



STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
HUMAN SERVICES REGISTER

I. DEPARTMENT

HUMAN SERVICES DEPARTMENT

II. SUBJECT

GENERAL PROVISIONS FOR PUBLIC ASSISTANCE PROGRAMS

III. PROGRAMS AFFECTED

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)
STATE FUNDED CASH ASSISTANCE PROGRAMS
MEDICAL ASSISTANCE PROGRAMS
LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

IV. ACTION

FINAL REGULATIONS

V. BACKGROUND

The proposed changes to the NMAC place the New Mexico Income Support Division (ISD) in compliance with federal and state laws and regulations. A public hearing was held on July 1, 2013, to receive public comments on the proposed rules. There were two attendees and written comments were received from four different agencies. There were several formatting and re-numbering changes that have been incorporated and adopted as final.

The written comments received address different sections of the proposed amendments to 8.100.100.14-15 NMAC and 8.100.110.8-11 NMAC, and the repeal and replacement of 8.100.140 NMAC and 8.100.970 NMAC.

Amendments to 8.100.100 NMAC – General Operating Procedures

In response to the proposed amendments to 8.100.100.14 and 15 NMAC, comments were received to clarify who is allowed to review the case record and how one goes about reviewing the case record. The Department considered these comments and has replaced “legal guardian” with “authorized representative” as defined in 8.100.970 NMAC, since a “legal guardian” is more rigidly defined than “authorized representative.” Comments

were received to remove the requirement of an applicant or recipient of benefits to submit formal documentation when designating an “authorized representative.” The Department has considered these comments, and has decided not to make any changes due to the confidential nature of the documents contained in the case record. Formal documentation can come in many forms, including but not limited to, the designation of the authorized representative on an application for benefits, an approved power of attorney, or the entry of appearance by an attorney and must accompany the completion of the Request for Access to Case Record form.

Another comment was received requesting clarification on what will happen to original documents that are submitted to the local ISD field office by mail or drop box after they are scanned into the Department’s secure electronic data management system. The Department has considered this comment and has modified the language of 8.100.100.14(A) NMAC. All original documents mailed to or left with the local ISD field office will be photocopied and returned to the client by mail. The copied documents will be scanned into the Department’s secure electronic data management system and destroyed once the scan is successfully completed.

Lastly, two comments were received requesting that state and federal laws, regulations, policy and procedural guidance, and other program materials continue to be made available in print at each local ISD field office, rather than electronically online. The Department has considered this comment and has added language to 8.100.100.15 NMAC allowing for the disbursement of applicable federal and state laws and regulations and internal policy and procedural guidance in the Summary of Evidence (SOE) for use in a fair hearing pursuant to 8.100.970.10(F) NMAC.

Amendments to 8.100.110 NMAC – General Operating Policies - Applications

In response to the proposed amendments to 8.100.110.8-11 NMAC, the Department received two comments. The first comment received requested clarification of whether an applicant for Supplemental Nutrition Assistance Program (SNAP) benefits who has been denied expedited service would be informed of their right to request a fair hearing. Upon review of federal regulations at 7 CFR 273.15(d)(1), applicants who are denied expedited service are eligible for an Agency Review Conference (ARC) to be held within two (2) days unless a later date is requested by the applicant, not a fair hearing. Therefore, no changes will be made to 8.100.110(A)(1)(b) NMAC, other than grammatical changes.

The second comment received requested that the timeframe for the Department to mail an application or provide the online web address to a household requesting such information remain in 8.100.110.9(B) NMAC. The Department has considered this comment and has determined through a review of 7 CFR 273.2(c)(1) that an applicant has the right to file an application on the same day it contacts the office during business hours, and he/she can do so in person, by fax or electronically; however, 7 CFR 273.2(c)(2) allows the Department to mail an application to a household requesting one on the same day a request is received. Therefore, the Department has added language to clarify that an application will be mailed, faxed or hand delivered and the applicant will be provided the

approved Department web portal address (for online applications), as indicated by the requestor, on the same day the request is received by the Department.

Repeal and Replacement of 8.100.140 NMAC – General Operating Policies – Case Files

In response to the proposed changes to 8.100.140.8-11 NMAC, the Department received two comments. The first comment received requested clarification on what will happen to original documents that are submitted to the local ISD field office by mail or drop box after it is scanned into the Department's secure electronic data management system. The Department has considered this comment and has modified the language of 8.100.140.8(A) NMAC. All original documents mailed to or left with the local ISD field office will be photocopied and returned to the client by mail. The copied documents will be scanned into the Department's secure electronic data management system and destroyed once the scan is successfully completed.

The second comment received requested that the Department rethink its decision to remove the home or field office provision due to applicants with mobility or transportation issues being inadvertently excluded from participating in the public assistance programs administered by the Department. The Department has considered this comment and has determined that no further changes will be made to 8.100.140.10(C) NMAC, other than re-numbering and formatting changes. Furthermore, 7 CFR 273.2(e)(2) allows for the Department to waive the face-to-face interview required in paragraph 7 CFR 273.2(e)(1) "in favor of a telephone interview on a case-by-case basis because of household hardship situations as determined by the State agency. These hardship conditions include, but are not limited to: illness, transportation difficulties, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in an in-office interview."

Repeal and Replacement of 8.100.970 NMAC – Oversight – Program Participation Hearings

In response to the proposed changes to 8.100.970 NMAC, comments were received to update the "Definitions" section, to clarify the definition of "Agency Review Conference," "Authorized Representative," and "Claimant." The Department considered these comments and additional language was included to clarify the definitions of "Agency Review Conference (ARC)" at 8.100.970.7(A) NMAC, "authorized representative" at 8.100.970.7(B) NMAC and "claimant" at 8.100.970.7(C) NMAC. One comment was received requesting to add the definition of "Notice of Adverse Action," however, the Department decided against adding the definition. Comments were received to remove the requirement of an applicant or recipient of benefits to submit formal documentation when designating an "authorized representative" at 8.100.970.7(B) NMAC. The Department has considered these comments, and has decided not to make any changes due to the confidential nature of the documents contained in the case record. Formal documentation can come in many forms, including but not limited to, the designation of the authorized representative on an application for benefits, an approved

power of attorney, or the entry of appearance by an attorney and must accompany the completion of the Request for Access to Case Record form.

Comments were received requesting modification of 8.100.970.8 NMAC that includes modifying 8.100.970.8(A) NMAC to retain some of the deleted language and to clarify who can request a fair hearing. The Department has considered the comments and revised 8.100.970.8(A) NMAC to clarify that any “household aggrieved by an adverse action taken by the Department” may request a fair hearing and no other changes were made to subsection A.

One comment was received requesting to remove the requirement of an applicant or recipient of benefits to submit formal documentation when designating an “authorized representative” at 8.100.970.8(B) NMAC. The Department has considered the comment, and has decided not to make any changes due to the confidential nature of the documents contained in the case record. Formal documentation can come in many forms, including but not limited to, the designation of the authorized representative on an application for benefits, an approved power of attorney, or the entry of appearance by an attorney and must accompany the completion of the Request for Access to Case Record form.

Several comments were received requesting to modify 8.100.970.8(C) NMAC. The first comment received requested that “claimant” be changed to “household” or “applicant.” The Department has considered this comment and has changed “claimant” to “household.” Two comments were received requesting modification of 8.100.970.8(C)(4) NMAC to clarify what documents in the case record are prohibited from release. The Department has considered this comment and added language to clarify what documents the claimant may receive and how to request access to the case record once a fair hearing is requested in accordance with 8.100.970.8(B) NMAC. Comments were received requesting modification of 8.100.970.8(C)(6) NMAC to clarify when, and if, benefits should be continued when the household has requested a fair hearing within the thirteen (13) day timeframe to be eligible for continued benefits. The Department has considered this comment and added language that clarifies when, and if, the benefits may be continued when a household requests a fair hearing within the required timeframe. The household may elect to continue SNAP benefits or, if there's no indication that the client has waived a continuation of SNAP benefits, it will assume a continuation of SNAP benefits is desired pursuant to federal regulation at 7 CFR 273.5(k). Sec. 402 of the Social Security Act allows for states to submit a “State Plan” that outlines the administrative or appeal process for the Temporary Assistance for Needy Families (TANF), and the “State Plan” allows for the continuation of TANF benefits if the household requests a fair hearing within the thirteen (13) day timeframe. If the client requests a fair hearing within the required timeframe and does not want to continue benefits pending the outcome of the fair hearing, the household must indicate to the Department, either verbally or in writing, that it does not want continued benefits; otherwise, benefits will be continued pending the outcome of the fair hearing.

Additional comments were received requesting clarification of the proposed language “Upon the filing of a notice of appearance in a matter with the fair hearing bureau, the Department shall forward all hearing-related documentation to the claimant’s legal

counsel” at 8.100.970.8(D) NMAC. The Department has considered this comment, and has removed this language from 8.100.970.8(D) NMAC and added language to 8.100.970.8(C)(4) NMAC that clarifies that an authorized representative (as defined in 8.100.970.7(B) NMAC) should receive a copy of the SOE and any document submitted to the Fair Hearings Bureau for the fair hearing once it is known to the Department that an authorized representative has been designated by the claimant. The question of who the responsible party will be to provide the documents is governed by internal policy and procedural guidance.

More comments were received requesting modification of the proposed amendment to 8.100.970.8(E). Two comments were received requesting clarification of the proposed amendment to 8.100.970.8(E)(1) NMAC that allows for notices to be provided by “mail or electronic mail.” The Department has considered this comment and has modified the language to 8.100.970.8(E) NMAC that allows for the household to choose the method of receiving notices, either by mail or in electronic format. There were several comments received requesting modification of 8.100.970.8(E)(6) NMAC that allows for the claimant to provide its own interpreter and give only two (2) days advance notice to request an interpreter be provided by the Department. The Department has considered this comment and has removed language referring to the claimant using its own interpreter for a fair hearing, and has specified that all requests be made within ten (10) days, not two (2) days. Additional language was added to include requests for special accommodations for a disability and a speech/sign language interpreter, not only a language interpreter, and allow for a postponement of the fair hearing in accordance with 8.100.970.10(B) NMAC, if an interpreter is not requested timely.

One comment was received to clarify the proposed 8.100.970.8(F) NMAC. The Department has considered this comment and included additional citations to the regulations for each ISD administered program’s rules on mass changes.

Comments were received requesting modification of 8.100.970.8(G) and (H) NMAC to clarify when, and if, benefits should be continued when the household has requested a fair hearing within the thirteen (13) day timeframe to be eligible for continued benefits. The Department has considered this comment and added language that clarifies when, and if, the benefits may be continued when a household requests a fair hearing within the required timeframe. The household may elect to continue SNAP benefits or, if there's no indication that the client has waived a continuation of SNAP benefits, it will assume a continuation of SNAP benefits is desired pursuant to federal regulation at 7 CFR 273.5(k). Sec. 402 of the Social Security Act allows for states to submit a “State Plan” that outlines the administrative or appeal process for TANF and the “State Plan” allows for the continuation of TANF benefits if the household requests a fair hearing within the thirteen (13) day timeframe. If the client requests a fair hearing within the required timeframe and does not want to continue benefits pending the outcome of the fair hearing, the household must indicate to the Department, either verbally or in writing, that it does not want continued benefits; otherwise, benefits will be continued pending the outcome of the fair hearing.

Next, comments were received for modification of the proposed 8.100.970.9 NMAC. The first set of comments received requested that the proposed amendment to 8.100.970.9(B)(2) NMAC that takes out the specified timeframes to issue a fair hearing decision be reconsidered. The Department has considered these comments and has modified the language of 8.100.970.9(B)(2) NMAC and added subparagraphs (a)-(d) to include the specified timeframes the Department has to issue a final fair hearing decision for each ISD administered public assistance program.

