TITLE 8 SOCIAL SERVICES
CHAPTER 291 MEDICARE MEDICAL ASSISTANCE PROGRAMS CATEGORY OF AFFORDABLE CARE ELIGIBILITY [AFFORDABLE CARE]

PART 430 FINANCIAL RESPONSIBILITY REQUIREMENTS

8.291.430.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.291.430.1 NMAC - Rp, 8.291.430.1 NMAC, xx-xx-15]

8.291.430.2 SCOPE: The rule applies to the general public.
[8.291.430.2 NMAC - Rp, 8.291.430.2 NMAC, xx-xx-15]

8.291.430.3 STATUTORY AUTHORITY: [The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.] The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.291.430.3 NMAC - Rp, 8.291.430.3 NMAC, xx-xx-15]

8.291.430.4 DURATION: Permanent.
[8.291.430.4 NMAC - Rp, 8.291.430.4 NMAC, xx-xx-15]

8.291.430.5 EFFECTIVE DATE: XX-XX, 2015, unless a later date is cited at the end of a section.
[8.291.430.5 NMAC - Rp, 8.291.430.5 NMAC, xx-xx-15]

8.291.430.6 OBJECTIVE: [The objective of this rule is to provide eligibility guidelines when determining eligibility for medicaid programs and other health care programs. Processes for establishing and maintaining this category of eligibility are detailed in the 8.291.400 through 8.291.430 NMAC.] The objective of this rule is to provide eligibility guidelines when determining eligibility for the medicaid program and other health care programs. Processes for establishing and maintaining a medical assistance programs (MAP) category of the affordable care eligibility are detailed in the 8.291.400 through 8.291.430 NMAC.
[8.291.430.6 NMAC - Rp, 8.291.430.6 NMAC, xx-xx-15]

8.291.430.7 DEFINITIONS: Refer to [8.291.400.7] 8.291.400 NMAC for detailed descriptions.
[8.291.430.7 NMAC - Rp, 8.291.430.7 NMAC, xx-xx-15]

8.291.430.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.291.430.8 NMAC - Rp, 8.291.430.8 NMAC, xx-xx-15]

8.291.430.9 GENERAL NEED DETERMINATION: To be eligible for medicaid, an applicant/recipient must meet specific income standards.
[8.291.430.9 NMAC - Rp, 8.291.430.9 NMAC, xx-xx-15]

8.291.430.10 FEDERAL POVERTY LEVEL (FPL): This part contains the monthly federal poverty level table for use in determining monthly income standards for MAP categories of eligibility outlined in Section 10 of [8.291.400.10] 8.291.400 NMAC:

<table>
<thead>
<tr>
<th>HOUSEHOLD SIZE</th>
<th>100%</th>
<th>133%</th>
<th>138%</th>
<th>190%</th>
<th>240%</th>
<th>250%</th>
<th>300%</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>$981</td>
<td>$1,305</td>
<td>$1,354</td>
<td>$1,864</td>
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<tr>
<td>4</td>
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<td>$2,688</td>
<td>$2,789</td>
<td>$3,840</td>
<td>$4,850</td>
<td>$5,053</td>
<td>$6,063</td>
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</table>

8.291.430 NMAC
8.291.430.11 INCOME STANDARD FOR PREGNANT WOMEN AND PARENT CARETAKER ELIGIBILITY: [This part contains the fixed monthly standard for individuals eligible for pregnant women and parent caretaker medicare.] This part contains the MAP category of pregnant women and parent caretaker eligibility’s fixed monthly standard for an applicant or re-determining recipient:

<table>
<thead>
<tr>
<th>HOUSEHOLD SIZE</th>
<th>MONTHLY INCOME LIMIT</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>$451</td>
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<tr>
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<td>7</td>
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<tr>
<td>8</td>
<td>$1,553</td>
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<tr>
<td>+1</td>
<td>$158</td>
</tr>
</tbody>
</table>

[8.291.430.11 NMAC - Rp, 8.291.430.11 NMAC, xx-xx-15]

8.291.430.12 INCOME DISREGARD: A disregard of five percent of 100 percent of the current FPL, according to the individual’s applicant’s or re-determining recipient’s budget group size, will be given according to the ACA related category of eligibility. This income disregard will be subtracted from the countable income. [8.291.430.12 NMAC - Rp, 8.291.430.12 NMAC, xx-xx-15]

8.291.430.13 LIVING ARRANGEMENT: All individuals listed on the MAP application are evaluated according to their living arrangement to determine if they can be included in an assistance group or budget group.

