



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT
NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

II. SUBJECT
8.291.430 NMAC, *Medicaid Eligibility - Affordable Care, Financial Responsibility Requirements*

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
FINAL RULE

V. BACKGROUND SUMMARY
New Mexico Human Services Register Vo. 37, No. 25, dated March 18, 2014, issued the proposed rule, 8.291.430 NMAC, *Medicaid Eligibility - Affordable Care, Financial Responsibility Requirements*.

A public hearing was held on Thursday, May 2, 2014, to receive public comments and testimony on this proposed rule. The Human Services Department (the Department) received no oral testimony and no written or record comments.

The rule will be amended as proposed.

VI. RULE
The above referenced rule will be contained in the Medical Assistance Division Program Policy Manual. This Final Register and rule will be available on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and the corresponding rules will also be posted at on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/medical-assistance-division-1.aspx>. If you do not have internet access, a copy of the rules may be requested by contacting the Medical Assistance Division at 505-827-3152.

VII. EFFECTIVE DATE
This rule will have an effective date June 1, 2014.

VIII. PUBLICATION

Publication of these rules approved by:

Sidonie Squier 5/13/14

SIDONIE SQUIER, SECRETARY
HUMAN SERVICES DEPARTMENT

This is an amendment to 8.291.430 NMAC, Sections 14 and 15, effective June 1, 2014.

8.291.430.14 BASIS FOR DEFINING THE ASSISTANCE UNIT AND BUDGET GROUPS: At the time of application, an applicant or recipient and the department shall identify everyone who is to be considered for inclusion in an assistance unit and budget group. The composition of the assistance unit and budget group is based on the following factors:

A. Assistance group: the assistance unit includes an individual who applies and who is determined eligible under one of the categories of eligibility outlined in 8.291.400.10 NMAC.

B. Budget group: the budget group consists of the following types and will be established on an individual basis:

(1) Tax filer(s): households that submit an application where an individual intends to file for federal taxes or will be claimed as a dependent on federal income taxes for the current year.

(a) The budget group will consist of individuals who are listed on the application as the taxpayer and tax dependents.

(b) If there are multiple taxpayers listed on a single application, the budget group(s) will be established based on who the taxpayer intends to claim as a dependent (including the taxpayer). Only the taxpayer and dependents listed on the application will be considered as part of the budget group.

(c) In the case of a married couple living together, each spouse will be included in the household of the other spouse, regardless of whether they expect to file a joint tax return, a separate tax return or whether one spouse expects to be claimed as a tax dependent by the other spouse.

(d) Exceptions to tax filer rules: the following individuals will be treated as non-filers:

(i) individuals other than a spouse or a biological, adopted, or step child who expect to be claimed as a tax dependent by another taxpayer outside of the household;

(ii) individuals under 19 who expect to be claimed by one parent as a tax dependent and are living with both parents but whose parents do not expect to file a joint tax return; and

(iii) individuals under 19 who expect to be claimed as a tax dependent by a non-custodial parent.

(2) Non-filer(s) are individuals applying for medicaid who have not filed for taxes, do not intend to file for federal taxes, have not been claimed as a dependent on taxes in the current year or who meet an exception to tax filer rules in Paragraph (1) above. The following individuals may be included in a budget group when evaluating eligibility for an ACA related medicaid eligibility category, provided that they live together:

(a) the individual;

(b) the individual's spouse;

(c) parents/step-parents, if the applicant is under the age of 19; or

(d) the individual's biological, adopted and step children under the age of 19.

(3) Households may submit an application that includes both filer and non-filers as defined in Subsections A and B above. The budget group(s) will be organized using the filer and non-filer concepts, and eligibility will be established on an individual basis.

[8.291.430.14 NMAC - Rp, 8.291.430.14 NMAC, A, 6-1-14]

8.291.430.15 INCOME STANDARDS: Verification of income, both earned and unearned, is mandatory for all ACA-related medicaid programs. Verification methods can be found at 8.291.410 NMAC.

