



State of New Mexico
HUMAN SERVICES DEPARTMENT



HUMAN SERVICES REGISTER

I. DEPARTMENT

NEW MEXICO HUMAN SERVICES DEPARTMENT

II. SUBJECT

LOW INCOME HOME ENERGY
ASSISTANCE PROGRAM (LIHEAP) REGULATIONS

III. PROGRAM AFFECTED

LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

IV. ACTION

FINAL REGULATIONS

V. BACKGROUND SUMMARY

The Department has clarified language in the LIHEAP Regulations to align the administration of LIHEAP with the other public assistance programs, define crisis and life-threatening situations for crisis LIHEAP processing timeframes and to outline an application processing timeframe to ensure the disposition of receipt of LIHEAP benefits.

A public hearing was held on August 30, 2012 to receive public comment on the proposed LIHEAP regulations. No one attended the hearing. The Department received written comments from one individual.

The Department received a comment regarding the proposed regulation at 8.150.110 NMAC.

Comment: The Department received a comment to remove the word “automatically” from the sentence in proposed rule 8.150.110.10.A.

Response: The Department agrees to remove the word “automatically”.

The Department received a comment regarding the proposed rule at 8.150.500 NMAC.

Comment: The rule at 8.150.500.8.B.9 must be revised to correct the citation of 8.150.526 NMAC to 8.150.520.18 NMAC.

Response: The Department agrees to this correction to the citation.


The Department has made grammatical and clarifying edits to the proposed LIHEAP Rules, and has updated terminology.

VI. EFFECTIVE DATE

October 1, 2012

VII. PUBLICATION

Publication of these final regulations approved on Sept 14 2012 by:



SIDONIE SQUIER, SECRETARY
HUMAN SERVICES DEPARTMENT

8.150.100.12 **ISD FIELD OFFICE RESPONSIBILITIES:** Each of the field offices of the income support division in the state is responsible for:

A. providing outreach and referral for low-income clients, particularly disabled and elderly clients, regarding the LIHEAP program;

B. informing low-income households, particularly disabled and elderly clients, about the eligibility determination process and application procedures for the LIHEAP program;

C. providing documentation to households requesting verification of cash benefits received from the human services department or other documentation available to the department or in the case file;

D. complying with other LIHEAP program directives as may be issued by ISD;

E. assisting all applicant households to complete the LIHEAP application and when necessary interviewing the household when LIHEAP benefits have been requested;

F. entering the completed LIHEAP application into the designated LIHEAP computer system;

G. responding to inquiries about the status of a LIHEAP application; and

H. processing payment errors when identified; the ISD office must issue a supplement in cases of benefit under-issuances or complete and submit restitution and claim paperwork to the office of the inspector general's restitution services bureau for over-issuances.

[8.150.100.12 NMAC - Rn, 8.150.102.8 NMAC & A, 10-1-12]

2012 SEP 17 PM 2:47

This is an amendment to 8.150.110 NMAC, Sections 9 and 10, effective October 1, 2012.

8.150.110.9 SUBMISSION OF FORMS: [Paper applications]

A. Applicants: Any household may apply for regular benefits at any one of the income support division county offices [~~and suboffices~~] located throughout the state during the period specified for application for regular benefits.

B. Application process: In order for a determination of eligibility for regular benefits to be made for these applicant households, the household's [~~paper~~] application, signed and accompanied by all required supporting documentation, must be received by the income support division county offices [~~or suboffices~~] by the deadline date of the application period for regular benefits.

C. Application period: The period of application for regular benefits will be year round beginning after the application for the LIHEAP grant has been submitted to the U. S. department of health and human services, and ending August 31. There will be a one month suspension of LIHEAP during the month of September. The opening and closing dates for this application period are advertised in all promotional material regarding the program.

D. Crisis processing: Households who apply for LIHEAP benefits and provide documentation that a crisis situation exists will have their application [~~"fast tracked"~~] processed within 48 hours after submission of an application for LIHEAP benefits or within 18 hours in demonstrated life-threatening situations.

[7-1-95, 11-1-95, 11-15-96, 10-01-97, 12-01-97, 10-1-00; 8.150.110.9 NMAC - Rn, 8 NMAC 22.LHP.112 & A, 10-1-01; A, 10-1-12]

8.150.110.10 DISPOSITION OF APPLICATION/NOTICE:

A. Income support division county office responsibilities: [~~All households who apply for LIHEAP benefits through a paper application at an income support division county office or suboffice will be provided with a notice of approval or denial. The notice of eligibility will be provided to the applicant when the application process is completed at the ISD county office.~~] Households who complete the application process for LIHEAP benefits will be provided with a notice of approval or denial. The notice of benefit determination will be provided to applicant no later than 60 days from the date of submission of a completed application. If the household fails to provide the verification required to determine eligibility to ISD, ISD may summarily deny the application after 60 days from the date of the application.

B. LIHEAP central office responsibilities: LIHEAP central office staff will complete random reviews of LIHEAP approvals and denials. The review will verify whether LIHEAP policy was correctly applied. If an eligibility error is found or the application is incomplete, a determination will be made to identify any payment errors.

C. Notices: All households will be mailed a notice of eligibility for LIHEAP benefits. The notice will list the point total, the benefit amount and the method of issuance.

[7-1-95, 11-1-95, 11-15-96, 11-16-96, 10-15-98, 10-1-00; 8.150.110.10 NMAC - Rn, 8 NMAC 22.LHP.116, 10-1-01; A, 10-1-12]

2012 SEP 17 PM 2:47

This is an amendment to 8.150.410 NMAC, Sections 9 and 12, a repeal of Section 10 and an addition of Sections 16 through 18, effective October 1, 2012.

8.150.410.9 ENERGY RESPONSIBILITY:

A. Energy cost: To be eligible for LIHEAP benefits, the household must incur an energy cost. The energy cost may be for a primary heat source, i.e., the energy source or fuel with which the household is predominantly heated, or for a secondary heat source. A secondary heat source is an energy source that is essential to the process of providing heat to the home. Or, the energy cost may be for a cooling cost. The cooling cost may be for a primary source, i.e., evaporative cooling or refrigerated air, or secondary cooling. Secondary cooling is the use of energy to operate portable fans, ceiling fans, whole house fans, gable vent fans, or power attic vent fans.

B. Secondary heat source: Electricity to ignite a gas or steam furnace is the most common example of an allowable secondary heat source for LIHEAP purposes. Electricity used only for lighting purposes or to operate fans to distribute heat from a wood-burning stove is not considered an allowable secondary heat source for LIHEAP purposes.

C. Wood-gathering households: Households who use wood as a fuel to heat their home and gather the wood themselves are considered to have a heating responsibility. Regardless of whether a [cost] direct or indirect cost was incurred to obtain the wood the household meets this requirement.

D. Direct or indirect utility responsibility: The heating/cooling cost may be direct in the form of a utility payment or fuel purchase, or indirect in the form of a non-subsidized rent payment which either designates or does not designate the included utility cost, or costs associated with obtaining wood for heating households.

E. Crisis intervention: To be eligible for LIHEAP crisis intervention, the household must meet the eligibility criteria for regular benefits as specified in 8.150.500.8 NMAC, must not have received a LIHEAP benefit in the current federal fiscal year and, in addition, be able to provide verification that proves the applicant household is facing a current or impending energy crisis, established with any one of the following:

(1) written notice of disconnect for the household from a utility vendor for a disconnect date after the close of the previous LIHEAP crisis season;

(2) proof of insufficient funds for the household to open an account with a utility vendor or meet the security deposit requirements of a utility vendor;

(3) statement from the household's fuel vendor that fuel will not be provided without payment.

F. Community referrals: In circumstances where the household is not eligible for crisis intervention, the household may be informed of other resources in the community, particularly other utility assistance programs available through a community action agency, which may be able to assist the household in meeting its energy expenses.

[7-1-95, 11-1-95, 11-15-96, 10-15-98; 8.150.410.9 NMAC - Rn, 8 NMAC 22.LHP.410, 10-1-01; A, 10-1-12]

~~8.150.410.10 [DIRECT OR INDIRECT UTILITY RESPONSIBILITY: The heating/cooling cost may be direct in the form of a utility payment or fuel purchase, or indirect in the form of a non-subsidized rent payment which either designates or does not designate the included utility cost.] [Reserved]~~

[7-1-95, 11-1-95, 11-15-96, 10-15-98; 8.150.410.10 NMAC - Rn, 8 NMAC 22.LHP.410, 10-1-01; Repealed, 10-1-12]

8.150.410.12 INDIAN TRIBAL ELIGIBILITY: In New Mexico, an Indian tribe may choose to administer its own LIHEAP program for tribal members and request from DHHS an allocation of the state's share of the LIHEAP grant award for this purpose. An Indian tribe is defined as a legal entity of a group of Native Americans living on tribal lands with a distinct and separate government. Residents of tribal land may be eligible for tribal administered LIHEAP or HSD-administered LIHEAP under the following circumstances.