A. Extended living in the home: An individual physically absent from the home is a member of the assistance unit or budget group. Extended living in the home includes:

1. attending college or boarding school;
2. receiving treatment in a title XIX [medicaid] MAD enrolled facility (including institutionalized when meeting a nursing facility (NF) level of care (LOC) and intermediate care facilities for the mentally retarded (ICF-MRs));
3. emergency absences: an [individual] applicant or re-determining recipient absent from the home due to an emergency, who is expected to return to the household, continues to be a member of the household;
4. foster care placements: a [child] minor applicant or minor re-determining recipient removed from the home by a child protective services agency (tribal, bureau of Indian affairs, or children, youth and families department) will be considered to be living in the home until the adjudicatory hearing; if the adjudicatory hearing results in custody being granted to some other entity, the [child] minor applicant or minor re-determining recipient will be removed from the assistance unit and budget group;
5. a stay in a detention center:
   a. regardless of adjudication status the individual continues to be a member of the household but will not be medicaid eligible;
   b. once an adjudicated individual leaves the detention center to receive inpatient services in a medical institution, the individual may be eligible during treatment if all other criteria are met; eligibility ceases to exist when the individual returns to the detention center;]
6. Inmate of a public institution:
B. Extended living in the home also includes:

1. Residential treatment centers; and
2. Group homes; and
3. Free-standing psychiatric hospitals.

C. Living in the home with a parent caretaker: To be included in the assistance unit, a [child] minor applicant or minor re-determining recipient must be living, or considered to be living, in the home of:

1. A biological or adoptive or step parent (there is a presumption that a child born to a married woman is the child of the husband); or
2. A specified relative who:
   a. Is related within the fifth degree of relationship by blood, marriage or adoption, as determined by New Mexico statute Chapter 45 - Uniform Probate Code; a relationship based upon marriage, such as "in-law" or "step" relationships, continues to exist following the dissolution of the marriage by divorce or death; and
   b. Assumes responsibility for the day-to-day care and control of the [child] minor applicant or minor re-determining recipient; the determination of whether an individual functions as the specified relative shall be made by the specified relative unless other information known to the worker clearly indicates otherwise;
3. A [child] minor applicant or minor re-determining recipient considered to be living in the home: a [child] minor applicant or minor re-determining recipient is considered to be part of the assistance unit and budget group as evidenced by the [child] minor applicant’s or minor re-determining recipient’s customary physical presence in the home; if a [child] he or she is living in more than one household, the following applies:
   a. The custodial parent is the parent with whom the [child] minor applicant or minor re-determining recipient lives the greater number of nights; or
   b. If the [child] minor applicant or minor re-determining recipient spends equal amounts of time with each household, the [child] minor applicant or minor re-determining recipient shall be considered to be living in the household of the parent with the higher MAGI.

D. For individuals for whom the state must complete a determination of income either based on MAGI or for MAGI-excepted groups:

1. MAD recognizes same-sex couples as spouses, if they are legally married under the laws of the state, territory, or foreign jurisdiction in which the marriage was celebrated; and
2. For an applicant or re-determining recipient whose MAP category of eligibility is based on the eligibility for another HSD benefit program, and for whom MAD does not complete a determination of income for a MAP category of eligibility, MAD will not make any determination concerning marital status. The applicant’s or re-determining recipient’s MAP category of eligibility will continue to be based on the determination of eligibility for the other HSD applicable benefits.

Section 14 of this rule shall identify everyone who is to be considered for inclusion in an assistance unit and budget group. The composition of the assistance unit and budget group is based on the following factors:

A. Assistance group: the assistance unit includes an [individual] applicant or re-determining recipient who applies and who is determined [eligible under one of the categories of eligibility outlined in 8.291.400.10 NMAC] to meet a MAP category of eligibility found in Section 10 of this rule.

B. Budget group: the budget group consists of the following types and will be established on an individual basis:

1. Tax filer(s): households that submit [an] a MAP application where an [individual] applicant or a re-determining recipient intends to file for federal taxes or will be claimed as a dependent on federal income taxes for the current year.
(a) The budget group will consist of applicants or re-determining recipients who are listed on the MAP application as the taxpayer and tax dependents.