A comment was received requesting the addition of “in whole or in part” after the word “denied” in 8.100.970.9(C)(1). The Department considered this comment and made the requested change. The same commenter wanted modification of 8.100.970.9(C)(2) NMAC that includes services that are not provided or denied. The Department has considered this comment and clarified 8.100.970.9(C)(2) to include assistance or services that are “reduced, modified, terminated, suspended or not provided” as reasons for requesting a fair hearing.

Several comments were received requesting modification of 8.100.970.9(D) NMAC to eliminate the dismissal of a fair hearing request that is not submitted within the ninety (90) day timeframe and allowing for a “good cause” exception to the rule. The Department has considered these comments and pursuant to 7 CFR 273.15(j)(1)(i), the Department is allowed to dismiss any request for hearing if not submitted within the allotted timeframe (i.e. 90 days). Sec. 402 of the Social Security Act allows for states to submit a “State Plan” that outlines the administrative or appeal process for TANF and the “State Plan” specifically states that the household must request a fair hearing no later than ninety (90) days; therefore, no changes will be made to this paragraph. One comment was received requesting modification of the proposed amendment to allow for an oral withdrawal of a fair hearing request at 8.100.970.9(D)(2) NMAC. The Department has considered this comment and language has been modified to clarify the process when a claimant verbally withdraws its request for hearing. Requests for hearing can be withdrawn verbally pursuant to 7 CFR 273.15(j)(1)(iv) and Sec. 402 of the Social Security Act that allows for states to outline the administrative or appeal process for TANF. Another comment was received requesting that 8.100.970.9(D)(6) and (7) NMAC be clarified, so that Fair Hearings Bureau clerical staff are not allowed to deny or dismiss requests for fair hearings and any denials or dismissals should be done in writing. The Department has considered this comment and no changes will be made; however, additional internal policy and procedural guidance may be provided to the Fair Hearings Bureau and ISD staff, so that it is clear which Fair Hearings Bureau staff (i.e. Hearing Officer) is allowed to deny or dismiss requests for a fair hearing.

Additional comments were received requesting that 8.100.970.9(E)(3) NMAC be amended to include additional circumstances that would be considered “good cause” and remove the ten (10) day time limit to request that “good cause” be granted. The Department has considered this comment and no further changes will be made, since 8.100.970.9(E) NMAC allows for the Fair Hearings Bureau to determine “good cause” at its discretion. The time limit for requesting “good cause” for failing to appear at a fair hearing will remain.

Further, comments were received requesting to clarify language in 8.100.970.10 NMAC. The first set of comments received requests modification of 8.100.970.10(A) NMAC to clarify what is needed in the Notice of Hearing. The Department has considered these comments and one change was made to 8.100.970.10(A)(4) NMAC to include the claimant's right to "receive a copy of the SOE and any document, not specifically prohibited by federal and state laws and regulations, contained in the claimant's case record in order to prepare for the fair hearing in accordance with subsection B of 8.100.970.8 NMAC."

Several comments were received requesting clarification of 8.100.970.10(B) NMAC and the timeframes for requesting a postponement and how it affects the issuance of the final fair hearing decision. For SNAP cases, 7 CFR 273.15(c)(4) allows a household to request and receive a postponement of a hearing "not to exceed 30 days." It does not allow for a longer period of time; therefore, no changes will be made to subparagraph (1). For TANF cases, although the issue of postponements is not specifically covered, Sec. 402 of the Social Security Act allows for states to outline its administrative or appeal process for TANF. Therefore, no changes will be made to subparagraph (2). Additional comments requested that the Department not be allowed to request a postponement or postponements be charged to the Department under certain circumstances; however, after much consideration, the Department has chosen not to make any further changes to 8.100.970.10(B) NMAC because the proposed change will not affect the fair hearing decision timeframes since any granted postponement must stay within the time limitations outlined in the federal and state laws and regulations.

One comment was received requesting that 8.100.970.10(D) NMAC be modified to include a privacy statement when a household is involved in a group hearing. The Department has considered this comment and has added a sentence regarding the confidentiality of records, and it is also noted in 8.100.970.11(F)(1) NMAC.

A couple of comments were received requesting modification of 8.100.970.10(E) NMAC. The Department has considered these comments and the language in subsection E has been modified to specify that a claimant may opt to have an ARC at the time the household requests the fair hearing in person at an ISD field office or by phone with a local ISD field office worker, along with other grammatical changes.

Several comments were received to rescind the proposed 8.100.970.10(F) NMAC that replaced the requirement of the Department to submit the SOE "within seven (7) days of the hearing request" to "no less than ten (10) days prior to the hearing" citing Goldberg v. Kelly, 397 U.S. 254 (1970). The Department has considered these comments and the Office of General Counsel (OGC) has reviewed the Supreme Court case and has concluded that Goldberg v. Kelly does not require the Department to change the proposed language. Moreover, Sec. 402 of the Social Security Act allows for states to outline its administrative or appeal process for TANF. Therefore, the Department has decided to keep the proposed language at 8.100.970.10(F) NMAC that means an SOE must be submitted no less than ten (10) days prior to the date of the fair hearing. Moreover, the "hearing officer" may exclude the SOE or may postpone or continue a fair hearing, if an SOE is not submitted timely in a manner that the timeframes set forth in

8.100.970.9(B)(2) NMAC are met. Finally, the language in subparagraphs (1)-(5) were modified for clarification of what is needed and what will be provided in an SOE.

Then, comments were received that requested clarification of 8.100.970.11 NMAC. A comment was received requesting that the removal of the word “all” from 8.100.970.11(A) NMAC be reconsidered. The Department has considered this comment and has modified subsection A, and will leave in “all” in accordance with 7 CFR 273.15(p)(6) and Sec. 402 of the Social Security Act that allows for states to outline its administrative or appeal process for TANF.

One comment received requested clarification of whether or not a “hearing officer” may discuss the specifics of a fair hearing with other members of the Fair Hearings Bureau. The Department has considered this comment and modified 8.100.970.11(B)(4) NMAC to allow the “hearing officer” to discuss a pending fair hearing with members of the Fair Hearings Bureau, but no one else “unless all parties or their authorized representatives are present.”

Another comment was received to modify 8.100.970.11(C) NMAC to allow the “hearing officer” to recuse himself if an allegation of bias has been raised. The Department has considered this comment and has modified the language to include instances where allegations of bias have arisen, and a withdrawal of the “hearing officer” is considered so that the deadline for the issuance of a final fair hearing decision is not compromised.

Several comments were received requesting that the language, “unreliable or of little probative value” to 8.100.970.11(F) NMAC be removed and not be adopted as final. The Department has considered this comment and “unreliable and of little probative value” has been removed. Moreover, the following sentence was not removed from 8.100.970.11(F) NMAC as proposed: “Evidence that is not available to the claimant, due to availability or confidentiality, may not be presented to the hearing officer or used in making the final hearing decision.” Instead, it was modified to read as follows: “Evidence that is not available to the claimant may not be presented to the hearing officer or used in making the final fair hearing decision, unless the unavailability of evidence was in accordance with federal and state laws and regulations.”

Additional comments were received that requested to modify 8.100.970.11(I) NMAC because the description of “record of the hearing” did not comport to federal regulations. The Department has considered these comments and modified the language in accordance with 7 CFR 273.15(q)(1) and Sec. 402 of the Social Security Act that allows for states to outline its administrative or appeal process for TANF.

Next, comments were received that requested modification of 8.100.970.12 NMAC. Subsection A was modified for clarification’s sake. A comment was received requesting clarification or removal of 8.100.970.12(D) NMAC that allows for the “hearing officer” to grant a continuance. The Department has considered this comment and has modified the language for clarification’s sake, but will not remove subsection D. The granting of a continuance is subject to the same limitations set forth in 8.100.970.10(B) NMAC. Lastly, comments were received requesting clarification or the removal of

8.100.970.12(E) NMAC due to possible due process violations if the fair hearing record is left open to allow additional evidence to be submitted after a fair hearing is completed. The Department has considered these comments and has modified the language, so that only additional evidence corresponding to testimony heard during the fair hearing may be requested to be submitted and the fair hearing may be continued for a date and time in order for the non-producing party to respond to the additional evidence on the record, as long as, it does not result in a violation of the limitations set forth in 8.100.970.10(B) NMAC.

Further, several comments were received that requested clarification or modification of 8.100.640.13 NMAC. Two comments were received requesting that the proposed amendment to the opening statement be removed because it is unclear and would not allow for the denials and dismissals of fair hearing requests made by the Fair Hearings Bureau to be appealed to the appropriate Division Director. The Department has considered this comment and has decided to not include the proposed language because there are some denials and dismissals that are subject to judicial review; however, the language has been modified for clarity's sake. The last comment received requested that the Department not adopt proposed language to eliminate the provision that states the final fair hearing decision be based solely on the fair hearing record. The Department has considered this comment and has modified 8.100.970.13(D) NMAC to include similar language, so that it is known that the final fair hearing decision must be based solely on the hearing record pursuant to 7 CFR 273.15(q)(1) and Sec. 402 of the Social Security Act that allows for states to outline its administrative or appeal process for TANF.

No comments were received to modify 8.100.970.14 NMAC. However, some grammatical changes were made to this section for clarification's sake.

No comments were received to modify 8.100.970.15 NMAC. However, this section was outdated and changes were made taking into account that there are different steps of judicial review depending on the category of assistance being appealed.

Finally, several comments were received to clarify sections of 8.100.970 NMAC due to federal and state laws and regulations governing the services provided by the medical assistance programs administered by the Department. The Department has considered these comments and additional language was added to several sections throughout this regulation clarifying that fair hearings for the eligibility of the medical assistance programs administered by the Department is governed under 8.100.970 NMAC; however, the termination, modification, reduction or suspension of medical assistance program services are governed by the applicable federal and state laws and regulations, including 8.352 et seq. NMAC, not 8.100.970 NMAC.

VI. FINAL REGULATIONS

This register and proposed regulations are available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/registers/ISDRegisters.html>. If you do not have Internet access, a copy of the final regulations may be requested by contacting the Income Support Division Policy and Program Development Bureau at (505) 827-7219.

VII. EFFECTIVE DATE

November 27, 2013

VIII. PUBLICATION

Publication of these regulations approved on Nov 6 2013 by:



SIDONIE SQUIER, SECRETARY
HUMAN SERVICES DEPARTMENT

This is an amendment to 8.100.100 NMAC, Sections 14 and 15, effective 11/27/2013

8.100.100.14 CLIENT INFORMATION

A. ISD case record

(1) ISD case records, consisting of forms, records, narrative material, correspondence and documents, are ~~maintained in the ISD county offices~~ scanned into electronic format and maintained in the department's secure electronic data management system. Documents submitted in person will be electronically scanned and returned to the individual. Original documents mailed to or left with the office will be photocopied and the originals mailed back to the client at his/her last known address known to the department. The copied documents will be electronically scanned and destroyed once successful completion of a scan into electronic format is confirmed. The ~~purpose of the record is to document~~ case record documents the current and historical eligibility of a recipient group and thereby to establish the validity of decisions to ~~provide~~ approve or deny assistance.

(2) Case records are the property of ~~HSD~~ the department and are established and maintained solely for use in the ~~administration of HSD's~~ public assistance programs administered by the department. Information contained in the ~~records~~ case record(s) is confidential and is released only under the limited circumstances and conditions ~~described in 8.100.100.13-15 NMAC~~ as provided in federal and state laws and regulations, including 8.100.100 NMAC, Sections 13 through 15. Case records and their contents must remain in the possession of ~~HSD,~~ the department, its contractors, or approved federal employees ~~unless a court orders its release~~. Copies of case records may be released in accordance with federal and state laws and regulations or pursuant to a court order.

(3) ~~ISD2~~ Electronic eligibility system information: ~~Automated~~ Client information stored on ~~ISD2 (the department's automated system for client eligibility)~~ the department's electronic eligibility system is subject to the same guidelines for release of information as the ~~ISD county~~ department's case record.