A. Tribes that administer LIHEAP: Indian tribal members living on their tribe's tribal lands, whose tribe administers their own LIHEAP program, are not eligible for HSD-administered LIHEAP benefits.

B. Tribes not administering LIHEAP: Indian tribal members living on the tribal lands of tribes not administering their own LIHEAP program may be considered for HSD-administered LIHEAP benefits providing they meet income eligibility and heating/cooling responsibility requirements as specified in this policy.

C. Indians on other tribes' land: [~~Households~~] Households that are members of Indian tribes administering their own LIHEAP program but not living on their tribe's tribal lands, may be considered for HSD-administered LIHEAP benefits providing they meet income eligibility and heating responsibility requirements, as specified in this policy, and they did not receive LIHEAP benefits from their tribal government.

D. Non-Indians and non-tribal members on tribal land: Non-Indians living on tribal lands and Indians living on tribal lands who are excluded from eligibility for LIHEAP by the Indian tribe administering their own LIHEAP program may be considered for HSD-administered LIHEAP benefits providing they meet income eligibility and heating/cooling responsibility requirements as specified in this policy.

E. At the direction of the HSD secretary, HSD may serve tribal members normally excluded due to Subsection A of 8.150.410.12 NMAC if they have not been or do not expect to be served by the tribal LIHEAP program.

[7-1-95, 11-1-95, 11-15-96; 8.150.410.12 NMAC - Rn, 8 NMAC 22.LHP.410 & A, 10-10-01; A, 10-1-05; A, 10-1-06; A, 10-1-12]

8.150.410.16 RESIDENCE IN FACILITY OR INSTITUTION: Persons residing in New Mexico but living in group homes, halfway houses, institutions, homeless shelters, or in places not normally intended for human occupation are not eligible unless they can document heating/cooling expenses.

[8.150.410.16 NMAC - Rn, 8.150.420.8 NMAC & A, 10-1-12]

8.150.410.17 RECIPIENT RIGHTS:

A. Treatment and non-discrimination: Members of a household shall have the right, at all times, to be treated with dignity at all times. Household members may not be discriminated against on the basis of age, sex, race, color, handicap, national origin, or religious or political belief.

B. Confidentiality: Household members have the right to confidentiality as defined in 8.100.100.13 NMAC.

C. Fair hearings: The household has the right to disagree with the determinations made by HSD and to appeal such actions through HSD's fair hearing process.

[8.150.410.17 NMAC - Rn, 8.150.430.8 NMAC & A, 10-1-12]

8.150.410.18 RECIPIENT RESPONSIBILITIES:

A. Benefit purpose: The household is responsible for using the benefit received for the purpose intended.

B. Erroneously issued benefits: If it is determined the household is not entitled to the benefit received, whether agency or client caused, the household is responsible for paying back the benefits received. The household is responsible for repayment whether the benefit was received directly by the household or paid to a vendor.

[8.150.410.18 NMAC - Rn, 8.150.430.9 NMAC & A, 10-1-12]

2012 SEP 17 PM 2:47

This is an amendment to 8.150.500 NMAC, Section 8 and a repeal of Sections 9 and 10, effective October 1, 2012.

8.150.500.8 NEED DETERMINATION: To be eligible for LIHEAP benefits households must do the following:

A. application: a household member or representative must complete an application for LIHEAP benefits and be interviewed; and

B. documentation: the household must provide proof that they meet the qualifications of the LIHEAP program; current documents used in other public assistance programs may be used for LIHEAP application processes, unless questionable:

(1) proof of identity for the applicant using any of the following documentation:

- (a) birth certificates(s); or
- (b) baptism certificate; or
- (c) hospital or birth record; or
- (d) divorce papers; or
- (e) alien registration card; or
- (f) immigration & naturalization service (INS) records; or
- (g) U. S. passport; or
- (h) Indian census records; or
- (i) family bible; or
- (j) school or day care records; or;
- (k) government records; or
- (l) social security records; or
- (m) social service records; or
- (n) insurance policy; or
- (o) court records; or
- (p) church records; or
- (q) voter registration card; or
- (r) letter from doctor, religious official or school official, or someone else who knows the

applicant; or

(s) applicant sworn statement;

(2) proof of citizenship or legal resident status if questionable, such as birth certificate, permanent resident card, naturalization papers, etc.;

