



STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
HUMAN SERVICES REGISTER

I. DEPARTMENT

HUMAN SERVICES DEPARTMENT (HSD)

II. SUBJECT

8.102.461 NMAC-CASH ASSISTANCE PROGRAMS-WORK PROGRAM
ACTIVITIES
8.102.520.9 NMAC-CASH ASSISTANCE PROGRAMS-ELIGIBILITY POLICY-
INCOME
8.102.620 NMAC-CASH ASSISTANCE PROGRAMS-DESCRIPTION OF PROGRAM
BENEFITS-BENEFIT DETERMINATION/GENERAL

III. PROGRAMS AFFECTED

CASH ASSISTANCE PROGRAM

IV. ACTION

PROPOSED AMENDMENTS

V. BACKGROUND

The Human Services Department (HSD) is promulgating proposed regulations for the Cash Program administered by HSD, including its authority to promulgate regulation, and is governed by Chapter 9, Article 8, NMSA 1978 (Repl.1983). Proposing amendments to Section 12 of 8.102.461 NMAC, Section 9 of 8.102.520, and Section 10 of 8.102.620.10.

The Department is proposing to update NMAC sections to reflect changes in policy:

- Section 12 of 8.102.461 NMAC: Excluding income for TANF eligibility participants who receive income from the activity under Subsidized Private Sector Employment;
- Section 9 of 8.102.520 NMAC: Update for pass-through distribution for TANF recipients who collect child support; and
- Section 10 of 8.102.620.10 NMAC: Eliminating sanctioning for TANF participants assigned to limited participation for failure to meet hours or providing a timesheet.

Concise Explanatory Statement:

Regulations issued pursuant to the act are contained in 45 CFR Parts 200-299 and 300-399. Administration of the Human Services Department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).

VI. PUBLIC HEARING

A public hearing to receive testimony on this proposed rule, pursuant to Section 14-4-5.6 NMSA 1978, will be held on Monday, November 14, 2022, 9:00 a.m-10:00 a.m. The hearing will be held virtually through GoTo Meeting, and a phone number will be provided for individuals who would like to participate by telephone.

<https://meet.goto.com/587458453>

You can also dial in using your telephone.

United States: +1 (646) 749-3122

Access Code: 587-458-453

All written comment may be dropped off during the scheduled hearing time at the HSD Sandoval County Field Office, 4363 Jager Dr., Rio Rancho, NM 87144.

Individuals wishing to testify may contact the Income Support Division (ISD), P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling 505-396-0313. This register and proposed regulations are also available on the Human Services Department website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. If you do not have Internet access, a copy of the proposed regulations may be requested by contacting the Income Support Division, P.O. Box 2348, Santa Fe, New Mexico 87504-2348 or by calling 505-396-0313.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-709-5468 or through the New Mexico Relay system, toll free at #711. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, November 14, 2022. Please send comments to:

Human Services Department
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

You may send comments electronically to: HSD-isdrules@state.nm.us

VII. PUBLICATION DATE:

October 11, 2022

VIII. PUBLICATION

Publication of these proposed amendments approved on 9/6/2022

by:

DocuSigned by:



1BA9EB5EAD00499...

**Kari Armijo, Deputy Cabinet Secretary
Signing electronically on behalf of D.S.**

DAVID R. SCRASE, M.D., SECRETARY
HUMAN SERVICES DEPARTMENT

This is an amendment to 8.102.461 NMAC, Section 12 effective 1/1/2023.

8.102.461.12 SUBSIDIZED PRIVATE SECTOR EMPLOYMENT (Core Activity):

A. Employment for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a participant is considered to be subsidized private sector employment.

B. General: New Mexico will use TANF funds to offset the wages of employing a TANF participant for an established period of time. Upon expiration of the subsidized term of employment, the employer is expected to hire the participant. **This income will be excluded for determining TANF eligibility.**

C. Component activities: The following shall be considered as qualified participation hours for subsidized private sector employment.

(1) Employment will be considered subsidized if the employer receives TANF or other public sector funding for an employee.

(2) Public sector paid apprenticeships and paid internships shall be considered subsidized employment.

D. Supervision and documentation: Hours of participation in an employment- related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

[8.102.461.12 NMAC - Rp, 8.102.460.21 NMAC, 04/01/2012; **A, 1/1/2023**]

This is an amendment to 8.102.520 NMAC, Section 9 effective 1/1/2023.