A. All income will be calculated as defined by Section 36B of the code to produce a modified adjusted gross income (MAGI). This amount is compared to the FPL for the appropriate medicaid category of eligibility and household size.

B. MAGI is calculated using the methodologies defined in Section 36B(d)(2)(B) of the federal tax code, with the following exceptions:

(1) an amount received as a lump sum is counted as income only in the month received.

(2) scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income.

(3) American Indian/Alaska native exceptions; the following are excluded from income:

(a) distributions from Alaska native corporations and settlement trusts;

(b) distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the secretary of the interior;

- (c) distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from;
- (i) rights of ownership or possession in any lands described in Subparagraph (b) above;
- or
- (ii) federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;
- (d) distributions resulting from real property ownership interests related to natural resources and improvements;
- (i) located on or near a reservation or within the most recent boundaries of a prior federal reservation; or
 - (ii) resulting from the exercise of federally-protected rights relating to such real property ownership interests.
- (e) payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom; and
- (f) student financial assistance provided under the bureau of Indian affairs education programs.
- ~~(g)~~ (4) all social security benefits under Title II will be counted in determining MAGI.
- [8.291.430.15 NMAC - Rp, 8.291.430.15 NMAC, 1-1-14; A, 6-1-14]

TITLE 8 SOCIAL SERVICES
CHAPTER 291 MEDICAID ELIGIBILITY - AFFORDABLE CARE
PART 430 FINANCIAL RESPONSIBILITY REQUIREMENTS

8.291.430.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
 [8.291.430.1 NMAC - Rp, 8.291.430.1 NMAC, 1-1-14]

8.291.430.2 SCOPE: The rule applies to the general public.
 [8.291.430.2 NMAC - Rp, 8.291.430.2 NMAC, 1-1-14]

8.291.430.3 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 or by state statute. See NMSA 1978, Section 27-1-12 et seq.
 [8.291.430.3 NMAC - Rp, 8.291.430.3 NMAC, 1-1-14]

8.291.430.4 DURATION: Permanent.
 [8.291.430.4 NMAC - Rp, 8.291.430.4 NMAC, 1-1-14]

8.291.430.5 EFFECTIVE DATE: January 1, 2014, unless a later date is cited at the end of a section.
 [8.291.430.5 NMAC - Rp, 8.291.430.5 NMAC, 1-1-14]

8.291.430.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for medicaid programs and other health care programs. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
 [8.291.430.6 NMAC - Rp, 8.291.430.6 NMAC, 1-1-14]

8.291.430.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
 [8.291.430.7 NMAC - Rp, 8.291.430.7 NMAC, 1-1-14]

8.291.430.8 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.
 [8.291.430.8 NMAC - Rp, 8.291.430.8 NMAC, 1-1-14]

8.291.430.9 GENERAL NEED DETERMINATION: To be eligible for medicaid, an applicant/recipient must meet specific income standards.
 [8.291.430.9 NMAC - Rp, 8.291.430.9 NMAC, 1-1-14]

8.291.430.10 FEDERAL POVERTY LEVEL (FPL): This part contains the monthly federal poverty level table for use in determining monthly income standards for categories of eligibility outlined in 8.291.400.10 NMAC:

HOUSEHOLD SIZE	100%	133%	138%	190%	240%	250%	300%
1	\$973	\$1,294	\$1,343	\$1,848	\$2,334	\$2,432	\$2,918
2	\$1,311	\$1,744	\$1,809	\$2,491	\$3,146	\$3,278	\$3,933
3	\$1,650	\$2,194	\$2,276	\$3,134	\$3,959	\$4,123	\$4,948
4	\$1,988	\$2,644	\$2,743	\$3,777	\$4,770	\$4,969	\$5,963
5	\$2,326	\$3,094	\$3,210	\$4,420	\$5,582	\$5,815	\$6,978
6	\$2,665	\$3,544	\$3,677	\$5,062	\$6,395	\$6,661	\$7,993
7	\$3,003	\$3,994	\$4,144	\$5,705	\$7,206	\$7,507	\$9,008
8	\$3,341	\$4,444	\$4,611	\$6,348	\$8,018	\$8,353	\$10,023
+1	\$338	\$450	\$467	\$643	\$812	\$846	\$1,015

