

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

8.100.640.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.100.640.1 NMAC - N, 09/30/2013]

8.100.640.2 SCOPE: The rule applies to the general public.
[8.100.640.2 NMAC - N, 09/30/2013]

8.100.640.3 STATUTORY AUTHORITY:
A. Chapter 27 NMSA 1978 (1992 Repl.) provides for the department to "...adopt, amend and repeal bylaws, rules and regulations..." It also provides for administration of public assistance programs.
B. The ISD of the HSD was created by the HSD secretary under authority granted by 9-8-6(B)(3) NMSA 1978.
[8.100.640.3 NMAC - N, 09/30/2013]

8.100.640.4 DURATION: Permanent.
[8.100.640.4 NMAC - N, 09/30/2013]

8.100.640.5 EFFECTIVE DATE: September 30, 2013, unless a later date is cited at the end of a section.
[8.100.640.5 NMAC - N, 09/30/2013]

8.100.640.6 OBJECTIVE: The objective of these regulations is to provide regulations in accordance with federal and state laws and regulations for the ISD administered programs.
[8.100.640.6 NMAC - N, 09/30/2013]

8.100.640.7 DEFINITIONS: Unless otherwise apparent from the context, the following definitions shall apply throughout these regulations.

A. Claim: means correcting the over-issuance of benefits an eligibility determination group received, but was not entitled to receive, subject to the recovery of such overpayments.

B. Administrative or agency error (AE) claim: means any claim for an overpayment caused by an action or failure to take action by the department.

C. Eligibility determination group: means the basic assistance unit for a category of assistance, or a group of people, either mandatory or optional, to be included in determining the monthly benefit amount.

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

E. Intentional program violation (IPV) claim: means any claim for an overpayment or trafficking resulting from an individual committing an IPV, as defined in regulation in Subsection D of 8.139.647.8 NMAC.

F. Restoration: means the issuance of benefits to an eligibility determination group that it was entitled to receive, but did not receive due to:

(1) an agency error or department discovered error;

(2) judicial action; a favorable fair hearing decision or an erroneous administrative disqualification for an IPV that is later reversed; or

(3) a regulation specifically requiring issuance of lost benefits.

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

H. Supplement: means the amount of benefits issued in addition to the monthly benefit amount the eligibility determination group has already received that equals the amount of benefits the group was entitled to receive for that month.

[8.100.640.7 NMAC - N, 09/30/2013]

8.100.640.8 ERRONEOUS PAYMENT PROVISIONS: An erroneous payment exists when an error is made by the client or the department that resulted in an underpayment or overpayment of program benefits. The difference between the amount issued and the corrected amount is the amount of the payment error. The department

shall take action to correct errors in the supplemental nutrition assistance program (SNAP), state SNAP supplement, New Mexico combined application project (NMCAP), New Mexico works (NMW) cash assistance, general assistance for disabled adults and unrelated children (GA), adult residential shelter care home (ARSCH), education works (EWP), refugee cash assistance, medical assistance, and LIHEAP benefits issued to an eligibility determination group regardless of the cause of the error. NMW cash assistance, GA, ARSCH, EWP, refugee cash assistance will be referenced as cash assistance programs throughout the regulations unless otherwise specified.

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

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

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

[8.100.640.8 NMAC - N, 09/30/2013]

8.100.640.9 ESTABLISHING PERIOD OF ERROR:

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

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

C. Overpayment of benefits:

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

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

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

(2) Establishing a claim: A claim will be established against any eligibility determination group for any month in which the eligibility determination group received an overpayment of benefits if it exceeds the claims establishment threshold as defined in Subsection G of 8.100.640.11 NMAC.

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

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

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

[8.100.640.9 NMAC - N, 09/30/2013]

8.100.640.10 RESTORATION OF BENEFITS:

A. Entitlement:

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

(a) agency error;

(b) SNAP administrative disqualification for IPV that is later reversed; or

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

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

(a) date the department receives a request for restoration from an eligibility determination group; or

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

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

B. Errors in benefits:

(1) ISD discovered errors:

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

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

(c) The department shall notify the eligibility determination group of entitlement to lost benefits; amount of benefits to be restored; any offsetting that will be done; method of restoration, and right to appeal through the fair hearing process if the eligibility determination group disagrees with any aspect of the proposed restoration.

