

TITLE 8 SOCIAL SERVICES
CHAPTER 200 MEDICAID ELIGIBILITY - GENERAL RECIPIENT RULES
PART 410 GENERAL RECIPIENT REQUIREMENTS

8.200.410.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.200.410.1 NMAC - Rp, 8.200.410.1 NMAC, 1/1/2014]

8.200.410.2 SCOPE: The rule applies to the general public.
[8.200.410.2 NMAC - Rp, 8.200.410.2 NMAC, 1/1/2014]

8.200.410.3 STATUTORY AUTHORITY: 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.
[8.200.410.3 NMAC - Rp, 8.200.410.3 NMAC, 1/1/2014]

8.200.410.4 DURATION: Permanent.
[8.200.410.4 NMAC - Rp, 8.200.410.4 NMAC, 1/1/2014]

8.200.410.5 EFFECTIVE DATE: January 1, 2014, unless a later date is cited at the end of a section.
[8.200.410.5 NMAC - Rp, 8.200.410.5 NMAC, 1/1/2014]

8.200.410.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD) eligibility policy manual, specifically 8.200.400 NMAC, *General Medicaid Eligibility*. Processes for establishing and maintaining MAD eligibility are detailed in the income support division (ISD) general provisions 8.100 NMAC, *General Provisions for Public Assistance Programs*.
[8.200.410.6 NMAC - Rp, 8.200.410.6 NMAC, 1/1/2014]

8.200.410.7 DEFINITIONS: [RESERVED]

8.200.410.8 [~~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.~~] **[RESERVED]**
[8.200.410.8 NMAC - Rp, 8.200.410.8 NMAC, 1/1/2014; A, xx-xx-xx]

8.200.410.9 GENERAL RECIPIENT REQUIREMENTS: To be eligible or continue eligibility for medicaid or other medical assistance programs, an applicant or eligible recipient must meet specific non-financial requirements. In addition to the rules in this chapter, refer to 8.100.130 NMAC regarding the following requirements:

- A. citizenship or alien status;
- B. enumeration;
- C. residence;
- D. non-concurrent receipt of assistance;
- E. applications for other benefits; and
- F. assignment of medical support rights.

[8.200.410.9 NMAC - Rp, 8.200.410.9 NMAC, 1/1/2014]

8.200.410.10 [~~ENUMERATION] USE OF SOCIAL SECURITY NUMBER (42 CFR 435.910):~~ [~~The social security administration (SSA) is responsible for the assigning of social security numbers (SSN), a process called enumeration. HSD uses the SSN as a unique identifier to the individual and eligible recipient and to verify income and resources where applicable.~~]

~~A. Applicant and an eligible recipient: Except as noted in Subsection B of this section, it is mandatory for a medicaid applicant and an eligible recipient to report his or her SSN. If an applicant or an eligible recipient does not have a valid SSN, he or she must apply for one. Applications for an SSN are available at any SSA or HSD income support division (ISD) office. An application for an SSN can be made by completing and submitting an SSN application form. Proof of the SSN application must be provided to ISD.~~

~~**B. Applicant and eligible recipient exception:** The following applicants or eligible recipients in the following categories are not required to report an SSN. Reporting an SSN is voluntary for:~~

- ~~(1) emergency medical services for aliens (EMSA); and~~
- ~~(2) refugee medical assistance (RMA).~~

~~**C. Non-applicants and non-eligible recipients:** Reporting an SSN is voluntary for individuals who are not seeking medicaid services for themselves.]~~

A. HSD requires, as a condition of eligibility, that each individual (including children) seeking medicaid furnish each of his or her social security numbers (SSN).

(1) HSD will advise the applicant of:
(a) the statute or other authority under which the agency is requesting the applicant's SSN; and

(b) the uses HSD will make of each SSN, including its use for verifying income, eligibility, and amount of medical assistance payments per 42 CFR 435.940 through 435.960.

(2) If an applicant cannot recall his or her SSN or SSNs or has not been issued a SSN HSD will:

- (a) assist the applicant in completing an application for an SSN;
- (b) obtain evidence required under the social security administration (SSA) regulations to establish the age, the citizenship or alien status, and the true identity of the applicant; and
- (c) either send the application to SSA or, if there is evidence that the applicant has previously been issued a SSN, request SSA to furnish the number.