B. Persons with access to confidential information

(1) Client: The name of an ~~individual~~ individual(s) providing confidential information to the department regarding a client is not released to a client or his or her authorized representative. The release of all other case information is subject to the following conditions:

(a) A client or his or her authorized representative must complete a request for access to a case record ~~form,~~ each time ~~he/she~~ he or she wishes to have access to the case record. If the client wishes to have ~~a~~ his or her authorized representative review the record in ~~his/her~~ his or her absence, the client must ~~complete the proper form and indicate the representative's name~~ provide formal documentation authorizing the named individual(s) to access the identified case information for a specified purpose and time frame. This includes ~~individuals~~ an individual(s) acting as the client's authorized representative in a fair hearing. ~~No one may sign the form on the client's behalf.~~ Only the client or the client's authorized representative may authorize another individual(s) to review the record.

(b) The record must be reviewed in the presence of the county director or designee.

(c) If a client disagrees with information contained in the case record, ~~he/she~~ he or she may make a written rebuttal which is made part of the case record. ~~No contested~~ Contested material may not be removed from the case record.

(2) Inquiries on client's behalf: Inquiries made ~~as the result of a client's complaint regarding his/her~~ on behalf of a client regarding eligibility for or amount of assistance received are treated as coming from private individuals, regardless of whether they come from a private citizen, elected official, or public or private agency. ~~The letter of complaint, or a signed form permitting ISD to release information, must be received before the inquiry can be answered.~~ The department must receive formal documentation from the client or his or her authorized representative permitting the release of information.

(3) Department employees: Confidential information is available to ~~HSD~~ employees or agents of ~~HSD~~ the department who need it in connection with the ~~administration of HSD and its~~ various services and public assistance programs administered by the department. This includes field and central office staff, representatives of the ~~HSD~~ child support enforcement ~~bureau~~ division (CSED) and medical assistance division ~~as well as~~ (MAD), and private firms or other agencies under contract with ~~HSD who~~ the department that perform work or provide services related to ~~financial~~ public assistance programs. Confidential information is also available to employees of the federal government concerned with the ~~administration of ISD~~ public assistance programs administered by the department.

(4) Non-HSD Non-department employees: Confidential information about applicants for and recipients of ~~financial~~ public assistance may be released to other agencies or individuals including law enforcement officers ~~who~~ that meet all of the following standards:

(a) agency or individual is involved in the administration of a federal or a federally-assisted program ~~[which] that~~ provides assistance in cash, in kind or in services, directly to individuals on the basis of need;

(b) information is to be used for the purpose of establishing eligibility, determining amount of assistance or for providing services for applicants or recipients;

(c) agency or individual is subject to standards of confidentiality comparable to those of ~~[HSD]~~ the department; and

(d) agency or individual has actual or implied consent of the applicant or recipient to release the information; in an emergency, information may be released without permission, but the client must be informed of its release immediately thereafter; consent may be considered as implied if a recipient or member of the assistance group has made application to the inquiring agency for a benefit or service.

(5) **Funding agencies/auditors:** ~~[HSD]~~ The department's public assistance programs' funding agencies and auditors may have access to and use of client information and is subject to the confidentiality requirements specified above and [to all other relevant statutes and restrictions] in accordance with federal and state laws and regulations.

(6) **Employers:** To claim a tax credit on wages paid to ~~[financial]~~ cash assistance recipients, as provided under the Revenue Act of 1978, an employer may request and receive information from ~~[HSD]~~ the department as to whether an employee is a recipient who meets the criteria for either ~~[(1)]~~ (a) the welfare tax credit (NMW recipient during the three (3) month period consisting of the month hired and the two (2) months immediately preceding the date of hire); or ~~[(2)]~~ (b) the targeted jobs tax credit (recipient of ~~[general assistance]~~ GA who received GA for at least ~~[30]~~ thirty (30) days, ending within the ~~[60-day]~~ sixty (60) day period which ends on the hiring date). Such releases are to be made on a case by case basis and must be accompanied by a consent to release information signed by the client.

C. Medical records: Medical reports and medical information in ~~[HSD's]~~ the department's possession, regardless of how they were obtained, may not be shown to a client, unless they are ~~[relevant to]~~ released as part of a fair hearing. Because of the potentially upsetting nature of the facts contained in some reports and because a physician's knowledge is frequently necessary to interpret those facts, a client ~~[is always]~~ shall be referred to his/her physician regarding any questions.

D. Court proceedings

(1) Program-related court cases

(a) Criminal or civil court proceedings involving the establishment of paternity and enforcement of child and medical support for recipients, prosecution for fraud, suits for recovery of fraudulently obtained public assistance benefits, third-party recovery, and custody hearings regarding custody of children for whom ~~[financial]~~ public assistance is being provided are considered part of ~~[HSD's administration of financial]~~ the public assistance programs administered by the department. ~~[HSD and/or]~~ The department or its interests may be represented in such cases by an attorney from the office of general counsel (OGC), CSED, CYFD, by a local district attorney, by a representative of the attorney general's office or by a federal prosecutor.

(b) If information contained in a case record or known to ~~[an HSD]~~ a department employee is needed in preparation for or as part of a court proceeding, ~~[HSD employees]~~ the department employee(s) will cooperate in making sure that needed information is supplied. Although employees may receive a subpoena to testify in such a court proceeding, a subpoena is not needed if the court proceeding relates to the ~~[administration of the program]~~ public assistance programs administered by the department. To the extent possible, attorneys responsible for a case, or other persons helping in preparing the case for court action, will notify ~~[a worker]~~ the department, or other custodian of a case record, in advance and in writing, of the need for court testimony, whether the record should be brought, and of the time, date and place of hearing. If there is not enough time before the hearing to provide written notice, a phone call, ~~[which the worker]~~ that the department logs in the narrative section of the case record, is sufficient. If it is not clear whether a court proceeding relates to the ~~[administration of financial]~~ public assistance programs administered by the department, the ~~[field]~~ local county office may contact the ~~[office of general counsel]~~ OGC or the ~~[income support division]~~ appropriate division director's office for help.

(2) ~~[External]~~ Non-program related court cases:

~~[(a)]—On occasion, an HSD employee may be contacted regarding clients about whom he/she has information which may be pertinent to a court proceeding, but which is not connected with the administration of HSD programs. While HSD's regulations would prohibit giving testimony in such cases, a refusal on the part of an employee who is expected to testify could result in his/her being jailed or fined. No employee is expected to do this. The following section clarifies the procedures for release of information in court proceedings not related to the administration of assistance programs. It also provides instructions for documenting the appropriate steps to avoid a breach of confidentiality.~~

~~(b) Disclosure of confidential information in connection with court proceedings may be requested in one of three ways: (1) the employee may be requested, without a subpoena, to appear as a witness and to testify to matters that include confidential information; (2) the employee may be subpoenaed to appear as a witness; or (3) a subpoena may be issued directing the employee both to appear as a witness and to produce the ISD records in court (subpoena duces tecum).~~

~~(c) Request to appear: A request to appear may come from the client or his/her attorney or from some third party. An HSD employee complies only if such an appearance is approved through appropriate HSD procedures. A request must be made by the client or his/her attorney, and must relate directly to that recipient. The written request must contain a statement that the client waives his/her right to confidentiality in making the request.~~

~~(d) Subpoena as witness: A subpoena is a written court order directing an individual to appear in court for the purpose of giving testimony.~~

~~(i) Upon receiving a subpoena to testify regarding confidential information, an HSD employee must immediately contact, in writing if time permits, the office of general counsel (OGC) and explain the particulars of the case.~~

~~(ii) OGC prepares a letter from the HSD secretary for the employee to present to the court. The letter requests that the employee be excused from testifying regarding confidential information.~~

~~(iii) The employee presents the letter to the court, with copies to all parties involved in the proceeding.~~

~~(iv) The employee follows the instructions of the court regarding the necessity for his/her testimony.~~

~~(v) The subpoena and a copy of the secretary's letter are kept in the case record as proof of HSD's actions to maintain confidentiality.~~

~~(vi) If time allows, the contacts with OGC are made in writing. If this is not possible, the contact may be made by telephone, to be followed up in writing.~~

~~(vii) Note: In cases where the OGC cooperates with state or federal law enforcement officials in the development of a court case connected with the administration of an HSD program, it is not appropriate to introduce the secretary's letter into the proceedings. In these cases, OGC notifies the employee that the letter is not necessary. The notification is retained in the record.~~

~~(e) Subpoena duces tecum: A subpoena duces tecum is an order directing the appearance of the custodian of records and the production of specified records in court. By law, the official custodian of all departmental records is the HSD secretary, however, custodianship of all county records is expressly delegated to each county director or the person in charge of the office in his/her absence. Other than situations where the court hearing is considered part of program administration, division records are not produced in court without a subpoena duces tecum. If such a subpoena is issued, the procedures explained below should be followed.~~

~~(i) A letter is sent to the employee who has been summoned to testify regarding confidential information. When the letter is received, a copy is sent to each attorney involved in the proceeding. (Attorneys' names are provided by the OGC staff).~~

~~(ii) At the time of the hearing, the employee should have with him/her the original of the letter and three copies, as well as the case record and/or other documents which have been subpoenaed (by subpoena duces tecum).~~

~~(iii) Following the oath or affirmation, the employee should give his/her name and make a statement similar to the following: "I am an employee of the New Mexico human services department and as such I would like to make a statement to the court. Under state and federal laws and regulations, employees of HSD are required to safeguard information to which they are a party as a result of their position. I would like to present the following letter to the court regarding the requirement to maintain confidentiality regarding our clients."~~

~~(iv) The employee should at this point give the original to the judge. The extra copies may be given to the attorneys if they have not received them. The judge then decides whether the employee may testify. The employee follows the instructions of the court regarding the necessity for his/her testimony.]~~

Any person or attorney seeking confidential information from a case record for a non-program related court case should direct a properly issued subpoena to the appropriate local county office with a copy also sent to the department's OGC. The department will seek to preserve the confidentiality of the case record unless the release of the information is expressly authorized by federal and state laws and regulations or is otherwise ordered by a court of competent jurisdiction.

[07/01/97, 04/01/98; 8.100.100.14 NMAC - Rn, 8 NMAC 3.ISD.031, 04/13/2001; A, 11/27/2013]

8.100.100.15 PUBLIC INFORMATION ACT

A. Policy and procedures manual:

~~(1) Issuing manual to public custodians: This manual is issued without charge to public custodians who make it available to a substantial number of the recipient population.~~

~~(2) Issuing manual to private custodians: This manual is available to private groups or individuals who request it. A nominal fee is charged to cover the cost of printing.~~

~~(3) Accessibility to applicants or recipients of assistance: This manual is available for inspection at the ISD central and county offices, during regular office hours, to individuals either applying for or receiving assistance. On request, the central or county office reproduces, without charge, limited specific policy material for an applicant or recipient, or representative, to decide whether a fair hearing should be requested or to prepare for a fair hearing.]~~ The regulations for the public assistance programs administered by the department are located on the official website of the New Mexico administrative code located at <http://www.nmcpr.state.nm.us/nmac/>. Procedures and policy guidance is located at the official department website under the specified division at <http://www.hsd.state.nm.us/>. Copies of appropriate regulations and procedures and policy guidance will be provided to the claimant as part of the summary of evidence in a fair hearing pursuant to Subsection F of 8.100.970.10 NMAC.

B. State program and plan materials: ~~[HSD handbooks are available for inspection on request at each local ISD office as well as at the central office. State plan documents may be reviewed at the office of the director of the division having responsibility for the plan.]~~ The department state plans are available at the official department website under the specified division at <http://www.hsd.state.nm.us/>.

C. Other printed materials: Additional printed materials, such as brochures and pamphlets describing basic financial and nonfinancial eligibility criteria, the application process, and participant rights and responsibilities, are available at the local [ISD] county offices, social security [and] administration offices, state employment services offices, [and] other agencies providing [human services] public assistance services, and the official department website at <http://www.hsd.state.nm.us/>.