[8.291.430.10 NMAC - Rp, 8.291.430.10 NMAC, 1-1-14; A, 5-1-14]

8.291.430.11 INCOME STANDARD FOR PARENT CARETAKER ELIGIBILITY: This part contains the fixed monthly standard for individuals eligible for parent caretaker medicaid:

HOUSEHOLD SIZE	MONTHLY INCOME LIMIT
1	\$451
2	\$608
3	\$765
4	\$923
5	\$1,080
6	\$1,238
7	\$1,395
8	\$1,553
+1	\$158

[8.291.430.11 NMAC - Rp, 8.291.430.11 NMAC, 1-1-14]

8.291.430.12 INCOME DISREGARD: A disregard of five percent of 100 percent of the current FPL, according to the individual's budget group size, will be given according to the ACA related category of eligibility. This income disregard will be subtracted from the countable income.

[8.291.430.12 NMAC - Rp, 8.291.430.12 NMAC, 1-1-14]

8.291.430.13 LIVING ARRANGEMENT: All individuals listed on the application are evaluated according to their living arrangement to determine if they can be included in an assistance group or budget group.

A. Extended living in the home: An individual physically absent from the home is a member of the assistance unit or budget group. Extended living in the home includes:

- (1) attending college or boarding school;
- (2) 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 the mentally retarded (ICF-MRs);
- (3) emergency absences: an individual absent from the home due to an emergency, who is expected to return to the household, continues to be a member of the household;
- (4) foster care placements: a child removed from the home by a child protective services agency (tribal, bureau of Indian affairs, or children, youth and families department) will be considered to be living in the home until the adjudicatory hearing; if the adjudicatory hearing results in custody being granted to some other entity, the child will be removed from the assistance unit and budget group;
- (5) a stay in a detention center:
 - (a) regardless of adjudication status the individual continues to be a member of the household but will not be medicaid eligible;
 - (b) once an adjudicated individual leaves the detention center to receive inpatient services in a medical institution, the individual may be eligible during treatment if all other criteria are met; eligibility ceases to exist when the individual returns to the detention center.

B. Extended living in the home also includes:

- (1) residential treatment centers;
- (2) group homes; and
- (3) free-standing psychiatric hospitals.

C. Living in the home with a parent caretaker: To be included in the assistance unit, a child must be living, or considered to be living, in the home of:

- (1) a biological or adoptive or step parent (there is a presumption that a child born to a married woman is the child of the husband); or
- (2) a specified relative who:
 - (a) is related within the fifth degree of relationship by blood, marriage or adoption, as determined by New Mexico statute Chapter 45 - Uniform Probate Code; a relationship based upon marriage, such as "in-law" or "step" relationships, continues to exist following the dissolution of the marriage by divorce or death; and

(b) 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;

(3) a child considered to be living in the home: a child is considered to be part of the assistance unit and budget group as evidenced by the child's customary physical presence in the home; if a child is living in more than one household, the following applies:

(a) the custodial parent is the parent with whom the child lives the greater number of nights; or

(b) if the child spends equal amounts of time with each household, the child shall be considered to be living in the household of the parent with the higher MAGI.

[8.291.430.13 NMAC - Rp, 8.291.430.13 NMAC, 1-1-14]

8.291.430.14 BASIS FOR DEFINING THE ASSISTANCE UNIT AND BUDGET GROUPS: At the time of application, an applicant or recipient and the department shall identify everyone who is to be considered for inclusion in an assistance unit and budget group. The composition of the assistance unit and budget group is based on the following factors:

A. Assistance group: the assistance unit includes an individual who applies and who is determined eligible under one of the categories of eligibility outlined in 8.291.400.10 NMAC.

