

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 291 MEDICAID ELIGIBILITY - AFFORDABLE CARE**  
**PART 430 FINANCIAL RESPONSIBILITY REQUIREMENTS**

**8.291.430.1 ISSUING AGENCY:** New Mexico Human Services Department (HSD).  
 [8.291.430.1 NMAC - Rp, 8.291.430.1 NMAC, 11/16/2015]

**8.291.430.2 SCOPE:** The rule applies to the general public.  
 [8.291.430.2 NMAC - Rp, 8.291.430.2 NMAC, 11/16/2015]

**8.291.430.3 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 Section 27-1-12 NMSA et seq.  
 [8.291.430.3 NMAC - Rp, 8.291.430.3 NMAC, 11/16/2015]

**8.291.430.4 DURATION:** Permanent.  
 [8.291.430.4 NMAC - Rp, 8.291.430.4 NMAC, 11/16/2015]

**8.291.430.5 EFFECTIVE DATE:** November 16, 2015, unless a later date is cited at the end of a section.  
 [8.291.430.5 NMAC - Rp, 8.291.430.5 NMAC, 11/16/2015]

**8.291.430.6 OBJECTIVE:** The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Processes for establishing and maintaining a medical assistance programs (MAP) category of the affordable care eligibility are detailed in the 8.291.400 through 8.291.430 NMAC.  
 [8.291.430.6 NMAC - Rp, 8.291.430.6 NMAC, 11/16/2015]

**8.291.430.7 DEFINITIONS:** Refer to 8.291.400 NMAC for detailed descriptions.  
 [8.291.430.7 NMAC - Rp, 8.291.430.7 NMAC, 11/16/2015]

**8.291.430.8 ~~MISSION STATEMENT:~~ MISSION STATEMENT:** To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.  
 [8.291.430.8 NMAC - Rp, 8.291.430.8 NMAC, 11/16/2015; A/E, 4/1/2016; A, xx/xx/xxxx]

**8.291.430.9 GENERAL NEED DETERMINATION:** To be eligible for a MAP category of eligibility, an applicant or a recipient must meet specific income standards.  
 [8.291.430.9 NMAC - Rp, 8.291.430.9 NMAC, 11/16/2015]

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

HOUSEHOLD SIZE	100%	133%	138%	190%	240%	250%	300%
1	<del>[\$1,041]</del> \$1,064	<del>[\$1,385]</del> \$1,415	<del>[\$1,437]</del> \$1,468	<del>[\$1,978]</del> \$2,021	<del>[\$2,498]</del> \$2,552	<del>[\$2,603]</del> \$2,659	<del>[\$3,123]</del> \$3,190
2	<del>[\$1,410]</del> \$1,437	<del>[\$1,875]</del> \$1,911	<del>[\$1,945]</del> \$1,983	<del>[\$2,678]</del> \$2,730	<del>[\$3,382]</del> \$3,449	<del>[\$3,523]</del> \$3,592	<del>[\$4,228]</del> \$4,311
3	<del>[\$1,778]</del> \$1,810	<del>[\$2,365]</del> \$2,408	<del>[\$2,453]</del> \$2,498	<del>[\$3,378]</del> \$3,439	<del>[\$4,266]</del> \$4,344	<del>[\$4,444]</del> \$4,525	<del>[\$5,333]</del> \$5,430
4	<del>[\$2,146]</del> \$2,184	<del>[\$2,854]</del> \$2,904	<del>[\$2,962]</del> \$3,013	<del>[\$4,078]</del> \$4,149	<del>[\$5,150]</del> \$5,240	<del>[\$5,365]</del> \$5,459	<del>[\$6,438]</del> \$6,550
5	<del>[\$2,515]</del> \$2,557	<del>[\$3,344]</del> \$3,401	<del>[\$3,470]</del> \$3,529	<del>[\$4,777]</del> \$4,858	<del>[\$6,034]</del> \$6,137	<del>[\$6,286]</del> \$6,392	<del>[\$7,543]</del> \$7,671

6	[\$2,883] \$2,930	[\$3,834] \$3,897	[\$3,978] \$4,044	[\$5,477] \$5,567	[\$6,918] \$7,032	[\$7,207] \$7,325	[\$8,648] \$8,790
7	[\$3,251] \$3,304	[\$4,324] \$4,394	[\$4,487] \$4,559	[\$6,177] \$6,277	[\$7,802] \$7,928	[\$8,128] \$8,259	[\$9,753] \$9,910
8	[\$3,620] \$3,677	[\$4,814] \$4,890	[\$4,995] \$5,074	[\$6,877] \$6,986	[\$8,686] \$8,825	[\$9,048] \$9,192	[\$10,858] \$11,031
+1	[\$369] \$373	[\$490] \$496	[\$508] \$515	[\$700] \$709	[\$884] \$897	[\$920] \$933	[\$1,105] \$1,121