8.102.520.9 EXEMPT INCOME: The following income sources are not considered available for the gross income test, the net income test, and the cash payment calculation:

- A. medicaid;
 - B. food stamp benefits;
 - C. government-subsidized foster care, if the child for whom the payment is received is not included in the benefit group;
 - D. SSI;
 - E. government-subsidized housing or a housing payment; government includes any federal, state, local or tribal government or a private non-profit or for profit entity operating housing programs or using governmental funds to provide subsidized housing or to make housing payments;
 - F. income excluded by federal law (described in 8.139.527 NMAC);
 - G. educational payments made directly to an educational institution;
 - H. government-subsidized child care;
 - I. earned income that belongs to a child 17 years of age or younger who is not the head of household; only earned income paid directly to the child is considered as belonging to the child;
 - J. up to \$50.00 child support disregard and up to \$100.00 for one child and \$200 for two or more children per month, child support pass-through distributed to the benefit group by the CSED;
 - K. an emergency one-time only payment made by other agencies or programs;
 - L. reimbursements for past or future identified expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the benefit group, such as expenses for job or job training related activities, travel, per diem, uniforms, transportation costs to and from the job or training site, and medical or dependent care reimbursements and any reimbursement for expenses incurred while participating in NMW work program activities; reimbursements for normal living expenses, such as rent, mortgage, clothing or food eaten at home are not excluded;
 - M. utility assistance payments such as from low-income home energy assistance program (LIHEAP), low-income assistance program (LITAP), or similar assistance programs.
 - N. subsidized private sector employment: as outlined at Subsection B of 8.102.461.12 NMAC.
- [8.102.520.9 NMAC - Rp 8.102.520.8.I NMAC, 07/01/2001; A, 11/15/2007; A, 07/15/2010; A, 1/1/2023]

This is amendment to 8.102.620 NMAC, Section 10 effective 1/1/2023.

8.102.620.10 CHILD SUPPORT AND NMW NON-COOPERATION PAYMENT SANCTIONS:

A. General:

(1) The benefit group shall be subject to a non-cooperation payment sanction under either or both of the following circumstances:

- (a) failure by a benefit group member to meet NMW requirements; or
- (b) failure by the adult responsible for children included in a benefit group to meet child support enforcement division (CSED) cooperation requirements or both;
- (c) good cause will be evaluated based on the circumstances of each instance of non-cooperation.

(2) **Occurrence of non-cooperation:**

(a) **Child support:**

(i) A benefit group shall be subject to a payment sanction for failure to comply with CSED cooperation requirements, even if the adult required to cooperate with child support requirements is not included in the benefit group.

(ii) Each benefit group member that fails to cooperate with the NMW requirement is subject to a sanction and shall affect the benefit group.

(iii) An occurrence of non-cooperation shall be applied when a sanction progresses to the next sanction level as a result of the noncompliance continuing for three consecutive months without the sanctioned participant reestablishing compliance. Progression to the next sanction level shall be effective in the fourth month.

(iv) A first or second level sanction is considered to be cured upon full cooperation by the sanctioned participant or a sanction shall be reversed based on a hearing decision when the sanction imposed is determined to be invalid.

(b) **NMW:**

(i) A benefit group is subject to a payment sanction when a participant in the benefit group fails to cooperate with the NMW requirements absent a finding of good cause.

(ii) In a two-parent benefit group, each mandatory benefit group member that fails to cooperate with the NMW requirements is subject to a sanction that affects the benefit group's sanction level and payment.

(iii) A participant shall not be sanctioned for more than one NMW requirement element at one time. A participant may be sanctioned for the same or a different NMW requirement element only after the original sanction element is cured or reversed. A first or second level sanction may be cured upon full cooperation by the sanction participant and a sanction shall be reversed based on a hearing decision when the sanction imposed is determined to be invalid.

(iv) A participant with limited participation status may **not** be sanctioned [for failure to meet the work participation requirement] for **failure to meet hours or failure to provide a time sheet rates** as identified on the approved work participation agreement.

(v) An occurrence of non-cooperation shall be applied when a sanction progresses to the next sanction level as a result of the noncompliance continuing for three consecutive months without the sanctioned participant reestablishing compliance. Progression to the next sanction level shall be effective in the fourth month.

(3) **Cumulative sanctions:**

(a) Non-cooperation sanctions are cumulative within the benefit group and shall occur when:

(i) the participant fails to comply with the NMW and child support enforcement requirements;

(ii) more than one participant in the benefit group have failed to comply with either the NMW and child support enforcement requirement.

(b) Cumulative sanctions, whether or not cured, shall remain the property of that benefit group participant who caused the sanction.

(i) A participant with a sanction who leaves a benefit group relieves the benefit group of that participant's sanction status.

(ii) A participant with a sanction who joins another benefit group subjects the new benefit group to any sanction or sanction level that has not been cured prior to joining the benefit group.

(c) The benefit group's cumulative sanctions and benefit level shall be reevaluated when a sanction is cured or reversed.