(3) HSD cannot deny or delay services to an otherwise eligible individual pending issuance or verification of the individual's SSN by SSA or if the individual meets one of the exceptions in Paragraph (5) of Subsection A of 8.200.410.10 NMAC.

(4) HSD will verify the SSN furnished by an applicant or beneficiary with SSA to ensure the SSN was issued to that individual, and to determine whether any other SSNs were issued to that individual.

(5) Exception: The requirement of Paragraph (3) of Subsection A of 8.200.410.10 NMAC does not apply and HSD may give a medicaid identification number to an individual who:

- (a) is not eligible to receive an SSN;
- (b) does not have an SSN and may only be issued an SSN for a valid non-work reason in accordance with 20 CFR 422.104; or

(c) refuses to obtain an SSN because of well-established religious objections.

(6) The identification number may be either an SSN obtained by HSD on the applicant's behalf or another unique identifier.

(7) The term *well established religious objections* means that the applicant:

- (a) is a member of a recognized religious sect or division of the sect; and
- (b) adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number.

(8) HSD may use the medicaid identification number established by HSD to the same extent as an SSN is used for purposes described in Subparagraph (b) of Paragraph (1) of Subsection A of 8.200.410.10 NMAC.

[8.200.410.10 NMAC - Rp, 8.200.410.10 NMAC, 1/1/2014; A, xx-xx-xx]

8.200.410.11 CITIZENSHIP: To be eligible for medicaid, an individual must be a citizen of the United States; or an alien who meets the requirements set forth in either Subsection A or B of [\[this section\] 8.200.410.11 NMAC](#).

A. Aliens who entered the United States prior to August 22, 1996: Aliens who entered the United States prior to August 22, 1996, will not be subject to the five-year bar on eligibility for purposes of medicaid eligibility, and will continue to be eligible for medicaid on the basis of alien regulations in effect prior to August 22, 1996. These classes of aliens are as follows.

(1) Aliens who entered the United States prior to August 22, 1996, and remained continuously present in the United States until the date they obtained qualified alien status on or after August 22, 1996; any single absence from the United States of more than 30 days, or a total aggregate of absences of more than 90 days, is considered to interrupt "continuous presence".

(2) Aliens lawfully admitted for permanent residence or are permanently residing in the United States under color of law as follows:

(a) the individual may be eligible for medicaid if the individual is an alien residing in the United States with the knowledge and permission of the United States immigration and customs enforcement

(ICE) and ICE does not contemplate enforcing the alien's departure; 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;

(b) aliens who are permanently residing in the United States under color of law are listed below; 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:

(i) aliens admitted to the United States pursuant to 8 U.S.C. 1153(a)(7)(Section 203(a)(7) of the Immigration and Nationality Act); ask for a copy of ICE Form I-94 endorsed "refugee-conditional entry";

(ii) aliens, including Cuban/Haitian entrants, paroled in the United States pursuant to 8 U.S.C. 1182(d)(5)(Section 212(d)(5) of the Immigration and Nationality Act; 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);

(iii) aliens residing in the United States pursuant to an indefinite stay of deportation; ask for an immigration and naturalization services letter with this information or ICE Form I-94 clearly stated that voluntary departure has been granted for an indefinite period of time;

(iv) aliens residing in the United States pursuant to an indefinite voluntary departure; ask for an immigration and naturalization services letter or ICE Form I-94 showing that voluntary departure has been granted for an indefinite time period;

(v) aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi)) and whose departure ICE does not contemplate enforcing; ask for a copy of ICE Form I-94 or Form I-210 or a letter clearly stating that status;

(vi) aliens who have filed applications for adjustment of status pursuant to Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that ICE has accepted as properly filed (within the meaning of 8 CFR 245.2(a)(1) or (2)) and whose departure ICE does not contemplate enforcing; ask for a copy of ICE Form I-94 or I-181 or a passport appropriately stamped;

(vii) aliens granted stays of deportation by court order, statute, or regulation, or by individual determination of ICE pursuant to Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105 (a)) or relevant ICE instructions, whose departure that agency does not contemplate enforcing; ask for a copy of ICE Form I-94 or a letter from ICE, or a copy of a court order establishing the alien's status;

(viii) aliens granted asylum pursuant to Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158); ask for a copy of ICE Form I-94 and a letter establishing this status;

(ix) aliens admitted as refugees pursuant to Section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or Section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)); ask for a copy of ICE Form I-94 properly endorsed;