(b) If there are multiple taxpayers listed on a single MAP application, the budget group(s) will be established based on who the taxpayer intends to claim as a dependent (including the taxpayer). Only the taxpayer and his or her child and tax dependent (dependent) listed on the MAP application will be considered as part of the budget group.

(c) In the case of a married couple living together, each spouse will be included in the household of the other spouse, regardless of whether they expect to file a joint tax return, a separate tax return or whether one spouse expects to be claimed as a tax dependent by the other spouse.

(d) Exceptions to tax filer rules: the following applicants or re-determining recipients will be treated as non-filers:

(i) an applicant or a re-determining recipient other than a spouse or a biological, adopted, or step child who expect to be claimed as a tax dependent by another taxpayer outside of the household;

(ii) an applicant or a re-determining recipient under 19 who expect to be claimed by one parent as a tax dependent and are living with both parents but whose parents do not expect to file a joint tax return; and

(iii) an applicant or a re-determining recipient under 19 who expect to be claimed as a tax dependent by a non-custodial parent.

(2) Non-filer(s) are an applicant or a re-determining recipient applying for Medicaid a MAP category of eligibility who has not filed for taxes, does not intend to file for federal taxes, has not been claimed as a dependent on taxes in the current year or who meets an exception to tax filer requirements in Subsection B Paragraph (1) of this Section. The following applicants or re-determining recipients may be included in a budget group when determining a MAP category of ACA related eligibility:

(a) the applicant or re-determining recipient;

(b) the applicant’s or re-determining recipient’s spouse;

(c) parents and step-parents, if the applicant or re-determining recipient is under the age of 19; or

(d) the applicant’s or re-determining recipient’s biological, adopted and step children under the age of 19.

(3) Households may submit a MAP application that includes both filer and non-filer as defined in Subsections A and B of this Section. The budget group(s) will be organized using the filer and non-filer concepts, and eligibility will be established on an individual basis.

(4) Income of an applicant’s or re-determining recipient’s dependent: The MAGI-based income of an applicant’s or re-determining recipient’s dependent who is included in the household of his or her natural, adopted, or step-parent and is not expected to be required to file a tax return under Section 6012(a)(1) of the Internal Revenue Code for the taxable year in which a MAP category of eligibility is to be determined, is not included in the household income whether or not the dependent files a tax return.

(5) The MAGI-based income of an applicant’s or re-determining recipient’s dependent who is not expected to be required to file a tax return under Section 6012(a)(1) of the Internal Revenue Code for the taxable year in which a MAP category of eligibility is to be determined is not included in the household income of the applicant or re-determining recipient dependent whether or not he or she will file a tax return.


8.291.430.15 INCOME STANDARDS: Verification of income, both earned and unearned, is mandatory for all MAP categories of ACA related eligibility. Verification methods can be found at 8.291.410 NMAC.

A. All income will be calculated as defined by Section 36B of the federal tax code to produce a modified adjusted gross income (MAGI). This amount is compared to the FPL for the appropriate MAP category of eligibility and household size.

B. MAGI is calculated using the methodologies defined in Section 36B(d)(2)(B) of the federal tax code, with the following exceptions:

(a) an amount received as a lump sum is counted as income only in the month received.
(2) scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income.

(3) The following American Indian or Alaska native exceptions are excluded from income:
   (a) distributions from Alaska native corporations and settlement trusts;
   (b) distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the secretary of the interior;
   (c) distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from:
      (i) rights of ownership or possession in any lands described in Subparagraph (b) above; or
      (ii) federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;
   (d) distributions resulting from real property ownership interests related to natural resources and improvements:
      (i) located on or near a reservation or within the most recent boundaries of a prior federal reservation; or
      (ii) resulting from the exercise of federally-protected rights relating to such real property ownership interests.
   (e) payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom; and
   (f) student financial assistance provided under the bureau of Indian affairs education programs.

(4) all social security benefits under Title II will be counted in determining MAGI.

8.291.430.16 RESOURCE STANDARDS: Resources as defined in 8.100.130 NMAC are not a factor of eligibility for ACA related medicaid categories.

HISTORY OF 8.291.430 NMAC:

History of Repealed Material: