

Notice of Rulemaking

The Human Services Department (the Department), Medical Assistance Division (MAD), is amending the following rules that are part of the New Mexico Administrative Code (NMAC):

- 8.200.510 NMAC, General Recipient Rules-Resource Standards
- 8.215.500 NMAC, SSI Methodology-Income and Resource Standards
- 8.240.500-QMB-Income and Resource Standards
- 8.281.400 NMAC, Institutional Care-Recipient Policies
- 8.281.500 NMAC, Institutional Care-Income and Resource Standards
- 8.290.400 NMAC, Home and Community-Based Services Waiver-Recipient Policies

NM Statute Section 9-8-6 (2016) authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: October 31, 2017

Hearing Date: November 29, 2017

Adoption Date: Proposed as March 1, 2018

Technical Citations:

Public Law 97-458 (section 4) Amended Public Law 93-134, the Indian Judgement Award Authorization Act

Public Law 113-295, The Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act)

The Department through these rules is revising the excess home equity amount for long-term care services, is incorporating into policy the Achieving a Better Life Experience Act (ABLE Act) which establishes state-run tax advantaged accounts for eligible individuals to use for disability related expenses, adds additional resource and income exclusions for distributions made to Native Americans, and requires interviews at initial application for Institutional Care and Waiver Medical Assistance Program (MAP) eligibility categories. Other changes throughout the rules are to update language, incorporate standardized rule language, and to provide additional clarification in sections of the rules.

8.200.510 NMAC

Section 15-The excess home equity amount for long-term care services is being changed from the federal maximum of \$840,000 down to the federal minimum of \$560,000. The home equity amount will continue to be increased each year by the urban component of the consumer price index as required by the New Mexico Medicaid State Plan.

8.215.500

Section 12-Outdated references were replaced with current NMAC references.

Section 13-A new subsection “H” was added to incorporate language describing the ABLE Act which establishes state-run tax advantaged accounts for eligible individuals to use for disability related expenses. Tax advantaged accounts allow an eligible individual to save and use funds for disability-related expenses.

Section 14-A new subsection “N” was added for ABLE Act exclusions. ABLE account balances are excluded up to \$100,000. Amounts over \$100,000 count towards the \$2,000 SSI resource limit.

A new subsection “O” was added to exclude from resources per capita payments under the Indian Judgement Fund Act of \$2,000 or less.

Section 18-A new subsection “C” was added which states that contributions from any source into an ABLE account is not considered income to an SSI recipient. However, an SSI recipient’s earnings contributed to an ABLE account are considered wages and counted. Gifts to an SSI recipient to be deposited into an ABLE account are considered income unless made directly into an ABLE account.

Section 20-Unearned income exclusions of Subsection D paragraph (6)” were updated to exclude certain income distributions to Native Americans as required by public law. A new paragraph “15” was added to Subsection D that identifies which distributions from an ABLE account are excluded as income of the designated beneficiary.

Section 21-Outdated reference was replaced with current NMAC reference.

8.240.500 NMAC

Section 14-Language was added to clarify Qualified Medicare Beneficiary policy that the standard \$20 disregard is only given if the applicant or recipient lives with an ineligible spouse.

8.281.400 NMAC

Section 10-Language was added to this section to clarify that Level of Care determinations are also made by Managed Care Organizations.

Section 11-Language was added that an interview is required at initial application for Institutional Care Medicaid. The telephonic or in-person interview shall be scheduled within ten working days at a time that is convenient for the applicant. Missed interviews can be rescheduled by that applicant. An application can be denied on the 45th day if the applicant does not contact the Income Support Division or does not appear for the rescheduled interview.

8.281.500 NMAC

Section 7-The acronym for QLTCPI was changed to QSLTCIP (Qualified State Long-Term Care Insurance Partnership) in this section and throughout the rule.

8.290.400 NMAC

Section 11-A new subsection “E” was added to state that an interview is required at initial application for Waiver programs.

This proposed amendments will be contained in 8.200.510 NMAC, 8.215.500 NMAC, 8.240.500 NMAC, 8.281.400 NMAC, 8.281.500 NMAC, and 8.290.400 NMAC.

The register and proposed rule amendments are available on the HSD website at: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have internet access, a copy of the proposed register and rules may be requested by contacting MAD at 505-827-6252.

The Department proposes to implement these rules effective March 1, 2018. A public hearing to receive testimony on these proposed rules will be held in the Hearing Room 1, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico, on November 29, 2017, from 10 a.m. to 12 p.m., Mountain Standard Time (MST).

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at (505) 827-6252. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

Interested persons may submit written to:

Human Services Department
Office of the Secretary
ATTN: Medical Assistance Division Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Recorded oral comments may be left by calling (505) 827-1337. Electronic comments may be submitted to madrules@state.nm.us. Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. MST, on November 29, 2017.