirement.

(2) No more than 12 months in a lifetime of such activity are countable in meeting the standard work participation rate.

(3) Enrollment in an agreed-upon vocational training program is the responsibility of the participant.

(4) Level of effort: Participation requirement hours shall be considered based on:

(a) actual supervised class time hours;

(b) labs and similar activities are considered class time;

(c) actual hours of completed supervised study-time;

(d) one hour of unsupervised study time per hour of class not to exceed the educational program requirements; and

(e) holiday time and excused absences.

C. Component activities: Vocational educational training programs should be limited to component activities that give participants the knowledge and skills to perform a specific occupation. The following shall be considered as qualified participation hours for vocational education and training.

(1) Vocational associate degree programs: Programs consisting of both academic and vocational for credit course work that requires 60 credits for completion. Completion of these programs can provide an associate of arts, associates of science or associates of applied science degree in fields defined as vocational as per Subsection A of this section.

(2) Instructional certificate programs: Programs designed to upgrade job related skills which generally require up to a year to complete and involve less academic work than associate degrees.

(3) Industry skills certifications: Industry developed certificates for students who demonstrate specific skills often thru testing. Preparation for tests include both self-study and courses offered at post secondary institutions or other training providers.

(4) Non-credit course work: Curriculum designed to accommodate those who want specific job related skills at an accredited institution.

(5) English as a second language (ESL) and basic education: these courses of study can count as part of the vocational training component only if they are included in the embedded activities in the curriculum. In order to count as a work activity, basic remedial education or ESL must be required subjects by counseling or evaluative services provided by the educational facility.

(6) Distance education and online certificate programs: Distance education and online certificate programs in the associate degree and certificate programs listed above must be taken through an institution accredited by an accrediting agency and recognized by the council for higher education accreditation or by the U.S. department of education in order to qualify as a work activity and approved on a case-by-case basis by the NMW service provider.

(7) Class and homework hours must be reported on timesheets and verified as supervised by the attended institution's instructor or aide.

D. Supervision and documentation:

(1) Verification of level of effort shall be required to determine that a participant has satisfactorily completed the hours by one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised and unsupervised hours documented on a monthly timesheet.

[8.102.461.19 NMAC - N.]

8.102.461.20 JOB SKILLS TRAINING:

A. Job skills training required by an employer to provide a participant with the ability to obtain employment or to advance within the workplace is considered job skills training.

B. General: Non-core work activities are countable towards the total work participation rate for a participant who has completed the core work activity hours.

C. Component activities: Participation in the following is considered as meeting work participation requirement rates when combined with a core work activity:

- (1) full-time training for adult basic education (ABE), English as a second language (ESL);
- (2) post-secondary education; or
- (3) any other job related training that can not be considered vocational education as outlined in 8.102.461.19 NMAC.

D. Supervision and documentation:

- (1) Verification of activities shall be required to determine that a participant has satisfactorily completed the hours by participating in one or several of the component criteria.
- (2) Participation requirement hours shall be considered based on actual supervised hours documented on a monthly timesheet.
- (3) Job skills training directly related to employment must be supervised on at least a daily ongoing basis.
- (4) Countable work participation hours shall be determined by actual hours spent in class time, completion of supervised and unsupervised study hours to include holidays and excused absences. One hour of unsupervised study time for each hour of classroom time will be counted, as long as the amount of study time does not exceed the educational program requirements.
[8.102.461.20 NMAC - N,]

8.102.461.21 EDUCATION RELATED TO EMPLOYMENT:

A. Any organized activity which is designed to improve the participant's knowledge or skills for the specific purpose of increasing the participant's ability to perform in the workplace is considered to be education directly related to employment.

B. General: NMW participants may engage in this activity if they have not received a high school diploma or a certificate of high school equivalency or needs specific education related to current employment or job offer. Non-core work activities are countable towards the total work participation standard for a participant who has completed the core work activity hours.

C. Component activities: Participation in the following is considered as meeting work participation requirement hours when combined with a core work activity:

- (1) English as a second language (ESL) for participants who are unable to or uncomfortable with their ability to communicate in English, either spoken or written; or
- (2) literacy training for participants who have trouble understanding written English and is based on a demonstrated or acknowledged difficulty in reading comprehension, regardless of the level of education completed; or
- (3) adult basic education (ABE) to assist participants who need classes providing basic educational training before working on a general equivalency degree (GED); or
- (4) GED classes for participants who have completed a general equivalency diploma pre-test and the results indicate the participant is ready; or
- (5) high school attendance for participants who are attending an accredited high school, a participant who has recently dropped out of high school shall be encouraged to re-enroll or required to pursue a GED; or
- (6) post-secondary institution for participants who are enrolled in advanced educational training activity through colleges, technical institutes or universities and who are attending classes in order to complete a two- or four-year college degree; or
- (7) education directly related to employment shall include any other job-related class provided by a facility or organization.

