TITLE 8 SOCIAL SERVICES
CHAPTER 296 MEDICAID ELIGIBILITY - OTHER ADULTS
PART 400 RECIPIENT REQUIREMENTS

8.296.400.1 ISSUING AGENCY: New Mexico Health Care Authority (HCA).
[8.296.400.1 NMAC - Rp, 8.296.400.1 NMAC, 1/1/2019; A, 7/1/2024]

8.296.400.2 SCOPE: The rule applies to the general public.
[8.296.400.2 NMAC - Rp, 8.296.400.2 NMAC, 1/1/2019]

8.296.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq*., NMSA 1978. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.296.400.3 NMAC - Rp, 8.296.400.3 NMAC, 1/1/2019; A, 7/1/2024]

8.296.400.4 DURATION: Permanent.
[8.296.400.4 NMAC - Rp, 8.296.400.4 NMAC, 1/1/2019]

8.296.400.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.296.400.5 NMAC - Rp, 8.296.400.5 NMAC, 1/1/2019]

8.296.400.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.296.400.6 NMAC - Rp, 8.296.400.6 NMAC, 1/1/2019]

8.296.400.7 COMMUNITY ENGAGEMENT DEFINITIONS: ~~[Refer to 8.291.400.7 NMAC.]~~

A. Definitions beginning with "A": "Applicable individual" means an individual who is not a specified excluded individual and who is:

(1) Eligible to enroll or is enrolled under the state plan for the other adults medicaid category; or

(2) Otherwise eligible to enroll or is enrolled in a demonstration project under section 1115(a)(2) of the Act that provides coverage that meets minimum essential coverage, and who is:

(i) at least 19 and under 65 years of age;

(ii) not pregnant;

(iii) not entitled to or enrolled for benefits in part A or B medicare benefits; and

(iv) not otherwise eligible under the state plan.

B. Definitions beginning with "B": [RESERVED]

C. Definitions beginning with "C":

(1) "Caretaker relative" means a relative of a dependent child or a disabled individual by blood, adoption, or marriage with whom the child or disabled individual is living, who assumes primary responsibility for the dependent child's or disabled individual's care, and who is one of the following:

(i) The dependent child's or disabled individual's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(ii) The disabled individual's husband, wife, son, daughter, stepson, stepdaughter, grandson, or granddaughter.

(iii) The spouse of such parent or relative, even after the marriage is terminated by death or divorce.

(iv) Another relative of the dependent child or disabled individual based on blood (including those of half-blood), adoption, or marriage; the domestic partner of the parent or other caretaker relative;

or an adult with whom the dependent child or disabled individual is living and who assumes the primary responsibility for the dependent child or disabled individual's care.

(2) "**Community service"** means unpaid work, completed voluntarily or because of a mandate by court order, with a structured program that is completed for the direct benefit of the community under the auspices of public or nonprofit organizations (including embedded activities of the program that allow an individual to develop skills necessary to complete community service). The public or nonprofit organizations:

(i) Include organizations described in section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. 501(c)(3)) and other organizations.

(ii) Must provide oversight of the activity, which must not serve a partisan purpose, and have a process in place to track the community service completed by individuals, including the type of community service activity, dates and hours the community service is completed, and a point of contact who can confirm the hours completed.

D. Definitions beginning with "D":

(1) **"Dependent"** means an individual who is:

(i) The minor (as defined under State law) child of an applicable individual who is living with the applicable individual;

(ii) The tax dependent of an applicable individual (whether or not the tax dependent is a minor child of the applicable individual or residing with the applicable individual); or

(iii) An individual for whom the applicable individual has been appointed a guardian by a court.

(2) **"Dependent child"** means a child 13 years of age or under who relies on another individual for care.

(3) **"Disabled individual"** means an individual who meets the American with Disabilities Act definition of disability at 28 CFR 35.108. An individual need not be eligible for medicaid or other federal programs on the basis of disability to be a disabled individual under this definition.

E. Definitions beginning with "E": "Educational program" means a program that is one of the following:

(1) An institution of higher education as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001);

(2) A program of career and technical education as defined in section 3(5) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302(5));

(3) A high school as defined in title VIII of the Elementary and Secondary Education Act (20 U.S.C. 7801 et seq.); and

(4) A state approved program of study leading to a certificate of high school equivalence for an applicable individual who has not received a high school diploma.

F. Definitions beginning with "F": "Family caregiver" means an adult family member or other individual who has a significant relationship with, and who provides care within a broad range of assistance to, a dependent child or a disabled individual.

G. Definitions beginning with "G": "Guardian" means an adult appointed by a court to care for and make personal decisions for a dependent child or disabled individual who cannot care for themselves.

H. Definitions beginning with "H": [RESERVED]

I. Definitions beginning with "I": "Individual acting on behalf of the applicable individual" means any individual from whom the HCA is required to accept an application.

