



Michelle Lujan Grisham, Governor  
David R. Scrase, M.D., Secretary  
Nicole Comeaux, J.D., M.P.H, Director

January 26, 2021

Interested Parties:

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule *8.292.400 Medicaid Eligibility-Parent Caretaker Recipient Requirements*.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: January 26, 2021

Hearing Date: February 26, 2021

Adoption Date: Proposed as June 1, 2021

Technical Citations: 42 CFR 435.110 and 435.4, 1902(a)(10)(A)(i)(I), 1931(b) and (d)

**Background**

42 Code of Federal Regulations (CFR) 435.4 defines a dependent child as, “a child who meets both of the following criteria: (1) Is under the age of 18, or, at State option, is age 18 and a full-time student in secondary school (or equivalent vocational or technical training), if before attaining age 19 the child may reasonably be expected to complete such school or training.”

The Department in its State Plan for the Parents and Other Caretaker Relatives Medicaid category did elect the state option to include individuals who are parents or other caretakers of children who are 18 years old, provided the children are full-time students in a secondary school or the equivalent level of vocational or technical training.

The 18-year-old dependent full-time student requirement is not currently cited in the Department’s Parent Caretaker NMAC. The Department is updating Parent Caretaker NMAC with the 18-year-old dependent full-time student requirement to comport with the State Plan and CFR language.

42 CFR 435.4 defines a parent or caretaker relative as “a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care (as may, but is not required to, be indicated by claiming the child as a tax dependent for Federal income tax purposes), and who is one of the following—

- (1) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.
- (2) The spouse of such parent or relative, even after the marriage is terminated by death or divorce.
- (3) At State option, another relative of the child based on blood (including those of half-blood), adoption, or marriage; the domestic partner of the parent or other caretaker relative; or an adult with whom the child is living and who assumes primary responsibility for the dependent child's care.”

The Department in its State Plan for the Parents and Other Caretaker Relatives Medicaid category did elect the state option to include as caretaker relative individuals within the fifth degree of relationship to the dependent child. The Department is updating Parent Caretaker NMAC with the 42 CFR 435.4 definition of a caretaker relative to comport with the State Plan and CFR language.

**The Department is proposing to amend the rule as follows:**

**Section 8**

Section 8 is being amended to include the Department’s current mission statement.

**Section 9**

Section 9 is being updated to include the dependent child and caretaker relative definitions found at 42 CFR 435.4 and the State Plan.

The register for these proposed amendments to this rule will be available January 26, 2021 on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement these rules effective June 1, 2021. A public hearing will be held **via conference call** at 10 a.m., Mountain Time (MT) on Friday, February 26, 2021. **Conference phone number: 1-800-747-5150. Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: [madrules@state.nm.us](mailto:madrules@state.nm.us). Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on February 26, 2021. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.