

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 281 MEDICAID ELIGIBILITY - INSTITUTIONAL CARE (CATEGORIES 081, 083 and 084)**  
**PART 400 RECIPIENT POLICIES**

**8.281.400.1 ISSUING AGENCY:** New Mexico Human Services Department.  
[2/1/1995; 8.281.400.1 NMAC - Rn, 8 NMAC 4.ICM.000.1, 7/1/2003]

**8.281.400.2 SCOPE:** The rule applies to the general public.  
[2/1/1995; 8.281.400.2 NMAC - Rn, 8 NMAC 4.ICM.000.2, 7/1/2003]

**8.281.400.3 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 Section 27-2-12 et seq., NMSA 1978 (Repl. Pamp. 1991).  
[2/1/1995; 8.281.400.3 NMAC - Rn, 8 NMAC 4.ICM.000.3, 7/1/2003]

**8.281.400.4 DURATION:** Permanent.  
[2/1/1995; 8.281.400.4 NMAC - Rn, 8 NMAC 4.ICM.000.4, 7/1/2003]

**8.281.400.5 EFFECTIVE DATE:** ~~[February 1, 191995]~~ January 1, 2019, unless a later date is cited at the end of a section.  
[2/1/1995; 8.281.400.5 NMAC - Rn, 8 NMAC 4.ICM.000.5, 7/1/2003]

**8.281.400.6 OBJECTIVE:** The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.  
[2/1/1995; 8.281.400.6 NMAC - Rn, 8 NMAC 4.ICM.000.6, 7/1/2003]

**8.281.400.7 DEFINITIONS:** [RESERVED]

**8.281.400.8** [RESERVED]

**8.281.400.9 INSTITUTIONAL CARE MEDICAID CATEGORIES 081, 083 AND 084:** The New Mexico medicaid program (medicaid) pays for services furnished to individuals who require institutional care and who meet all supplemental security income (SSI) eligibility criteria and whose monthly gross countable income is less than the maximum allowed amount for institutional care.  
[2/1/1995; 8.281.400.9 NMAC - Rn, 8 NMAC 4.ICM.400, 7/1/2003]

**8.281.400.10 BASIS FOR DEFINING THE GROUP:** An applicant/recipient must require institutional care as certified by a physician licensed to practice medicine or osteopathy. The applicant/recipient must be institutionalized in a medicaid qualifying bed in a New Mexico medicaid approved institution or in a hospital administered under the authority of the US department of veterans affairs (VA). Medicaid approved "Institutions" are defined as acute care hospitals (ACHs), nursing facilities (NFs) and intermediate care facilities for individuals with intellectual disabilities (ICF/IID), swing beds and certified inpatient rehabilitation centers. Level of care (LOC) determinations for institutional care medicaid eligibility are made by the MAD ~~[UR]~~ Utilization Review (UR) contractor or a member's selected or assigned Managed Care Organization (MCO). Documentation of these determinations is provided to the institution by the UR contractor or MCO. For applicants/recipients in a hospital awaiting placement in NFs, confirmation letters are furnished by the MAD UR contractor for use by hospital staff. A level of care (LOC) is not required for acute care hospitals. Documentation of acute care hospitalization must be provided by the hospital to determine the eligibility period.  
[2/1/1995; 7/1/00; 8.281.400.10 NMAC - Rn, 8 NMAC 4.ICM.402, 7/1/2003; A, 3/1/2018; A, xx/xx/xxxx]

**8.281.400.11 INTERVIEW REQUIREMENTS:**

**A. Purpose and scope of interview:** An interview is required at initial application for institutional care medicaid. The initial interview is an official and confidential discussion of household circumstances with the applicant. The interview is intended to provide the applicant with program information, and to supply the facts needed by the ~~[ISD caseworker]~~ income support division (ISD) worker to make a reasonable eligibility

determination. The interview is not simply to review the information on the application, but also to explore and clarify any unclear or incomplete information. The scope of the interview shall not extend beyond examination of the applicant's circumstances that are directly related to determining eligibility. The interview shall be held prior to disposition of the application.

**B. Individuals interviewed:** Applicants, including those who submit applications by mail, shall be interviewed via telephone with an ~~[ISD caseworker]~~ **ISD worker**. When circumstances warrant or upon request of the applicant, the household may be interviewed in person at another place reasonably accessible and agreeable to both the applicant and the ~~[ISD caseworker]~~ **ISD worker**. The applicant may bring any person he chooses to the interview.