J. Definitions beginning with "J": [RESERVED]

K. Definitions beginning with "K": [RESERVED]

L. Definitions beginning with "L": [RESERVED]

M. Definitions beginning with "M": [RESERVED]

N. Definitions beginning with "N": [RESERVED]

O. Definitions beginning with "O": [RESERVED]

P. Definitions beginning with "P":

(1) **"Parent"** means an individual with the legal status of a mother or father, including by adoption, in accordance with applicable state law, who provides some level of care to a dependent child or disabled individual.

(2) "Period of enrollment" means a continuous period of enrollment in coverage under the state plan or waiver without the individual being disenrolled, regardless of the number of consecutive eligibility periods, of redeterminations or renewals, or of transitions between eligibility groups.

Q. Definitions beginning with "Q": [RESERVED]

R. Definitions beginning with "R": "Reliable information available to the state" means, for purposes of verifying compliance, deemed compliance or exclusion from the community engagement requirement information necessary for determining eligibility to which the HCA has access or should have access including, but not limited to:

(1) Information from electronic data sources that the HCA has determined to be effective as documented in the HCAs verification plan;

(2) Information from other state or local agencies;

(3) Information related to community engagement from federal agencies and other data sources provided through the electronic service established by the secretary;

(4) Information in the state's eligibility system;

(5) Information in the individual's case record;

(6) Payroll data;

(7) Claim(s) relevant to the individual that have been adjudicated in the preceding 12 months, including those that have been paid, pended or denied; and

(8) Encounter data, as relevant to the individual, for the preceding 12 months.

S. Definitions beginning with "S":

(1) "**Seasonal worker"** means a worker who performs labor or services on a seasonal basis as defined by the secretary of labor, including workers whose "employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year" and retail workers employed exclusively during the holiday season.

(2) "**Secretary"** means the secretary of the federal department of health and human services.

T. Definitions beginning with "T": [RESERVED]

U. Definitions beginning with "U": [RESERVED]

V. Definitions beginning with "V": [RESERVED]

W. Definitions beginning with "W":

(1) "**Work"** means:

(i) Work in exchange for money;

(ii) Work in exchange for goods or services ("in-kind" work); and

(iii) Unpaid work (other than community service).

(2) "**Work program"** means a program that is one of the following:

(i) A program under title I of the Workforce Innovation and Opportunity Act (WIOA);

(ii) A program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296);

(iii) A program of employment and training operated or supervised by a state or political subdivision of a state that meets standards approved by the governor of the state, including a program under section (d)(4) of section 6 of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4), other than a supervised job search program or job search training program. However, a program under this subsection may include supervised job search or job search training as subsidiary activities as long as such activity is less than half the required hours of the program;

(iv) A program of employment and training for veterans operated by the department of labor or the department of veterans affairs. Any employment and training program of the department of veterans affairs that serves veterans must be an approved work program; and

(v) A workforce partnership under subsection (d)(4)(N) of section 6 of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4)(N).

X. Definitions beginning with "X": [RESERVED]

Y. Definitions beginning with "Y": [RESERVED]

Z. Definitions beginning with "Z": [RESERVED]

[8.296.400.7 NMAC - Rp, 8.296.400.7 NMAC, 1/1/2019; A, xx/xx/xxxx]

8.296.400.8 [~~**[RESERVED]**~~] **MISSION:** We ensure that New Mexicans attain their highest level of health by providing whole-person, cost-effective, accessible, and high-quality health care and safety-net services.

[8.296.400.8 NMAC - Rp, 8.296.400.8 NMAC, 1/1/2019; A, xx/xx/xxxx]

8.296.400.9 WHO CAN BE A RECIPIENT: To be eligible, an individual must meet specific eligibility requirements:

A. is age 19 or older and under age 65;

B. is not pregnant;

C. are not entitled to or enrolled in part A or B medicare benefits;

D. meets ACA eligibility requirements pursuant to 8.291.400 through 8.291.430 NMAC; [~~and~~]

E. has household income that is at or below one hundred thirty-three percent of the federal poverty level (FPL) for the applicable family size[~~.~~]; and

F. meets community engagement requirements or an exclusion or exception as described in 8.296.400.10 NMAC for applications dated, or renewals initiated on or after January 1, 2027.

[8.296.400.9 NMAC - Rp, 8.296.400.9 NMAC, 1/1/2019; A, 2/1/2020; A, xx/xx/xxxx]

8.296.400.10 DEMONSTRATING COMMUNITY ENGAGEMENT (42 CFR 435.552):

A. An applicable individual demonstrates community engagement for a month if the individual meets one or more of the following conditions:

(1) The individual works not less than 80 hours.

(2) The individual completes not less than 80 hours of community service.

(3) The individual participates in a work program for not less than 80 hours.

(4) The individual is enrolled in an educational program at least half-time.

(5) The individual engages in any combination of the activities described in this subsection, for a total of not less than 80 hours. The HCA is not permitted to combine educational program hours with another activity if the individual is enrolled in an educational program at least half-time.

(6) The individual has a monthly income that is not less than the applicable minimum wage requirements under section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)(C)), multiplied by 80 hours.