(4) Progressive sanctions:

(a) Non-cooperation sanctions are progressive to both the participant and to the benefit group and shall progress to the next level for the benefit group in which the sanctioned participant resides when:

(i) a participant fails to establish compliance in three-month increments; or
 (ii) a participant fails to comply with NMW or CSED requirements as a separate occurrence.

(b) A sanction that is not cured for three consecutive months shall progress until compliance is established by the participant.

(c) A participant's compliance cannot reverse the sanction level attributed to the benefit group. Any subsequent sanction is imposed at the next higher level, unless reversed by a hearing decision.

B. The conciliation process:

(1) **When conciliation is available:** Conciliation shall be available to a participant or applicant once during an occurrence of assistance. There must be a period of at least 12 months between occurrences of cash assistance in order for a conciliation to be available again to the benefit group. NMW conciliation and child support conciliation are independent and are counted separately from each other.

(2) Determining that noncompliance has occurred:

(a) The determination of noncompliance with child support shall be made by CSED. The conciliation and sanctioning process for child support noncompliance is initiated upon receipt of notice from CSED that the participant or applicant has failed to cooperate. Under 8.102.420 NMAC, the non-cooperative participant or applicant shall be individually disqualified from participation in the benefit group.

(b) The determination of noncompliance with NMW requirements shall be made by the caseworker. A finding of noncompliance shall be made if:

(i) the participant has not completed an assessment;
 (ii) the participant fails or refuses to complete an IRP;
 (iii) the participant fails or refuses to submit an approvable WPA;
 (iv) the participant fails to submit timely documentation showing

completion of required work hours;

(v) the participant's monthly attendance report shows fewer than the minimum required hours of participation and no other allowable hours of activity can be reasonably attributed by the caseworker towards the monthly participation requirement.

(3) **Initiating conciliation:** Within 10 days of determining that noncompliance exists, the caseworker shall take action to initiate a conciliation, if the participant's conciliation has not been used. A conciliation is initiated by the department or its designee issuing a conciliation notice. CSED shall determine noncompliance and notify the caseworker who shall initiate the conciliation process.

(4) **Conciliation period:** Conciliation gives a participant a 30-calendar day period to correct the current non-compliance for either a NMW participation or CSED requirement.

(a) The conciliation process is established by the department, to address the noncompliance, identify good cause for noncompliance or barriers to compliance and shall occur only once prior to the imposition of the sanction.

(i) The participant shall have ten working days from the date a conciliation notice is mailed to contact the department to initiate the conciliation process. A participant who fails to initiate the conciliation process shall have a notice of adverse action mailed to him after the 10th working day following the date on which the conciliation notice is mailed.

(ii) Participants who begin but do not complete the conciliation process shall be mailed a notice of adverse action 30 days from the date the original conciliation was initiated. The benefit group shall be subject to sanction in the month following the month the notice of adverse action expires.

(b) **Non-cooperation with CSED requirements:** When the participant has initiated the conciliation process, it is the participant's responsibility to contact CSED and to comply with requirements or to request a waiver from CSED due to good cause. If the caseworker does not receive confirmation from CSED within 30 days of issuing the conciliation notice that the participant is cooperating or has requested a waiver for good cause in accordance with 8.50.105.14 NMAC; the conciliation process shall be considered to have failed the benefit group shall be subject to payment sanctioning.

(c) The caseworker shall make the determination whether arrangements have been

made to meet NMW requirements or whether there is good cause for waiving the cooperation requirements. If arrangements to meet the requirement or to waive it have not been made by the 30th day following issuance of the conciliation notice, the conciliation shall be considered to have failed and the participant is subject to sanctioning.

C. Sanctioning:

(1) Within 10 days of determining that a participant has failed to meet a NMW requirement, department or its designee shall issue notice of adverse action that the payment shall be reduced. The payment reduction shall take place with the first payment following expiration of the notice of adverse action.

(2) Notice of adverse action shall apply to all NMW and child support noncompliance sanctions, including those relating to the conciliation process.

(3) A participant who corrects the failure of compliance with NMW or child support enforcement requirements during the notice of adverse action 13-day time period shall not have the sanction imposed against the benefit group or payment amount. The sanction shall not count as a cumulative or progressive sanction, since the reason for the sanction was corrected during the time period of the notice of adverse action and prior to a benefit reduction being imposed. A participant who has failed to meet work participation hours cannot correct the sanction during the notice of adverse action time period.

(4) Failure to comply during the notice of adverse action 13-day time period shall cause the sanction to become effective for a minimum of one month. If the participant later complies with the NMW compliance requirements, as determined by the department, the sanction may be removed, so long as the participant has received at least one month of reduced benefit due to sanction.