**C. Scheduling interviews:** The interview on an initial application shall be scheduled within 10 working days, and, to the extent possible, at a time that is most convenient for the applicant.

**D. Missed interviews:** ISD shall notify a household that it missed its first interview appointment, and inform the household that it is responsible for rescheduling the missed interview. If the household contacts the caseworker within the 45-day application processing period, the caseworker shall schedule a second interview. When the applicant contacts ISD, either orally or in writing, the caseworker shall reschedule the interview as soon as possible thereafter within the 45 day processing period, without requiring the applicant to provide good cause for missing the initial interview. If the applicant does not contact ISD or does not appear for the rescheduled interview, the application shall be denied on the 45th day (or the next work day) after the application was filed. [2/1/1995; 8.281.400.11 NMAC - Rn, 8 NMAC 4.ICM.410, 7/1/2003; A, 3/1/2018; A, xx/xx/xxxx]

**8.281.400.12 ENUMERATION:** ~~[A medicaid applicant/recipient must furnish his/her social security account number. Medicaid eligibility is denied or terminated for any applicant/recipient who fails to furnish a social security account number. Applicants/recipients without a valid social security account number must apply for a number. Presentation of an application for a social security number or proof that an application has been made at a social security administration office is considered as meeting this requirement.]~~ **An applicant/recipient must furnish his or her social security number in accordance with 8.200.410.10 NMAC.** [2/1/1995; 8.281.400.12 NMAC - Rn, 8 NMAC 4.ICM.411, 7/1/2003; A, xx/xx/xxxx]

**8.281.400.13 CITIZENSHIP:** Refer to medical assistance program manual Section 8.200.410.11 NMAC. [2/1/1995; 4/30/98; 8.281.400.13 NMAC - Rn, 8 NMAC 4.ICM.412, 7/1/2003]

**8.281.400.14 RESIDENCE:**

**A. Residence in the United States:** An applicant/recipient must be residing in the United States at the time of approval. An applicant/recipient who leaves the United States for an entire calendar month loses eligibility. The applicant/recipient must re-establish his/her residence in the United States for at least 30 consecutive days before becoming eligible for any SSI-related medicaid program.

**B. Residence in New Mexico:** To be eligible for institutional care medicaid, an applicant/recipient must be physically present in New Mexico on the date of application or final determination of eligibility and must have demonstrated intent to remain in the state. If the individual does not have the present mental capacity to declare intent, the parent, guardian or adult child may assume responsibility for a declaration of intent. If the individual does not have the present mental capacity to declare intent and there is no guardian or relative to assume responsibility for a declaration of intent, the state where the person is living is recognized as the state of residence. A temporary absence from the state does not preclude eligibility. A temporary absence exists if the applicant/recipient leaves the state for a specific purpose with a time-limited goal and intends to return to New Mexico when the goal is accomplished. [2/1/1995; 7/1/00; 8.281.400.14 NMAC - Rn, 8 NMAC 4.ICM.413, 7/1/2003]

**8.281.400.15 SPECIAL RECIPIENT REQUIREMENTS:** To be eligible for institutional care medicaid, an applicant/recipient must be aged, blind, or disabled as defined by the social security administration (SSA). Recipients of institutional care medicaid in New Mexico are terminated from assistance if they are transferred to, or choose to move to, a long term care facility out-of-state. New Mexico medicaid does not cover NF services furnished to applicants/recipients in out-of-state facilities. [2/1/1995; 7/1/00; 8.281.400.15 NMAC - Rn, 8 NMAC 4.ICM.420, 7/1/2003]

**8.281.400.16 AGED:** To be considered aged, an applicant/recipient individmust be 65 years of age or older. Age is verified by the following:

- A. decision from SSA regarding age;
- B. acceptable documentary evidence including:
  - (1) birth certificate or delayed birth certificate;
  - (2) World War II ration books;
  - (3) baptismal records;
  - (4) marriage license or certificate;
  - (5) military discharge papers;
  - (6) insurance policies;
  - (7) Indian census records;
  - (8) dated newspaper clippings;
  - (9) voting registration;
  - (10) World War I registration;
  - (11) veterans administration records; or
  - (12) school census.