(3) social security numbers for all household members; a social security card is required if the number has not been issued by the social security administration or is being used by another person in the ISD data bases;

(4) proof of gross income for all household members, such as check stubs, award letters, statement from employer, etc.;

(5) proof of a utility responsibility with an expense incurred in the past twelve months for the household's current residence [~~unless expense information is made available to HSD by a utility, bulk fuel vendor or municipality~~]:

- (a) bill for metered service for a one-month period, or
- (b) purchase receipt for propane, or
- (c) receipt for wood purchase, or
- (d) rental agreement or landlord statement that utilities are included in rent, or
- (e) signed statement or billing history from a utility or fuel vendor;

(6) [~~account~~] account number at current address for the selected heating or cooling expense;

(7) proof of crisis when the situation exists, such as a disconnect notice, statement of non-delivery of bulk fuel or statement detailing the cost of initiating service;

(8) proof of disability for at least one household member [~~, if claimed, such as a doctor's statement, SSI award letter, statement of receipt of worker's compensation or DVR services, other disability-based income, etc.~~] as determined by another public assistance or federal or state entity; and

(9) proof of emergency expenditures that apply to [~~8.150.526~~] 8.150.520.18 NMAC;

C. eligibility criteria: the household must meet the identity, social security number, income, citizenship, utility responsibility, and residency requirements.

[7-1-95, 11-1-95, 11-15-96, 10-1-97, 10-15-98; 8.150.500.8 NMAC - Rn, 8 NMAC 22.LHP.501.11 & A, 10-1-01; A, 10-1-06; A, 10-1-07; A, 10-1-12]

8.150.500.9 [~~CRISIS INTERVENTION: To be eligible for LIHEAP crisis intervention, the household must meet the eligibility criteria for regular benefits as specified above in 8.150.500.8 NMAC, must not have received a LIHEAP benefit in the current federal fiscal year and, in addition, be able to:~~

~~_____ A. _____ Crisis verification: Provide verification that proves the applicant household is facing a current or impending energy crisis, established with any one of the following:~~

~~_____ (1) _____ written notice of disconnect for the household from a utility vendor for a disconnect date after the close of the previous LIHEAP crisis season;~~

~~_____ (2) _____ proof of insufficient funds for the household to open an account with a utility vendor or meet the security deposit requirements of a utility vendor;~~

~~_____ (3) _____ statement from the household's fuel vendor that fuel will not be provided without payment.~~

~~_____ B. _____ Community referrals: In circumstances where the household is not eligible for crisis intervention, the household must be informed of other resources in the community, particularly other utility assistance programs available through a community action agency, which may be able to assist the household in meeting its energy expenses.] [Reserved]~~

[7-1-95, 11-1-95, 11-15-96, 10-15-98, 10-1-00; 8.150.500.9 NMAC - Rn, 8 NMAC 22.LHP.501.12, 10-1-01; A, 10-1-06; Repealed 10-1-12]

8.150.500.10 [~~GROSS INCOME DETERMINATION: Gross income is defined as all income received prior to deductions, including taxes, and garnishments, whether voluntary or involuntary.~~

~~_____ A. _____ Income sources: Gross income includes income from both earned and unearned sources.~~

~~_____ B. _____ Countable income: The gross unearned income of all household members is counted in its entirety, and the gross earned income of all household members over the age of 18 is counted in its entirety, unless:~~

~~_____ (1) _____ the income is specifically exempted; or~~

~~_____ (2) _____ the income is self employment (see LIHEAP 8.150.520.9 NMAC); or~~

~~_____ (3) _____ the income is that of an ineligible alien, in which case the income is prorated (see LIHEAP policy 8.150.520.10 NMAC);~~

~~_____ (4) _____ the income is a full month's income and is anticipated to be received on a weekly or biweekly basis; in these circumstances, the income shall be converted to a monthly amount as follows:~~

~~_____ (a) _____ income received on a weekly basis is averaged and multiplied by 4.0;~~

~~_____ (b) _____ income received on a biweekly basis is averaged and multiplied by 2.0;~~

~~_____ (c) _____ averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.49 or lower are rounded down.~~

~~_____ C. _____ Gross income receipt period: Gross income received or anticipated to be received by the household in the month of application is used to establish income eligibility for LIHEAP applications unless Subsection D of 8.150.500.10 NMAC applies.~~

~~_____ D. _____ Current income verified in other public assistance programs: Current income that has been verified by ISD in another active public assistance programs may be used to verify income for the LIHEAP application, unless questionable.] [Reserved]~~

[7-1-95, 11-1-95, 11-15-96, 10-15-98, 10-1-00; 8.150.500.10 NMAC - Rn, 8 NMAC 22.LHP.501.2 & A, 10-1-01; A, 10-1-05; A, 10-1-07; A, 4-1-10; Repealed, 10-1-12]

2012 SEP 17 PM 2:48

This is an amendment to 8.150.520 NMAC, Sections 8 through 11 and adding Sections 12 through 19, effective October 1, 2012.