D. Federal laws, regulations and other materials: Federal materials should be obtained by contacting the responsible federal agency directly. The university of New Mexico is a federal repository. Many federal agencies post regulations, planning documents and requirements as well as program instructions on the internet.

[04/01/98; 8.100.100.15 NMAC - Rn, 8 NMAC 3.ISD.035, 04/13/2001; A, 11/27/2013]

This is an amendment to 8.100.110 NMAC, Sections 8, 9 and 11, effective 11/27/2013

8.100.110.8 RIGHT TO APPLY: Each individual ~~[wishing to do so]~~ shall have the opportunity to apply for public assistance ~~[from]~~ programs administered by the ~~[HSD]~~ department or to have an authorized representative do so on ~~[his/her]~~ his or her behalf. An application may be made whether or not it appears as if the applicant is eligible. ~~[Application is on a form]~~ Applications are made in a format prescribed by the department to include paper forms or electronic submissions.

A. Screening: Every applicant shall have the opportunity to meet, face to face or telephonically, with ~~[an HSD]~~ a department employee ~~[on the same day an application is submitted]~~ when an application is submitted during regular business hours. The employee will review the application, assist the applicant in completing the application, if it is incomplete or assistance is otherwise necessary, and will assist in identifying the public assistance ~~[programs for which]~~ program(s) that the applicant wishes to apply.

~~[B.]~~ **(1) Screening for food-stamp supplemental nutrition assistance program (SNAP) expedited service:** The employee will screen ~~[food-stamp]~~ SNAP applicants for entitlement to expedited ~~[food-stamp]~~ processing, using ~~[a standard form and stamp]~~ the standard formula and documenting the application, as appropriate.

~~(1)~~ **(a)** If the applicant is eligible for expedited service, the employee will process the ~~[food-stamp]~~ SNAP application within ~~[twenty-four hours of determining the household is expedited]~~ the specified timeframes outlined in federal and state laws and regulations.

~~(2)~~ **(b)** If ~~[entitlement to]~~ expedited ~~[food-stamp]~~ SNAP processing is denied, the applicant will be informed of the right to request an ~~[informal]~~ agency review conference to be held within two **(2)** days of the request unless the household ~~[asks for]~~ requests a later date pursuant to Paragraph (4) of Subsection E of 8.100.970.10 NMAC.

~~[C.]~~ **(2) Proof checklist:** The employee will provide the applicant with ~~[a standard form,]~~ the proof checklist ~~[, which]~~ on a standard department form that identifies the ~~[eligibility factors]~~ verification requirements needed for each public assistance program and the various methods ~~[by which] that~~ each factor may be verified or established. The employee will explain why the ~~[information]~~ verification is needed, how to obtain the ~~[information]~~ verification, provide examples of the types of verification, the period of time the verification should cover, and offer to help the applicant obtain the ~~[information]~~ verification.

~~[D.]~~ **(3) Scheduling the appointment:** The employee will schedule an application interview to be held within ~~[10]~~ ten (10) working days of the date the application was submitted ~~[and which] that~~ is, to the extent possible, convenient for both the applicant and the ~~[worker]~~ department. The employee will provide the applicant with a written appointment letter ~~[which] that~~ will include: ~~[notice of]~~ the date, time and place of the appointment, the name and telephone number of the ~~[ISS assigned to the application]~~ local county office, the consequences of missing an appointment, how to reschedule an appointment, the possibility of a waiver of the ~~[office]~~ in-office interview, ~~[(financial assistance and medicaid) or face-to-face interview (food stamps)]~~ and that the spouse, any ~~[another]~~ other responsible person in the household, or an authorized representative may attend the interview with the applicant or in the applicant's place.

~~[E.]~~ **Requesting a waiver:** Upon request, the employee will provide a standard form on which the applicant may request a waiver of the face-to-face interview (food stamps) or of the office interview (financial assistance and medicaid) or designate an authorized representative.]

B. Alternative interviews: Specific requirements for telephone and out of office interviews are outlined in each program's chapter on this topic.

~~[F.]~~ **C. Screening by mail or drop box:** If an applicant mails in the application, leaves the application in a drop box, or is unwilling or unable to be screened in person, ~~[HSD]~~ the department will screen the application for all public assistance programs and for expedited ~~[food-stamp]~~ SNAP eligibility upon receipt. An appointment letter and the proof checklist, with appropriate boxes marked, will be mailed to the applicant on the same day as the date of application.

~~[G.]~~ **D. Resource planning session:** No later than ~~[45]~~ forty-five (45) days after ~~[an application is filed, the recipient, or applicant if the application has not yet been approved,]~~ the date of application, the individual applying for benefits shall be provided a resource planning session. The session shall ascertain the immediate needs of the individual or family, shall help the individual to assess his or her financial and non-financial options and shall result in referrals to such other agencies or programs as the individual deems appropriate to his or her specific needs. [07/01/97, 04/01/98; 8.100.110.8 NMAC - Rn, 8 NMAC 3.ISD.111, 04/13/2001; A, 11/27/2013]

8.100.110.9 SUBMISSION OF FORMS: Applicants may submit forms to a local county office in person~~;~~ or through an authorized representative, through the approved department web portal, by fax or by mail.

A. Incomplete application: An applicant has the right to file an incomplete form as long as the form contains the applicant's name, address and the signature of a responsible household or benefit group member or the household or benefit group's authorized representative, if one is designated.

B. Requesting application forms: ~~[An applicant may request an application form by mail or by telephone. In either case, the ISD staff must mail the requested form to the applicant within 24 hours.]~~ When the department receives a request for an application for assistance, the department will mail, fax or hand deliver a paper application and provide the approved department web portal address (for online applications), as indicated by the requestor, on the same day the request is received by the department.
[07/01/97; 8.100.110.9 NMAC - Rn, 8 NMAC 3.ISD.112, 04/13/2001; A, 11/27/2013]

8.100.110.11 PROCESSING APPLICATIONS

A. [FA/FS] Financial assistance (FA)/SNAP combined cases: To facilitate participation in ~~[the food stamp program]~~ SNAP, the Food Stamp Act requires that individuals applying for ~~[financial assistance (FA)]~~ FA be able to apply for ~~[food stamp benefits (FS)]~~ SNAP benefits at the same time.

(1) **Application:** A household applying jointly for FA and [FS] SNAP is required to file only one application on a form prescribed by the department. The ~~[form]~~ application contains the information necessary to complete the application process whether it was submitted by paper format or electronically online. If it is unclear to the department whether the applicant intends to apply for ~~[FS further information may be provided at the]~~ SNAP, the department will ask the applicant during the FA interview~~;~~ or other contact may be made with the applicant. An application for [FS] SNAP will be processed in accordance with time standards and procedures set forth in federal and state laws and regulations governing ~~[the food stamp program]~~ SNAP, including expedited processing provisions.

(2) **Single interview:** Whenever possible, a single interview will be held with an applicant who applies jointly for FA and [FS] SNAP benefits.

(3) **Categorical eligibility:** A [FS] SNAP household ~~[which]~~ that meets criteria set forth in 8.139.420.8 NMAC is categorically eligible. If a household does not meet [FS] SNAP eligibility criteria, but is potentially categorically eligible, the ~~[easeworker]~~ department must postpone denying the [FS] SNAP application until the ~~[30th]~~ thirtieth (30th) day.

(4) **Application processing:** As a result of differences in FA and [FS] SNAP application processing procedures and timeliness standards, eligibility for [FS] SNAP benefits may be determined prior to FA eligibility determination. Action on a [FS] SNAP application may be postponed until categorical eligibility is established to afford the household any benefits of this provision. However, [FS] SNAP approval may not exceed the applicable SNAP expedited or regular application processing timeliness standards.

(5) **Application is denied:** If an FA application is denied, an applicant is not required to file a new [FS] SNAP application. [FS] SNAP eligibility will be determined on the basis of the original application filed jointly for FA and [FS] SNAP, as well as any other documentation and information obtained in the course of the FA determination ~~[which]~~ that is relevant to [FS] SNAP eligibility and benefit amount. A [FS] SNAP application may not be denied based on an FA denial reason, but based on the SNAP eligibility criteria.

(6) **Denial retrieval:** A [FS] SNAP application ~~[which]~~ that is denied on the ~~[30th]~~ thirtieth (30th) day must be readily retrievable if the household is later determined eligible for ~~[financial assistance or SSI]~~ FA or supplemental security income (SSI) benefits. When this occurs, the [ISS] department will use the original [FS] SNAP application, update any information and approve the [FS] SNAP case with prorated benefits as of the date of ~~[financial assistance]~~ FA or SSI approval or payment effective date, whichever is later. A second interview is not necessary, however, the applicant or authorized representative should initial all changes and ~~[re-date and re-sign the original FS application]~~ sign and date the verification of the changes.

B. Reporting changes: All participants in [ISD] public assistance programs administered by the department are required to report any changed circumstances ~~[which]~~ that relate to their eligibility for assistance or level of benefits. Each participant is provided with a list of the specific information he/she is required to report and the reporting time limits. Clients who report a change for FA are considered to have reported the change for ~~[food stamp]~~ SNAP purposes. When a change is reported, [ISD] the department must ensure that adjustments are made in the client's eligibility status or allotment for those months ~~[in-which]~~ that the reported change is in effect, in accordance with each program's chapter on this topic.

(1) **Notice:** Whenever a client's benefits are altered as a result of changes, or whenever a certification period is shortened to reflect changes in the household's circumstances, the client is notified of the action by [ISD] the department in accordance with the notice requirements. If the certification period is shortened, the household's certification period may not end any earlier than the second month following the month the [ISS] department

determines the certification period should end. This allows adequate time to send a notice of expiration and for the household to timely reapply. If FA benefits are terminated, but the household is still eligible for ~~[food-stamp]~~ SNAP benefits, members of the household must be informed about ~~[food-stamp work registration and participation]~~ SNAP employment & training and ABAWD requirements, if applicable.

(2) **FA reduction or termination within [FS] SNAP certification period:** Whenever a reported change results in the reduction or termination of a client's FA benefits within the ~~[food-stamp]~~ SNAP certification period, action will be taken to determine how the change affects the client's ~~[food-stamp]~~ SNAP eligibility and benefit levels.

(a) **Sufficient information:** When there is sufficient information to determine how the change affects ~~[food-stamp]~~ SNAP eligibility and benefit levels, the following actions will be taken:

(i) **Reduction/termination of ~~[food-stamp]~~ SNAP benefits:** ~~[If the change requires a reduction or termination in either or both the FA, FS payment, a single notice of adverse action will be issued for both the FA and food stamp actions. If the client requests a fair hearing within the period provided by the notice, the household's food stamp benefits shall be continued on the basis authorized immediately prior to sending the notice. If a fair hearing is requested for both programs' benefits, the hearing is conducted according to FA procedures and time standards. However, the household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, the change is made effective in accordance with the procedures specified in the food stamp program chapter on reporting and recertification.]~~ A change that reduces or terminates SNAP, FA or both benefits will generate a notice of adverse action for each category of assistance that is sent to the household and authorized representative. The notice(s) of adverse action will inform the household of its fair hearing rights and method for requesting continuation of benefits.

(ii) **Increase in ~~[food-stamp]~~ SNAP benefits:** If the reduction/termination of FA benefits results in the increase of ~~[food-stamp]~~ SNAP benefits, the increase in ~~[food-stamp]~~ SNAP benefits occurs after the FA notice period expires and the FA grant is actually reduced or terminated.

(b) **Insufficient information:** Whenever there is insufficient information to determine how the FA change affects the client's ~~[food-stamp]~~ SNAP eligibility and benefit level, the following actions shall be taken:

(i) **FA notice of adverse action required:** Where an FA notice of adverse action has been sent and the client requests a fair hearing and FA benefits are continued pending the appeal, the household's ~~[food-stamp]~~ SNAP benefits will be continued on the same basis. However, the household must ~~[reapply for food stamp program]~~ recertify for SNAP benefits if the ~~[food-stamp program]~~ SNAP certification period expires before the fair hearing process is completed.