[2/1/1995; 8.281.400.16 NMAC - Rn, 8 NMAC 4.ICM.421, 7/1/2003]

**8.281.400.17 BLIND:** To be considered blind, an applicant/recipient must have central visual acuity of 20/200 or less with corrective lenses.

**A. Documentation of blindness:** An applicant/recipient must meet the SSA's definition of blindness. If he/she is receiving social security or supplemental security income (SSI) benefits based on the condition of blindness, verification of this factor can be accomplished through documents, such as award letters or benefit checks

**B. Status of SSA determination:** If it has not been determined whether an applicant/recipient meets SSA's definition of blindness or if only a temporary determination was made, the [\[ISS\] ISD worker](#) must request a determination from [\[disability determination services \(DDS\)\] the disability determination unit \(DDU\)](#). Eligibility based on blindness cannot be considered to exist without a DDS determination.

**C. Redetermination of blindness:** A redetermination of blindness by [\[DDS\] the DDU](#) is not required on a re-application following an applicant/recipient's termination from SSI/SSA or medicaid, if a permanent condition of blindness was previously established or the termination was based on a condition unrelated to blindness and there was no indication of possible improvement in an applicant/recipient's vision.

**D. Remedial treatment:** If [\[DDS\] the DDU](#) recommends remedial medical treatment that carries no more than the usual risk or a reasonable plan for vocational training, an applicant/recipient must comply with the recommendation unless good cause for not doing so exists.

[2/1/1995; 8.281.400.17 NMAC - Rn, 8 NMAC 4.ICM.422, 7/1/2003; A, xx/xx/xxxx]

**8.281.400.18 DISABILITY:** To be considered disabled, an applicant/recipient under 65 years of age is considered to have a qualifying disability if he/she is unable to engage in any substantial gainful activity because of any medically determinable physical, developmental, or mental impairment which has lasted, or is expected to last, for a continuous period of at least 12 months.

**A. Documentation of disability:** An applicant/recipient must meet the social security administration (SSA)'s definition of disability. If he/she is receiving social security or supplemental security income (SSI) benefits based on the condition of disability, verification of this factor can be accomplished through documents, such as award letters or benefit checks.

**B. Status of SSA determination:** If it has not been determined whether an applicant/recipient meets the SSA's definition of disability or if only a temporary determination was made, the ISS must request a determination from [\[disability determination services \(DDS\)\] the DDU](#). Eligibility based on disability cannot be considered to exist without a DDS determination.

**C. Redetermination of disability:** A redetermination of disability by [\[DDS\] the DDU](#) is not required on a re-application following an applicant/recipient's termination from SSI/SSA or medicaid, if a permanent condition of disability was previously established or the termination was based on a condition unrelated to disability and there was no indication of possible improvement in an applicant/recipient's physical condition.

**D. Remedial treatment:** If [\[DDS\] the DDU](#) recommends remedial medical treatment that carries no more than the usual risk or a reasonable plan for vocational training, an applicant/recipient must comply with the recommendation unless good cause for not doing so exists.

[2/1/1995; 8.281.400.18 NMAC - Rn, 8 NMAC 4.ICM.424, 7/1/2003; A, xx/xx/xxxx]

**8.281.400.19 SSI STATUS:** The ~~[income support specialist (ISS)]~~ ISD worker determines whether an applicant/recipient's SSI eligibility will continue while he/she is institutionalized.

**A. Applicant/recipient currently eligible for SSI:** If an applicant/recipient will not continue to be eligible for SSI while institutionalized, the [ISS] ISD worker processes the application regardless of the fact that SSA will not terminate SSI benefits until the month following the month the applicant/recipient enters an institution.

**B. Applicant not currently receiving SSI:** If an applicant/recipient is not receiving SSI or has not applied for SSI before applying for medicaid and his/her gross income is less than ~~[fifty dollars (\$50.00)]~~ \$50, the [ISS] ISD worker processes the application and refers the applicant to the SSA for determination of eligibility for SSI benefits. If an applicant's gross monthly income is ~~[fifty dollars (\$50)]~~ \$50 or more but not in excess of the maximum allowable income standard, the [ISS] ISD worker determines eligibility for institutional care medicaid based on remaining financial and nonfinancial criteria.

