



State of New Mexico  
Human Services Department  
Human Services Register



**I. DEPARTMENT**

NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

**II. SUBJECT**

**8.200.400 NMAC, General Recipient Rules-General Medicaid Eligibility**

**8.200.410 NMAC, General Recipient Rules-Recipient Requirements**

**8.200.430 NMAC, General Recipient Rules, Recipient Rights and Responsibilities**

**8.231.400 NMAC, Infants of Mothers Who are Medicaid Eligible-Recipient Policies**

**8.231.500 NMAC, Infants of Mothers Who are Medicaid Eligible-Income and Resource**

**8.231.600 NMAC, Infants of Mothers Who are Medicaid Eligible-Benefit Description**

**8.291.400 NMAC, Affordable Care-Eligibility Requirements**

**8.291.410 NMAC, Affordable Care-Recipient Requirements**

**8.293.400 NMAC, Pregnant Women-Recipient Requirements**

**8.294.400 NMAC, Pregnancy-Related Services-Recipient Requirements**

**III. PROGRAM AFFECTED**

(TITLE XIX) MEDICAID

**IV. ACTION**

FINAL RULE

**V. BACKGROUND SUMMARY**

New Mexico Human Services Register Vol. 40, No. 12, dated June 13, 2017, issued the proposed rules, 8.200.400 NMAC, 8.200.410 NMAC, 8.200.430 NMAC, 8.231.400 NMAC, 8.231.500 NMAC, 8.231.600 NMAC, 8.291.400 NMAC, 8.291.410 NMAC, 8.293.400 NMAC, and 8.294.400 NMAC.

A public hearing was held on July 14, 2017 to receive public comment and testimony on this proposed rule. The Human Services Department (the Department) received two written comments. Additionally, federal guidance was incorporated that changes language to the citizenship/immigration language found at 8.200.410.11 NMAC.

## Summary of Comments:

1. The following Federal guidance was incorporated into the citizenship/immigration language found at 8.200.410 NMAC:

### **8.200.410.11 CITIZENSHIP**

The word “alien” was replaced throughout 8.200.410 NMAC with “non-citizen.” Also, “United States national” was added to 8.200.400.11 NMAC.

#### **8.200.410.11(A)**

The language “and will continue to be eligible for Medicaid on the basis of regulations in effect prior to August 22, 1996” was deleted because it was unclear.

#### **8.200.410.11(A)(1)**

A new number “1” was added with the language “Qualified non-citizens who entered the United States prior to August 22, 1996, and obtained their qualified non-citizen status prior to that date, are eligible for Medicaid without the 5 year waiting period.” The prior number “1” language was kept and renumbered to “2.”

#### **8.200.410.11(A)(3)**

The prior number “2” was renumbered to number “3” and the language was changed to “Lawful Permanent Residents (LPRs) are qualified non-citizens per 8 USC 1641.” The rest of the language pertaining to non-citizens who are “permanently residing in the United States under the color of law” (PRUCOL) was deleted. For individuals who entered the United States prior to August 22, 1996, it is unnecessary to look at whether their immigration standard met PRUCOL. PRUCOL immigration standards were no longer in effect under federal law after the Personal Responsibility and Work Opportunity Act of 1996 (PWORA) was enacted on August 22, 1996 and should not be used to determine Medicaid eligibility. Federal financial participation is not available for individuals in a PRUCOL status.

#### **8.200.410(B)**

Changed “Aliens” to “Qualified non-citizens.”

#### **8.200.410(B)(1)**

Changed “Aliens” to “Qualified non-citizens” as the five year waiting period applies to qualified non-citizens. Added “unless meeting an exception below” for clarity. Also added language that “LPRs who adjust from a status exempt from the five-year bar are not subject to the five-year bar.” Deleted the language “date of alien’s entry” and replaced with “the date the non-citizen obtained qualified status” because eligibility does not begin as of the individual’s date of entry with a qualified status.

#### **8.200.410(B)(1)(h)**

Deleted the language pertaining to battered aliens as these non-citizens are subject to the 5 year bar.

#### **8.200.410(B)(1)(k)**

Added under new letter “k” non-citizens receiving SSI.

#### **8.200.410(B)(2)(a)**

This language is not needed as it is was already previously listed.

#### **8.200.410(B)(2)(c)**

Amerasians should be listed as a separate category although they are treated as refugees for Medicaid eligibility.