B. Budget group: the budget group consists of the following types and will be established on an individual basis:

(1) Tax filer(s): households that submit an application where an individual intends to file for federal taxes or will be claimed as a dependent on federal income taxes for the current year.

(a) The budget group will consist of individuals who are listed on the application as the taxpayer and tax dependents.

(b) If there are multiple taxpayers listed on a single application, the budget group(s) will be established based on who the taxpayer intends to claim as a dependent (including the taxpayer). Only the taxpayer and dependents listed on the application will be considered as part of the budget group.

(c) In the case of a married couple living together, each spouse will be included in the household of the other spouse, regardless of whether they expect to file a joint tax return, a separate tax return or whether one spouse expects to be claimed as a tax dependent by the other spouse.

(d) Exceptions to tax filer rules: the following individuals will be treated as non-filers:

(i) individuals other than a spouse or a biological, adopted, or step child who expect to be claimed as a tax dependent by another taxpayer outside of the household;

(ii) individuals under 19 who expect to be claimed by one parent as a tax dependent and are living with both parents but whose parents do not expect to file a joint tax return; and

(iii) individuals under 19 who expect to be claimed as a tax dependent by a non-custodial parent.

(2) Non-filer(s) are individuals applying for medicaid who have not filed for taxes, do not intend to file for federal taxes, have not been claimed as a dependent on taxes in the current year or who meet an exception to tax filer rules in Paragraph (1) above. The following individuals may be included in a budget group when evaluating eligibility for an ACA related medicaid eligibility category, provided that they live together:

(a) the individual;

(b) the individual's spouse;

(c) parents/step-parents, if the applicant is under the age of 19; or

(d) the individual's biological, adopted and step children under the age of 19.

(3) Households may submit an application that includes both filer and non-filers as defined in Subsections A and B above. The budget group(s) will be organized using the filer and non-filer concepts, and eligibility will be established on an individual basis.

[8.291.430.14 NMAC - Rp, 8.291.430.14 NMAC, A, 6-1-14]

8.291.430.15 INCOME STANDARDS: Verification of income, both earned and unearned, is mandatory for all ACA-related medicaid programs. Verification methods can be found at 8.291.410 NMAC.

A. All income will be calculated as defined by Section 36B of the code to produce a modified adjusted gross income (MAGI). This amount is compared to the FPL for the appropriate medicaid category of eligibility and household size.

B. MAGI is calculated using the methodologies defined in Section 36B(d)(2)(B) of the federal tax code, with the following exceptions:

- (1) an amount received as a lump sum is counted as income only in the month received.
 - (2) scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income.
 - (3) American Indian/Alaska native exceptions; the following are excluded from income:
 - (a) distributions from Alaska native corporations and settlement trusts;
 - (b) distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the secretary of the interior;
 - (c) distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from;
 - (i) rights of ownership or possession in any lands described in Subparagraph (b) above;or
 - (ii) federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;
 - (d) distributions resulting from real property ownership interests related to natural resources and improvements;
 - (i) located on or near a reservation or within the most recent boundaries of a prior federal reservation; or
 - (ii) resulting from the exercise of federally-protected rights relating to such real property ownership interests.
 - (e) payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom; and
 - (f) student financial assistance provided under the bureau of Indian affairs education programs.
- ~~(g)~~ (4) all social security benefits under Title II will be counted in determining MAGI.
[8.291.430.15 NMAC - Rp, 8.291.430.15 NMAC, 1-1-14; A, 6-1-14]

8.291.430.16 RESOURCE STANDARDS: Resources as defined in 8.100.130 NMAC are not a factor of eligibility for ACA related medicaid categories.
[8.291.430.16 NMAC - Rp, 8.291.430.16 NMAC, 1-1-14]

HISTORY OF 8.291.430 NMAC:

History of Repealed Material:

8.291.430 NMAC, Financial Responsibility Requirements, filed 9-17-13 - Duration expired 12-31-13.

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 [8.291.430.3 NMAC - Rp, 8.291.430.3 NMAC, 1-1-14]

8.291.430.4 DURATION: Permanent.
 [8.291.430.4 NMAC - Rp, 8.291.430.4 NMAC, 1-1-14]

8.291.430.5 EFFECTIVE DATE: January 1, 2014, unless a later date is cited at the end of a section.
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8.291.430.12 INCOME DISREGARD: A disregard of five percent of 100 percent of the current FPL, according to the individual's budget group size, will be given according to the ACA related category of eligibility. This income disregard will be subtracted from the countable income.