(ii) **FA notice of adverse action not required:** If an FA notice of adverse action is not required, or the client decides not to request a fair hearing and continuation of FA benefits, the household must be notified that its certification period will expire at the end of the month following the month the notice of expiration is sent, and that it must reapply if it wishes to continue to participate in the ~~[the food-stamp program]~~ SNAP. The notice of expiration will also explain to the household that the certification period is expiring because of changes in its circumstances that may affect its ~~[food-stamp program]~~ SNAP eligibility and benefit level.

(3) **Certification periods:** The ~~[ISS department]~~ will assign FA and ~~[FS]~~ SNAP certification periods that expire at the same time. In no event are FA ~~[food-stamp]~~ and SNAP benefits to be continued beyond the end of a certification period.

(4) **Recertification:** Households in which all members are contained in a single ~~[financial assistance]~~ FA grant or in a single ~~[GA]~~ general assistance (GA) grant will have their ~~[food-stamp]~~ SNAP interviews for recertification, to the extent possible, at the same time they are redetermined for FA.

(5) **Reopened cases:** If the FA and ~~[FS]~~ SNAP cases are closed or the ~~[FS]~~ SNAP certification expires, and the former recipient reapplies for one or both programs for the month following closure or expiration, benefits are prorated from the date of application for ~~[food-stamp]~~ SNAP. If reapplication is made for FA or ~~[food stamps]~~ SNAP or both, following a break of one full month or more, ~~[food-stamp and financial assistance]~~ SNAP and FA benefits for the month of application will be determined prospectively under beginning month provisions.

C. Other processing standards

(1) **SSI Households:** Households in which all members are applying for SSI benefits are handled in the same manner as ~~[financial assistance]~~ FA households with respect to the postponement of ~~[FS]~~ SNAP approval or denial and the retrieval of denied ~~[food-stamp]~~ SNAP applications.

(a) Since the ~~[ISS does not have first-hand knowledge of the]~~ department cannot monitor the progress of the SSI application, and if the ~~[food-stamp]~~ SNAP application is denied on the ~~[30th]~~ thirtieth (30th) day, the household must be advised to reapply for ~~[food-stamp]~~ SNAP when it has been notified of SSI approval.

(b) SSI households are also entitled to apply for ~~[food-stamps]~~ SNAP and be recertified at ~~[SSA]~~ the social security administration (SSA) offices. SSA will accept the application and forward the completed application, transmittal form, and any available verification to the designated ~~[food-stamp]~~ local ISD field office. When SSA accepts and refers the application, the household is not required to appear at a second office interview, although the ~~[ISS]~~ department may request additional verification or information needed to make an eligibility determination. Processing time limits begin when the ~~[food-stamp]~~ SNAP application is registered at the SSA office.

(2) **GA households:** Households in which all members are applying for state administered ~~[general assistance-(GA)]~~ GA are to be processed jointly for GA and ~~[food-stamp]~~ SNAP benefits. However, since these households are not, nor will they become categorically eligible, the provisions to postpone approval or denial and to retrieve denied ~~[food-stamp]~~ SNAP applications do not apply.

(3) **Mixed households:** Households in which some but not all of the household members are applying for NMW benefits will file separate applications for FA and ~~[food-stamp]~~ SNAP benefits. Applications will be handled under the same processing provisions required for nonfinancial assistance households. However, if those not applying for ~~[financial-assistance]~~ FA benefits are recipients of SSI, the ~~[food-stamp]~~ SNAP application would be jointly processed, because SSI recipients are already considered FA recipients.
[07/01/97, 04/01/98; 8.100.110.11 NMAC - Rn, 8 NMAC 3.ISD.114, 04/13/2001; A, 04/01/2010; A, 11/27/2013]

Notice of Repeals

The Income Support Division of the Human Services Department repeals its rule 8.100.140 NMAC, General Operating Policies - Case Files, filed 3-26-2001 and replaces it with 8.100.140 NMAC, General Operating Policies - Case Files, effective 11-27-2013.

The Income Support Division of the Human Services Department repeals its rule 8.100.970 NMAC, Oversight - Program Participation Hearings, filed 3-26-2001 and replaces it with 8.100.970 NMAC, Oversight - Program Participation Hearings, effective 11-27-2013.

TITLE 8 SOCIAL SERVICES
CHAPTER 100 GENERAL PROVISIONS FOR PUBLIC ASSISTANCE PROGRAMS
PART 140 GENERAL OPERATING POLICIES CASE FILES

8.100.140.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.100.140.1 NMAC - Rp, 8.100.140.1 NMAC, 11/27/2013]

8.100.140.2 SCOPE: The rule applies to the general public.
[8.100.140.2 NMAC - Rp, 8.100.140.2 NMAC, 11/27/2013]

8.100.140.3 STATUTORY AUTHORITY:

A. Section 27 NMSA 1978 (1992 Repl.) provides for the department to "...adopt, amend and repeal bylaws, rules and regulations..." It also provides for administration of public assistance programs.

B. The income support division (ISD) of the human services department (HSD) was created by the HSD secretary under authority granted by Section 9-8-6-B-(3) NMSA 1978.
[8.100.140.3 NMAC - Rp, 8.100.140.3 NMAC, 11/27/2013]

8.100.140.4 DURATION: Permanent.
[8.100.140.4 NMAC - Rp, 8.100.140.4 NMAC, 11/27/2013]

8.100.140.5 EFFECTIVE DATE: November 27, 2013, unless a later date is cited at the end of a section.
[8.100.140.5 NMAC - Rp, 8.100.140.5 NMAC, 11/27/2013]

8.100.140.6 OBJECTIVE: The objective of these regulations is to provide general policy and procedures for the ISD administered programs.
[8.100.140.6 NMAC - Rp, 8.100.140.6 NMAC, 11/27/2013]

8.100.140.7 DEFINITIONS: [Reserved]

8.100.140.8 PURPOSE OF CASE FILES

A. ISD case records consisting of forms, records, narrative material, correspondence, and documents are scanned into electronic format and maintained in the department's secure electronic data management system. Documents submitted in person will be electronically scanned and returned to the individual. Original documents mailed to or left with the office will be photocopied and the originals mailed back to the client at his/her last known address known to the department. The copied documents will be electronically scanned and destroyed once successful completion of a scan into electronic format is confirmed. The case record documents the current and historical eligibility of a recipient group and thereby to establish the validity of decisions to approve or deny assistance.

B. Case records are the property of the department and are established and maintained solely for use in the public assistance programs administered by the department. Information contained in the case records is confidential and is released only under the limited circumstances and conditions as provided in federal and state laws and regulations, including 8.100.100 NMAC, Sections 13 through 15. Case records and their contents must remain in the possession of the department, its contractors, or approved federal employees. Copies of case records may be released in accordance with federal and state laws and regulations or pursuant to a court order.

C. Electronic eligibility system information: Client information stored on the department's electronic eligibility system is subject to the same guidelines for release of information as the department's case record.

[8.100.140.8 NMAC - Rp, 8.100.140.8 NMAC, 11/27/2013]

8.100.140.9 CONTENT OF CASE NARRATIVE: The following narrative outline is used on all applications for assistance, and to record data and verification concerning all variable conditions of eligibility. After the initial determination of eligibility for assistance, no additional data are required in redeterminations except for those eligibility conditions which are subject to change.

A. The case narrative is used for the comprehensive recording of relevant factual information in the case record. Narrative entries must be made promptly, with dates of relevant contacts.

B. Recorded information should be limited to items which are applicable to the case, such as changes in eligibility factors since the last review. Information which does not change, such as social security numbers, is not repeated.

C. The items below are intended as a minimum requirement for case narratives. Each county office manager has the privilege of expanding it at his/her discretion.
[8.100.140.9 NMAC - Rp, 8.100.140.9 NMAC, 11/27/2013]

8.100.140.10 ESSENTIAL INFORMATION AT INITIAL DETERMINATION

A. Heading: Case name and number.

B. Application and intake:

(1) date of application, program applied for and reason for application stated in terms of the client's circumstances;

(2) documentation of worker's explanation of client's rights and responsibilities;

(3) names of individuals for whom application is being made.

C. Basic eligibility factors: Explanation of how each basic eligibility factor has been established, including: residence; non-transfer of property; school attendance; nonconcurrent receipt of assistance; living in the home of the specified relative; citizenship; parentage; and age.

D. Child support enforcement division (CSED) cooperation: Status of cooperation with the CSED.

E. Enumeration: Status of enumeration (social security number) of each person.

F. Retroactive medicaid status: Status of eligibility for retroactive medicaid requested by applicant.

G. Work program status:

(1) current work program participation status, work participation agreement, assessment certification or copy of assessment and individual responsibility plan for each benefit group member subject to work program requirements;

(2) disability determination request for applying for limited work participation status;

(3) determination of limited work participation status request;

(4) any other work program related documentation.

H. Medical resources - third party liability: Verification of third party liability that includes the name(s) of the private health insurance, type of available coverage, name of each insured individual(s), the policy and group number for each insured individual, and other information, as needed, in accordance with federal and state laws and regulations.

I. Need:

(1) documentation and discussion of all pertinent factors relating to the condition of eligibility;

(2) list of amounts, verifications and dates of income and resources by individual;

(3) explanation of earned income computations.

J. Shelter (for applicable programs): Documentation of shelter information, including whether housing is subsidized by the government.

K. SNAP: Status of the certification. Explanation of circumstances affecting SNAP certification.

L. Disposition of application: Effective date of approval/denial. Reference to appropriate manual section for denials.

M. Follow-up: Necessary follow-ups.

[8.100.140.10 NMAC - Rp, 8.100.140.10 NMAC, 11/27/2013]

8.100.140.11 REDETERMINATION/RECERTIFICATION

A. date of interview and how household composition or living arrangements are established;

B. documentation of school attendance of children in benefit group;

C. documentation of current resources and income; accounting for all formerly reported income and resources;

D. updated information on non-custodial parents and status of cooperation with the CSED;

E. review of work and work program participation and planning;

F. disposition of SNAP certification; and

G. list of necessary follow-ups.

[8.100.140.11 NMAC - Rp, 8.100.140.11 NMAC, 11/27/2013]

History of 8.100.140 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
ISD Rule 131, Administrative Policy, filed 2/10/1988.

History of Repealed Material:

8 NMAC 3.ISD.140, General Operating Policies, Case Files, filed 6/16/1997 - Repealed effective 7/1/1997.

8.100.140 NMAC, General Operating Policies Case Files, filed 3/26/2001 - Repealed effective 11/27/2013.

TITLE 8 SOCIAL SERVICES
CHAPTER 100 GENERAL PROVISIONS FOR PUBLIC ASSISTANCE PROGRAMS
PART 970 OVERSIGHT - PROGRAM PARTICIPATION HEARINGS

8.100.970.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.100.970.1 NMAC - Rp, 8.100.970.1 NMAC, 11/27/2013]

8.100.970.2 SCOPE: The rule applies to the general public.
[8.100.970.2 NMAC - Rp, 8.100.970.2 NMAC, 11/27/2013]

8.100.970.3 STATUTORY AUTHORITY

A. Section 27 NMSA 1978 (1992 Repl.) provides for the department to "...adopt, amend and repeal bylaws, rules and regulations..." It also provides for administration of public assistance programs.

B. The income support division (ISD) of the human services department (HSD) was created by the HSD secretary under authority granted by Section 9-8-6-B-(3) NMSA 1978.
[8.100.970.3 NMAC - Rp, 8.100.970.3 NMAC, 11/27/2013]

8.100.970.4 DURATION: Permanent.
[8.100.970.4 NMAC - Rp, 8.100.970.4 NMAC, 11/27/2013]

8.100.970.5 EFFECTIVE DATE: November 27, 2013, unless a later date is cited at the end of a section.
[8.100.970.5 NMAC - Rp, 8.100.970.5 NMAC, 11/27/2013]

8.100.970.6 OBJECTIVE: The objective of these regulations is to provide general policy and procedures for the public assistance programs administered by the department.
[8.100.970.6 NMAC - Rp, 8.100.970.6 NMAC, 11/27/2013]

8.100.970.7 DEFINITIONS

A. Agency review conference (ARC): means an optional conference offered by the department to households adversely affected by a department action that is normally held prior to a fair hearing. An ARC may be attended by all parties responsible for and affected by the adverse action taken by the department, including but not limited to, the ISD field office staff, the child support enforcement division (CSED), a New Mexico works (NMW) representative and the household or its authorized representative for the purpose of informally resolving the dispute. The ARC is optional and shall in no way delay or replace the fair hearing process.