**8.200.410(B)(2)(e)**

The language “or under Section 241(b)(3)” was added.

**8.200.410(B)(2)(h)**

New language was added for clarity and to reference the federal definition of battered individuals.

**8.200.410(B)(2)(i)**

The language “and their spouses, children, siblings, or parents” was added.

**8.200.410(B)(3)**

The language “under age 21” was added to clarify the age children are exempt from the 5 year bar. Also the language “including meeting state residency and income requirements” was added for clarity.

**8.200.410(B)(3)(a)**

The examples were removed as these categories are not specific examples of non-immigrant statuses.

**8.200.410(B)(3)(vi)**

The language “except those with deferred action under “Defined Action for Childhood Arrivals” who are not considered lawfully present” was added.

**8.200.410(B)(3)(d)**

Changed “and”, “such”, and “who” and added “or”, “is”, and “and” for clarity.

**8.200.410(B)(3)(h)**

Deleted this group as this group is not included in the State Plan.

**8.200.410(B)(3)(h)**

Added the new group “victims of trafficking” as this group is included in the State Plan.

**8.200.410(B)(4) and (5)**

Deleted the language “or can be credited with 40 qualifying quarters” from number “4.” Deleted all the language in number “5.” The language pertaining to 40 quarters is deleted because the State Plan does not indicate that it requires LPRs to have 40 qualifying work quarters.

**8.200.410(B)(5)**

Language was added to the new number “5” section that deletes outdated language and adds new language that mirrors the State Plan Amendment.

2. One commenter provided the following written comments to the citizenship/immigration language found at 8.200.410 NMAC:

**8.200.410(A)(2)**: Delete “ICE does not contemplate enforcing an alien’s departure if it is the policy or practice of ICE not to enforce the departure of aliens in the same category, or if from all the facts and circumstances in a particular case it appears that ICE is otherwise permitting the alien to reside in the United States indefinitely, as determined by verifying the alien’s status with ICE.”

**8.200.410(A)(2)(b)**: Delete “none of the categories include applicants for an alien status other than those applicants listed in item (vi) or (xvi) of this Subparagraph; none of the categories allow Medicaid eligibility for non-immigrants; for example, students or visitors; also listed are the most commonly used documents that ICE provides to aliens in these categories.”

**8.200.410(A)(2)(b)(ii)**: Delete “for Cuban/Haitian entrant (Status Pending) reviewable January 15, 1981; (although the forms bear this notation, Cuban/Haitian entrants are admitted under Section 212(d)(5) of the Immigration and Nationality Act).”

**8.200.410(A)(b)(vi)**: Delete “ask for a copy of ICE form I-94 or I-181 or a passport appropriately stamped.” The commenter asked that HSD add “ask for form I-797, receipt.”

**8.200.410(A)(b)(viii), (ix), and (xiv)**: The commenter requested that all the language in viii, ix, and xiv regarding Section 207 and 208 individuals be completely deleted as these individuals would already be permanent residents.

**8.200.410(A)(3) and (4)**: The commenter requested that all the language found in 3 and 4 be deleted as Section 210, 210A, and 245A persons do not exist anymore.

**8.200.410(B)(3)(a)**: The commenter stated the language defining a qualified alien is not needed as it has already been defined in 8.200.410.410B(2) NMAC.

**8.200.410(B)(3)(b)**: The commenter requested removal of the language “a lawful temporary resident and applicant for legalization under IRCA under the LIFE Act be deleted as these persons do not exist anymore.

**8.200.410(B)(3)(d)(i)**: The commenter requested that all the language found in (i) be deleted as these persons do not exist anymore. However, per federal guidance this group still exists and is statutorily eligible so we are keeping the current language.

**8.200.410(B)(3)(d)(vii)**: The commenter requested that “Aliens whose visa petitions have been approved and who have a pending application for adjustment of status” be deleted as these persons are already included in (ii). However, the language will be kept because per federal guidance an applicant for adjustment of status may request an employment authorization document but it is not mandatory. There may be individuals with an approved visa petition and a pending application for adjustment of status who do not have an employment authorization document, but who are eligible under CHIPRA 214.

**8.200.410(B)(4)**: The commenter requested deletion of the language “and the spouse of the sponsor” as spouses must have executed an affidavit of support form to have their income deemed to the immigrant.