(x) aliens granted voluntary departure pursuant to Section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) or 8 CFR 242.5 whose departure ICE does not contemplate enforcing; ask for a Form I-94 or Form I-210 bearing a departure date;

(xi) aliens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1(a)(ii) prior to June 15, 1984 or 242.1(a)(22) issued June 15, 1984 and later; ask for a copy for ICE Form I-210 or a letter showing that departure has been deferred;

(xii) aliens residing in the United States under orders of supervision pursuant to Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252(d)); ask for a copy of Form I-220 B;

(xiii) aliens who have entered and continuously resided in the United States since before January 1, 1972, (or any date established by Section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259); ask for any proof establishing this entry and continuous residence;

(xiv) aliens granted suspension for deportation pursuant to Section 244 of the Immigration and Nationality Act (8 U.S.C. 1254) and whose departure ICE does not contemplate enforcing; ask for an order from an immigration judge showing that deportation has been withheld;

(xv) aliens whose deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)); ask for an order from an immigration judge showing that deportation has been withheld;

(xvi) any other aliens living in the United States with the knowledge and permission of the immigration and naturalization service and whose departure the agency does not contemplate enforcing (including permanent non-immigrants as established by Public Law 99-239, and persons granted extended voluntary departure due to conditions in the alien's home country based on a determination by the secretary of state).

(3) Aliens granted lawful temporary resident status under Section 245A and 210A of the Immigration and Nationality Act if the individual is aged, blind or disabled as defined in Section 1614(a)(1) of the act, under 18 years of age, or a Cuban/Haitian entrant as defined in Section 510(e)(1) and (2)(A) of the Public Law 96-422.

(4) Aliens granted lawful temporary resident status under Section 210 of the Immigration and Nationality Act unless the alien would, but for the 5-year bar to receipt of AFDC contained in such section, be eligible for AFDC.

B. Aliens who entered the United States on or after August 22, 1996:

(1) Aliens who entered the United States on or after August 22, 1996, are barred from medicaid eligibility for a period of five years, other than emergency services (under Category 085). The five-year bar begins on the date of the alien's entry into the United States with a status of qualified alien. The following classes of qualified aliens are exempt from the five-year bar:

(a) an alien admitted to the United States as a refugee under Section 207 of the Immigration and Nationality Act;

(b) an alien granted asylum under Section 208 of the Immigration and Nationality Act;

(c) an alien whose deportation is withheld under Section 243(h) of the Immigration and Nationality Act;

(d) an alien who is lawfully residing in the state and who is a veteran with an honorable discharge not on account of alien status; is on active duty other than on active duty for training, in the armed forces of the United States; or the spouse or unmarried dependent child under the age of 18 of such veteran or active duty alien;

(e) an alien who was granted status as a Cuban and Haitian entrant, as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;

(f) an alien granted Amerasian immigrant status as defined under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988;

(g) victims of a severe form of trafficking, in accordance with Section 107(b)(1) of the Trafficking Victims Protection Act of 2000, P.L. 106-386;

(h) battered aliens who meet the conditions set forth in Section 431(c) of [\[PRWORA\] the Personal Responsibility and Work Opportunity Reconciliation Act \(PRWORA\)](#), as added by Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208 (IIRIRA), and amended by Section 5571 of the Balanced Budget Act of 1997, P.L. 105-33 (BBA), and Section 1508 of the Violence Against Women Act of 2000, P.L. 106-386; Section 431(c) of PRWORA, as amended, is codified at 8 USC 1641(c);

(i) members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e);
(j) American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies; and

(k) Afghan and Iraqi special immigrants under Section 8120 of Pub. L. 111-118 of the Department of Defense Appropriations Act, 2010.

(2) Qualified alien: A "qualified alien", for purposes of this regulation, is an alien, who at the time the alien applies for, receives, or attempts to receive a federal public benefit, is:

(a) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act; or

(b) an alien who is granted asylum under Section 208 of such act; or

(c) a refugee who is admitted to the United States under Section 207 of the act (including certain Amerasian immigrants as refugees); or

(d) an alien who is paroled into the United States under Section 212(d)(5) of such act for a period of at least one year; or

(e) an alien whose deportation is being withheld under Section 243(h) of such act; or

(f) an alien who is granted conditional entry pursuant to 203(a)(7) or such act as in effect prior to April 1, 1980; or

(g) an alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980); or

(h) certain battered women and alien children of battered parents (only those who have begun the process of becoming a lawful permanent resident under the Violence Against Women Act); or

(i) victims of a severe form of trafficking; or

(j) members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e);

or

(k) American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies; or

(l) Afghan and Iraqi special immigrants under Section 8120 of Pub. L. 111-118 of the Department of Defense Appropriations Act, 2010.