B. Authorized representative: means an individual designated by a household to represent and act on its behalf during the fair hearing process. The household must provide formal documentation authorizing the named individual(s) to access the identified case information for a specified purpose and time frame. An authorized representative may be an attorney representing a person or household, a person acting under the authority of a valid power of attorney, a guardian ad litem, or any other individual(s) designated by the household.

C. Claimant: means the household requesting a fair hearing that is claiming to be adversely affected by an action(s) taken by the department.
[8.100.970.7 NMAC - N, 11/27/2013]

8.100.970.8 FAIR HEARINGS

A. A household aggrieved by an adverse action taken by the department that affects the participation of the household in a department administered public assistance program may appeal the department's decision by requesting a fair hearing in accordance with federal and state laws and regulations. Medicaid recipients wanting to request a fair hearing due to termination, modification, reduction or suspension of services must do so in accordance with any applicable federal and state laws and regulations, including 8.200.430.12 NMAC and 8.352 NMAC, et seq.

B. A household may designate an authorized representative to request a hearing on its behalf and to represent them during the fair hearing process. The claimant or his or her authorized representative must complete a request for access to a case record each time he or she wishes to have access to the record outside what is provided to the claimant in the summary of evidence (SOE). If the claimant wishes to have his or her authorized representative review the record in his or her absence, the claimant must provide formal documentation authorizing the named individual(s) to access the identified case information for a specified purpose and time frame.

C. Hearing rights: Each household has the right to request a fair hearing and:

- (1) to be advised of the nature and availability of a fair hearing and an ARC;
- (2) to be represented by counsel or other authorized representative of the claimant's choice;
- (3) to receive reasonable assistance in completing procedures necessary to request a fair hearing; and
- (4) to receive a copy of the SOE and any document contained in the claimant's case record in order to prepare for the fair hearing in accordance with Subsection B of 8.100.970.8 NMAC; the department shall forward the SOE and any other document(s) submitted to the fair hearings bureau for admission into the fair hearing record to the claimant's authorized representative once the department becomes aware that an authorized representative has been designated by the claimant;
- (5) to have a fair hearing that safeguards the claimant's opportunity to present a case;
- (6) to elect to continue to receive the current level of benefit, provided the request for hearing is received by the department before the close of business of the thirteenth (13th) day immediately following the date of the notice of adverse action; a claimant that elects to continue to receive the same level of benefit pending the fair hearing decision shall be informed that a hearing decision in favor of the department may result in an overpayment of benefits and a requirement that the household repay the benefits; a claimant may waive a continuation of benefits pending the outcome of the fair hearing;
- (7) to have prompt notice and implementation of the final fair hearing decision; and
- (8) to be advised that judicial review may be invoked to the extent such review is available under state law.

D. The department will neither provide representation for, nor pay for any costs incurred by a claimant or the authorized representative in preparation for, or attendance at an ARC, fair hearings or judicial appeals.

E. Notice of rights:

- (1) At the time of application for assistance, the department shall inform each applicant of the applicant's right to request a fair hearing if the applicant disagrees with an action taken by the department. The applicant may choose to receive the notice by mail or in electronic format.
- (2) The notice shall inform the applicant of the procedure by which a fair hearing may be requested and that the claimant's case may be presented by the claimant or an authorized representative.
- (3) The department shall remind the household of its right to request a fair hearing any time the household expresses disagreement with an action taken on its case by the department.
- (4) Each county office shall post a notice of the right to request a fair hearing and an ARC, and a copy shall be given, upon request, to any person that has requested a hearing.
- (5) Each notice provided to a claimant pursuant to this section shall include a statement that free legal assistance, by an individual or organization outside of the department, may be available to assist with the fair hearing process.
- (6) A claimant may request special accommodations for a disability or a language or speech interpreter be available during a fair hearing or ARC. An interpreter or special accommodations shall be provided by the department at no cost to the claimant. A request for a language interpreter, a speech interpreter or other disability accommodation must be made within ten (10) days of the date of the fair hearing. If an interpreter or disability accommodations are not requested timely, the claimant can request postponement of the hearing in accordance with Subsection B of 8.100.970.10 NMAC.

F. Special provisions pertaining to mass changes: Special provisions apply in situations involving mass changes. These provisions are contained at 8.100.180.12 and 15 NMAC, 8.139.120.13 NMAC, 8.139.500.8 and 9 NMAC, 8.106.630.10 and 11 NMAC, 8.102.501.9 NMAC and 8.102.630.10 NMAC.

G. Continuing benefit for cash assistance: If a claimant who is a cash assistance recipient requests a fair hearing before the close of business of the thirteenth (13th) day immediately following the date of the notice of adverse action, the claimant may elect to waive or continue receiving the same amount of cash assistance and services issued immediately prior to the notice of adverse action until a final decision is issued. If there is no indication that the claimant has waived a continuation of benefits, the department will assume a continuation of benefits is desired. The household is required to comply with the reporting and renewal provisions at 8.102.120 NMAC and 8.106.120 NMAC. Cash assistance recipients are to continue compliance with the NMW compliance requirements at 8.102.460 NMAC.

H. Continuing SNAP benefits: If a claimant who is a SNAP recipient requests a fair hearing before the close of business of the thirteenth (13th) day immediately following the date of the notice of adverse action, the claimant may elect to waive or continue receiving the same amount of SNAP benefits issued immediately prior to the adverse action until a final decision is issued. If there is no indication that the claimant has waived a continuation

of benefits, the department will assume a continuation of benefits is desired. The claimant is required to comply with the reporting and renewal provisions at 8.139.120 NMAC.

I. Continuing eligibility for a medical assistance program: If a claimant who is a recipient of a medical assistance program requests a fair hearing before the close of business of the thirteenth (13th) day immediately following the date of the notice of adverse action, the claimant may elect to waive or continue receiving the same medical assistance benefit issued immediately prior to the adverse action until a final decision is issued. If there is no indication that the claimant has waived a continuation of benefits, the department will assume a continuation of benefits is desired. If the hearing is regarding the termination, modification, reduction or suspension of medical assistance program services, a continuation of services is governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq.
[8.100.970.8 NMAC - Rp, 8.100.970.8 NMAC, 11/27/2013]

8.100.970.9 THE HEARING PROCESS

A. Initiation of the hearing process:

- (1) A request for a fair hearing can be made by the claimant or an authorized representative orally or in writing.
- (2) If a claimant requests a fair hearing orally, the department shall take such actions as are necessary to initiate the fair hearing process.
- (3) The fair hearings bureau shall promptly send written acknowledgement to the claimant and the authorized representative upon its receipt of a written or oral hearing request.

B. Time limits:

(1) A household or its authorized representative shall request a fair hearing no later than close of business on the ninetieth (90th) day following the date of the notice of adverse action. If the ninetieth (90th) day falls on a weekend, holiday or other day the department is closed, a request received the next business day will be considered timely.

(2) The department shall assure that the fair hearing is conducted, a fair hearing decision is reached and the claimant and the authorized representative are notified of the decision within the specified program time limit set forth below, except in instances where the time limit may be extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(a) **SNAP program:** The final fair hearing decision shall be issued to the claimant and the authorized representative within sixty (60) days from the date the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(b) **Cash assistance programs:** The final fair hearing decision shall be issued to the claimant and the authorized representative within ninety (90) days from the date that the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(c) **LIHEAP:** The final fair hearing decision shall be issued to the claimant and the authorized representative within sixty (60) days from the date that the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(d) **Medical assistance programs:** The final fair hearing decision shall be issued to the claimant and the authorized representative within ninety (90) days from the date that the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC. Fair hearing decisions regarding the termination, modification, reduction or suspension of services is governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq.

C. Jurisdiction of the fair hearings bureau:

- (1) An applicant for, or recipient of, a department administered public assistance program may request a fair hearing, and the department's fair hearings bureau shall have jurisdiction over the matter, if:
 - (a) an application for benefits or services is denied in whole or in part, or not processed timely;
 - (b) assistance or services are reduced, modified, terminated, suspended or not provided, or the form of payment is changed;
 - (c) a good cause request for not participating in the work program or CSED is denied in whole or in part;
 - (d) the department refuses or fails to approve a work program participation plan, or the supportive services related to it, that have been developed by a participant; or
 - (e) the claimant is aggrieved by any other action affecting benefit level or participation in an assistance program administered by HSD.

(2) Fair hearing requests submitted to the local county office shall be immediately forwarded to the fair hearings bureau for scheduling. The fair hearings bureau shall promptly inform the applicable local county office upon its receipt of a written or oral fair hearing request submitted directly to the fair hearings bureau to ensure timely scheduling of an ARC.

D. Denial or dismissal of request for hearing: The fair hearings bureau shall deny or dismiss, as applicable, a request for a fair hearing when:

(1) the request is not received by the close of business on the ninetieth (90th) day following the date of the notice of adverse action; in instances where the fair hearings bureau schedules a hearing prior to becoming aware of the lateness of the fair hearing request, the fair hearings bureau shall, upon learning of the late request, promptly dismiss the matter and provide notice thereof to all parties;

(2) the request for a fair hearing is withdrawn or canceled, either orally or in writing, by the claimant or claimant's authorized representative; if withdrawn orally, the claimant and the authorized representative shall be provided written verification of the withdrawal and given ten (10) calendar days from the date of the notification to request reinstatement of the hearing;

(3) the sole issue presented concerns a federal or state law requiring an adjustment of assistance for all or certain classes of clients, including but not necessarily limited to a reduction, suspension or cancellation of benefits, unless the reason for the hearing request involves alleged error in the computation of benefits (e.g. mass changes);

(4) the claimant fails to appear, without good cause, at a scheduled fair hearing;

(5) the same issue has already been appealed and a hearing decision made;

(6) there is no adverse action or delay of benefits or services for which a fair hearing may be requested; or

(7) the issue is one that the fair hearings bureau does not have jurisdiction as provided by federal or state laws and regulations.

(8) Requests for fair hearings for medical assistance cases involving the termination, modification, reduction or suspension of services are governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq.

E. Good cause for failing to appear:

(1) If the claimant or the claimant's authorized representative fails to appear for a fair hearing at the scheduled time and place, the claimant's appeal will be considered abandoned and the fair hearings bureau shall dismiss the matter, unless the claimant or authorized representative presents good cause. A claimant or authorized representative may present good cause for failing to appear to the scheduled fair hearing at any time no later than close of business on the tenth (10th) calendar day immediately following the scheduled hearing date. If the tenth (10th) calendar day falls on a weekend, holiday or other day that the department is closed, a request received the next business day will be considered timely. If good cause is submitted timely and permitted, the fair hearings bureau shall reschedule the hearing or, where appropriate, reinstate a matter previously dismissed.

(2) If the department fails to appear due to circumstances beyond its control, the department may present good cause within ten (10) calendar days after the scheduled hearing. If good cause is submitted timely and permitted, the fair hearings bureau shall reschedule the fair hearing.

(3) Good cause includes, but is not limited to, a death in the family, disabling personal illness, or other significant emergencies. At the discretion of the hearing officer, other exceptional circumstances may be considered good cause.