8.150.520.8 EARNED GROSS INCOME:

A. Definitions: Earned gross income is defined as income received in the form of wages paid on a predetermined regular basis, pay received irregularly for work performed irregularly, or income resulting from self-employment activities. Income from rental property, if 20 hours or more per week are spent working as a landlord, is also countable as earned income.

B. Exclusions: The following are not counted as gross income:

(1) in-kind benefits: (i.e. good or services realized, provided or exchanged for non-monetary compensation);

(2) vendor payments: (i.e. payments made on behalf of a household to a third party);

(3) lump sum payments: [~~food stamp on lump sum policy in 8.139 NMAC~~] see food stamp regulations on lump sum payments in 8.139.520.9 NMAC;

(4) loans;

(5) charitable contributions from nonprofit agencies to meet household expenses;

(6) earned income tax credits;

(7) value of food stamps;

(8) TANF annual clothing allowance;

(9) monies received for the care of a third party beneficiary who is not a household member; and

(10) monies excluded by federal statute, a listing of which can be found in food stamp policy citation

8.139 NMAC.

[7-1-95, 11-1-95, 11-15-96, 10-15-98, 10-1-99, 10-1-00; 8.150.520.8 NMAC - Rn, 8 NMAC 22.LHP.520.2, 10-1-01; A, 10-1-06; A, 10-1-12]

8.150.520.9 SELF EMPLOYMENT GROSS INCOME: [~~Self-employment income must be annualized.~~]

A. Definition: Ongoing self-employment income intended to support the household through the year [~~must be annualized~~], that is averaged over a 12 month period, even if the household earns the money in a concentrated period. Self-employment income intended to support the household only for a portion of the year must be averaged over the months it is intended to provide support.

B. Verification sources: Monthly business records detailing profits and expenses or the household's federal income tax return are needed to annualize the household's self-employment income.

C. Gross income calculation: For self-employment income, the net income of the business activity is considered the gross income of the household member. The net income of the business is derived by subtracting the allowable costs of doing business from the business's gross income.

D. Business expenses:

(1) Allowable costs are, generally, those required to produce the business's gross income. These include, but are not limited, to: raw materials, stock, labor, insurance premiums, interest paid on income producing property, taxes paid on income-producing property, transportation for business purposes.

(2) Costs specifically not allowed are payments on the principal of the purchase price of income-producing property, assets, equipment, or machinery, net losses from previous periods, personal income taxes, money set aside for personal expenses, transportation to and from work, charitable contributions, entertainment, and depreciation.

E. Annualizing income: From gross self-employment income, subtract allowable expenses to derive the net self-employment income. Divide the net self-employment income by 12 to produce a monthly (average) figure. This figure is the countable monthly gross income. To determine the household's total gross, this figure must be added to any other income the household receives.

[7-1-95, 11-1-95, 11-15-96; 8.150.520.9 NMAC - Rn, 8 NMAC 22.LHP.520.3, 10-1-01; A, 10-1-12]

8.150.520.10 GROSS INCOME OF INELIGIBLE ALIENS: The gross income received by any ineligible alien household member must be prorated and counted to establish the benefit amount.

A. Definition: If any member of the household providing income to the household is an ineligible alien for TANF purposes, that member's income is not counted in its entirety but is prorated. Prorating results in excluding a portion of the ineligible alien household member's income from consideration because the ineligible alien is not a recipient of public assistance benefits.

B. Proration calculation: Calculate the gross income of the ineligible alien and divide the total by the number of members, eligible and ineligible, in the household. The resulting figure is the pro-rata portion of the income for each member, eligible and ineligible. To determine the portion of the income to be counted, multiply the pro rata portion by the remaining number of eligible household members.
[7-1-95, 11-1-95, 11-15-96; 8.150.520.10 NMAC - Rn, 8 NMAC 22.LHP.520.4, 10-1-01; A, 10-1-06; A, 10-1-12]

8.150.520.11 GROSS INCOME OF MIGRANT HOUSEHOLDS:

A. Definition: A migrant household is a group that travels away from home on a regular basis with a group of laborers to seek employment in an agriculturally related activity.