[8.291.430.10 NMAC - Rp, 8.291.430.10 NMAC, 11/16/2015; A/E, 4/1/2016; A/E, 9/14/2017; A, 2/1/2018; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A, xx/xx/xxxx]

**8.291.430.11 INCOME STANDARD FOR PREGNANT WOMEN AND PARENT CARETAKER**

**ELIGIBILITY:** This part contains the MAP category of pregnant women and parent caretaker eligibility's fixed monthly standard for an applicant or recipient:

HOUSEHOLD SIZE	MONTHLY INCOME LIMIT
1	\$451
2	\$608
3	\$765
4	\$923
5	\$1,080
6	\$1,238
7	\$1,395
8	\$1,553
+1	\$158

[8.291.430.11 NMAC - Rp, 8.291.430.11 NMAC, 11/16/2015]

**8.291.430.12 INCOME DISREGARD:** A disregard of five percent of 100 percent of the current FPL, according to the applicant's or recipient's budget group size, will be given according to the Affordable Care Act (ACA) related category of eligibility. This income disregard will be subtracted from the countable income.

[8.291.430.12 NMAC - Rp, 8.291.430.12 NMAC, 11/16/2015]

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

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

- (1) attending college or boarding school;
- (2) receiving treatment in a title XIX MAD enrolled facility (including institutionalized when meeting a nursing facility (NF) level of care (LOC) and intermediate care facilities for the mentally retarded (ICF-MRs);
- (3) emergency absences: an applicant or recipient absent from the home due to an emergency, who is expected to return to the household, continues to be a member of the household;
- (4) foster care placements: a minor applicant or minor recipient removed from the home by a child protective services agency (tribal, bureau of Indian affairs, or children, youth and families department) will be considered to be living in the home until the adjudicatory hearing; if the adjudicatory hearing results in custody being granted to some other entity, the minor applicant or minor recipient will be removed from the assistance unit and budget group;
- (5) inmate of a public institution:
  - (a) see 8.200.410.15 NMAC for the definition of a public institution and an inmate of a public institution;
  - (b) an inmate of a public institution is included in the household with other mandatory household members if he or she is expected to file a tax return or be claimed as a tax dependent; see 8.291.430.14 NMAC;

(c) an inmate of a public institution is not included in the household if he or she neither files a tax return nor is claimed as a tax dependent which requires that mandatory household members be living together; see 8.291.430.14 NMAC.

**B.** Extended living in the home also includes:

- (1) residential treatment centers;
- (2) group homes; and
- (3) free-standing psychiatric hospitals.

**C.** Living in the home with a parent caretaker: To be included in the assistance unit, a minor applicant or minor recipient must be living, or considered to be living, in the home of:

(1) a biological or adoptive or step parent (there is a presumption that a child born to a married woman is the child of the husband); or

(2) a specified relative who:

(a) is related within the fifth degree of relationship by blood, marriage or adoption, as determined by New Mexico statute Chapter 45 - Uniform Probate Code; a relationship based upon marriage, such as "in-law" or "step" relationships, continues to exist following the dissolution of the marriage by divorce or death; and

(b) assumes responsibility for the day-to-day care and control of the minor applicant or minor recipient; the determination of whether an individual functions as the specified relative shall be made by the specified relative unless other information known to the worker clearly indicates otherwise;

(3) a minor applicant or minor recipient considered to be living in the home: a minor applicant or minor recipient is considered to be part of the assistance unit and budget group as evidenced by the minor applicant's or minor recipient's customary physical presence in the home; if a he or she is living in more than one household, the following applies:

(a) the custodial parent is the parent with whom the minor applicant or minor recipient lives the greater number of nights; or

(b) if the minor applicant or minor recipient spends equal amounts of time with each household, the minor applicant or minor recipient shall be considered to be living in the household of the parent with the higher modified adjusted gross income (MAGI).

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

(1) MAD recognizes same-sex couples as spouses, if they are legally married under the laws of the state, territory, or foreign jurisdiction in which the marriage was celebrated; and

(2) for an applicant or recipient whose MAP category of eligibility is based on the eligibility for any other HSD benefit program and for which income is not used in the eligibility determination, the applicant's or recipient's marital status will not be used in making the eligibility determination; the applicant's or recipient's MAP category of eligibility will continue to be based on the determination of eligibility of the other HSD applicable benefits.