D. Supervision and documentation:

- (1) Verification of activities shall be required to determine that a participant has completed the hours by participating in one or several of the component criteria.
- (2) Countable work participation hours shall be determined by actual hours spent in class time, completion of supervised and unsupervised study hours to include holidays and excused absences. One hour of unsupervised study time for each hour of classroom time will be counted, as long as the amount of study time does not exceed the educational program requirements. Hours will be documented on a monthly timesheet.
[8.102.461.21 NMAC - N,]

8.102.461.22 SECONDARY SCHOOL/GED:

A. The secondary school/GED work program activity serves participants who are age 18 or older. This may be a qualified activity for a participant who is under age 20, but cannot enroll in high school if the participant has:

(1) successfully completed a previous education work program activity - English as a second language or adult basic education; or

(2) completed a general equivalency diploma pre-test and the results indicate the participant is ready for GED classes.

B. Participation must be supervised on no less than a daily basis. Non-core work activities are countable towards the total work participation standard for a participant who has completed the standard work participation rate with a core work activity.

C. Component activities: Participation in the following is considered as meeting work participation requirement hours when combined with a core work activity:

(1) ABE or ESL; or

(2) GED or high school shall only be included when they are prerequisites for employment.

D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has completed the hours by participating in one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a monthly timesheet.

(3) Countable work participation hours shall be determined by actual hours spent in class time, completion of supervised and unsupervised study hours to include holidays and excused absences. One hour of unsupervised study time for each hour of classroom time will be counted, as long as the amount of study time does not exceed the educational program requirements.

[8.102.461.22 NMAC - N.]

This is a proposed new part in Chapter 102 in Title 8 NMAC.

TITLE 8 **SOCIAL SERVICES**
CHAPTER 102 **CASH ASSISTANCE PROGRAMS**
PART 462 **NEW MEXICO WAGE SUBSIDY PROGRAM**

8.102.462.1 **ISSUING AGENCY:** New Mexico Human Services Department.
[8.102.462.1 NMAC N, 09/01/2011]

8.102.462.2 **SCOPE:** The rule applies to the general public.
[8.102.462.2 NMAC - N, 09/01/2011]

8.102.462.3 **STATUTORY AUTHORITY:**

A. New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

B. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the temporary assistance for needy families (TANF) block grant under Title IV of the Social Security Act. Through the New Mexico Works Act of 1998, NMSA 1978, § 27-2B-1 et seq., the New Mexico works program was created.
[8.102.462.3 NMAC - N, 09/01/2011]

8.102.462.4 **DURATION:** Permanent.
[8.102.462.4 NMAC - N, 09/01/2011]

8.102.462.5 **EFFECTIVE DATE:** September 1, 2011, unless a later date is cited at the end of a section.
[8.102.462.5 NMAC - N, 09/01/2011]

8.102.462.6 **OBJECTIVE:**

A. The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, resources and support. The further purpose of the program is to increase family income through family employment and child support and by utilizing cash assistance as a support service to enable and assist parents to participate in employment. This is achieved by participation in, and successful completion of the activities described in this part.

B. The New Mexico wage subsidy program is a subsidized employment opportunity where a TANF cash assistance participant is employed full time. The department or its agents may subsidize the up to 50 percent of the employee's salary with funds from the TANF block grant. Funding of the program is contingent on specific appropriation of state and federal funding.
[8.102.462.6 NMAC - N, 09/01/2011]

8.102.462.7 **DEFINITIONS:** [Reserved]

8.102.462.8 **CASE ADMINISTRATION FOR THE NEW MEXICO WAGE SUBSIDY PROGRAM:**

The New Mexico wage subsidy program is a subsidized employment opportunity where a TANF cash assistance participant is employed full-time. Payments to employers are made from TANF block grant funds.

A. **Initial Eligibility:** Active participants in the TANF/NMW program may be referred to participating employers to be considered for a New Mexico wage subsidy position. To be eligible for these positions, the participant must meet the following criteria:

- (1) have sufficient work experience;
- (2) be a registered participant in NMW;
- (3) is not in current conciliation or being sanctioned for non-cooperation with the NMW work requirements or child support requirements;
- (4) have citizenship documentation and a social security number; and
- (5) have verification of their highest educational level attained.

B. **Certification period:** A participant may be employed through the New Mexico wage subsidy program for up to 12 months.