[8.100.970.9 NMAC - Rp, 8.100.970.9 NMAC, 11/27/2013]

8.100.970.10 PRE-HEARING PROCEDURE

A. Notice of hearing: Unless the claimant or authorized representative requests an expedited scheduling of a fair hearing, the fair hearings bureau shall provide written notice of the scheduling of a fair hearing to all parties not less than ten (10) calendar days prior to date of the fair hearing. The notice of hearing shall include:

(1) the date, time and place of the hearing;

(2) the name, address and phone number of the hearing officer;

(3) information regarding the fair hearing process and the procedures to be followed by the respective parties;

(4) the right of the claimant and the authorized representative to receive a copy of the SOE and any document, not specifically prohibited by federal and state law and regulation, contained in the claimant's case record in order to prepare for the fair hearing in accordance with Subsection B of 8.100.970.8 NMAC;

(5) notice that the appeal will be dismissed if the claimant or the authorized representative fails to appear without good cause;

(6) information about resources in the community that may provide free legal assistance with the fair hearing process; and

(7) notice that the department will not pay for any costs of the claimant or authorized representative, including legal counsel, that are incurred in the preparation for, or attendance at, an ARC, fair hearing or judicial appeal.

B. Postponement: A claimant or authorized representative is entitled to, and the fair hearings bureau shall grant, at least one postponement of a scheduled fair hearing. The department may request and be approved for one postponement at the discretion of the fair hearings bureau due to the unavailability of any department witness to appear at the scheduled fair hearing. Requests for more than one postponement are considered at the discretion of the fair hearings bureau, on a case-by-case basis. A request for postponement must be submitted not less than one (1) business day prior to the scheduled fair hearing, unless otherwise allowed by the fair hearings bureau, and is subject to the following limitations:

(1) **SNAP and LIHEAP cases:** A postponement may not exceed thirty (30) days and the time limit for action on the decision is extended for as many days as the fair hearing is postponed.

(2) **Cash assistance cases:** The fair hearing may be postponed, but must be rescheduled to assure a final decision is made no more than ninety (90) days from the date of the request for fair hearing.

(3) **Medical assistance cases:** The fair hearing may be postponed, but must be rescheduled to assure a final decision is made no more than ninety (90) days from the date of the request for fair hearing. Fair hearings for medical assistance cases involving the termination, modification, reduction or suspension of services are governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq.

(4) The fair hearings bureau shall issue notice of the rescheduling of a postponed fair hearing not less than ten (10) calendar days before the rescheduled date, unless oral agreements are obtained from all parties to reschedule the fair hearing with less notice in an effort to meet the required timeframes. Documentation of the oral agreement shall be maintained in the fair hearing record.

C. Expedited hearing: Hearing requests from SNAP households, such as migrant farm workers that plan to move out of the state before the hearing decision would normally be made should be scheduled on an expedited basis.

D. Group hearings: A hearing officer may respond to a series of individual requests for hearings by conducting a single group hearing. Group hearing procedures apply only to cases in which individual issues of fact are not disputed and where related issues of state or federal law, regulation or policy are the sole issues being raised. In all group hearings, the regulations governing individual hearings are followed. Each individual claimant is permitted to present the claimant's own case or to be represented by an authorized representative. If a group hearing is scheduled, any individual claimant may withdraw from the group hearing and request an individual hearing. The confidentiality of client records is to be maintained in accordance with federal and state laws and regulations.

E. Agency review conference (ARC): The department and the claimant are encouraged to meet for an ARC before the scheduled fair hearing to discuss the department's action(s) that the claimant has appealed. The ARC is optional and does not delay or replace the fair hearing process. An ARC will be held within ten (10) calendar days from the date of the fair hearing request. If the claimant submits a hearing request to the field office, in person or by telephone, the ARC may, at the claimant's option, be conducted at that time. An appeal may not be dismissed by the department for failure of the claimant or authorized representative to appear at a scheduled ARC.

(1) The department shall send a written notice of the scheduled ARC to the claimant and authorized representative. The claimant may choose to receive the notice by mail or in electronic format.

(2) An ARC may be attended by all parties responsible for and affected by the adverse action taken by the department, including but not limited to, the ISD field office staff, the CSED, a NMW representative and the claimant or its authorized representative.

(3) The purpose of the ARC is to informally review the adverse action taken by the department and to determine whether the dispute can be resolved in accordance with federal and state law and regulation. The ARC is optional and shall in no way delay or replace the fair hearing process, unless the outcome of the ARC is the claimant withdrawing the fair hearing request.

(4) For cases in which the household appeals a denial of expedited SNAP service, the ARC shall be scheduled within two (2) business days, unless the household requests that it be scheduled at a later date or does not wish to have an ARC.

(5) A household may request an ARC in order to discuss an adverse action taken by the department against the household, regardless of whether or not a fair hearing is requested.

F. Summary of evidence (SOE): An SOE shall be prepared by the department and submitted to the fair hearings bureau and the claimant and authorized representative no less than ten (10) calendar days prior to the date of the fair hearing. Failure to provide the SOE within the prescribed timeframe may result in its exclusion or a postponement or continuance of the hearing at the discretion of the hearing officer pursuant to Subsection B of 8.100.970.10 NMAC and Subsection D of 8.100.970.12 NMAC. Unless the hearing request is withdrawn by the claimant or authorized representative, an SOE shall be prepared and submitted in accordance with this paragraph, regardless of the results of an ARC. The SOE shall contain at least the following information:

- (1) identifying information, including but not limited to, claimant's name, at least the last four digits of the claimant's social security number, the claimant's individual identification number or case identification number, the claimant's last known address, and the type of assistance involved;
- (2) the issue(s) on appeal that outlines the adverse action taken by the department against the household;
- (3) documentation in support of the department's adverse action, including any facts, information and department findings related to the fair hearing issue(s);
- (4) applicable federal and state laws and regulations, internal department policy documents, and any additional supportive legal documentation; and
- (5) results of the ARC, if completed at the time of submission of the SOE.

G. Availability of information: The department staff shall:

(1) allow the claimant and the authorized representative to examine the case record and provide the claimant and the authorized representative a copy of the SOE and any document, not specifically prohibited by federal and state laws and regulations, contained in the claimant's case record in order to prepare for the fair hearing in accordance with Subsection B of 8.100.970.8 NMAC; and

(2) provide accommodations for a disability or a language or speech interpreter in accordance with Paragraph (6) of Subsection E of 8.100.970.8 NMAC.

[8.100.970.10 NMAC - Rp, 8.100.970.10 NMAC, 11/27/2013]

8.100.970.11 HEARING STANDARDS

A. Rights during the fair hearing: The claimant or authorized representative shall be given an opportunity to:

- (1) examine the SOE and case record prior to, and during, the hearing in accordance with subsection B of 8.100.970.8 NMAC;
- (2) present his or her case or have it presented by an authorized representative;
- (3) introduce witnesses;
- (4) establish all pertinent facts and circumstances;
- (5) advance any arguments without undue interference; and
- (6) question or refute any testimony or evidence, including an opportunity to confront and cross-examine the department's witnesses.

B. Hearing officer: Fair hearings are conducted by an impartial official who:

- (1) does not have any personal stake or involvement in the case;
- (2) was not directly involved in the initial determination of the action which is being contested;
- (3) was not the immediate supervisor of the worker who took the action that is being contested; and
- (4) may not discuss the merits of any pending fair hearing with anyone outside the fair hearings bureau, unless all parties or their authorized representatives are present.

C. Disqualification and withdrawal: If the appointed hearing officer had any involvement with the department action(s) being appealed, including giving advice or consulting on the issue(s) presented, or is related in any relevant degree to the claimant, the claimant's authorized representative, or ISD worker that took the action being appealed, the appointed hearing officer shall be disqualified as the hearing officer for that case. In addition, an appointed hearing officer shall, prior to the date of the fair hearing, withdraw from participation in any proceedings that the hearing officer determines that he cannot afford a fair and impartial hearing or where allegations of bias have arisen and have not been resolved prior to the deadline for a fair hearing decision to be issued pursuant to Paragraph (2) of Subsection B of 8.100.970.9 NMAC.

D. Authority and duties of the hearing officer: The authority and duties of the hearing officer are to:

- (1) explain how the fair hearing will be conducted to participants at the start of the hearing;
- (2) administer oaths and affirmations;
- (3) insure that all relevant issues are considered during the fair hearing;

(4) request, receive and make part of the fair hearing record all evidence necessary to decide the issues being raised;

(5) regulate the content, conduct and the course of the hearing to ensure an orderly hearing; if a claimant, the claimant's authorized representative, any witness or other participant in the fair hearing refuses to cooperate or comply with rulings on the procedures and issues as determined by the hearing officer, or acts in such a manner that an orderly fair hearing is not possible, the hearing officer may take appropriate measures to ensure that order is fully restored so that the claimant's opportunity to fairly present his or her case is safeguarded; such measures shall include, but not be limited to, excluding or otherwise limiting the presentation of irrelevant evidence, or terminating the fair hearing and making the recommendation based on the record that has been made up to the point that the fair hearing was terminated;

(6) limit cross-examination that is repetitive or harassing;

(7) request, if appropriate, an independent medical assessment or professional evaluation from a source mutually satisfactory to the claimant and the department; and

(8) provide a fair hearing record and report and recommendation for review and final decision by the appropriate division director.

E. Appointment of hearing officer: A hearing officer is appointed by the fair hearings bureau upon receipt of the request for hearing.

F. Process: Formal rules of evidence and civil procedure do not apply to the fair hearing process. All relevant evidence is admissible, subject to the hearing officer's authority to limit evidence that is repetitive or unduly cumulative. Evidence that is not available to the claimant may not be presented to the hearing officer or used in making the final fair hearing decision, unless the unavailability of evidence was in accordance with federal and state laws and regulations.

(1) **Confidentiality:** The confidentiality of client records is to be maintained in accordance with federal and state laws and regulations. Confidential information that is protected from release and other documents or records that the claimant will not otherwise have an opportunity to contest or challenge shall not be introduced at the fair hearing or affect the hearing officer's recommendation.

(2) **Administrative notice:** The hearing officer may take administrative notice of any matter for which judges of this state may take judicial notice.

(3) **Privilege:** The rules of privilege apply to the extent that they are requested and recognized in civil actions in New Mexico.

(4) **Medical issues:** In a case involving medical care or a medical condition, the claimant waives confidentiality and both parties shall have the right to examine any medical documents that are admitted into evidence.

(5) When the evidence presented at the fair hearing does not adequately address the relevant medical issues, additional medical information may be obtained at the discretion of the hearing officer. The additional medical information may include, but is not limited to, a medical evaluation or analysis obtained at the department's expense, from a source satisfactory to the claimant.

G. Motions: Motions shall be decided by the hearing officer without a hearing, unless permitted by the hearing officer upon written request of the department, the claimant or the authorized representative.

H. Burden of proof: The department has the burden of proving the basis for its action, proposed action or inaction by a preponderance of the evidence.

I. Record of the fair hearing: A record of each fair hearing shall be made by the hearing officer, in accordance with the following.

(1) The fair hearing proceedings, including testimony and exhibits, shall be recorded electronically.

(2) The hearing officer's electronic recording shall be the official transcript of the fair hearing, and shall be retained by the fair hearings bureau in accordance with all federal and state laws and regulations.

(3) The record of the fair hearing includes: the recorded fair hearing, including testimony and exhibits, any pleadings filed in the proceeding, any and all papers and requests filed in the proceeding, the report and recommendation of the hearing officer; and, the final fair hearing decision made by the division director. The fair hearing record will be maintained in the department's secure electronic data management system, but may be made available to the claimant or the authorized representative for copying and inspection at a reasonable time.

(4) If a final fair hearing decision is appealed, a written verbatim transcript of the fair hearing shall be prepared by the department and a copy of the transcript shall be provided to the claimant or authorized representative, free of charge.

[8.100.970.11 NMAC - Rp, 8.100.970.11 NMAC, 11/27/2013]

8.100.970.12 CONDUCTING THE FAIR HEARING: A fair hearing is conducted in an orderly manner and in an informal atmosphere. The fair hearing is not open to the public. The fair hearing is conducted by telephone, unless the claimant or the authorized representative makes a special request for the fair hearing to be held in person and the request is justified by special circumstances, as determined by the hearing officer on a case-by-case basis.