(3) Children and pregnant women exempt from the five year bar: As authorized by CHIPRA 2009 legislation, New Mexico medicaid allows a lawfully residing child and pregnant woman, if otherwise eligible, to obtain medicaid coverage. A lawfully residing child and pregnant woman must meet the residency requirement as set forth in 8.200.410.12 NMAC. A child or pregnant woman is considered lawfully present if he or she is:

(a) a qualified alien as defined in Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (8 U.S.C. Section 1641);

(b) an alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission (e.g. nonimmigrant visa holders, citizens of Micronesia, the Marshall Islands, and Palau, a lawful temporary resident and applicant for legalization under [\[IRCA\] the Immigration Reform and Control Act \(IRCA\)](#), legalization under the [\[LIFE\] Legal Immigration Family Equity \(LIFE\)](#) Act, family unity, an applicant for cancellation of removal or suspension of deportation, order of supervision, and registry applicant;

(c) an alien who has been paroled into the [\[U.S.\] United States \(U.S.\)](#) pursuant to Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. Section 1182(d)(5)) for less than one year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;

(d) an alien who belongs to one of the following classes:

(i) aliens currently in temporary resident status pursuant to Section 210 or 245A of the Immigration and Nationality Act (8 U.S.C. Section 1160 or 1255a, respectively);

(ii) aliens currently under temporary protected status (TPS) pursuant to Section 244 of the Immigration and Nationality Act (8 U.S.C. Section 1254a), and pending applicants for TPS who have been granted employment authorization;

(iii) aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);

(iv) family unity beneficiaries pursuant to Section 301 of Pub. L. 101-649, as amended;

(v) aliens currently under deferred enforced departure (DED) pursuant to a decision made by the president;

(vi) aliens currently in deferred action status; or

(vii) aliens whose visa petitions have been approved and who have a pending application for adjustment of status;

(e) pending applicants for asylum under Section 208(a) of the INA (8 U.S.C. Section 1158) or for withholding of removal under Section 241(b)(3) of the INA (8 U.S.C. Section 1231) or under the convention against torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;

(f) aliens whose applications for withholding of removal under the convention against torture have been granted;

(g) children who have pending applications for special immigrant juvenile status as described in Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. Section 1101(a)(27)(J));

(h) aliens who are lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. Section 1806(e); or

(i) aliens who are lawfully present in American Samoa under the immigration laws of American Samoa.

(4) Alien sponsors (where an affidavit of sponsorship was executed pursuant to Section 213 of the Immigration and Nationality Act subsequent to August 22, 1996): The income and resources of an alien sponsor, and the spouse of the sponsor, of any individual applying for medicaid, are deemed available to the

applicant, when an affidavit of support is executed pursuant to Section 213 of the Immigration and Nationality Act, on or after August 22, 1996. This counting of alien sponsor income and resources is effective until the sponsored alien achieves citizenship, or can be credited with 40 qualifying quarters.

(5) Quarters of coverage: For purposes of determining the number of quarters of coverage under Title II of the Social Security Act, an alien will be credited with all of the quarters that were worked by him or her, as well as all of the qualifying quarters of coverage worked by a parent of such alien, while the alien was under 18; and all of the quarters credited to a spouse, if the alien remains married to the spouse or such spouse is deceased. Beginning January 1, 1997, any quarter in which the alien received a means-tested federal benefit is not counted as a qualifying quarter.

(6) Federal means-tested benefit: For purposes of determining whether an alien has or has not received any federal means-tested benefits during a quarter, starting with January 1, 1997, the definition of federal means-tested benefits will not include:

(a) medical assistance under Title XIX of the Social Security Act (medicaid) for emergency treatment of an alien, not related to an organ transplant procedure, if the alien otherwise meets eligibility for medical assistance under the state plan;

(b) short-term, noncash, in-kind emergency disaster relief;

(c) assistance or benefits under the National School Lunch Act;

(d) assistance or benefits under the Child Nutrition Act of 1966;