(2) Judicial action:

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

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

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

(i) date the department receives a request for restoration;

(ii) if a request for restoration is not received, date the fair hearing action was initiated; but never more than one (1) year from the date the department is notified of, or discovers, the loss.

(3) Disqualification for SNAP IPV:

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

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

(4) Agency errors:

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

(b) If an eligible eligibility determination group's application was delayed, the months for which benefits were lost will be calculated in accordance with application processing guidelines for delayed eligibility determinations in Subsection D of 8.139.110.13 NMAC, Subsection D of 8.102.110.12 NMAC and Subsection C of 8.106.110.12 NMAC.

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

C. Processing the restoration:

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

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

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

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

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

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

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

[8.100.640.10 NMAC - N, 09/30/2013]

8.100.640.11 OVERPAYMENTS (CLAIMS AGAINST ELIGIBILITY DETERMINATION GROUPS):

The department shall take action to establish a claim against any eligibility determination group that received more benefits than it was entitled to receive, including LIHEAP benefits paid to a vendor on behalf of the eligibility determination group, whether or not the overpayment occurred because of an IHE, an AE, or an IPV.

A. Claim recovery:

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

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

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

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

B. Types of claims for all programs:

(1) IHE claims:

(a) A claim will be handled as an IHE claim if the overpayment was caused by:

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

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

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

(b) Instances of IHE's that may result in a claim include, but are not limited to, the following:

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

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

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

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

(v) social security administration took action or failed to take appropriate

action, resulting in the eligibility determination group improperly receiving supplemental security income (SSI).

(2) Administrative or agency errors:

(a) A claim will be handled as an AE claim if the overpayment was caused by the department's action or failure to take action.

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

C. IPV claims established for SNAP:

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

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

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

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

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

(2) Before the determination of an IPV or the signing of either the waiver of right to a disqualification hearing or a disqualification consent agreement, the claim against an eligibility determination group is handled as an IHE claim.

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

E. Development of information: When quality control review findings, or information reported or received indicate, that benefits may have been issued incorrectly; the department shall attempt to obtain and verify whether benefits were provided in error.

F. When claims are not established: Overpayment claims shall not be established for administrative or IHE's, if an over-issuance occurred because the department did not ensure that the following procedural requirements were fulfilled:

(1) an application form was signed; or

(2) appropriate work registration code was entered.

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

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

(2) Claims resulting from an IHE will not be established if the cumulative error is less than two hundred fifty dollars (\$250).

(3) Claims resulting from fraud or an IPV will always be established for the full amount of the overpayment.

[8.100.640.11 NMAC - N, 09/30/2013]

8.100.640.12 CALCULATING THE AMOUNT OF THE ERROR (CALCULATING CLAIMS)

A. SNAP:

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

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

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

(c) The department shall not include in the calculation any overpayment amount that occurred in a month more than six (6) years before the date the overpayment was discovered.

(2) Calculating the claim for an IPV:

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

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

(c) The department may not include in the calculation any amount of the overpayment that occurred in a month more than six (6) years prior to the date the overpayment was discovered.

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

(e) In no event shall the department determine as the first month that the change would have been effective any month later than two (2) months after the month that the change in eligibility determination group circumstances occurred.

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

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

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

B. Cash assistance programs:

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

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

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

(c) An historical change that results in a lower payment than was originally issued, results in an overpayment and the establishment of a claim if it exceeds the claims establishment thresholds listed in Subsection G of 8.100.640.11 NMAC.

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

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

(2) Overpayments to sponsored aliens:

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

- (i) the agency failed to request information from the sponsor; or
- (ii) the sponsor can show that the sponsor provided all information available to the sponsor at the time the information was provided;
- (iii) the alien provided incorrect information without the knowledge of the sponsor; or

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

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

(3) Developing substantiating information:

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

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

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

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

(4) Offsetting the claim: Once the amount of the claim for IPV, IHE and AE is established, any restoration the eligibility determination group is eligible to receive is reduced or offset by the amount of the claim. Action must be taken to initiate collection of the remaining balance, if any.

C. LIHEAP:

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

(2) The department may establish a claim that exceeds the claim establishment threshold, as identified in Subsection G of 8.100.640.11 NMAC, for LIHEAP benefits overpaid up to six (6) years prior to the date the overpayment occurred.

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

D. Claims involving reported changes: In cases involving reported changes, the department shall determine the first month the overpayment occurred.