**Response:** The Department agrees with the commenter and has updated the rule accordingly except where indicated.

3. A second commenter provided the following written comments in response to the proposed rule changes:

#### **8.200.400.10 BASIS FOR DEFINING GROUP-MEDICAID CATEGORIES**

Written comment asked that the family planning category be added to the list of Medicaid categories found at 8.200.410.10 NMAC.

**Response:** The Department agrees and has added family planning to the list of categories.

#### **8.200.400.11 and 8.200.400.12: PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN AND CHILDREN**

Written comment requested that both 8.200.410.11 and 8.200.400.12 be deleted in their entirety as the respective categories of eligibility addressed in these sections no longer exist. The existing rules for presumptive eligibility for Affordable Care Act (ACA) coverage for pregnant women and children at 8.291.400.13 NMAC are sufficient. It is redundant and confusing to keep 8.200.400.11 and 8.200.400.12 NMAC in place.

**Response:** The Department agrees and has deleted 8.200.400.11 and 8.200.400.12 NMAC.

**8.200.410.10 USE OF SOCIAL SECURITY NUMBER**

Written comment stated that paragraph (5) of 8.200.410.10(a) explains that HSD may provide an individual with a Medicaid identification number in lieu of requiring a Social Security Number (SSN) under certain circumstances. Paragraphs (6)-(8) of 8.200.410.10(A) provide greater detail about when an individual may be eligible for a Medicaid identification number and the extent to which the number can be used in place of an SSN. The current numbering format employed by the Department does not make this clear. The content in paragraphs (6)-(8) should be included in sub-paragraphs under paragraph (5). The commenter provided proposed formatting of 8.200.410.10(A) NMAC.

**Response:** The Department agrees and has adopted the commenter's proposed formatting.

**8.200.410.12 TYPES OF ACCEPTABLE DOCUMENTARY EVIDENCE OF CITIZENSHIP**

**8.200.400.410.12(B)(1)(b)-(e)**: Written comment stated that the drafting of 8.200.400.410.12(B)(1)(b)-(e) is confusing and inaccurate. In keeping with federal laws this section should function only as a heading. The title should be followed by three subparagraphs describing the types of evidence an individual can submit to prove citizenship via residence or domicile in the Northern Mariana Islands/TTPI. As written, it appears as though subparagraphs (c)-(e) are separate and distinct from, rather than related to, subparagraph (b). The commenter provided proposed formatting of 8.200.410.12(B)(1)(b)-(e).

**Response:** The Department agrees and has adopted the commenter's proposed formatting.

**8.200.410.12(B)(2)**: Written comment stated that HSD must explicitly indicate whether it is taking the option to establish proof of citizenship via a cross match with the State Bureau of Vital Records. Federal law allows the Department to decide whether it will take the option to establish proof of citizenship via a cross match with the vital statistics agency responsible for documenting birth records. The proposed language at 8.200.410.12(B)(2) states "at HSD option, a cross match with a state vital statistics agency documenting a record of birth." As written, the regulation invites arbitrary processing by caseworkers to either attempt a cross match or not. The Department should take this option in order to ease the verification burden on clients. If the Department elects to take this option, it must affirmatively state so in the regulations.

**Response:** The Department currently does not have in place a cross match to establish proof of citizenship with the State Bureau of Vital Records. The language was removed from the rule.

**8.200.410.12(C)**: Written comment stated that federal law provides three methods for an applicant to prove his or her identity. The current drafting of 8.200.410.12(C) makes it appear as though HSD provides eleven different methods for proving identity. In keeping with federal law, 8.200.410.12(C) should function only as a heading titled "Evidence of identity" followed by three paragraphs describing the ways in which an individual can prove identity. The first paragraph, which is a statement that HSD will accept documentation that includes a photograph

and vital statistics of the applicant, should be followed by nine subparagraphs describing the types of verifications that may be submitted. The commenter provided proposed formatting for 8.200.410.12(C).

**Response:** The Department agrees and has adopted the commenter's proposed formatting.

### **8.200.410.13 REASONABLE OPPORTUNITY PERIOD**

Written comment stated that the Department should reference the appropriate provisions in the NMAC when necessary, as opposed to referencing the CFR, as caseworkers are not trained on federal regulations. 8.200.410.13(A)(1) should reference 8.200.410.10(A)(2) rather than 42 CFR 435.910 in referring to the process for an individual who cannot recall his or her SSN or has not been issued an SSN. Likewise, 8.200.410.13(A)(3) should reference 8.200.410.12, rather than 42 CFR 435.407 for describing the types of acceptable documentary evidence of citizenship.