[8.291.430.13 NMAC - Rp, 8.291.430.13 NMAC, 11/16/2015]

**8.291.430.14 BASIS FOR DEFINING THE ASSISTANCE UNIT AND BUDGET GROUPS:** At the time of a MAP application, an applicant or recipient and ISD shall identify everyone who is to be considered for inclusion in an assistance unit and budget group. The composition of the assistance unit and budget group is based on the following factors:

**A.** Assistance group: the assistance unit includes an applicant or recipient who applies and who is determined to meet a MAP category of eligibility found in 8.291.430.10 NMAC.

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

(1) tax filers and dependents: households that submit a MAP application where an applicant or a recipient intends to file for federal taxes or will be claimed as a dependent on federal income taxes for the current year:

(a) the budget group will consist of applicants or recipients who are listed on the MAP application as the taxpayer and tax dependents;

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

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

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

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

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

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

(2) individuals who neither file a tax return nor are claimed as a tax dependent: in the case of applicants or recipients who do not expect to file a federal tax return and do not expect to be claimed as a tax dependent for the taxable year in which a MAP category of eligibility is being made, or meet an exception to tax filer requirements in Paragraph (1) of Subsection B of 8.291.430.14 NMAC, the budget group consists of the applicant or recipient and, if living with the applicant or recipient:

(a) the applicant's or recipient's spouse;

(b) the applicant's and recipient's natural, adopted and step children under the age of 19; and

(c) in the case of applicants or recipients under the age of 19, the applicant's or recipient's natural, adopted and step parents and natural, adoptive and step siblings under the age of 19.

(3) households may submit a MAP application that includes both filer and non-filers as defined in Subsections A and B of 8.291.430.14 NMAC; the budget group(s) will be organized using the filer and non-filer concepts, and eligibility will be established on an individual basis.

[8.291.430.14 NMAC - Rp, 8.291.430.14 NMAC, 11/16/2015]

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

**A.** All income will be calculated as defined by Section 36B of the Federal Tax Code to produce a MAGI. This amount is compared to the FPL for the appropriate MAP category of eligibility and household size.

**B.** MAGI is calculated using the methodologies defined in Section 36B(d)(2)(B) of the Federal Tax Code, with the following exceptions:

(1) an amount received as a lump sum is counted as income only in the month received except for qualified lottery and gambling winnings per Subsection D of 8.291.430.15 NMAC;

(2) scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income;

(3) the following American Indian or Alaska native exceptions are excluded from income:

(a) distributions from Alaska native corporations and settlement trusts;

(b) distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the secretary of the interior;

(c) distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from;

(i) rights of ownership or possession in any lands described in Subsection B of 8.291.430.15 NMAC; or

(ii) federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;

(d) distributions resulting from real property ownership interests related to natural resources and improvements;

(i) located on or near a reservation or within the most recent boundaries of a prior federal reservation; or

(ii) resulting from the exercise of federally-protected rights relating to such real property ownership interests.

(e) payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom; and

(f) student financial assistance provided under the bureau of Indian affairs education programs.

C. Certain income of children and tax dependents: The following are not included in household income:

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

(2) The MAGI-based income of an applicant's or recipient's dependent who is not expected to be required to file a tax return under Section 6012(a)(1) of the Internal Revenue Code for the taxable year in which a MAP category of eligibility is being determined is not included in the household income of the taxpayer whether or not such dependent files a tax return.

D. Qualified lottery and gambling winnings are included in MAGI-based income based on the following:

(1) Qualified lottery winnings are defined as winnings from sweepstakes, lottery, or pool described in section 4402 of the internal revenue code (which generally requires that these particular activities be conducted by a state agency or under the authority of state law), or winnings from a lottery operated by a multistate or multijurisdictional lottery association or tribe. Multijurisdictional lotteries include those that include multiple entities of government. Qualified lottery winnings apply to the single payout option. Lottery winnings paid out in installments are not considered qualified lottery winnings and are treated as recurring income that can be prorated over a twelve-month period to determine an average current monthly income for medicaid.

(2) Income that is received as a lump sum from monetary winnings from gambling is included in MAGI-based income. Gambling winnings include betting pools, wagers placed through bookmakers, slot machines, roulette wheels, dice tables, lotteries, bolita or number games, or the selling of chances therein including tribal winnings.

(3) Non-cash prizes, like a car or boat, are not counted as qualified lottery winnings or monetary winnings from gambling and are counted as lump sum income in the month received.

