

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 290 MEDICAID ELIGIBILITY - HOME AND COMMUNITY-BASED SERVICES WAIVER**  
**(CATEGORIES 090, 091, 092, 093, 094, 095 AND 096)**  
**PART 500 INCOME AND RESOURCE STANDARDS**

**8.290.500.1 ISSUING AGENCY:** New Mexico Human Services Department.  
[2/1/95; 8.290.500.1 NMAC - Rn, 8 NMAC 4.WAV.000.1, 5/1/02]

**8.290.500.2 SCOPE:** The rule applies to the general public.  
[2/1/95; 8.290.500.2 NMAC - Rn, 8 NMAC 4.WAV.000.2, 5/1/02]

**8.290.500.3 STATUTORY AUTHORITY:** The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See NMSA 1978 Sections 27-2-12 et. seq. (Repl. Pamp. 1991).  
[2/1/95; 8.290.500.3 NMAC - Rn, 8 NMAC 4.WAV.000.3, 5/1/02]

**8.290.500.4 DURATION:** Permanent.  
[2/1/95; 8.290.500.4 NMAC - Rn, 8 NMAC 4.WAV.000.4, 5/1/02]

**8.290.500.5 EFFECTIVE DATE:** February 1, 1995 unless a later date is cited at the end of a section.  
[8.290.500.5 NMAC - Rn, 8 NMAC 4.WAV.500, 5/1/02]

**8.290.500.6 OBJECTIVE:** The objective of these regulations is to provide eligibility criteria for the medicaid program.  
[2/1/95; 8.290.500.6 NMAC - Rn, 8 NMAC 4.WAV.000.6, 5/1/02; A, 11/1/07]

**8.290.500.7 DEFINITIONS:** See 8.290.400.7 NMAC.  
[8.290.500.7 NMAC - N, 11/1/07]

**8.290.500.8** [~~MISSION: To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.~~] **[RESERVED]**  
[8.290.500.8 NMAC - N, 3/1/10; A, xx-xx-xx]

**8.290.500.9 NEED DETERMINATION:** Eligibility for the home and community-based services waiver programs is always prospective. Applicants/recipients must meet, or expect to meet, all financial eligibility criteria in the month for which a determination of eligibility is made. Applicants for and recipients of medicaid through one of the waiver programs must apply for, and take all necessary steps to obtain, any income or resources to which they may be entitled. Such steps must be taken within 30 days of the date the human services department (HSD) furnishes notice of the potential entitlement.

A. **Failure to apply for and take steps to determine eligibility for other benefits:** Failure or refusal to apply for and take all necessary steps to determine eligibility for other benefits after notice is received results in an applicant/recipient becoming ineligible for medicaid.

B. **Exceptions to general requirement:** Applicants/recipients who have elected a lower VA payment do not need to reapply for veterans administration improved pension (VAIP) benefits. Crime victims are not required to accept victims compensation payments from a state-administered fund as a condition of medicaid eligibility.

[2/1/95; 1/1/97; 8.290.500.9 NMAC - Rn, 8 NMAC 4.WAV.500, 5/1/02; A, 11/1/07]

**8.290.500.10 RESOURCE STANDARDS:** See 8.281.500.10 NMAC and following subsections.  
[2/1/95, 1/1/97; 8.290.500.10 NMAC - Rn, 8 NMAC 4.WAV.510, 5/1/02]

**8.290.500.11 APPLICABLE RESOURCE STANDARDS:** An applicant/recipient is eligible for medicaid on the factor of resources if countable resources do not exceed two thousand dollars (\$2,000).

A. **Liquid resources:** See Subsection A of 8.281.500.11 NMAC.

B. **Nonliquid resources:** See Subsection B of 8.281.500.11 NMAC and following subsections.

[2/1/95, 1/1/97; 8.290.500.11 NMAC - Rn, 8 NMAC 4.WAV.511, 5/1/02]

**8.290.500.12 COUNTABLE RESOURCES:** See 8.281.500.12 NMAC and following subsections.

[2/1/95, 1/1/97; 8.290.500.12 NMAC - Rn, 8 NMAC 4.WAV 512, 5/1/02]

**8.290.500.13 RESOURCE EXCLUSIONS:** See 8.281.500.13 NMAC and following subsections.

[2/1/95, 1/1/97; 8.290.500.13 NMAC - Rn, 8 NMAC 4.WAV.513, 5/1/02]

**8.290.500.14 ASSET TRANSFERS:** See 8.281.500.14 NMAC, *asset transfers*, and following subsections for rules governing transfers of assets. All provisions pertaining to transfers under institutional care medicaid apply to transfers under the waiver programs with the exception of the penalty for transfers of assets for less than fair market value. The penalty for transfers of assets for less than fair market value for waiver applicants/recipients is ineligibility for long term care medicaid services under the waiver programs. Federal regulations specify that, to be eligible for a waiver program, an individual must be receiving the waiver or long term care services. Because a waiver applicant/recipient is not eligible to receive these services under the medicaid program, they are ineligible for the HCBS waiver program. The period of ineligibility is based on when the assets were transferred during the look back period. After February 8, 2006, the look back period for transfers is 60 months prior to the date of application. As soon as the HCBS waiver applicant has no transfers for less than fair market value during the 60 months look back period, they are eligible to be reconsidered for HCBS provided all financial and non-financial criteria are met. If the transfer for less than fair market value is discovered after the applicant is approved for HCBS, the period of ineligibility begins the first day of the month in which the resources were transferred. If the applicant or recipient enters a nursing facility, a penalty period for the transfer of assets for less than fair market value is calculated based on 8.281.500.14, *asset transfers*. This penalty period runs whether or not the individual remains in the nursing facility.