A. Opening the fair hearing: The fair hearing is opened by the hearing officer who will explain the telephonic fair hearing procedures to all present at the fair hearing. The hearing officer will then explain his or her role in the proceedings, and that the final fair hearing decision on the issue(s) appealed will be made by the appropriate department division director after review of the hearing officer's report and recommendation, including the fair hearing record. On the record, the individuals present are asked to identify themselves, the order of testimony is explained, the oath is administered to all witnesses who will testify during the hearing, the issue is identified, and all pleadings, papers, and requests, including but not limited to, the SOE and any evidence being presented, will be identified and entered into the record with any objections handled in accordance with applicable federal and state laws and regulations.

B. Order of testimony: The order of testimony is as follows:

(1) Presentation of the department's case: The department will present its case and the evidence, including testimony and exhibits, in support of the adverse action taken against the household, and:

- (a) the claimant or authorized representative may cross-examine the department representative;
- (b) the hearing officer may ask further clarifying questions; and
- (c) if the department calls other witnesses, the order of examination of each witness is as

follows:

- (i) direct testimony by the witness(es);
- (ii) cross-examination by the claimant or the authorized representative; and
- (iii) examination or further clarifying questions by the hearing officer or, if requested,

follow up questions from the department representative.

(2) Presentation of the claimant's case: The claimant or the authorized representative will present its case and the evidence, including testimony and exhibits, in support of its position, and:

- (a) the department may cross-examine the claimant or the authorized representative;
- (b) the hearing officer may ask further clarifying questions; and,
- (c) if the claimant calls other witnesses, the order of examination of each witness is as follows:
 - (i) direct testimony by the witness(es);
 - (ii) cross-examination by the department representative; and
 - (iii) examination or further clarifying questions by the hearing officer or, if requested,

follow up questions from the claimant or the authorized representative.

(3) The claimant may offer evidence on the points at issue without undue interference, may request proof or verification of evidence or statements submitted by the department or its witnesses, and may present evidence in rebuttal.

(4) The hearing officer may ask the parties to summarize and present closing arguments.

C. Written closing argument: If the claimant or the department is represented by legal counsel, the hearing officer may request that the closing argument be submitted in writing to the fair hearings bureau.

D. Continuance: The hearing officer may continue the hearing upon the request of either party, or on the hearing officer's own motion, for admission of additional testimony or evidence. A party seeking a continuance in order to obtain additional evidence must make a showing that the evidence was not available at the time of the hearing despite a reasonable attempt having been made to obtain it. The granting of a continuance is at the discretion of the hearing officer is subject to the same limitations set forth in Subsection B of 8.100.970.10 NMAC. The reason(s) for the continuance and if any oral agreements were reached in regards to the continuance shall be stated for the hearing record. The fair hearings bureau shall issue notice of the rescheduling of a continued fair hearing not less than ten (10) calendar days before the rescheduled date, unless oral agreements are obtained from all parties to reschedule the fair hearing with less notice in an effort to meet the required timeframes.

E. Additional documentary evidence: If the hearing officer requests additional documentary evidence based on testimony heard during the fair hearing, the hearing officer may close the fair hearing but keep the record open subject to production of the additional evidence being submitted by a party or parties.

(1) The hearing officer shall set a date and time for production of the requested evidence, not to exceed ten (10) calendar days; the party producing the additional evidence shall submit copies to the hearing officer and each party.

(2) Within ten (10) calendar days of its receipt of the additional evidence, the non-producing party may submit a written response to the hearing officer and each party that will become part of the fair hearing record;

or, the hearing officer may continue the hearing until such a date and time that the non-producing party may respond to the additional evidence on the record.

(3) The hearing officer shall close the record at the close of business on the tenth (10th) calendar day following its receipt of the additional evidence.

(4) The hearing officer may only request additional evidence pursuant to this paragraph if it will not result in a violation of the limitations set forth in Subsection B of 8.100.970.10 NMAC.

F. Re-opening a fair hearing: The hearing officer, at the hearing officer's discretion, may re-open a fair hearing when the evidentiary record fails to address an issue that is relevant to resolution of a fair hearing request. The fair hearing can only be re-opened if the parties have agreed to an extension of the timeframes in accordance with Paragraph (2) of Subsection B of 8.100.970.9 NMAC and the limitations set forth in Subsection B of 8.100.970.10 NMAC. Written notice of the date, time and place of the re-opened fair hearing is sent to the parties, not less than ten (10) days before the date of the re-opened hearing, unless oral agreements are obtained from all parties to reschedule the fair hearing with less notice in an effort to meet the required timeframes. [8.100.970.12 NMAC - Rp, 8.100.970.12 NMAC, 11/27/2013]

8.100.970.13 FAIR HEARING DECISION: The final fair hearing decision shall be made by the appropriate department division director after review of the fair hearing record and the hearing officer's report and recommendation.

A. Hearing officer recommendation: The hearing officer reviews the record of the fair hearing and all appropriate regulations, and evaluates the testimony and evidence admitted during the hearing. The hearing officer submits the complete record of the fair hearing, along with the hearing officer's report and recommendation, in a standard format to the appropriate division director(s) within fifteen (15) days of the hearing, or sooner, to ensure the timeframes set forth in Paragraph (2) of Subsection B of 8.100.970.9 NMAC are met.

B. Content of recommendation: The hearing officer specifies the reason(s) for all factual conclusions, identifies the supporting evidence, references the relevant federal and state laws and regulations, along with appropriate department policy and procedural guidance, and responds to the arguments of the parties in a written report and recommendation. The hearing officer shall submit a recommendation:

(1) in favor of the claimant when the adverse action taken by the department is not supported by a preponderance of the evidence available as a result of the fair hearing;

(2) in favor of the department when the preponderance of the evidence, available as a result of the fair hearing, supports the adverse action taken by the department is in accordance with federal and state laws and regulations; or

(3) any other result supported by the fair hearing record.

C. Review of recommendation: The fair hearing record and report and recommendation are reviewed by the appropriate department division director(s) or designee to ensure conformity with applicable federal and state laws and regulations.

D. Final decision: The hearing officer's recommendation may be adopted or rejected, in whole or in part, in a final written decision by the appropriate department division director. The final fair hearing decision shall be based solely on the fair hearing record as defined in Paragraph (3) of Subsection I of 8.100.970.11 NMAC. The final fair hearing decision must summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and relevant federal and state laws and regulations. No person who participated in the original action under appeal may participate in arriving at the final fair hearing decision. The final fair hearing decision becomes part of the fair hearing record.

E. Notice to claimant: The claimant, the authorized representative and the department shall be notified in writing of the final fair hearing decision and its effect on the benefits. If a claimant has an authorized representative, the authorized representative is mailed a copy of the final fair hearing decision. When a final fair hearing decision is adverse to the claimant, the decision shall include:

(1) a statement that the claimant has exhausted all administrative remedies available;

(2) the claimant's right to pursue judicial review of the final fair hearing decision; and

(3) information on how to file an appeal of the final fair hearing decision, the timeframe for filing an appeal and where the appeal may be filed.

[8.100.970.13 NMAC - Rp, 8.100.970.13 NMAC, 11/27/2013]

8.100.970.14 IMPLEMENTATION OF DECISION: Unless stayed by court order, the department's final fair hearing decision is binding on all issues that have been the subject of the fair hearing as to that claimant. The local

county office is responsible for assuring that decisions are implemented within the timeframes specified below. The final fair hearing decision serves as advanced notice for changes in benefits or services.

A. Decision favorable to the department: If assistance or benefits have been continued pending the outcome of the fair hearing and the decision is favorable to the department, the department shall take immediate action to adjust the payment and submit a claim for the excess benefit amount(s) paid pending the outcome of the fair hearing.

B. Decision favorable to the claimant:

(1) **Cash assistance programs:** When a fair hearing decision is favorable to the claimant, the department authorizes corrective payment. For incorrectly denied cases, corrected benefits are issued retroactively in the following manner:

(a) to the date of adverse action or to the thirtieth (30th) day from the application date, whichever is earlier; or

(b) to the first day of the month that the case is actually eligible for benefits.

(c) For ongoing cases, the corrected cash assistance payments are retroactive to the first day of the month that the incorrect action became effective.

(2) **SNAP:** Decisions that result in an increased benefit shall be reflected in the claimant's next authorized allotment. The final fair hearing decision serves as verification for increased benefits.

(3) **Medical assistance programs:** When a fair hearing decision is favorable to the claimant and a case was incorrectly denied, corrected benefits are issued retroactively in the following manner:

(a) to the date of adverse action or to the thirtieth (30th) day from the application date, whichever is earlier; or

(b) to the first day of the month that the case is actually eligible for benefits;

(c) for ongoing cases, the corrected benefit is retroactive to the first day of the month that the incorrect action became effective.

(d) fair hearings for medical assistance programs involving the termination, modification, reduction or suspension of services are governed by applicable federal and state law and regulations, including 8.352 NMAC, et seq.

[8.100.970.14 NMAC - Rp, 8.100.970.14 NMAC, 11/27/2013]

8.100.970.15 JUDICIAL REVIEW

A. Right of appeal: If a final fair hearing decision upholds the department's original action, the claimant has the right to pursue judicial review of the final fair hearing decision and is notified of that right in the department's final fair hearing decision.

B. Timeliness:

(1) **SNAP, LIHEAP, general assistance (GA), and medical assistance programs:** Unless otherwise provided by law, within thirty (30) days of the issuance of the department's final fair hearing decision, the claimant may appeal the final fair hearing decision by filing a notice of appeal with the appropriate district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

(2) **NMW:** Unless otherwise provided by law, within thirty (30) days of the issuance of the department's final fair hearing decision, the claimant may appeal the final fair hearing decision by filing a notice of appeal with the court of appeals pursuant to the provisions of Section 27-2B-13 NMSA 1978.

C. Jurisdiction and standard of review:

(1) The district court's jurisdiction is defined by statute at Section 27-3-3 NMSA 1978 and Section 39-3-1.1 NMSA 1978. The court of appeals jurisdiction is defined by statute at Section 27-2B-13 NMSA 1978.

(2) The court of appeals or district court may set aside, reverse or remand the department's final fair hearing decision if it determines that:

(a) the department acted fraudulently, arbitrarily or capriciously;

(b) the final fair hearing decision was not supported by substantial evidence; or,

(c) the department did not act in accordance with federal and state laws and regulations.

D. Benefits pending an appeal: If the court decides in favor of the claimant, the department must immediately act in accordance with the court's final hearing decision. If the decision is in favor of the department, the department shall take any and all appropriate actions in accordance with Subsection A of 8.100.970.14 NMAC and 8.100.640 NMAC.

E. Effect of appeal: If the court of appeals decides in favor of the claimant, the HSD office of general counsel immediately notifies the county office as to the appropriate benefit issuance and adjustments, if any.

If the decision is in favor of HSD, and a reduction has been pending the decision on appeal, an overpayment claim retroactive to the date the change should have been made is filed.

F. Appealing the appellant court's decision:

(1) **SNAP, LIHEAP, GA and medical assistance programs:** A party to the appeal to district court may appeal the district court's decision by filing a petition for writ of certiorari with the court of appeals, which may exercise its discretion to grant review. A party may seek further review by filing a petition for writ of certiorari with the supreme court. Section 39-3-1.1 NMSA 1978.

(2) **NMW:** A party may seek further review by filing a petition for writ of certiorari with the supreme court.

[8.100.970.15 NMAC - Rp, 8.100.970.15 NMAC, 11/27/2013]

History of 8.100.970 NMAC:

History of Repealed Material: 8 NMAC 3.ISD General Provisions, filed 12/30/1994 - Repealed effective 7/1/1997
8.100.970 NMAC Oversight - Program Participation Hearings, filed 3/26/2001 - Repealed effective 11/27/2013