NMAC Transmittal Form

NEW MEXICO
State Records Center and Archives
COMMISSION OF PUBLIC RECORDS
Your Access to Public Information

Volume: XXXVI **Issue:** 20 **Publication date:** 10/21/2025 **Number of pages:** 2 **(ALD Use Only) Sequence No.** 328.9

Issuing agency name and address: HCA - Medical Assistance Division

Agency DFA code: 630

Contact person's name: Tabitha Mondragon

Phone number: 505-795-3572

E-mail address: tabitha.mondragon@hca.nm.gov

Type of rule action:

New ☐ **Amendment** ☑ **Repeal** ☐ **Emergency** ☐ **Renumber** ☐

(ALD Use) Recent filing date: 12/11/2018

Title number: 8 **Title name:** Social Services

Chapter number: 290 **Chapter name:** Medicaid Eligibility - Home and Community-Based Services Waiver (Categories 090, 091, 092, 093, 094, 095 and 096)

Part number: 600 **Part name:** Benefit Description

Amendment description (If filing an amendment): Amending (3) Sections.

Amendment's NMAC citation (If filing an amendment): Sections 10, 12, and 14 of 8.290.600 NMAC.

Are there any materials incorporated by reference?

Yes ☐ **No** ☒

Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? **Yes** ☐ **No** ☐ **Public domain** ☐

Specific statutory or other authority authorizing rulemaking:

42 CFR 435.201 and 435.217

Notice date(s): 5/20/2025

Hearing date(s): 6/23/2025

Rule adoption date: 9/22/2025

Rule effective date: 11/1/2025

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- **Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;**
- **Reasons for any change between the published proposed rule and the final rule; and**
- **Reasons for not accepting substantive arguments made through public comment.**

One public comment was received that opposed the rule change to 8.290.600 due to the removal of ongoing nursing facility level of care (NFLOC) for certain community benefit members. The proposed rule would require an annual level of care and no longer allow for an ongoing NFLOC. The HCA agrees with the commenter and revised the proposed rule to allow for certain community benefit members with chronic conditions to have an ongoing NFLOC.

Issuing authority (If delegated, authority letter must be on file with ALD):
Name:

Kari Armijo

Check if authority has been delegated ☐

Title:

Secretary

Signature: **(BLACK ink only OR Digital Signature)**

DocuSigned by:
Kari Armijo
1BA9E55EAD00493...

Date signed:

9/30/2025

This is an amendment to 8.290.600 NMAC, Sections 10, 12, and 14, effective 11/1/2025.

8.290.600.10 BENEFIT DETERMINATION: Application for the waiver programs is made using the [~~HSD~~] HCA 100 application. Upon notification by the appropriate program manager that an unduplicated recipient (UDR) is available for waiver services, applicants are registered on the income support division (ISD) eligibility system. Applications must be acted upon and notice of approval, denial, or delay sent out within 45 calendar days from the date of application, or within 90 calendar days if a disability determination is required from the disability determination unit (DDU). The eligible recipients must assist in completing the application, may complete the form themselves, or may receive help from a relative, friend, guardian, or other designated representative.

A. Representatives applying on behalf of individuals: If a representative makes application on behalf of the eligible recipient, that representative will continue to be relied upon for information regarding the eligible recipient's circumstances. The ISD caseworker will send all notices to the eligible recipient in care of the representative.

B. Additional forms: The following forms are also required as part of the application process:

(1) the eligible recipient or representative must complete and sign the primary freedom of choice (PFOC) form at the time of allocation; and

(2) the eligible recipient or representative must sign the applicant's statement of understanding at the time waiver services are declined or terminated.

C. Additional information furnished during application: The ISD caseworker provides an explanation of the waiver programs, including, but not limited to, income and resource limits and possible alternatives, such as institutionalization. The ISD caseworker refers potentially eligible recipients to the social security administration to apply for supplemental security income (SSI) benefits. If a disability decision by the DDU is required, but has not been made, the ISD caseworker must follow established procedures to refer the case for evaluation.

[8.290.600.10 NMAC - Rp, 8.290.600.10 NMAC, 1/1/2019; A, 11/1/2025]

8.290.600.12 ONGOING BENEFITS:

A. A complete redetermination of eligibility must be performed annually by the ISD caseworker for each open case.

B. [~~Level of care determinations are made by the utilization review contractor or a member's selected or assigned managed care organization, as applicable to the centennial care, community benefit program. Level of care reviews are required to be completed at least annually except for certain community benefit members whose chronic condition is not expected to improve. These individuals may be eligible for an ongoing nursing facility (NF) level of care (LOC). To qualify for ongoing NF LOC, the community benefit member must have met a NF LOC for the previous three years. The ongoing NF LOC status must be reviewed and approved annually by the managed care organization's medical director and must be supported in documentation by the member's physician. The complete criteria for an ongoing NF LOC can be found in the New Mexico medicaid nursing facility level of care criteria and instructions document~~] Level of care (LOC) determinations are made by the member's selected or assigned managed care organization or by New Mexico medicaid's designated third party assessor or utilization review contractor. LOC reviews are required to be completed annually for home and community-based waiver programs. Certain community benefit members whose chronic condition is not expected to improve may be eligible for an ongoing nursing facility LOC.

C. 90 day reconsideration period: [~~HSD~~] HCA will reconsider in a timely manner the waiver eligibility of an individual who is terminated for failure to submit the renewal form or necessary information, if the individual subsequently submits the renewal form within 90 days after the date of termination without requiring a new application per 42 CFR 435.916(C)(iii).

[8.290.600.12 NMAC - Rp, 8.290.600.12 NMAC, 1/1/2019; A, 11/1/2025]

8.290.600.14 CHANGES IN ELIGIBILITY: If the eligible recipient ceases to meet any of the eligibility criteria, the case is closed following provision of advance notice as appropriate. See Section 8.200.430.9 NMAC and following subsections for information about notices and hearing rights.

A. Non-provision of waiver services: To continue to be eligible for waiver services, an eligible recipient must be receiving waiver services, early and periodic screening, diagnostic and treatment (EPSDT) benefits or managed care services, other than case management, (42 CFR Section 435.217). If at any time waiver services are no longer being provided (e.g., a suspension) and are not expected to be provided for 90 consecutive

days, the recipient is **ineligible** for the waiver category and the case must be closed after appropriate notice is provided by the ISD caseworker.

B. Admission to a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities (ICF-IID): If an eligible waiver recipient enters an acute care hospital, a nursing facility, or an ICF-IID and remains for more than 90 consecutive days, the waiver case must be closed and an application for institutional care medicaid (ICM) must be processed. The eligible recipient is not required to complete a new application if the periodic review on the waiver case is not due in either the month of entry into the institution or the following month. If the waiver recipient is institutionalized within less than 90 consecutive days and still receives waiver services within that time frame, the waiver case is not closed and an application for ICM need not be processed.

C. Reporting changes in circumstances: The primary responsibility for reporting changes in the eligible recipient's circumstances rests with the eligible recipient or [~~his/her~~] their representative. At the initial eligibility determination and all on-going eligibility redeterminations, the ISD caseworker must explain the reporting responsibilities requirement to the eligible recipient or [~~his/her~~] their representative and document that such explanation was given. In the event that waiver services cease to be provided, the case manager or the waiver program manager (or designee) must immediately notify the income support division office of that fact by telephone. The telephone call is to be followed by a written notice to the ISD caseworker.

[8.290.600.14 NMAC - Rp, 8.290.600.14 NMAC, 1/1/2019; A, 11/1/2025]