(4) Formula for counting qualified lottery or gambling winnings: For qualified winnings from lotteries or gambling occurring on or after January 1, 2018, the following formula applies for counting income:

(a) winnings less than \$80,000 are counted in the month received;

(b) winnings of \$80,000 but less than \$90,000 are counted as income over two months with an equal amount counted in each month;

(c) for every additional \$10,000 one month is added to the period over which total winnings are divided, in equal installments, and counted as income;

(d) the maximum period of time over which winnings may be counted is 120 months, which would apply for winnings of \$1,260,000 and above. HSD in the notice of case action (NOCA) notifies individuals of the date on which the lottery or gambling winnings no longer will be counted for the purposes of medicaid eligibility; and

(e) the formula for counting winnings is applied separately to each instance of winnings.

(5) Lottery or gambling winnings count as MAGI-based income over multiple months only for the individual receiving the winnings in the household. For other individuals in the household, the winnings count only in the month received in determining their MAGI-based income eligibility.

(6) Verification of lottery winnings: HSD requires verification of lottery winnings, but will first access electronic data sources, if available, before requesting documentation.

(7) Hardship exemption: HSD allows for an exemption of the counting of lottery winnings if the applicant or recipient with the lottery winnings can demonstrate an undue medical hardship such that the applicant or recipient's health or life would be endangered. An applicant or recipient must submit a written request along with supporting documentation. A decision regarding a medical hardship exemption will be made within 30 calendar days of receipt of the written request. Notice of the exemption decision will be mailed to the applicant or recipient. If an exemption is approved, then an eligibility determination will be made without counting lottery winnings. If an exemption is denied, then the applicant or recipient can request an HSD administrative hearing pursuant to 8.352.2 NMAC. Hardship exemption request information is contained in the NOCA.

E. Parent mentor compensation: A parent mentor is a parent or guardian of a medicaid eligible child who is trained to assist families with children who have no health insurance coverage with respect to improving the social determinants of the health of such children. Section 3004 of the HEALTHY KIDS Act excludes certain parent mentor compensation from the MAGI calculation. The disregard of parent mentor income applies only in the case of parent mentors working with a grantee organization under section 2113 of the Social Security Act. Nominal amounts paid as a stipend, wages, or other compensation for participation as a parent mentor in a grant-funded program under section 213 of the Act are excluded from income. A nominal amount is defined as \$1,600 per month. Parent mentor income above \$1,600 per month is counted in the MAGI calculation.

F. Discharged student loan debt: Student loan debt that is discharged, forgiven or cancelled is taxable income to the borrower, and the amount of discharged debt is included in the MAGI-based income. Discharged student loan debt is not included in income (and not counted in the MAGI-based income) of a borrower for tax years 2018 through 2025 if the debt is discharged on account of the death or the permanent and total disability of the student. The borrower and the student may or may not be the same person. Student loan debt discharged under these circumstances is not counted as income in determining household income for other members of the borrower's household.

G. Alimony received: Alimony payments under separation or divorce agreements finalized after December 31, 2018, or pre-existing agreements modified after December 31, 2018, are not included in the income of the recipient. For individuals with alimony agreements finalized on or before December 31, 2018, alimony continues to be included in the income of the recipient for the duration of the agreement unless or until the agreement is modified. Self-attestation is accepted for the verification of the date of execution of separation or divorce agreements that include the provision for alimony.

H. Alimony paid: Alimony payments under separation or divorce agreements finalized after December 31, 2018, or pre-existing agreements modified after December 31, 2018, are not deductible by the payer. For individuals with alimony agreements finalized on or before December 31, 2018, alimony payments continue to be deductible. Self-attestation is accepted for the verification of the date of execution of separation or divorce agreements that include the provision for alimony.

I. Moving expenses, including expenses incurred by the individual as well as reimbursements from an employer, are not deductible in calculating MAGI for tax years 2018 through 2025. Moving expenses are deductible for active duty members of the military who are ordered to move or change duty station.

J. Tuition and fees deduction: Effective January 1, 2018 the payment of tuition and fees for qualified education expenses for postsecondary education is not an allowable deduction in calculating MAGI.  
[8.291.430.15 NMAC - Rp, 8.291.430.15 NMAC, 11/16/2015; A, xx/xx/xxxx]

**8.291.430.16 RESOURCE STANDARDS:** Resources as defined in 8.100.130 NMAC are not a factor of eligibility for a MAP category of ACA eligibility.  
[8.291.430.16 NMAC - Rp, 8.291.430.16 NMAC, 11/16/2015]

#### **HISTORY OF 8.291.430 NMAC:**

##### **History of Repealed Material:**

8.291.430 NMAC, Financial Responsibility Requirements, filed 9/17/2013 - Duration expired 12/31/2013.  
8.291.430 NMAC, Financial Responsibility Requirements, filed 12/17/2013 - Repealed effective 11/16/2015.