**Response:** The Department will keep the references to the CFR and has also added the references to NMAC as the commenter requested.

### **8.200.430 REPORTING REQUIREMENTS**

Written comment stated that federal law requires that states have procedures in place for reporting changes that may affect their eligibility and that the agency explain the ways in which such changes can be reported. Section 8.200.430.18 must include a reference to 8.100.110.9 NMAC, which describes the various methods by which applicants and participants can submit information to the Department.

**Response:** The Department agrees with the commenter and has added a reference to 8.100.110.9 NMAC.

### **8.231 NEWBORNS**

Written comment was provided regarding adding eligible newborns to Medicaid within 3 days with no application. The Department must ensure that infants are enrolled in the Medicaid program within 3 days following notification of birth from the health care provider. See NMAC 8.231.600.10 and 42 CFR 435.117(b)(1). The Special Master reports that the Department does not have sufficient Income Support Workers to facilitate this process. In many cases, it is taking over a month to enroll eligible infants into Medicaid. As a result, many infants are discharged from the hospital and even the Neonatal Intensive Care Unit without medical coverage and the means to pay for necessary medical supplies. The Department should investigate ways in which it can increase the number of eligibility staff located in hospitals to ensure that newborns are timely enrolled in the Medicaid program and have access to critical care and services.

**Response:** The Department has noted the concern that the 3 day standard delineated in 8.231.600.10 NMAC be met.

Written comment was provided regarding the use of consistent terminology in describing the duration of an initial eligibility determination. HSD uses inconsistent and confusing terminology in Chapter 231 to explain the duration of coverage for an infant deemed eligible for Medicaid. For example, the proposed language at 8.231.600.11 states that HSD provides Medicaid to

children “from birth until the child’s first birthday.” In contrast, 8.231.400.10 states that an infant is eligible for Medicaid “for 13 months starting with the month of birth.” 8.231.600.12 says that a newborn remains eligible “for up to 12 months.” 8.231.600.13 provides that a newborn is eligible “beginning with the birth month and remains eligible for one year” and 8.231.400.16 states that a child is eligible “from birth until the child’s first birthday (13 months).” We recommend that the Department consistently use the proposed language in 8.231.600.11 which is consistent with the language used in 42 CFR 435.117 to avoid unnecessary confusion.

**Response:** The Department agrees that the language is inconsistent and has updated the language throughout the newborn rules. However, rather than use “from birth until the child’s first birthday,” since Medicaid eligibility is for entire months and not partial months, the Department will use “through the month of the child’s first birthday.”

### **8.231.400 NEWBORN RECIPIENT POLICIES**

Written comment noted that the Department proposes to change 8.231.400.9 to read that “the New Mexico Medicaid program covers infants born to mothers who are eligible for and receiving New Mexico Medicaid at the time of the child’s birth.” 42 CFR 435.117(b)(1)(i) provides that a child is eligible for Medicaid if he or she was born to a mother who was eligible for and receiving Medicaid at the time of the birth including during a period of retroactive eligibility. The proposed changes to 8.231.400.10 and 8.231.600.13 make clear that a period of retroactive eligibility for a mother is included for purposes of making an eligibility decision on behalf of the child. This must be made clear in the COE 031 description at 8.231.400.9.

**Response:** The Department agrees and has updated the language at 8.231.400.9 NMAC. The Department is also adding the reference to 13 months coverage at 8.231.400.9 NMAC so it is clear that newborn coverage is for 13 months and not 12 months. Including 13 months provides clarify for training, field workers, and hearings.

Written comment stated that HSD must revise 8.231.400.10(A) to read “the mother was enrolled in Medicaid for the date of the child’s birth, including during a retroactive eligibility determination; **or**.” As it reads now, it appears as though all conditions in Sub-sections (A), (B), and (C) must be met when, in fact, an infant is eligible if the conditions in Sub-section (C) and either (A) or (B) are met.

**Response:** The Department moved the proposed language from 8.231.600 NMAC that mirrors 42 CFR 435.117 to 8.231.400.10 to clearly define the newborn eligibility group. The Department also changed “ENUMERATION” to “USE OF SOCIAL SECURITY NUMBER” at 8.231.400.12 NMAC and 8.231.600.15 NMAC to be consistent with the CFR.

### **8.231.600 NEWBORN BENEFIT DESCRIPTION**

Written comment stated that the Department must explain that the newborn category of Medicaid is an Affordable Care Act (ACA) category of eligibility. 8.231.600.6 must be revised to include an explanation that Newborn Medicaid is an ACA category of eligibility. See 2017 MAD 222. To the extent that the NMAC serves as a worker manual, caseworkers must have accurate information as to the regulations applicable to Newborn Medicaid. Caseworkers must understand that Chapter 291, Affordable Care Medicaid, is the main source of policy for any eligibility

provisions not explicitly covered in Chapter 231.

**Response:** The Department agrees and has updated the language at 8.231.600.6 NMAC.

Written comment stated that the rules should cross-reference to other sections of the NMAC when possible, rather than the United States Code or Code of Federal Regulations.

8.231.600.11(A)(1) states that a newborn child is eligible for Newborn Medicaid “regardless of whether the payment for services for the mother is limited to services necessary to treat an emergency medical conditions, as defined in section 1903(v)(3) of the Act.” Similarly, 8.231.600.11(B)(1)(a) states that HSD will issue a separate Medicaid identification number in the case of a child born to a mother “whose coverage is limited to services necessary for the treatment of an emergency medical condition, consistent with 42 CFR 435.139 or 435.350.” The coverage for emergency services described in both of these paragraphs is the coverage provided under the Emergency Medical Services for Aliens (EMSA) program, codified in Title 8, Chapter 285 of the NMAC. The Department should refer to the EMSA program by name and provide appropriate citations to Chapter 285 rather than federal law, as caseworkers rely on the NMAC as a policy manual and are not trained on federal statutes or regulations.

**Response:** The Department has moved the proposed language from 8.231.600.11 NMAC to 8.231.400.10 NMAC as this language mirrors 42 CFR 435.117 and is more appropriate in the 400 section of the newborn rules. The Department will keep the CFR references and has also added the EMSA NMAC references and program name as the commenter has requested.

Written comment stated that the regulations must include the process for determining ongoing eligibility for a child who has aged out of Newborn Medicaid. At the end of the twelve month certification period for an infant enrolled in Newborn Medicaid, HSD is required to follow the steps outlined by the Court in Doc. 475. Doc. 475 requires that the Department first attempt administrative renewal for the child based on information contained in the case file prior to requesting additional information from the family. If the Department cannot administratively renew a case, Doc. 475 mandates that HSD send the family a MAD 608 form to be completed and returned with only necessary information that could not be obtained by the Department through electronic databases. These processes are described in Chapter 291. NMAC 8.231.600.15 must include a reference to NMAC 8.291.410.19, if adopted, for a full explanation of the renewal process for ACA categories of Medicaid.

**Response:** The Department agrees and has added a reference to 8.291.410.19 NMAC in 8.231.600.14 NMAC, formerly 8.231.600.15 NMAC in the proposed rules.

Written comment stated that families are not required to provide proof of age at renewal. The proposed language at 8.231.600.16(B) states that “newborns who were initially eligible for Medicaid as deemed newborns are considered to have provided satisfactory documentation of citizenship and identity. At the time of renewal, the Department is not allowed to require or request that the family provide proof of the child’s citizenship, identity, or age.”

**Response:** The Department agrees and has updated the language at 8.231.600.15(B), formerly 8.231.600.16(B) in the proposed rules. to include age.



Written comment stated that HSD must fully explain the requirements for providing a Social Security Number (SSN) in 8.231.600.16. The proposed language in 8.231.600.16(A) states that “each individual (including children) seeking Medicaid furnish each of his or her SSNs.” This section does not fully explain the rights of a participant with regard to providing an SSN, such as the right to seek an exception form providing an SSN if he or she is not eligible to receive one. See 42 CFR 435.910 and the proposed rule at 8.200.410.10. The section also fails to explain the responsibilities of the Department, including the requirement that HSD assist the applicant in completing an application for an SSN if he or she cannot recall the SSN or it has not yet been issued. Please include a reference in this subsection to NMAC 8.200.410.10 or 42 CFR 435.910, for a full explanation of the rules regarding SSNs.