(a) A child support enforcement sanction shall be removed after CSED notifies the caseworker that the participant is in compliance with child support enforcement requirements.

(b) A NMW sanction shall be removed after the caseworker receives verification that the participant has completed an assessment; or has completed an IRP; or has completed a WPA that indicates the appropriate number of monthly hours in work activities; or has met NMW participation hours for at least 30 days; or has good cause to waive work participation requirements.

D. Sanction levels:

(1) First-level sanction:

(a) The first level sanction for failure to comply shall result in a sanction of twenty-five percent of the standard of need. The benefit group shall be given notice of the imposition of the sanction.

(b) A first level sanction that is not cured for three consecutive months shall progress to a second level sanction.

(2) Second-level sanction:

(a) The second level of sanction for failure to comply shall result in a decrease of fifty percent of the standard of need. The second level shall be initiated by:

(i) failure to comply with NMW participation or child support enforcement requirements for more than three months; or

(ii) a second occurrence of noncompliance with a NMW or CSED requirement by a participant; or

(iii) failure of a participant to comply with both CSED and NMW participation requirements simultaneously. The group shall be given concurrent notice of imposition of the second-level sanction.

(b) A second level sanction that is not cured for three consecutive months shall progress to the third level as described below.

(3) Third-level sanction:

(a) The third sanction level is case closure for a period of not less than six months. The group shall be given notice of adverse action prior to imposition of the sanction.

(i) Once a participant is sanctioned at the third level, any subsequent occurrence of failure to comply with NMW or CSED requirements shall immediately result in a third level sanction, and case ineligibility for six months.

(ii) The TANF grant will be counted as unearned income for SNAP benefits for the six month period of ineligibility in accordance with 8.139.520 NMAC.

(b) TANF applications received after a six month closure period will be reviewed for eligibility.

(i) Based on eligibility the TANF will be approved and all mandatory members will be required to meet the NMW compliance requirements set forth in 8.102.460 NMAC;

(ii) If ISD determines the applicant is still non-compliant with CSED, the

sanction will remain and the application will be denied.

E. Sanctions by other states or other programs: Participants in sanction status for failure to participate in other programs, such as the food stamp E&T program, or another state's or tribal TANF program, shall not carry that sanction status into NMW.

F. Sanctions with respect to voluntary participants: A voluntary participant is not subject to sanction for failure to participate, but shall be removed from the NMW and lose eligibility for support services

G. Good cause:

(1) Good cause applies to timely completion of assessment, IRP, WPA, work participation rates, and cooperation with the child support enforcement division.

(2) Good cause for failure to meet the NMW requirements.

(a) Good cause may be considered to exist for no more than 30 days in the event of:

(i) family death;

(ii) hospitalization;

(iii) major injury to the participant or a benefit group member for whom the participant has been the primary caretaker;

(iv) reported domestic violence;

(v) catastrophic event; or

(vi) it is shown the department did not provide the participant reasonable assistance to complete the assessment, IRP, or WPA.

(b) The participant must meet with the NMW service provider prior to the end of the 30-day period to establish a WPA for the full participation standard beginning on day 31 or must request a limited work participation status prior to the end of the 30-day period. The participant may be subject to sanction for failure to complete a WPA if a new WPA has not been established by day 31.

(i) A participant with good cause for failure to meet the NMW requirements, who expects the cause of failure to continue for more than 30 days, must contact the department to review the participant's circumstances.

(ii) Under no conditions shall good cause be granted for more than 30 days during any given reporting period.

(3) Good cause shall be considered when the department has failed to submit a notice in accordance with the requirements of adverse action notices, to the participant or provide available support services that would adversely affect the participant's ability to timely meet work participation requirements.

(4) Good cause for refusal to cooperate with the child support enforcement requirements: In some cases it may be determined by the CSED that the TANF/NMW applicant's/recipient's refusal to cooperate is with good cause in accordance with 8.50.105.14 NMAC. Any person requesting a good cause exemption to a TANF/NMW requirement to cooperate must complete a request for a good cause exemption on a form provided by the CSED and provide any documentation requested by CSED. The request for a good cause exemption will be reviewed by the CSED and the requestor will be informed of the decision in writing. The requestor's failure or refusal to complete the form or provide the requested documentation will result in an automatic denial of the request. The department may offer assistance to complete the form or obtain the necessary documentation, as appropriate.

(5) It is the applicant's/recipient's responsibility to inform the department if they are unable to meet the NMW compliance requirements or CSED cooperation requirements.

[8.102.620.10 NMAC - Rp 8.102.620.10 NMAC, 07/01/2001; A, 02/14/2002; A, 11/15/2007; A, 04/01/2012; A, 07/01/2013; A, 09/01/2017; A, 1/1/2023]