(e) public health assistance (not including any assistance under Title XIX medicaid) for immunizations, and testing or treatment of symptoms of communicable diseases, whether or not such symptoms are caused by communicable diseases;

(f) payments for foster care and adoption assistance under Part B and E of Title IV of the Social Security Act for a parent or child who would, in the absence of the restriction of eligibility for aliens contained in PRWORA of 1996, be eligible for such payments made on the child's behalf, but only if the foster or adoptive parent (or parents) of such child, is a qualified alien;

(g) programs, services, or assistance, delivering in-kind services at the community level and necessary for the provision of life or safety; that do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided, on the individual recipient's income or resources;

(h) programs of student assistance under Titles IV, V, IX, and X of the Higher Education Act of 1965, and Titles III, VII, and VIII of the Public Health Services Act;

(i) means-tested programs under the Elementary and Secondary Education Act of 1965;

(j) benefits under the Head Start Act; or

(k) benefits under the Job Training Partnership Act.

[8.200.410.11 NMAC - Rp, 8.200.410.11 NMAC, 1/1/2014; A, xx-xx-xx]

8.200.410.12 TYPES OF ACCEPTABLE DOCUMENTARY EVIDENCE OF CITIZENSHIP (42 CFR 435.407):

A. Stand-alone evidence of citizenship: The following must be accepted as sufficient documentary evidence of citizenship:

(1) A U.S. passport, including a U.S. passport card issued by the department of state, without regard to any expiration date as long as such passport or card was issued without limitation.

(2) A certificate of naturalization.

(3) A certificate of U.S. citizenship.

(4) A valid state-issued driver's license if the state issuing the license requires proof of U.S. citizenship, or obtains and verifies a SSN from the applicant who is a citizen before issuing such license.

(a) A real ID issued on or after November 14, 2016 is sufficient documentary evidence of citizenship.

(b) A driver authorization card (DAC) is not sufficient documentary evidence of citizenship.

(5) Documentary evidence issued by a federally recognized indian tribe identified in the FEDERAL REGISTER by the Bureau of Indian Affairs within the U.S. department of the interior, and including tribes located in a state that has an international border, which:

(a) Identifies the federally recognized indian tribe that issued the document;

(b) Identifies the individual by name; and

(c) Confirms the individual's membership, enrollment, or affiliation with the tribe.

(d) Documents described in paragraph (5) of Subsection A of 8.200.410.12 NMAC include, but are not limited to:

- (i) A tribal enrollment card;
- (ii) A certificate of degree of indian blood;
- (iii) A tribal census document;
- (iv) Documents on tribal letterhead, issued under the signature of the appropriate tribal official, that meet the requirements of Paragraph (5) of Subsection A of 8.200.410.12 NMAC.

(6) A data match with the SSA.

B. Evidence of citizenship: If an applicant does not provide documentary evidence from the list in Subsection A of 8.200.410.12 NMAC, the following must be accepted as satisfactory evidence to establish citizenship if also accompanied by an identity document listed in Subsection C of 8.200.410.12 NMAC:

(1) A U.S. public birth certificate showing birth in one of the 50 States, the District of Columbia, Guam, American Samoa, Swain's Island, Puerto Rico (if born on or after January 13, 1941), the Virgin Islands of the U.S. or the Commonwealth of the Northern Mariana Islands (CNMI) (if born after November 4, 1986, (CNMI local time)). The birth record document may be issued by a state, commonwealth, territory, or local jurisdiction. If the document shows the individual was born in Puerto Rico or the Northern Mariana Islands before the applicable date referenced in Paragraph (1) of Subsection B of 8.200.410.12 NMAC, the individual may be a collectively naturalized citizen. The following will establish U.S. citizenship for collectively naturalized individuals:

(a) Puerto Rico: Evidence of birth in Puerto Rico and the applicant's statement that he or she was residing in the U.S., a U.S. possession, or Puerto Rico on January 13, 1941;

(b) Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI));

(c) Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. Territory or possession on November 3, 1986, (NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time);

(d) Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration before January 1, 1975, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time);

(e) Evidence of continuous domicile in the NMI since before January 1, 1974, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time). Note: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

(2) At HSD option, a cross match with a state vital statistics agency documenting a record of birth.

(3) A certification of report of birth, issued to U.S. citizens who were born outside the U.S.

(4) A report of birth abroad of a U.S. citizen.

(5) A certification of birth in the U.S.

(6) A U.S. citizen identification card.