**Response:** The Department agrees and has added a reference to 8.200.410.10 NMAC in 8.231.600.15 NMAC, formerly 8.231.600.16 NMAC in the proposed rules.

### **8.291.400 Affordable Care Eligibility Requirements**

Written comment stated that the Department needs to explain the ways in which a participant can report changes per their prior comments to 8.200.430.18 NMAC.

**Response:** The Department agrees with the commenter and has added a reference to 8.100.110.9 NMAC.

### **8.291.410 AFFORDABLE CARE GENERAL RECIPIENT REQUIREMENTS**

Written comment stated that the Department, per federal law, must include a statement that the Department accepts handwritten, electronic and telephonically recorded signatures on applications. This ensures that all applicants are given an equal opportunity to participate in the Medicaid program as required by the Decree.

**Response:** The Department agrees and has added a new subsection F to 8.291.18 NMAC that includes a statement about signatures on applications.

Written comment stated that the Department should refer to existing provisions in the NMAC rather than the CFR. The proposed language at NMAC 8.291.410.19 refers to 42 CFR 435.907 four separate times to reference the various modes permitted for submitting an application. The modes for submitting an application are detailed in the previous proposed NMAC section. In sub-section (E) of 8.291.410.18. If section 18 is adopted, section 19 should reference the NMAC rather than the CFR. Likewise, the proposed language at 8.291.410.22(B)(1) references 42 CFR 435.949 for information on electronic verification. Instead, it should refer to the immediately following section, Section 23, which describes the Department’s policy on electronic verification.

**Response:** The Department will keep the references to the CFR and has updated 8.291.410.19 with references to 8.291.410.18 NMAC and 8.291.410.22(B) with a reference to 8.291.410.23 NMAC as the commenter requested.

Written comment stated that the Department should re-number the section “Verifying Financial Information” to conform to federal law. The Department’s proposed language in Section 22 of

8.291.410 NMAC aims to incorporate the provisions of 42 CFR 435.948 regarding how HSD will verify information relating to financial eligibility of an individual from other agencies in New Mexico and other state and federal programs. The information in proposed Paragraphs (B)(1)-(2) must be included as separate sub-sections. As written, it appears as though this information only relates to Sub-section (B) when, in fact, it is applicable to the entirety of section 22. The commenter provided proposed formatting for 8.291.410.22 NMAC.

**Response:** The Department agrees and has re-numbered the section using their proposed formatting.

Written comment stated that the Department must verify information through electronic databases. The proposed language at 8.291.410.23 states that “HSD may verify certain information with, or obtain such information from, federal agencies and other data sources.” This statement is incorrect. The Department is required to verify information through electronic data sources whenever possible as the Decree prohibits caseworkers from asking for additional proof of any information available through government data systems. This is also explicitly required in the federal regulations. 42 CFR 435.949 provides that “to the extent that information related to eligibility for Medicaid is available through the electronic service... states must obtain the information through such service. The Department must explicitly state this requirement in Section 23.

**Response:** The Department agrees and has reworded 8.291.410.23 NMAC language to match 42 CFR 435.949(a). Additionally, we added the language found at 42 CFR 435.949(b) that states that to the extent Medicaid eligibility information is available through the electronic service the Department must obtain that information through such service.

Written comment stated that the Department must promulgate regulations to fully implement the “reasonable compatibility” method of income verification. The proposed regulations at 8.291.410.24 leave out important information regarding the “reasonable compatibility” method for verifying the income of an applicant. Specifically, the proposed regulations fail to explain what it means for information to be “reasonably compatible,” i.e. that income information obtained through an electronic data match and income information provided by an applicant are considered reasonably compatible if both are either at, above, or below the applicable income threshold. See 42 CFR 435.952(C)(1). Likewise, the proposed regulation fails to describe the mandatory processes for resolving discrepancies between the electronic data match and the information provided by the applicant. Caseworkers receive in-depth instruction on how to apply the reasonable compatibility method during their initial training period, including the processes for resolving discrepancies. These processes must be codified into regulation as workers rely on the NMAC as a source of policy. Further these processes must be promulgated into regulation to conform to the Decree requirement that only necessary verification be required of applicants. Comprehensive regulations are crucial to ensure uniformity in case processing as required by the Decree. HSD should further codify important policy requirements as outlined in HSD’s new employee training materials, Module 8, including that workers must always utilize the most recent data source to verify the income and that income may still be reasonably compatible even if the client reports an additional employer or an employer that is different from what is listed in the electronic data source. The Department must also include a provision in the regulations

describing the requirement that HSD establish exceptions to self-attestation in special circumstances and that the agency may not deny or terminate eligibility or reduce benefits unless it has complied with the processes for seeking additional verification as required in the verification plan. See 42 CFR 435.952(c) and (d).

