

**MEDICAL ASSISTANCE PROGRAM ELIGIBILITY – LOSS OF SSI – INCOME OR RESOURCES AVAILABLE FROM AN ALIEN SPONSOR RECIPIENT REQUIREMENTS Tribal Consultation Version 9.18.13**

**TITLE 8 SOCIAL SERVICES  
CHAPTER 234 MEDICAID ELIGIBILITY - LOSS OF SSI - INCOME OR RESOURCES AVAILABLE FROM AN ALIEN SPONSOR  
PART 400 RECIPIENT REQUIREMENTS**

**8.234.400.1 ISSUING AGENCY:** New Mexico Human Services Department (HSD).  
[8.234.400.1 NMAC - Rp, 8.234.400.1 NMAC, 1-1-14]

**8.234.400.2 SCOPE:** The rule applies to the general public.  
[8.234.400.2 NMAC - Rp, 8.234.400.2 NMAC, 1-1-14]

**8.234.400.3 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.  
[8.234.400.3 NMAC - Rp, 8.234.400.3 NMAC, 1-1-14]

**8.234.400.4 DURATION:** Permanent.  
[8.234.400.4 NMAC - Rp, 8.234.400.4 NMAC, 1-1-14]

**8.234.400.5 EFFECTIVE DATE:** January 1, 2014, unless a later date is cited at the end of a section.  
[8.234.400.5 NMAC - Rp, 8.234.400.5 NMAC, 1-1-14]

**8.234.400.6 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, 8.200 NMAC, *Medicaid Eligibility – General Recipient Policies*. Processes for establishing and maintaining medicaid eligibility are detailed in the income support division (ISD) general provisions, 8.100 NMAC, *General Provisions for Public Assistance Programs*.  
[8.234.400.6 NMAC - Rp, 8.234.400.6 NMAC, 1-1-14]

**8.234.400.7 DEFINITIONS:** [RESERVED]

**8.234.400.8 MISSION:** To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.  
[8.200.400.8 NMAC - N, 1-1-14]

**8.234.400.9 MEDICAID ELIGIBILITY FOR INDIVIDUALS INELIGIBLE FOR SSI DUE TO DEEMED INCOME OR RESOURCES FROM AN ALIEN SPONSOR - CATEGORY 034:**

- A. An individual must meet specific eligibility requirements. These include:
  - (1) an individual meets the social security administration (SSA) definitions of: aged; blind; or disabled and is ineligible for supplemental security income (SSI) solely because of deemed income or resource considered available from an alien sponsor;
  - (2) an individual who meets the eligibility requirements pursuant to 8.200.410 NMAC and 8.200.420 NMAC for citizenship or alien status, enumeration, residence; non-concurrent receipt of assistance, and applications for other benefits;
  - (3) an applicant or recipient must assign medical support rights to HSD and agree to cooperate with third party liability responsibilities pursuant to 8.200.430 NMAC; and
  - (4) appropriate to the budget group size, countable income must be less than the SSI federal benefit rate (FBR) income pursuant to 8.200.520 NMAC, 8.215 NMAC and 8.234.500 NMAC.
- B. Individuals may have other creditable health insurance coverage.
- C. An individual who is an inmate of a public institution is not eligible pursuant to 8.200.410 NMAC.  
[8.234.400.9 NMAC - Rp, 8.234.400.9 NMAC, 1-1-14]

**8.234.400.10** [RESERVED]

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**8.234.400.11 ENUMERATION:** Refer to 8.200.410.10 NMAC.  
[8.234.400.11 NMAC - Rp, 8.234.400.11 NMAC, 1-1-14]

**8.234.400.12 CITIZENSHIP:** Refer to 8.200.410.11 NMAC.  
[8.234.400.12 NMAC - Rp, 8.234.400.12 NMAC, 1-1-14]

**8.234.400.13 RESIDENCE:** Refer to 8.200.410.12 NMAC.  
[8.234.400.13 NMAC - Rp, 8.234.400.13 NMAC, 1-1-14]

**8.234.400.14** [RESERVED]

**8.234.400.15 SSI STATUS:**

A. An applicant or re-determining recipient for Category 034 must meet all other SSI eligibility standards, including:

- (1) applicant or re-determining recipient's own income and resources must be below SSI standards;
- (2) nonconcurrent receipt of assistance;
- (3) residence;
- (4) aged, blind, or disabled status; and
- (5) citizenship or permanent alien status.