B. Verification sources: The household's federal income tax return is needed to annualize the household's income.

C. Calculation: The household's annual income reported on their federal income tax return should be divided by 12 to determine the household's average monthly income.

[10-15-98; 8.150.520.11 NMAC - Rn, 8 NMAC 22.LHP.520.5, 10-1-01; A, 10-1-12]

8.150.520.12 GROSS INCOME DETERMINATION: Gross income of the household member is defined as all income received prior to deductions, including taxes, garnishments, whether voluntary or involuntary and net business income.

A. Income sources: Gross income includes income from both earned and unearned sources.

B. Countable income: The gross unearned income of all household members is counted in its entirety, and the gross earned income of all household members over the age of 18 is counted in its entirety, unless:

(1) the income is specifically exempted; or

(2) the income is self-employment, in which case the income is annualized (see LIHEAP 8.150.520.9 NMAC); or

(3) the income is that of an ineligible alien, in which case the income is prorated (see LIHEAP policy 8.150.520.10 NMAC);

(4) the income is a full month's income and is anticipated to be received on a weekly or biweekly basis; in these circumstances, the income shall be converted to a monthly amount as follows:

(a) income received on a weekly basis is averaged and multiplied by 4.0;

(b) income received on a biweekly basis is averaged and multiplied by 2.0;

(c) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.49 or lower are rounded down.

C. Gross income receipt period: HSD shall establish income by utilizing the gross income of the household for the 30 day period immediately preceding the date on which LIHEAP eligibility is determined by ISD.

D. Current income verified in other public assistance programs: Current income that has been verified by ISD in another active public assistance programs may be used to verify income for the LIHEAP application, unless deemed questionable.

[8.150.520.12 NMAC - Rn, 8.150.500.10 NMAC & A, 10-1-12]

8.150.520.13 UNEARNED INCOME:

A. Definition: Unearned income is income received in the form of entitlement, disability, retirement, unemployment benefits or payments, including but not limited to the following:

(1) child support;

(2) alimony;

(3) temporary assistance to needy families (TANF) benefits;

(4) general assistance (GA) payments;

(5) royalties;

(6) dividends and interest; or

(7) tribal benefits.

B. Gross unearned income: The gross amount of the benefit or payment must be counted. In the case of OASDI benefits, the gross amount of the benefit includes the amount deducted for the medicare premium, if applicable.

C. Real estate contracts: Monthly payments resulting from the sale of property and contributions from family or friends are also countable unearned income.

D. Exclusions: The following are not counted as income:

- (1) in-kind benefits (i.e. goods or services realized, provided or exchanged for non-monetary compensation);
 - (2) vendor payments (i.e. payments made on behalf of a household to a third party);
 - (3) lump sum payments: as defined in food stamp regulations at 8.139.520.9 NMAC;
 - (4) loans;
 - (5) charitable contributions from nonprofit agencies to meet household expenses;
 - (6) earned income tax credits;
 - (7) value of food stamps;
 - (8) TANF annual clothing allowance;
 - (9) monies received for the care of a third party beneficiary who is not a household member; and
 - (10) monies excluded by federal statute, as listed at 8.139.527 NMAC.
- [8.150.520.13 NMAC - Rn, 8.150.522.8 NMAC & A, 10-1-12]

8.150.520.14 TOTAL GROSS INCOME: The household's total gross income is determined by adding countable earned and unearned income. Income received from self-employment and by ineligible aliens is not counted in full. The income of migrant households may be annualized and averaged. The household's total gross income must be equal to or less than income standards published annually in the LIHEAP state plan.
 [8.150.520.14 NMAC - Rn, 8.150.524.8 NMAC & A, 10-1-12]

8.150.520.15 INCOME STANDARD: Income guidelines for eligibility will be updated at the beginning of each federal fiscal year as required by federal statute. The guidelines will be effective for the entire federal fiscal year beginning October 1 and ending September 30. The income guidelines will be determined by the secretary of the human services department before the beginning of the new federal fiscal year and published annually in the LIHEAP state plan.
 [8.150.520.15 NMAC - Rn, 8.150.524.9 NMAC & A, 10-1-12]