(1) **Inadvertent household error:** If caused by an inadvertent error on the part of the eligibility determination group (failure to report a change in circumstances within the required time frames), the first month affected by the eligibility determination group's failure to report is the first month in which the change would have been effective if it had been reported timely. In no event will the department determine as the first month in which the change would have been effective any month later than two (2) months from the month in which the change in eligibility determination group's circumstances occurred.

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

[8.100.640.12 NMAC - N, 09/30/2013]

8.100.640.13 RECOVERY (COLLECTION ACTION): The department shall initiate collection action by sending the eligibility determination group an overpayment notice.

A. Adverse action notice: If the amount of the claim was not established by a fair hearing decision, the eligibility determination group will be provided with an adverse action notice. The adverse action notice is sent on all claims established after March 26, 1990 and on any preexisting claims if at any time after March 26, 1990 a

follow-up demand letter is sent on the claim. A one-time adverse action notice that informs the eligibility determination group that it has ninety (90) days to appeal the amount of the claim will satisfy notice requirements.

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

- (1) that unless the eligibility determination group selects an acceptable method of payment and informs the department within the specified time limit, or timely requests a fair hearing and continued benefits, their SNAP benefit amount will be reduced;
- (2) that benefit reduction will affect the eligibility determination group's monthly benefits, only if the department has not otherwise informed the eligibility determination group;
- (3) that if the eligibility determination group timely selects an acceptable benefit reduction amount, the reduction will begin with the first benefit month that is issued after the selection;
- (4) that if the eligibility determination group fails to make a timely selection or fails to request a fair hearing and continued benefits, the benefit reduction will be effective with the first benefit issued after timely notice of such selection or request for hearing is due to the department; and
- (5) advise the eligibility determination group of any individual or organization that provides free legal representation.

C. Collection action:

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

(a) the total amount of the claim is less than the established claims threshold outlined in Subsection G of 8.100.640.11 NMAC, and the claim cannot be recovered by reducing the eligibility determination group's SNAP benefit amount; or

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

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

(3) **Collection action:** Restitution bureau shall pursue collection as specified in 8.100.640.13 NMAC.

D. SNAP Intentional program violation (IPV):

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

(a) the eligibility determination group has repaid the overpayment already; or
(b) the department has documentation establishing that the eligibility determination group cannot be located; or

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

(2) **Partially paid claim:** The department shall initiate collection action for an unpaid or partially paid claim, even if collection action was previously initiated while the claim was being handled as an IHE claim.

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

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

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

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

(c) Collection action is pursued against any eligibility determination group which

has a member who was an adult member of the eligibility determination group that received the overpayment.

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

F. Recovery action:

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

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

(3) **Response to referral:**

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

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

G. Fraud referral:

(1) **Fraud elements:**

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

(b) Fraud exists when:

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

(ii) because of the misrepresentation and the department's reliance upon it, the eligibility benefit group has obtained benefits from the department to which they were not entitled.

(2) **Referral for investigation:** If the department decides that fraud may exist, the case is referred to the OIG for further investigation or possible prosecution.

[8.100.640.13 NMAC - N, 09/30/2013]

8.100.640.14 METHODS FOR COLLECTING OVERPAYMENTS:

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

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

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

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

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

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

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

B. Cash payment methods:

(1) **Lump sum cash:**

(a) If the eligibility determination group asks to make a lump sum cash payment or

is financially able to repay the claim at one time, the restitution bureau shall collect a lump sum cash payment.

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

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

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

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

(ii) cash benefits to repay a cash assistance claim or medical assistance claim; or

(iii) cash benefits to repay a SNAP claim.

(2) Installment payment schedules:

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

(b) Payments will be accepted in regular installments.

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

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

(ii) cash benefits to repay a cash assistance claim or medical assistance claim; or

(iii) cash benefits to repay a SNAP claim.

(3) Repayment of SNAP overpayments:

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

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

(4) Repayment of cash assistance overpayments:

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

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

(c) Repayment schedule:

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

(5) Repayment of LIHEAP benefits:

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

(b) The department will initiate collection action to recover the claim amount on day forty-five (45) if the eligibility determination group does not repay or make arrangements to repay the amount owed.

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

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

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

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

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

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

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

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

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

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

C. Other payment methods:

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

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

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

(4) **Any other means:** The department may invoke collections by any other means available, including but not limited to, the use of private collection agencies, following notification to the eligibility determination group.