C. **Effects on TANF cash assistance:**

- (1) The participant is ineligible for TANF cash assistance while participating in the wage subsidy program;
 - (2) the months of participation in the wage subsidy program will not count against a participant's 60 month term limit;
 - (3) the participant remains eligible for Medicaid;
 - (4) the participant's wages count against as income for determining food stamp eligibility.
 - (5) the participant may be eligible for a supplemental cash assistance payment if the wage subsidy employment is lost during the month, or if the net monthly full-time wage paid to the participant is less than the TANF cash assistance to which the participant would otherwise be eligible; and
 - (6) the participant's earnings are exempt from HUD housing determinations.
- D. Continued Eligibility:** the following requirements must be met for to ensure continued participation in the NM wage subsidy program:
- (1) the participant must remain eligible for TANF for the duration of the wage subsidy employment term;
 - (2) must maintain satisfactory attendance at the employment site; and
 - (3) continued participation by the second parent in a two parent family.

8.102.462.9 PROGRAM LIMITATIONS:

A. Failure to comply with other requirements: The benefit group shall be transitioned back to the NMW cash assistance program and appropriate sanctions applied if a participant fails or refuses to comply with child support enforcement, or school attendance, or reporting requirements in the NMW cash assistance program. The transition is effective in the month following the month the failure or refusal to comply is established.

B. Two-parent family: In a two-parent family where only one of the parents is a participant in the EWP, the other parent, if considered as a mandatory participant in the NMW work program, shall be required to participate in qualified work activities for a minimum of 30 hours per week. At least 20 hours a week must be spent in qualified primary work activities.

C. If a wage subsidy participant voluntarily quits a job without good cause, as determined by the NMW service provider or the department, the participant will no longer be considered for participation in the wage subsidy program. Refer to 8.102.620 NMAC for good cause provisions.

D. The TANF cash assistance participant will then have 10 days to notify the work program contractor and renew work participation activities or be subject to the conciliation/sanction process for non-compliance with the work program.

8.102.462.9 REQUIREMENTS FOR PARTICIPATING EMPLOYERS: Participating employers shall:

A. hire NMW participants for subsidized positions and offer a reasonable possibility of unsubsidized employment after the subsidy period;

B. not require participants to work in excess of forty hours per week;

C. pay a wage that is equal to the wage paid to permanent employees performing the same job duties and no less than the federal minimum wage;

D. ensure that the subsidized employment does not impair an existing contract or collective bargaining agreement;

E. ensure that the subsidized employment does not displace currently employed persons or fill positions that are vacant due to a layoff;

F. maintain health, safety and work conditions at or above levels generally acceptable in the industry and not less than those of comparable jobs offered by the employer;

G. provide on-the-job training necessary for subsidized participants to perform their duties;

H. sign an agreement for each placement outlining the specific job offered to a subsidized employee and agreeing to abide by all of the requirements of the wage subsidy program;

I. provide workers' compensation coverage for each subsidized employee;

J. provide other benefits (includes but is not be limited to, health care coverage, paid sick leave, holiday and vacation pay) equal to those for new employees, or as required by state and federal law, whichever is greater; and

K. inform the department of any absences resulting in leave without pay; and

L. proceed with termination of any New Mexico wage subsidy employee who has used an excess of 16 hours excused absences in a month or 80 cumulative hours over the course of the wage subsidy term.

8.102.462.10 DEPARTMENT REQUIREMENTS: The department shall:

- A. suspend regular TANF cash assistance payments to the benefit group for the calendar month in which an employer makes the first subsidized wage payment to a participant in the benefit group;
- B. pay employers each month, from the TANF block grant, an amount that equals fifty percent of the wages paid by the employer to program participants;
- C. issue a supplemental TANF cash assistance payment if the net monthly full-time wage paid to the participant is less than the TANF cash assistance amount for which the participant would otherwise be eligible;
- D. reimburse the participating employer each month through current invoice procedures; and
- E. assist the work program contractor by referring participants who may be eligible for the New Mexico wage subsidy program.

8.102.462.11 NMW SERVICE PROVIDER REQUIREMENTS: The department's NMW service provider shall:

- A. provide an orientation for all participants who are accepted into the wage subsidy program;
- B. identify eligible participants and refer them to potential employers;
- C. submit a list of referrals to the local ISD office to verify eligibility for NMW cash assistance;
- D. assist the TANF cash assistance participant in submitting applications for employment; and
- E. provide case management by monitoring employee work efforts and production to ensure job retention.

8.102.462.12 Leave balances and absences:

- A. **Annual and sick leave:** While participating in the NMW wage subsidy program, the participant is entitled to accrue a balance of both sick and annual leave, as provided by the employer.
- B. **Excused Absences:** Participants are entitled to unpaid excused absences at the discretion of the site supervisor or NMW service provider. A participant may not be allowed more than 16 hours of unpaid excused absences in any month or 80 hours cumulatively during the wage subsidy term. Absences are approved by the site supervisor or by the NMW service provider.
- D. Absences in excess of the accrued annual, sick and the unpaid excused absence totals will result in termination of the NMW wage subsidy activity and the participant will be subject to the conciliation and sanction process in accordance with regulation at 8.102.620 NMAC. The appropriate termination process dictated by the employer's human resources procedures shall be followed.

This is proposed amendment to section 11 of 8.102.501 NMAC.

8.102.501.11 NMW PARTICIPATION REQUIREMENTS: An TBP recipient will be encouraged to participate in work program activities and shall be expected to attend and complete all required activities, such as the assessment, individual responsibility plan (IRP), work participation agreement (WPA) and monthly participation requirements in accordance with 8.102.460~~[12 through 8.102.460.16]~~NMAC if not otherwise meeting. Participation requirements apply to each benefit group member whether the benefit group is considered to be a two-parent or single-parent benefit group. No TBP participant shall be sanctioned for NMW non-cooperation. [8.102.501.11 NMAC - N, 07/01/2008; A, 08/14/2009]

This is an amendment to Sections 10 of 8.102.620 NMAC and a repeal of Sections 15 and 16 of 8.102.620 NMAC.

8.102.620.10 CHILD SUPPORT AND ~~[WORK PROGRAM]~~ NMW NON-COOPERATION PAYMENT SANCTIONS:

A. General:

(1) The benefit group shall be subject to a non-cooperation payment sanction under either or both of the following circumstances:

- (a) failure by a benefit group member to meet ~~[work program]~~ NMW requirements; or
- (b) failure by the adult responsible for children included in a benefit group to meet child support enforcement division (CSED) cooperation requirements or both.
- (c) Good cause will be evaluated based on the circumstances of each instance of non-cooperation.

(2) Occurrence of non-cooperation:

(a) Child support:

- (i) A benefit group shall be subject to a payment sanction for failure to comply with CSED cooperation requirements, even if the adult required to cooperate with child support requirements is not included in the benefit group.
- (ii) Each benefit group member that fails to cooperate with the ~~[work program]~~ NMW requirement is subject to a sanction and shall affect the benefit group.
- (iii) An occurrence of non-cooperation shall be applied when a sanction progresses to the next sanction level as a result of the noncompliance continuing for three consecutive months without the sanctioned participant reestablishing compliance. Progression to the next sanction level shall be effective in the fourth month.
- (iv) A first or second level sanction is considered to be cured upon full cooperation by the sanctioned participant or a sanction shall be reversed based on a hearing decision when the sanction imposed is determined to be invalid.

(b) ~~[Work program]~~ NMW:

- (i) A benefit group is subject to a payment sanction when a participant in the benefit group fails to cooperate with the ~~[work program]~~ NMW requirements absent a finding of good cause.
- (ii) In a two-parent benefit group, each mandatory benefit group member that fails to cooperate with the ~~[work program]~~ NMW requirements is subject to a sanction that affects the benefit group's sanction level and payment.
- (iii) A participant shall not be sanctioned for more than one ~~[work program element]~~ NMW requirement element at one time. A participant may be sanctioned for the same or a different ~~[work program]~~ NMW requirement element only after the original sanction element is cured or reversed. A first or second level sanction may be cured upon full cooperation by the sanction participant and a sanction shall be reversed based on a hearing decision when the sanction imposed is determined to be invalid.
- (iv) A participant with limited participation status may be sanctioned for failure to meet the work participation requirement rates as identified on the approved work participation agreement.

(iv) An occurrence of non-cooperation shall be applied when a sanction progresses to the next sanction level as a result of the noncompliance continuing for three consecutive months without the sanctioned participant reestablishing compliance. Progression to the next sanction level shall be effective in the fourth month.

(3) Cumulative sanctions:

- (a) Non-cooperation sanctions are cumulative within the benefit group and shall occur when:
 - (i) the participant fails to comply with the ~~[work program]~~ NMW and child support enforcement requirements for a one-parent benefit group;
 - (ii) more than one participant in the benefit group have failed to comply with either the ~~[work program]~~ NMW and/or child support enforcement requirement.
- (b) Cumulative sanctions, whether or not cured, shall remain the property of that benefit group participant who caused the sanction.
 - (i) A participant with a sanction who leaves a benefit group relieves the benefit group of that participant's sanction status.
 - (ii) A participant with a sanction who joins another benefit group subjects the new benefit group to any sanction or sanction level that has not been cured prior to joining the benefit group.
- (c) The benefit group's cumulative sanctions and benefit level shall be reevaluated when a sanction is cured or reversed.

(4) Progressive sanctions:

(a) Non-cooperation sanctions are progressive to both the participant[?] and to the benefit group and shall progress to the next level for the benefit group in which the sanctioned participant resides when:

- (i) a participant fails to establish compliance in three-month increments; or
- (ii) a participant fails to comply with [work program] NMW or CSED requirements as a separate occurrence.

(b) A sanction that is not cured for three consecutive months shall progress until compliance is established by the participant [~~or there is a waiver of the requirement~~].

(c) A participant's compliance cannot reverse the sanction level attributed to the benefit group. Any subsequent sanction is imposed at the next higher level, unless reversed by a hearing decision.

B. The conciliation process:

(1) **When conciliation is available:** Conciliation shall be available to a participant or applicant once during an occurrence of assistance. There must be a period of at least 12 months between occurrences of cash assistance in order for a conciliation to be available again to the benefit group. [work program] NMW conciliation and child support conciliation are independent and are counted separately from each other.

(2) Determining that noncompliance has occurred:

(a) The determination of noncompliance with child support shall be made by CSED. The conciliation and sanctioning process for child support noncompliance is initiated upon receipt of notice from CSED that the participant or applicant has failed to cooperate. Under Subsection B of 8.102.420[~~-44~~] NMAC, the non-cooperative participant or applicant shall be individually disqualified from participation in the benefit group.

(b) The determination of noncompliance with [work program] NMW requirements shall be made by the caseworker. A finding of noncompliance shall be made if:

- (i) [~~ISD has not received a certification of~~] the participant has not completed an assessment;
- (ii) the participant fails or refuses to complete an IRP;
- (iii) the participant fails or refuses to submit an approvable WPA;
- (iv) the participant's monthly attendance report shows fewer than the minimum required hours of participation [~~in primary and total work activities~~] and no other allowable hours of activity can be reasonably attributed by the caseworker towards the monthly participation requirement.

(3) **Initiating conciliation:** Within 10 days of determining that noncompliance exists, the caseworker shall take action to initiate a conciliation, if the participant's conciliation has not been used. A conciliation is initiated by the caseworker issuing a conciliation notice. CSED shall determine noncompliance and notify the caseworker who shall initiate the conciliation process.

(4) **Conciliation period:** Conciliation gives a participant a 30-calendar day period to correct the current non-compliance for either a [work program] NMW participation or CSED requirement.

(a) The conciliation process is established by the department, to address the noncompliance, identify good cause for noncompliance or barriers to compliance and shall occur only once prior to the imposition of the sanction.

(i) The participant shall have ten working days from the date a conciliation notice is mailed to contact the department to initiate the conciliation process. A participant who fails to initiate the conciliation process shall have a notice of adverse action mailed to him after the tenth working day following the date on which the conciliation notice is mailed.

(ii) Participants who begin but do not complete the conciliation process shall be mailed a notice of adverse action 30 days from the date the original conciliation was initiated. The benefit group shall be subject to sanction in the month following the month the notice of adverse action expires.

(b) **Non-cooperation with CSED requirements:** When the participant has initiated the conciliation process, it is the participant's responsibility to contact CSED and to comply with requirements or to request a waiver from CSED due to good cause. If the caseworker does not receive confirmation from CSED within 30 days of issuing the conciliation notice that the participant is cooperating or has requested a waiver for good cause in accordance with 8.50.105.14 NMAC; the conciliation process shall be considered to have failed the benefit group shall be subject to payment sanctioning.

(c) The caseworker shall make the determination whether arrangements have been made to meet [work program] NMW requirements or whether there is good cause for waiving the cooperation requirements. If arrangements to meet the requirement or to waive it have not been made by the thirtieth day following issuance of the conciliation notice, the conciliation shall be considered to have failed and the participant is subject to sanctioning.

~~[(d) Good cause is considered to exist when:~~

~~_____ (i) the department has failed to submit notice or assist in providing necessary support services to the participant that would adversely affect the participant's ability to timely meet work participation requirements; or~~

~~_____ (ii) the total primary work participation hours reported are within four hours of the requirements as outlined in 8.102.460.13 NMAC.]~~

C. Sanctioning:

(1) Within 10 days of determining that a participant has failed to meet a ~~[cooperation]~~ NMW requirement, ISD shall issue notice of adverse action that the payment shall be reduced. The payment reduction shall take place with the first payment following expiration of the notice of adverse action.

(2) Notice of adverse action shall apply to all ~~[work program]~~ NMW and child support noncompliance sanctions, including those relating to the conciliation process.

(3) A participant who corrects the failure of compliance with ~~[work program]~~ NMW or child support enforcement requirements during the notice of adverse action 13-day time period shall not have the sanction imposed against the benefit group or payment amount. The sanction shall not count as a cumulative or progressive sanction, since the reason for the sanction was corrected during the time period of the notice of adverse action and prior to a benefit reduction being imposed. A participant who has failed to meet work participation hours cannot correct the sanction during the notice of adverse action time period.

(4) Failure to comply during the notice of adverse action 13-day time period shall cause the sanction to become effective.

(a) A sanction shall be removed effective the month following the month in which the determination is made that the participant has complied with requirements.

(b) A child support enforcement sanction shall be removed after CSED notifies the caseworker that the participant is in compliance with child support enforcement requirements.

(c) A ~~[work program]~~ NMW sanction shall be removed after the caseworker receives verification that the participant has completed an assessment; or has completed an IRP; or has completed a WPA that indicates the appropriate number of weekly hours in work activities; or has met ~~[work program]~~ NMW participation hours for at least 30 days; or has good cause to waive work participation requirements.

~~[(d) Good cause is considered to exist when:~~

~~_____ (i) the department has failed to submit notice to the participant or provide necessary support services that would adversely affect the participant's ability to timely meet work participation requirements; or~~

~~_____ (ii) the total primary work participation hours reported are no more than four hours less than required as outlined in 8.102.460.13 NMAC.]~~

D. Sanction levels:

(1) First-level sanction:

(a) The first level sanction for failure to comply, shall result in a sanction of 25 percent of the standard of need. The benefit group shall be given notice of the imposition of the sanction.

(b) If the first level lasts for more than three months, or a participant has a second occurrence of failure to comply with ~~[work program]~~ NMW or CSED requirements, the sanction shall advance to a second level sanction, as described below.

(2) Second-level sanction:

(a) The second level of sanction for failure to comply shall result in a decrease of 50 percent of the standard of need. The second level shall be initiated by:

(i) failure to comply with ~~[work program]~~ NMW participation or child support enforcement requirements for more than three months; or

(ii) a second occurrence of noncompliance with a ~~[work program]~~ NMW or CSED requirement by a participant; or

(iii) failure of a participant to comply with both CSED and ~~[work program]~~ NMW participation requirements simultaneously. The group shall be given concurrent notice of imposition of the second-level sanction.

(b) If the second level lasts for more than three consecutive months, the sanction shall advance to level three as described below.

(3) Third-level sanction:

(a) The third sanction level is case closure for a period of not less than six months. The group shall be given notice of adverse action prior to imposition of the sanction.

(b) Once a participant is sanctioned at the third level, any subsequent occurrence of failure to comply with ~~[work program]~~ NMW or CSED requirements shall immediately result in a third level sanction, and case ineligibility for six months.

E. Sanctions by other states or other programs: Participants in sanction status for failure to participate in other programs, such as the food stamp E&T program, or another state's or tribal TANF program, shall not carry that sanction status into NMW.

F. Sanctions with respect to voluntary participants: A voluntary participant is not subject to sanction for failure to participate, but shall be removed from the ~~[work program]~~ NMW and lose eligibility for support services.

G. Good cause:

(1) Good cause applies to timely completion of assessment, IRP, WPA, work participation rates, and cooperation with the child support enforcement division.

(2) Good cause for failure to meet the NMW requirements.

(a) Good cause may be considered to exist for no more than 30 days in the event of:

(i) family death;

(ii) hospitalization;

(iii) major injury to the participant or a benefit group member for whom the participant has been the primary caretaker;

(iv) reported domestic violence; ~~[or]~~

(v) catastrophic event[-]; or

(vi) it is shown the department did not provide the participant timely assistance to complete the assessment, IRP, or WPA.

(b) The participant must meet with the NMW service provider prior to the end of the 30 day period to establish a WPA for the full participation standard beginning on day 31 or must request a limited work participation status prior to the end of the 30 day period. The participant may be subject to sanction for failure to complete a WPA if a new WPA has not been established by day 31.

(i) A participant with good cause for failure to meet the NMW requirements, who expects the cause of failure to continue for more than 30 days, must contact the department to review the participant's circumstances.

(ii) Under no conditions shall good cause be granted for more than 30 days during any given reporting period.