8.150.520.16 CRISIS INTERVENTION STANDARDS: Households who are over the income standards but meet the crisis intervention requirements may be eligible for a crisis LIHEAP benefit. If a household is over the income standards, HSD staff should explore the household's financial circumstances and take into account any financial crises in the household that may have resulted in the household's inability to meet its utility or fuel expenses in the past 30 days. In these cases, the household's net income, rather than gross income, may be considered to determine income eligibility for LIHEAP benefits.
 [8.150.520.16 NMAC - Rn, 8.150.500.9 NMAC & A, 10-1-12]

8.150.520.17 NET INCOME:

A. Definition: Net income, except for net business income, for the purposes of LIHEAP policy, is not gross income minus deductions. Rather, it is gross income minus household emergency expenses incurred and paid in 30 days prior to the application date or the initial payment, during that period, of a bill resulting from a recent household emergency.

B. Calculation: To determine the net income for a household, subtract any allowable household emergency expenses from the household's gross income.

C. No emergency expenses: If the household did not incur and pay household emergency expenses or an initial payment for a recent household emergency in the 30 days prior to the application date for LIHEAP benefits, gross income is to be used to make the determination of eligibility.

[8.150.520.17 NMAC - Rn, 8.150.526.9 NMAC & A, 10-1-12]

8.150.520.18 HOUSEHOLD EMERGENCY EXPENSES:

A. Definition: Household emergency expenses are defined as expenses incurred and paid in full or in part by the household in the 30 days prior to the application date.

B. Examples of emergency expenses include:

- (1) hospital, ambulance, doctor and dental bills;
- (2) laboratory and other testing bills;
- (3) prescriptions and non-prescription items ordered by a licensed health care professional; and
- (4) services provided or ordered by a licensed health care professional; or
- (5) non-elective medical expenses;
- (6) emergency medical expenses, such as:

- (7) hospital bills; and
- (8) ambulance bills;
- (9) expenses resulting from the death of a household member or other major household crisis; or
- (10) repair or replacement of the household's primary vehicle.

C. Licensure exemption: Native American practitioners (medicine men), though not licensed by the state, are specifically recognized by HSD as health care providers under this policy.

[8.150.520.18 NMAC - Rn, 8.150.526.10 NMAC & A, 10-1-12]

8.150.520.19 VERIFICATION: To be considered, the household must provide proof of the incurred expense(s) and proof of payment.

[8.102.520.19 NMAC - Rn, 8.150.526.11 NMAC & A, 10-1-12]

This is an amendment to 8.150.600 NMAC, Section 8 and addition of Sections 9, 10 and 11, effective October 1, 2012.

8.150.600.8 BENEFITS - ISSUANCE AND USE AND VENDOR RESPONSIBILITIES:

- A. Issuance of benefits: Benefits are issued in one of the three following methods:
- (1) client warrants: HSD issues benefits directly to clients through client warrants [~~when authorized by the LIHEAP director~~]; or
 - (2) vendor payments: HSD issues benefits directly to the vendor; or
 - (a) HSD will provide the name and, when applicable, customer account number for the LIHEAP-eligible household to the vendor specified by the household; the vendor will notify HSD of mismatches within a specified time frame;
 - (b) vendors who carry customer accounts will credit eligible households with the amount of the LIHEAP regular benefit no more than 30 days from the time of the payment; vendors who provide fuel on demand will provide fuel to eligible households equal to the amount of the LIHEAP regular benefit no more than 30 days from the date of the eligible household's contact with the vendor to make arrangements for the provision of such fuel;
 - (c) vendors may transfer excess LIHEAP benefits from the account originally credited to another account they have for the household; the vendor must document the transfer in a manner that meets generally accepted audit standards; in order to transfer LIHEAP funds, the following conditions must be met:
 - (i) the vendor must provide multiple utility services [~~and/or~~] or bulk fuel; and
 - (ii) a credit remains on the originally credited account after current and delinquent charges are satisfied; and
 - (iii) the household approves the transfer; and
 - (iv) the utility or bulk fuel account that is credited is used by the household for their heating or cooling needs;
 - (d) vendors should transfer a LIHEAP benefit credit on an account that is closed after the credit is posted; the transfer must be to a new or existing account for the new residence of the recipient household; the vendor must document the transfer in a manner that meets generally accepted audit standards;
 - (e) vendors may refund LIHEAP benefit credit to a household under certain circumstances when the household moves [~~and/or~~] or will not have service with the company at their residence; the vendor must document the transfer in a manner that meets generally accepted audit standards;
 - (f) vendors must refund LIHEAP benefit credits on closed accounts to HSD when the credit cannot be transferred to a new account and/or the household cannot be located;
 - (3) electronic benefit transfer account: LIHEAP benefits are deposited directly into the household's special account that may be:
 - (a) a cash account available to the household at ATMs and retail stores; or
 - (b) a special account for LIHEAP payments accessed at authorized utility vendors to pay for heating or cooling costs; the EBT card is used at a point of sale (POS) terminal at the utility company office or other retailers authorized to accept utility company payments.