[8.291.430.12 NMAC - Rp, 8.291.430.12 NMAC, 1-1-14]

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- (1) attending college or boarding school;
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- (3) emergency absences: an individual absent from the home due to an emergency, who is expected to return to the household, continues to be a member of the household;
- (4) foster care placements: a child removed from the home by a child protective services agency (tribal, bureau of Indian affairs, or children, youth and families department) will be considered to be living in the home until the adjudicatory hearing; if the adjudicatory hearing results in custody being granted to some other entity, the child will be removed from the assistance unit and budget group;
- (5) a stay in a detention center:
 - (a) regardless of adjudication status the individual continues to be a member of the household but will not be medicaid eligible;
 - (b) once an adjudicated individual leaves the detention center to receive inpatient services in a medical institution, the individual may be eligible during treatment if all other criteria are met; eligibility ceases to exist when the individual returns to the detention center.

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- (1) residential treatment centers;
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- (3) free-standing psychiatric hospitals.

C. Living in the home with a parent caretaker: To be included in the assistance unit, a child must be living, or considered to be living, in the home of:

- (1) a biological or adoptive or step parent (there is a presumption that a child born to a married woman is the child of the husband); or
- (2) a specified relative who:
 - (a) is related within the fifth degree of relationship by blood, marriage or adoption, as determined by New Mexico statute Chapter 45 - Uniform Probate Code; a relationship based upon marriage, such as "in-law" or "step" relationships, continues to exist following the dissolution of the marriage by divorce or death; and

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8.291.430.15 INCOME STANDARDS: Verification of income, both earned and unearned, is mandatory for all ACA-related medicaid programs. Verification methods can be found at 8.291.410 NMAC.

A. All income will be calculated as defined by Section 36B of the code to produce a modified adjusted gross income (MAGI). This amount is compared to the FPL for the appropriate medicaid category of eligibility and household size.

B. MAGI is calculated using the methodologies defined in Section 36B(d)(2)(B) of the federal tax code, with the following exceptions:

- (1) an amount received as a lump sum is counted as income only in the month received.
- (2) scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income.
- (3) American Indian/Alaska native exceptions; the following are excluded from income:
 - (a) distributions from Alaska native corporations and settlement trusts;
 - (b) distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the secretary of the interior;
 - (c) distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from;
 - (i) rights of ownership or possession in any lands described in Subparagraph (b) above;
 - or
 - (ii) federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;
 - (d) distributions resulting from real property ownership interests related to natural resources and improvements;
 - (i) located on or near a reservation or within the most recent boundaries of a prior federal reservation; or
 - (ii) resulting from the exercise of federally-protected rights relating to such real property ownership interests.
 - (e) payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom; and
 - (f) student financial assistance provided under the bureau of Indian affairs education programs.
- (4) all social security benefits under Title II will be counted in determining MAGI.
[8.291.430.15 NMAC - Rp, 8.291.430.15 NMAC, 1-1-14; A, 6-1-14]

8.291.430.16 RESOURCE STANDARDS: Resources as defined in 8.100.130 NMAC are not a factor of eligibility for ACA related medicaid categories.
[8.291.430.16 NMAC - Rp, 8.291.430.16 NMAC, 1-1-14]

HISTORY OF 8.291.430 NMAC:

History of Repealed Material:

8.291.430 NMAC, Financial Responsibility Requirements, filed 9-17-13 - Duration expired 12-31-13.