(3) Good cause for refusal to cooperate with the child support enforcement requirements: In some cases it may be determined by the CSED that the TANF/NMW applicant's/recipient's refusal to cooperate is with good cause in accordance with 8.50.105.14 NMAC. Any person requesting a good cause exemption to a TANF/NMW requirement to cooperate must fill out a request for a good cause exemption on a form provided by the CSED and provide any documentation requested by CSED. The request for a good cause exemption will be reviewed by the CSED and the requestor will be informed of the decision in writing. The requestor's failure to complete the form or provide the requested documentation will result in an automatic denial of the request.

[B. — Good cause shall be considered to exist when a participant meets the minimum work participation requirement, but may not meet the total hours of participation or the non-core work requirement. There is no limit for allowing good cause for this reason during a time period; however, the department shall work with the participant to identify the reason the total work requirement is not met.]

[C. — Good cause applies to a participant not meeting the required time limit to complete the assessment, IRP, or WPA when the department has not demonstrated timely assistance to a participant.

[D.]H. Excused absences: For non-paid activities, allowable excused absences that are not approved by the employer or sponsoring agency may be considered good cause based on the approval of ISD. There are no more than 16 allowable hours per month and no more than 80 hours in the preceding 12 month period.

8.102.620.15 CALCULATING THE SUPPORTIVE SERVICES BENEFIT: If state or federal funds are specifically appropriated, the department may issue supportive services benefits.

A. Child care: The caseworker may authorize child care reimbursement for persons for a period not to exceed 30 days. All other child care shall be authorized by CYFD. The caseworker shall authorize child care in compliance with CYFD program requirements and standards. Child care payments shall not be paid for with federal TANF funds and shall not count towards the TANF term limits.

B. Transportation: [There are two types of payments issued for transportation costs: advance and standard reimbursement.] NMW participants may receive a standard transportation reimbursement.

~~[(1)]~~ **Advance:**

~~(a)~~ A NMW work program participant may request an advance of \$10.00 to attend orientation and assessment activities or to begin participation in a work program activity. The \$10.00 advance shall be deducted from the end of the month standard reimbursement.

~~(b)~~ A NMW work program participant who gets a job as a result of participating in a previously approved component may request a one time only travel advance. The participant shall be eligible for an advance for one month in order to pay for travel expenses until the first pay check is received. The standard travel reimbursement amount shall be provided.

~~(i)~~ A NMW participant who receives a transportation advance for employment does not submit an end of the month verification of incurred expenses. The participant shall not be eligible for further transportation assistance while in this job.

~~(ii)~~ A caseworker may authorize a travel allowance for a participant who gets a job as a result of participating in a previously approved component. The participant shall be eligible for the \$25.00 allowance for one month in order to pay for travel expenses incurred until the first pay check is received.

~~(2)]~~ **(1) Reimbursement:**

(a) The NMW [work program] allows travel reimbursement for mandatory and voluntary participants traveling to [work program] NMW offices for orientation, assessment, reassessment, or employment planning activities. In addition, travel costs are reimbursed for approved [work program] NMW activities identified and developed in the WPA.

(b) Mileage costs for paid employment are met through the cash assistance earned income deduction. Except for the one-time only advance, travel reimbursement shall not be made for any [work program] NMW activity for which the individual is paid.

~~[(3)]~~ **(2) Reimbursement standards:**

(a) NMW reimbursement for NMW [work program] participants using private automobiles shall be at a standard rate based on monthly mileage, as set forth below.

(i) The caseworker shall decide whether the claimed mileage is reasonable and, if the amount claimed is excessive, may adjust the amount downward.

| Monthly Mileage | Monthly Reimbursement |
|-----------------|-----------------------|
| 1 - 499 | \$25 |
| 500 - 1499 | \$50 |
| 1500 - 2499 | \$100 |
| 2500 or More | \$150 |

(ii) Mileage shall be allowed only if the activity takes place in the individual's home community. Travel may be allowed outside the individual's home community only if the [work program] NMW activity is not available in the community or if the [work program] NMW activity involves participation in an educational or vocational training program which is not available in the individual's home community.

~~[(b)]~~ The E&T program provides a standard monthly allowance of \$25 for participants engaged in an approved work program activity. The allowance shall be available subject to receipt of a report certifying completion of required activities during the month.]

~~[(e)]~~ **(b)** Bus tokens/passes are issued in lieu of the travel allowance and may not exceed \$25 for the month. A participant shall be eligible to receive bus tokens or a one-month bus pass on an interim basis, provided that:

- (i) the participant has no access to private transportation; and
- (ii) public transportation is a reasonable alternative.

C. Vocational training and education: If state or federal funds are specifically appropriated, the department may issue supportive services benefits.