(7) A Northern Marianas identification card issued by the U.S. department of homeland security (or predecessor agency).

(8) A final adoption decree showing the child's name and U.S. place of birth, or if an adoption is not final, a statement from a state-approved adoption agency that shows the child's name and U.S. place of birth.

(9) Evidence of U.S. civil service employment before June 1, 1976.

(10) U.S. military record showing a U.S. place of birth.

(11) A data match with the Systematic Alien Verification for Entitlements (SAVE) Program or any other process established by the department of homeland security (DHS) to verify that an individual is a citizen.

(12) Documentation that a child meets the requirements of section 101 of the Child Citizenship Act of 2000 as amended (8 U.S.C. 1431).

(13) Medical records, including, but not limited to, hospital, clinic, or doctor records or admission papers from a nursing facility, skilled care facility, or other institution that indicate a U.S. place of birth.

(14) Life, health, or other insurance record that indicates a U.S. place of birth.

(15) Official religious record recorded in the U.S. showing that the birth occurred in the U.S.

(16) School records, including pre-school, head start and daycare, showing the child's name and U.S. place of birth.

(17) Federal or state census record showing U.S. citizenship or a U.S. place of birth.

(18) If the applicant does not have one of the documents listed in Subsection A or Paragraph (1) through (17) of Subsection B of 8.200.410.12 NMAC, he or she may submit an affidavit signed by another individual under penalty of perjury who can reasonably attest to the applicant's citizenship, and that contains the applicant's name, date of birth, and place of U.S. birth. The affidavit does not have to be notarized.

C. Evidence of identity: HSD will accept the following as proof of identity, provided such document has a photograph or other identifying information sufficient to establish identity, including, but not limited to, name, age, sex, race, height, weight, eye color, or address:

(1) Identity documents listed at 8 CFR 274a.2 (b)(1)(v)(B)(1), except a driver's license issued by a Canadian government authority.

(2) Driver's license issued by a state or territory.

(3) School identification card.

(4) U.S. military card or draft record.

(5) Identification card issued by the federal, state, or local government.

(6) Military dependent's identification card.

(7) U.S. coast guard merchant mariner card.

(8) For children under age 19, a clinic, doctor, hospital, or school record, including preschool or day care records.

(9) Two other documents containing consistent information that corroborates an applicant's identity. Such documents include, but are not limited to, employer identification cards; high school, high school equivalency and college diplomas; marriage certificates; divorce decrees; and property deeds or titles.

(10) Finding of identity from a federal or state governmental agency. The agency may accept as proof of identity a finding of identity from a federal agency or another state agency (not described in Subparagraph (c)(1) of Paragraph (5) of Subsection A 8.200.410.12 NMAC), including but not limited to a public assistance, law enforcement, internal revenue or tax bureau, or corrections agency, if the agency has verified and certified the identity of the individual.

(11) If the applicant does not have any document specified in Subparagraph (c)(1) of Paragraph (5) of Subsection A 8.200.410.12 NMAC and identity is not verified under Subparagraph (c)(2) of Paragraph (5) of Subsection A 8.200.410.12 NMAC, the agency must accept an affidavit signed, under penalty of perjury, by a person other than the applicant who can reasonably attest to the applicant's identity. Such affidavit must contain the applicant's name and other identifying information establishing identity, as described in Subparagraph (c)(1) of Paragraph (5) of Subsection A 8.200.410.12 NMAC. The affidavit does not have to be notarized.

D. Verification of citizenship by a federal agency or another state: HSD may rely, without further documentation of citizenship or identity, on a verification of citizenship made by a federal agency or another state agency, if such verification was done on or after July 1, 2006.

E. Assistance with obtaining documentation: HSD will provide assistance to individuals who need assistance in securing satisfactory documentary evidence of citizenship in a timely manner.

F. Documentary evidence: A photocopy, facsimile, scanned or other copy of a document must be accepted to the same extent as an original document under this section, unless information on the copy submitted is inconsistent with other information available to HSD or HSD otherwise has reason to question the validity of, or the information in, the document.