[2/1/95, 1/1/97; 8.290.500.14 NMAC - Rn, 8 NMAC 4.WAV.515, 5/1/02; A, 11/1/07; A, 3/1/10]

**8.290.500.15 TRUSTS:** See ~~[8.281.500.15]~~ [8.281.510](#) NMAC and following subsections.

[1/1/97; 8.290.500.15 NMAC - Rn, 8 NMAC 4.WAV.517, 5/1/02; A, xx-xx-xx]

**8.290.500.16 RESOURCE STANDARDS FOR MARRIED COUPLES:**

A. **Community property resource determination methodology:** See Subsection A of ~~[8.281.500.16]~~ [8.281.500.15](#) NMAC and Paragraph (2) of Subsection A of ~~[8.281.500.16]~~ [8.281.500.15](#) NMAC for methodology used in the determination of eligibility for married applicants/recipients who began receiving waiver services for a continuous period prior to September 30, 1989.

B. **Spousal impoverishment:** See Subsection B of 8.281.500.16 NMAC and following subsections for spousal impoverishment methodology used in the determination of eligibility for married applicants/recipients with a spouse in the home who began receiving waiver services on or after September 30, 1989. The resource assessment is completed as of the first moment of the first day of the month in which the level of care is approved.

[1/1/97; 8.290.500.16 NMAC - Rn, 8 NMAC 4.WAV.518, 5/1/02; A, xx-xx-xx]

**8.290.500.17 DEEMING RESOURCES:** See ~~[8.281.500.17]~~ [8.281.500.16](#) NMAC. The resources of the custodial parent(s) are deemed available to the applicant/recipient for the entire calendar month in which the allocation letter is issued by the waiver program manager or the representative notifies the ISD worker that a UDR is available for the applicant/recipient. Beginning with the month following the month in which the allocation letter was issued, only the resources directly attributable and available to the applicant/recipient are counted and compared to the resource limit.

[2/1/95, 1/1/97; 8.290.500.17 NMAC - Rn, 8 NMAC 4.WAV.519 & A, 5/1/02; A, xx-xx-xx]

**8.290.500.18 INCOME:** To qualify for medicaid under any of the waiver programs, the gross countable income of the applicant/recipient must be less than the maximum allowable monthly income standard. See 8.200.520.16 NMAC, Income Standards. See ~~[8.281.500.18]~~ [8.281.500.17](#) NMAC and following subsections.

[2/1/95, 1/1/97; 8.290.500.18 NMAC - Rn, 8 NMAC 4.WAV.520, 5/1/02; A, xx-xx-xx]

**8.290.500.19 INCOME STANDARDS.** Income exclusions: See ~~[8.281.500.19]~~ [8.281.500.18](#) NMAC and following subsections.

[2/1/95, 1/1/97; 8.290.500.19 NMAC - Rn, 8 NMAC 4.WAV.521, 5/1/02; A, xx-xx-xx]

**8.290.500.20 UNEARNED INCOME:** See [\[8.281.500.20\]](#) [8.281.500.19](#) NMAC and following subsections. [2/1/95, 1/1/97; 8.290.500.20 NMAC - Rn, 8 NMAC 4.WAV.522, 5/1/02; A, xx-xx-xx]

**8.290.500.21 DEEMED INCOME:** See [\[8.281.500.21\]](#) [8.281.500.20](#) NMAC and following subsections. The income of the custodial parent(s) is deemed available to the applicant/recipient for the entire calendar month in which the allocation letter is issued by the waiver program manager or the representative notifies the ISD worker that a UDR is available for the applicant/recipient. Beginning with the month following the month in which the allocation letter was issued, only the income directly attributable and available to the applicant/recipient is counted and compared to the income limit. [2/1/95, 1/1/97; 8.290.500.21 NMAC - Rn, 8 NMAC 4.WAV. 523 & A, 5/1/02; A, xx-xx-xx]

**8.290.500.22 DISREGARDS:** See [\[8.281.500.22\]](#) [8.281.500.21](#) NMAC and following subsections. [2/1/95, 1/1/97; 8.290.500.22 NMAC - Rn, 8 NMAC 4.WAV 525, 5/1/02; A, xx-xx-xx]

**8.290.500.23 POST ELIGIBILITY/MEDICAL CARE CREDIT:** There are no medical care credits in the waiver programs. The applicant/recipient is allowed to keep all of his income to maintain his household in the community. [2/1/95, 1/1/97; 8.290.500.23 NMAC - Rn, 8 NMAC 4.WAV.530, 5/1/02; A, 11/1/07]

**HISTORY OF 8.290.500 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the Commission of Public Records-State Records Center and Archives: MAD Rule 898, Transfers Of Assets, 12/29/94.

**History of Repealed Material:** [RESERVED]