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

[8.100.640.14 NMAC - N, 09/30/2013]

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

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

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

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

- (1) the cumulative amount of all existing claims against the eligibility determination group equals twenty-five dollars (\$25) or less; and
- (2) a payment on the claim has not been received by the department in at least ninety (90) days.

D. Failure to locate: There is documentation establishing that the eligibility determination group cannot be located and the existing claim has been delinquent for at least six (6) years.

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

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

G. Uncollectible claims:

- (1) A claim may be determined uncollectible after being held in suspense for three (3) years.
- (2) A suspended or terminated claim may be offset against any SNAP benefit amount to be restored.

H. Overpaid claims:

- (1) If a household has overpaid a claim, the department shall reimburse any overpaid amounts as soon as possible after the overpayment becomes known.
- (2) The household may be reimbursed by whatever method the department deems appropriate after considering the household's circumstances.

I. Compromising the claim:

- (1) If the full or remaining amount of a claim cannot be liquidated in three (3) years, the restitution bureau may compromise the claim by reducing it to an amount that will allow the household to make restitution within three (3) years.
- (2) A compromised claim will be offset by any benefit that has not yet been restored to the household.
- (3) Claims caused by a SNAP IPV will not be compromised.

[8.100.640.15 NMAC - N, 09/30/2013]

8.100.640.16 WRITING OFF A CLAIM: Writing off a claim means that the claim is no longer considered a receivable subject to any federal or state collection requirements such as the Treasury Offset Program at 31 CFR 285 or the Supplemental Nutrition Assistance Program at 7 CFR 273.18. A claim may be written off if the claim is at least six (6) years old and at least one of the provisions of Subsections A through E of 8.100.640.15 NMAC apply. Only SNAP, LIHEAP and NMW cash assistance claims may be written off.

[8.100.640.16 NMAC - N, 09/30/2013]

8.100.640.17 EBT Adjustments: EBT adjustment pertains to any EBT transaction resulting in a change to a client's cash or snap benefits. If a system error causes a customer to receive funds to which they were not entitled or causes their account to not be charged for an EBT transaction, an adjustment may be completed to reclaim the funds or settle the transaction.

A. Client-initiated adjustments: The department must act on all requests for adjustments made by client households within 90 calendar days of the error transaction.

- (1) For SNAP the department has 10 business days from the date the household notifies it of the error to investigate and reach a decision on an adjustment and move funds into the client account.
- (2) For cash the department has 20 business days from the date the household notifies it of the error to investigate and reach a decision on an adjustment and move funds into the client account.
- (3) These timeframes also apply if the department or entity other than the household discovers a system error that requires a credit adjustment to the household. Business days are defined as calendar days other than Saturdays, Sundays, and federal holidays.

B. Retailer-initiated adjustments: The department must act upon all adjustments to debit a household's account no later than 10 business days from the date the error occurred, by placing a hold on the adjustment balance in the household's account. If there are insufficient benefits to cover the entire adjustment, a hold shall be placed on any remaining balance that exists, with the difference being subject to availability only in the next future month. The household shall be given adequate notice. The notice must be sent at the time the initial hold is attempted on the household's current month's remaining balance, clearly state the full adjustment amount,

and advise the household that any amount still owed is subject to collection from the household's next future month's benefits.

(1) The household shall have 90 days from the date of the notice to request a fair hearing.

(2) Should the household dispute the adjustment and request a hearing within 10 days of the notice, a provisional credit must be made to the household's account by releasing the hold on the adjustment balance within 48 hours of the request by the household, pending resolution of the fair hearing. If no request for a hearing is made within 10 days of the notice, the hold is released on the adjustment balance, and this amount is credited to the retailer's account. If there are insufficient funds available in the current month to cover the full adjustment amount, the hold may be maintained and settled at one time after the next month's benefits become available.

[8.100.640.17 NMAC - N, 3/1/2020]

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

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

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

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

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

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

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

(1) **Stale benefit threshold:**

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

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

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

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

(b) **Cash assistance:** The department shall attempt to notify the eligibility determination group no less than 45 days prior to the expungement of the cash assistance benefits. A request from the participant to reinstate any benefit must be received prior to the date of expungement.

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

[8.100.640.17 NMAC - N, 09/30/2013; A and Rn, 3/1/2020]

History of 8.100.640 NMAC: [RESERVED]