[8.200.410.12 NMAC - N, xx-xx-xx]

8.200.410.13 REASONABLE OPPORTUNITY PERIOD (42 CFR 435.956(b)):

A. HSD provides a reasonable opportunity period to individuals who have made a declaration of citizenship or satisfactory immigration status in accordance with 42 CFR 435.406, and for whom the HSD is unable to verify citizenship or satisfactory immigration status. During the reasonable opportunity period, the HSD continues efforts to complete verification of the individual's citizenship or satisfactory immigration status, or request documentation if necessary. The HSD provides notice of such opportunity that is accessible to persons who have limited English proficiency and individuals with disabilities, consistent with 42 CFR 435.905(b). During such reasonable opportunity period, the HSD must, if relevant to verification of the individual's citizenship or satisfactory immigration status:

(1) in the case of individuals declaring citizenship who do not have an SSN at the time of such declaration, assist the individual in obtaining an SSN in accordance with 42 CFR 435.910, and attempt to verify the individual's citizenship once an SSN has been obtained and verified;

(2) provide the individual with information on how to contact the electronic data source so that he or she can attempt to resolve any inconsistencies defeating electronic verification directly with such source, and pursue verification of the individual's citizenship or satisfactory immigration status if the individual or source informs the HSD that the inconsistencies have been resolved; and

(3) provide the individual with an opportunity to provide other documentation of citizenship or satisfactory immigration status, in accordance with 42 CFR 435.406 or 435.407.

B. The reasonable opportunity period:

(1) begins on the date on which the notice is received by the individual. The date on which the notice is received is considered to be 5 days after the date on the notice, unless the individual shows that he or she did not receive the notice within the 5-day period; and

(2) ends on the earlier of the date the HSD verifies the individual's citizenship or satisfactory immigration status or determines that the individual did not verify his or her citizenship or satisfactory immigration status or 90 days except that:

(3) HSD extends the reasonable opportunity period beyond 90 days, allowing for up to three 10 day extensions, for individuals declaring to be in a satisfactory immigration status if the HSD determines that the individual is making a good faith effort to obtain any necessary documentation or the agency needs more time to verify the individual's status through other available electronic data sources or to assist the individual in obtaining documents needed to verify his or her status.

(4) if, by the end of the reasonable opportunity period, the individual's citizenship or satisfactory immigration status has not been verified the HSD will take action within 30 days to terminate eligibility. [8.200.410.13 NMAC - N, xx-xx-xx]

[8.200.410.12] 8.200.410.14 RESIDENCE: To be eligible for medicaid, an applicant or eligible recipient must be living in New Mexico on the date of application and final determination of eligibility and have demonstrated an intention to remain in the state.

A. Establishing residence: Residence is established by living in the state and carrying out the types of activities associated with day-to-day living, such as occupying a home, enrolling a child in school or getting a state driver's license. An applicant or recipient who is homeless is considered to have met the residence requirements if he or she intends to remain in the state.

B. Recipients receiving benefits out-of-state: An applicant or an eligible recipient who receives financial or medical assistance in another state which makes residence in that state a condition of eligibility are considered residents of that state until the ISD office receives verification from the other state agency indicating that it has been notified by an applicant or eligible recipient of the abandonment of residence in that state.

C. Individuals court ordered into full or partial responsibility of the state children youth and families department (CYFD): When CYFD places a child in a new state of residence, the new state of residence is responsible for the provision of medicaid; however, the state must provide limited medicaid coverage for medicaid services that are part of the state medicaid benefit package and not available in the new state of residence.

D. Abandonment: Residence is not abandoned by temporary absences. Temporary absences occur when an eligible recipient leaves the state for specific purposes with time-limited goals. Residence is considered abandoned when the applicant or the eligible recipient leaves the state for any of the following reasons:

- (1) intends to establish residence in another state;
- (2) for no specific purpose with no clear intention of returning;
- (3) applies for financial, food or medical assistance in another state which makes residence in that state a condition of eligibility; or
- (4) for more than 30 consecutive calendar days, without notifying HSD of his or her departure or intention of returning.

E. Evidence of immigration status may not be used to determine that an individual is not a state resident per 42 CFR 435.956 (c)(2).

[8.200.410.14 NMAC - Rn & A, 8.200.410.12, xx-xx-xx]

[8.200.410.13] 8.200.410.15 NON-CONCURRENT RECEIPT OF ASSISTANCE:

A. An applicant or an eligible recipient receiving medicaid in another state is not medical assistance program eligible in New Mexico except when:

(1) institutional care medicaid begins on a specific date within the month rather than automatically reverting to the first day of the month, if an applicant for institutional care medicaid (Category 081, 083 or 084) moves to New Mexico from another state and it can be verified that the other state will terminate the individual's medicaid eligibility under that state program prior to the initial eligibility date in New Mexico, the application may be approved even though the individual receives medicaid from the other state for part of the month; coverage in New Mexico begins after the end date of services from the other state;

(2) an individual is court ordered into full or partial responsibility CYFD; when CYFD places a child in a new state of residence, the new state of residence is responsible for the provision of medicaid; however, New Mexico must provide limited medicaid coverage for medicaid services that are part of New Mexico's medicaid benefit package and not available in the new state of residence.