**Response:** The Department agrees that “reasonable compatibility” was not defined and has added to the rule the entire 42 CFR 435.952 section that defines “reasonable compatibility,” when the Department can seek additional information, exception for special circumstances, and that HSD may not deny or terminate eligibility or reduce benefits for any individual on the basis of information received unless HSD has sought additional information from the individual. The commenter further suggests incorporating into regulation caseworker instructions. The Department has noted this comment, but want to continue to separate rules from procedures which are addressed with training materials.

Written comment stated that the Department revise 8.291.410.25 NMAC to include references to the NMAC rather than the CFR in identifying verification provisions for determining income and eligibility, and indicate where the most recent verification plan can be accessed. The Department should reference the appropriate provisions in the NMAC when necessary as opposed to referencing the CFR for verification policies and procedures. Referencing the NMAC is important since caseworkers are not trained on federal regulations. Additionally, it is insufficient to simply put in the regulation that the Department has a verification plan. The regulation should indicate where the most recent version of the verification plan can be accessed.

**Response:** The Department will keep the reference to the CFR and has added the NMAC references as well. The Department also agrees with the commenter that the State Verification Plan (SVP) should be accessed and has posted the SVP on the HSD website under the Information for Recipients tab.

Written comment stated that the Department incorporate mandatory timeliness provisions from 42 CFR 435.912 into 8.291.410.26 NMAC. The Department’s regulations on timelines must be comprehensive and address all standards mandated under federal law. The Department must incorporate into 8.291.410.26 the federal provision at 42 CFR 435.912(g) which explains that HSD must neither use the application time standards as a waiting period before determining eligibility nor as a reason for denying eligibility.

**Response:** The Department agrees and has added the language found at 42 CFR 435.912(g) into Subpart G of 8.291.410.26 NMAC.

### **8.293.400 PREGNANT WOMEN RECIPIENT REQUIREMENTS**

Written comment stated that the Department should rely on existing State law for resolving questionable information. The proposed language at 8.293.400.9(A) cites to federal law and states “HSD accepts self-attestation of pregnancy unless HSD has information that is not reasonably compatible with such attestation subject to the requirements of 42 CFR 435.952.” There is no definition provided for the term “reasonably compatible” in the NMAC. Moreover, the Department already has existing regulations and procedures in place for resolving “questionable information.” See NMAC 8.100.130.12. The Decree also spells out processes for

resolving “questionable information.” We recommend revising 8.293.400.9(A) to read “HSD accepts self-attestation of pregnancy unless HSD has reason to believe the information is questionable as defined in 8.100.130.12 NMAC.”

**Response:** The Department agrees and has updated 8.293.400.9(A) with the suggested language.

### **8.294.400 PREGNANCY-RELATED SERVICES RECIPIENT REQUIREMENTS**

Written comment referred to the prior comment provided for 8.293.400.

**Response:** The Department agrees and has updated 8.294.400(A) with the suggested language.

### **General Comment**

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

**Response:** Creation of a comprehensive worker manual is outside the purview of these rules, but has been noted by the Department.

## **VI. RULES**

These amendments will be contained in 8.200.400 NMAC, 8.200.410 NMAC, 8.200.430 NMAC, 8.231.400 NMAC, 8.231.500 NMAC, 8.231.600 NMAC, 8.291.400 NMAC, 8.291.410 NMAC, 8.293.400 NMAC, and 8.294.400 NMAC. The final register and rule languages are available on the HSD website

at: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx>

and <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>.

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

## **VII. EFFECTIVE DATE**

This rule will have an effective date of October 01, 2017.

## **VIII. PUBLICATION**

Publication of these rules approved by:



BRENT EARNEST, SECRETARY  
HUMAN SERVICES DEPARTMENT