- B. Benefit use: The recipient household is responsible for using the benefit for the purpose intended:
- (1) to purchase fuel, such as propane, wood, coal, kerosene, fuel oil or other unregulated fuels;
 - (2) to pay the household's utility charges, such as those for electric or natural gas services;
 - (3) to purchase gasoline [~~and/or~~] or tools needed when a household gathers/cuts its own firewood;
 - (4) to pay a landlord for the utility costs that are included in the rent payment;
 - (5) to pay for a deposit obligation needed to initiate or continue service.

[7-1-95, 11-1-95, 11-15-96, 10-01-97; 8.150.600.8 NMAC - Rn, 8 NMAC 22.LHP.601 & A, 10-1-01; A, 10-1-05; A, 10-1-06; A, 10-1-12]

8.150.600.9 STATE LIHEAP FUNDING:

- A. Purpose: To reduce the home heating and cooling costs of low-income New Mexicans.
- B. Benefits:
- (1) payments that assist low-income households to reduce the costs of home heating/cooling; or
 - (2) weatherization services for the homes of low-income households.

[8.150.600.9 NMAC - Rn, 8.150.610.8 NMAC & A, 10-1-12]

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8.150.600.10 FUND USES: Unless specified by the New Mexico state legislature, the secretary of the human services department has the authority to specify the uses of the funding. Funding will be used for purposes similar to those allowed under the federal low income home energy assistance program.

[8.150.600.10 NMAC - Rn, 8.150.610.9 NMAC & A, 10-1-12]

8.150.600.11 WINTER MORATORIUM ON UTILITY DISCONNECTION: No utility shall discontinue or disconnect residential utility service for heating from November 15 through March 15 of the subsequent year for certain customers.

A. Administering authority: The human services department or a tribal entity that administers its own low income home energy assistance program are designated as the authorities to identify customers who meet the certain qualifications for the winter moratorium. The customer must also meet the New Mexico public regulation commission requirements to receive winter moratorium protection.

B. Qualification: Customers who qualify for the winter moratorium must meet the following income standards:

(1) the customer is a member of a household in which the total gross income is at or below 150% of the current federal poverty guidelines; or

(2) one or more of the household members:

(a) receive supplemental security income; or

(b) are eligible for any federally funded assistance program administered by ISD with income guidelines at or below 150% of the current federal poverty guidelines;

(3) the person in whose name a utility account is listed and the name of the public assistance recipient need not match in order for the customer to be entitled to protection under this section.

C. Proof of qualification:

(1) HSD generated approval notice for certain public assistance programs;

(2) computer generated notice from HSD;

(3) form completed by hand from a local ISD office;

(4) HSD generated data file listing qualified households;

(5) form completed by any agency charged with determining eligibility for a public assistance program; or

(6) HSD and a utility company/municipality may mutually agree on a method of notification.

[8.150.600.11 NMAC - Rn, 8.150.610.10 NMAC & A, 10-1-12]

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This is an amendment of 8.150.620 NMAC, a repeal of Section 11 and addition of Section 12, effective October 1, 2012.

8.150.620.11 ~~[POINTS INFORMATION SOURCE: The LIHEAP points guidelines are available from all human services department income support division offices, by writing to: Human Services Department LIHEAP P O Box 25607 Albuquerque NM 87125-6507, or by contacting the income support division customer service desk at 1-800-283-4465, or Relay New Mexico at 1-800-659-8331. If you are disabled and need the guidelines in an alternative format, please make the request when you contact us. The points guidelines are also located on the HSD income support division web site at <http://www.hsd.state.nm.us/pdf/LIHEAPPointGuidelines.pdf>.] [Reserved]~~
[8.150.620.11 - N, 10-1-01; A, 10-01-06; A, 10-01-07; Repealed, 10-1-12]

8.150.620.12 RETROACTIVE BENEFIT COVERAGE: Households that were denied LIHEAP benefits or received a lesser benefit than they were entitled to but, prevail in an appeal through an agency conference or fair hearing, are entitled a retroactive benefit.
[8.150.620.12 - N, 10-1-12]