(1) Reimbursement for vocational training and educational expenses, but not tuition, shall be available to NMW [work program] participants. ~~[E&T participants must pay such expenses using the \$25.00 monthly allowance or from other non work program sources.]~~

(2) NMW [work program] participants requesting reimbursement for various vocational training and educational expenses must provide receipts or request letters stating the amount of educational expenses. In addition, NMW [work program] participants must provide verification that financial assistance from other sources is unavailable or insufficient to cover the expenses for which the reimbursement is being requested.

(3) To be eligible for reimbursement of vocational training and educational expenses, the NMW participant must:

- (a) meet ~~[work program]~~ NMW participation requirements;
 - (b) have an approved WPA which identifies and approves supportive services for further training; a NMW ~~[work program]~~ participant is not eligible for reimbursement of vocational training or educational expenses incurred prior to development of the WPA.
 - (c) apply and be denied for any educational assistance from such other sources as scholarships, PELL grants, WIA, student loans, etc. for which the participant might be eligible;
 - (d) provide "letters of denial" for the financial assistance listed previously; and
 - (e) repeat steps (a) through (c) at the beginning of each educational period (semester, quarter, trimester etc. as applicable).
- (4) Reimbursable vocational training and education costs shall include only those for which a student is normally responsible, such as book and laboratory fees, special laboratory or shop clothing, work book fees, testing, registration, or graduation fees. In addition, personal classroom supplies, not to exceed \$15.00 per semester, may be reimbursed.
- (5) Participants enrolled in a post-graduate studies shall not be not eligible for supportive service reimbursement with respect to their post-graduate studies.
- (6) Education and vocational training supportive services cannot be guaranteed beyond the end of the WPA expiration date.
- (7) **Test fees:** Fees for completing either the scholastic aptitude test (SAT) or the American college test (ACT) may be reimbursed, provided one of the tests is required for admission into a given educational training institution.

D. Employment-related expense: If state or federal funds are specifically appropriated, the department may issue supportive services benefits.

- (1) A NMW ~~[work program]~~ participant may receive assistance to help pay the cost for certain personal items necessary to accept a bona fide job offer, or to retain employment. The assistance shall be limited to no more than \$300, and shall be available only once during the individual's lifetime.
- (2) **Payment method:**
- (a) Payment shall be made as a reimbursement for verified costs already incurred. Reimbursement must be requested within 60 days of employment.
 - (b) Payment may be issued prospectively, based on a billing statement or a detailed estimate of costs.
- (3) **Allowable costs:** Allowable costs include, but are not limited to:
- (a) special clothing, licensing and drug testing fees which an employer requires an employee to pay and which are a condition of employment;
 - (b) vehicle repairs, but not a vehicle purchase or insurance payment;
 - (c) tools which the employer requires an employee to pay for; or
 - (d) costs of bringing a home into compliance with certification requirements of the child care food program administered by CYFD, if the full cost is not available from the child care food program or CYFD.
- (4) **Costs not allowed:** Costs associated with the start-up of a business or self-employment venture are not allowed. Such costs must be met through an IDA.

[8.102.620.15 NMAC - Rp 8.102.620.15 NMAC, 07/01/2001]

8.102.620.16 SUPPORTIVE SERVICES BENEFITS:

A. Issuance schedule: If state or federal funds are specifically appropriated, the department may issue supportive services benefits.

- (1) Participants assigned to a ~~[work program activity]~~ NMW activity may receive reimbursement on a monthly basis. Participants must submit participation reports to receive the standard month's reimbursement, timely submission is required to receive ~~[additional reimbursement amount]~~ the reimbursement. Reimbursement shall be authorized within five working days after receipt of all required verification. Support services shall be issued within 10 working days after authorization.
- (2) Participants must submit the monthly participation report to be received no later than the fifth calendar day after a participation month's end. Reports received on the first workday after the fifth shall be considered timely if the fifth occurred on a weekend or holiday. Participants shall not be eligible to receive reimbursement if the report verifying participation is received 30 days or more following the end of the month for which participation is being reported.

B. Retroactive benefit coverage:

- (1) Benefit coverage which provides supportive services may be issued retroactively to a participant

if, upon individual case review, it is determined that:

- (a) the participant was eligible to receive supportive services;
- (b) the participant requested supportive services timely; and
- (c) ~~[work program]~~ NMW staff inadvertently failed to process the reimbursements in a timely manner.

(2) ~~[work program]~~ NMW participants must have signed a WPA, which has been approved by the ~~[caseworker]~~ NMW service provider, which identifies the supportive services. Under no circumstances shall ~~[work program]~~ NMW participants be eligible to receive supportive service reimbursement for costs incurred prior to enrollment in the ~~[work program]~~ NMW.