B. See 8.215.500.11 NMAC and 8.215.500.18 NMAC for information on SSI income and resource standards.

[8.234.400.15 NMAC - Rp, 8.234.400.15 NMAC, 1-1-14]

**8.234.400.16 RECIPIENT RIGHTS AND RESPONSIBILITIES:** Refer to 8.200.430 NMAC.  
[8.234.400.16 NMAC - Rp, 8.234.400.16 NMAC, 1-1-14]

**8.234.400.17 BASIS FOR DEFINING THE ASSISTANCE UNIT AND BUDGET GROUP:** At the time of application, an applicant shall identify everyone who is to be considered for inclusion in the assistance unit and budget group. The composition of the assistance unit and budget group is based on the relationship of the household members. Each member of the assistance unit and budget group, including an unborn child, is counted as one in the household size.

[8.234.400.17 NMAC - N, 1-1-14]

**8.234.400.18 ASSISTANCE UNIT:** The assistance unit includes the applicant and may include others in the household who are determined eligible.

[8.234.400.18 NMAC - N, 1-1-14]

**8.234.400.19 BUDGET GROUP:** The budget group includes all members of the assistance unit. Additional budget group members include individuals who live in the household with the assistance unit and have a financial obligation of support.

A. Except for an SSI recipient, the following individuals have a financial obligation of support for medicaid eligibility:

- (1) spouses: married individuals as defined under applicable New Mexico state law (New Mexico recognizes common law and same sex marriages established in other states); and
- (2) parents for children: there is a presumption that a child born to a married woman is the child of the spouse, or if the individual established parentage by some other legally recognized process.

B. The following individuals do not have a financial obligation of support for medicaid eligibility:

- (1) an SSI recipient to the assistance unit;
- (2) a father of the unborn child who is not married to the pregnant woman;
- (3) a stepparent to a stepchild;
- (4) a grandparent to a grandchild;
- (5) a legal guardian or conservator of a child;
- (6) an alien sponsor to the assistance unit; and

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(7) a sibling to a sibling.

[8.234.400.19 NMAC - N, 1-1-14]

**8.234.400.20 LIVING IN THE HOME:**

A. **Living in the home with a relative:** To be included in the assistance unit, a child must be living, or considered to be living, in the home of:

(1) a natural or an adoptive parent; there is a presumption that a child born to a married woman is the child of the spouse, or if the individual established parentage by some other legally recognized process; or

(2) a specified relative who is related within the fifth degree of relationship by blood, marriage or adoption and assumes responsibility for the day-to-day care and control of the child; 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.

B. **A child considered to be living in the home:** A child is considered to be part of the assistance unit as evidenced by the child's customary physical presence in the home. If a child is living with more than one household, the following applies:

(1) when the child is actually spending more time with one household than the other, the child would be determined to be living with the household with whom the child spends the most time; and

(2) when the child is actually spending equal amounts of time with each household, the child shall be considered to be living with the household who first applies for medicaid enrollment.

C. **Extended living in the home:** An individual may be physically absent from the home for longer or shorter periods of time and be a member of the assistance unit and budget group.

(1) Extended living in the home includes:

(a) when an individual is attending college or a boarding school; or

(b) when an individual is receiving treatment in a Title XIX medicaid facility (including institutionalized when meeting a nursing facility (NF) level of care (LOC) and intermediate care facilities for individuals with an intellectual disability (ICF-IID) LOC.

(2) When an individual has been a member of the assistance unit, eligibility for another medicaid eligibility category, such as long term care medicaid, should be evaluated. Until a determination of eligibility for another category can be made, the individual is considered to be living with the budget group.

D. **Temporary absence - extended living in the home:** An individual may be physically absent from the home and be a member of the assistance unit and budget group. These other temporary absences include:

(1) an individual not living in the home due to an emergency who is expected to return to the household within 60 calendar days, continues to be a member of the household;

(2) a child removed from the home of a parent or a specified relative by a child protective services agency (tribal, bureau of Indian affairs, or children, youth and families department), until an adjudicatory custody hearing takes place; if the adjudicatory hearing results in custody being granted to some other entity, the child will be removed from the assistance unit; or

(3) a child residing in a detention center:

(a) continues to be a member of the household if he or she resides fewer than 60 calendar days who is either adjudicated or not adjudicated as an inmate of a public institution; or

(b) the individual is not eligible for medicaid enrollment if he or she resides 60 calendar days or more as an adjudicated inmate of a public institution pursuant to 8.200.410 NMAC.

[8.234.400.20 NMAC - N, 1-1-14]

**HISTORY OF 8.234.400 NMAC:**

**History of Repealed Material:**

8.234.400 NMAC, Recipient Policies, filed 9-15-13 - Repealed effective 1-1-14.