[2/1/1995; 8.281.400.19 NMAC - Rn, 8 NMAC 4.ICM.427, 7/1/2003; A, xx/xx/xxxx]

**8.281.400.20 RECIPIENT RIGHTS AND RESPONSIBILITIES:** An applicant/recipient is responsible for establishing his/her eligibility for medicaid. As part of this responsibility, the applicant/recipient must provide required information and documents or take the actions necessary to establish eligibility. Failure to do so must result in a decision that eligibility does not exist. An applicant/recipient must also grant the human services department (HSD) permission to contact other persons, agencies or sources of information, which are necessary to establish eligibility.

[2/1/1995; 8.281.400.20 NMAC - Rn, 8 NMAC 4.ICM.430, 7/1/2003]

**8.281.400.21 RIGHT TO HEARING:** An applicant/recipient residing in an institution can request an administrative hearing to dispute issues relating to the eligibility determination process at the time of the eligibility determination (see Section 8.200.430.12 NMAC, Right to Hearing).

[2/1/1995; 7/1/00; 8.281.400.21 NMAC - Rn, 8 NMAC 4.ICM.433, 7/1/2003]

**8.281.400.22 ASSIGNMENTS OF MEDICAL SUPPORT:** Refer to medical assistance program manual Subsection F of Section 8.200.420.12 NMAC.

[2/1/1995; 8.281.400.22 NMAC - Rn, 8 NMAC 4.ICM.434 & A, 7/1/2003]

**8.281.400.23 REPORTING REQUIREMENTS:** Medicaid recipients must report any change in circumstances, which may affect his/her eligibility to their local income support division (ISD) office within 10 days of the change in accordance with 8.200.430.18 NMAC.

[2/1/1995; 8.281.400.23 NMAC - Rn, 8 NMAC 4.ICM.450 & A, 7/1/2003; A, xx/xx/xxxx]

#### **HISTORY OF 8.281.400 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center:

ISD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 12/29/1983.

ISD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 8/11/1987.

MAD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 2/5/1988.

MAD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 2/25/1988.

MAD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 6/1/1988.

MAD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 1/31/1989.

MAD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 6/21/1989.

MAD Rule 880.0000, Medical Assistance For Persons Requiring Institutional Care, filed 3/21/1990.

MAD Rule 880, Medical Assistance For Persons Requiring Institutional Care, filed 5/3/1991.

MAD Rule 880, Medical Assistance For Persons Requiring Institutional Care, filed 6/12/1992.

MAD Rule 880, Medical Assistance For Persons Requiring Institutional Care, filed 11/16/191994.

MAD Rule 882, Resources - Medical Assistance For Persons Requiring Institutional Care, filed 3/9/1993.

MAD Rule 882, Resources - Medical Assistance For Persons Requiring Institutional Care, filed 11/16/191994.

MAD Rule 882, Resources, filed 12/29/191994.

MAD Rule 883, Income - Medical Assistance For Persons Requiring Institutional Care, filed 3/18/1993.

MAD Rule 883, Income - Medical Assistance For Persons Requiring Institutional Care, filed 11/16/191994.

MAD Rule 883, Income, filed 12/29/1994.

MAD Rule 885, Medical Care Credit, filed 11/16/1994.

MAD Rule 888, Medicare Catastrophic Coverage Act of 1988 Regarding Transfers of Assets, filed 3/10/1994.  
MAD Rule 888, Transfers of Assets, filed 12/27/1994.  
MAD Rule 889, Spousal Impoverishment, filed 8/17/1992.  
MAD Rule 889, Spousal Impoverishment, filed 2/17/1994.

**History of Repealed Material:**

MAD Rule 880, Medical Assistance For Persons Requiring Institutional Care, filed 11/16/1994 - Repealed effective 2/1/1995.  
MAD Rule 882, Resources, filed 12/29/1994 - Repealed effective 2/1/1995.  
MAD Rule 883, Income, filed 12/29/1994 - Repealed effective 2/1/1995.  
MAD Rule 885, Medical Care Credit, filed 11/16/1994 - Repealed effective 2/1/1995.  
MAD Rule 888, Transfers of Assets, filed 12/27/1994 - Repealed effective 2/1/1995.  
MAD Rule 889, Spousal Impoverishment, filed 2/17/1994 - Repealed effective 2/1/1995.