B. An individual who is eligible for a full-coverage medicaid program may also be eligible for one of the medicare cost sharing medical assistance program categories. See 8.200.400 NMAC.

C. When a supplemental security income (SSI) recipient enters into a nursing home or hospital (institutionalized), SSA will re-evaluate SSI and related medicaid eligibility.

(1) When SSA determines that the individual remains eligible for SSI while institutionalized, the SSI benefit is adjusted as follows:

(a) if institutionalized for more than 90 calendar days - the SSI benefit is limited to \$30 a month; or

(b) if institutionalized for 90 calendar days or less - the SSI benefit continues at the regular amount.

(2) When SSA determines that the individual is not eligible for SSI, the individual or his or her authorized representative should file an application at HSD for institutional care medicaid. If the individual meets all factors of eligibility, approval of the institutional care medicaid application should be coordinated with the SSI closure date. If eligible, there will not be a break in eligibility and the individual shall not receive both SSI and institutional care medicaid in the same month pursuant to 8.281.400.10 NMAC.

[8.200.410.15 NMAC - Rn, 8.200.410.13, xx-xx-xx]

[8.200.410.14] 8.200.410.16 APPLICATIONS FOR OTHER BENEFITS: As a condition of eligibility, a medicaid applicant or an eligible recipient must take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which they are entitled, within 30 calendar days from the date HSD furnishes notice of the potential benefit, unless they can show good cause for not doing so.

A. Benefit types: Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensation and pensions, old age survivors and disability insurance (OASDI) benefits, railroad retirement benefits, and unemployment compensation.

B. Exceptions to general requirement/good cause: An individual may request a good cause waiver to this requirement by presenting ISD with corroborating evidence that:

(1) applying for other benefits is against the best interest of the individual, child or others, including physical or emotional harm to a child, parent or caregiver relative, adoption proceedings, and potential for emotional impairment; or

(2) exceptions applicable to institutional care medicaid, the SSI-related categories and the home and community based waivers are pursuant to Subsection B of 8.215.500.9 NMAC, Subsection B of 8.281.500.9 NMAC, and Subsection B of 8.290.500.9 NMAC.

C. Failure to apply for and take steps to determine eligibility for other benefits: When the parent(s) or where applicable the specified relative fails or refuses to apply for and take steps to determine eligibility within 30 calendar days from the date HSD furnishes notice of the potential benefit, the parent(s) or specified relative is not eligible for medicaid. An eligible recipient under the age of 18 years shall not lose his or her medicaid eligibility under this provision.

[8.200.410.16 NMAC - Rn, 8.200.410.14, xx-xx-xx]

[8.200.410.15] 8.200.410.17 INMATE IN A PUBLIC INSTITUTION:

A. A public institution is a:

(1) state and private correctional facility;

(2) county and privately operated jail;

(3) department of health behavioral health facility forensic unit;

(4) detention facility operated under the authority of CYFD; or

(5) facility that is operated under the authority of CYFD that provides for the care and rehabilitation of an individual who is under 18 years of age and who has committed an act that would be designated as a crime under the law if committed by an individual who is 18 years of age or older.

B. An inmate is a person incarcerated in a public institution listed in Subsection A of 8.200.410.15 NMAC for 30 or more days.

C. An inmate who is incarcerated in a public institution is not eligible for MAP services. The only exception are those services provided to an inmate while he or she is an inpatient in a medical facility outside the public institution for 24 hours or longer.

D. Incarceration in a public institution is not a basis for denying or terminating a MAP category of eligibility. During the time of incarceration an inmate may apply or recertify for a MAP category of eligibility. [8.200.410.17 NMAC - Rn, 8.200.410.15, xx-xx-xx]

HISTORY OF 8.200.410 NMAC:

History of Repealed Material:

8.200.410 NMAC, General Recipient Requirements, filed 6/11/2003 - Repealed effective 1/1/2014.