(7) The individual has an average monthly income over the preceding six months that is not less than the applicable minimum wage requirements under 29 U.S.C. 206(a)(1)(C) multiplied by 80 hours, and is a seasonal worker, as described in section 45(d)(5)(B) of the internal revenue code of 1986 (26 U.S.C. 45R(d)(5)(B)). The HCA in calculating the average monthly income for seasonal workers applies a prorated portion of a reasonably predictable increase or decrease in future income or family size over a 12-month period, in accordance with our MAGI-based state plan.

B. ENROLLMENT IN AN EDUCATIONAL PROGRAM: An applicable individual's enrollment status in an education program (full-time, half-time, less than half-time) is determined by the school or institution.

(1) The enrollment status of the individual begins on the first date of the school term for the education program.

(2) The enrollment status will continue through normal periods of attendance, vacation, and recess. During periods of vacation and recess, the enrollment status shall be based on the individual's status just prior to the school break.

(3) The enrollment status will end at the end of the month that the student is expelled, withdraws, completes the school term and is not registered for the next school term (excluding optional terms such as winter or summer sessions), or graduates (unless the student is enrolled in another educational program).

C. LESS THAN HALF-TIME ENROLLMENT IN AN EDUCATIONAL PROGRAM: If an applicable individual is enrolled in an educational program for less than half-time as determined by the school, the educational program hours shall be the following:

(1) For educational programs that use credit hours:

(a) Multiply the number of each one credit hour of instruction by three to get the total of education hours in a week.

(b) Multiply the weekly total as determined under this subsection by 4.33 weeks to get total hours in a one-month period.

(2) For educational programs that do not use credit hours, the hours spent attending class and participating in educational activities will count towards meeting this requirement.

D. COMBINATION OF ACTIVITES: An applicable individual may demonstrate community engagement for a month if the individual engages in any combination of activities described in this subsection for a total of not less than 80 hours.

(1) The hours for work, community service and participating in a work program need only be combined with educational program hours if the individual is enrolled in an educational program less than half-time.

(2) The hours for work, community service, and participating in a work program must be determined separately and based on the time spent on the specific activity in such month.

(a) If the monthly income is less than the applicable federal minimum wage requirement under 29 U.S.C. 206(a)(1)(C) multiplied by 80 hours, and the HCA does not have documentation regarding the number of hours worked, the HCA calculates the hours for work based on the monthly income provided then the HCA must use as a reasonable method to allocate work hours between members of the household.

(b) The HCA calculates the hours for work by dividing the monthly income as determined by the applicable federal minimum wage requirement under 29 U.S.C. 206(a)(1)(C).

(3) The hours for less than half-time enrollment in an educational program must be calculated as provided in Subsection C of 8.296.400.11 NMAC.

(4) After the HCA determines an applicable individual's hours for work, completing community service, participating in a work program, and less than half-time enrollment in an educational program, the hours must be added together. Adding the hours will provide the total hours for the combined activities.

E. MONTHLY INCOME: An applicable individual demonstrates community engagement for a month if:

(1) The individual has a monthly income that is not less than the applicable Federal minimum wage requirement under 29 U.S.C. 206(a)(1)(C) multiplied by 80 hours.

(2) The HCA determines the monthly income based on the individual's MAGI-based income, for their MAGI-based household, and applied to a month in the period, as applicable for demonstrating community engagement.

F. AVERAGE MONTHLY INCOME FOR SEASONAL WORKERS: An applicable individual demonstrates community engagement for a month if:

(1) The individual is a seasonal worker as described in 26 U.S.C. 45R(d)(5)(B) and had an average monthly income over the preceding six months that is not less than the applicable federal minimum wage requirement under 29 U.S.C. 206(a)(1)(C) multiplied by 80 hours.

(2) The HCA determines the average monthly income based on the individual's MAGI-based income, for their MAGI-based household, as applicable for demonstrating community engagement.

G. MANDATORY EXCEPTIONS FOR CERTAIN APPLICABLE INDIVIDUALS (42 CFR 435.553): The HCA deems an applicable individual to have demonstrated community engagement for a month if:

(1) For part or all of that month, the individual was:

(a) Under the age of 19 years;

(b) Entitled to or enrolled for medicare benefits under part A or enrolled for benefits under part B of title XVIII of the Act;

(c) Described in any mandatory coverage groups in subclauses (I) through (VII) of section 1902(a)(10)(A)(i) of the Act under the medicaid state plan; or

(d) A specified excluded individual; or

(2) At any point during the three-month period ending on the first day of that month, the individual was an inmate of a public institution.

H. SPECIFIED EXCLUDED INDIVIDUALS (42 CFR 435.554): An individual who meets the criteria for one or more of the categories described in this section is excluded from the definition of an applicable individual. Community engagement is not a condition of eligibility for specified excluded individuals. An individual is a specified excluded individual if meeting one of the following:

(1) The individual meets the definition of the eligibility group serving former foster care children, described at section 1902(a)(10)(A)(i)(IX) of the Act as amended by Public Law 115-271, regardless of whether the individual turned age 18 on or after January 1, 2023.

(2) The individual is an American Indian or Alaska native who:

(a) is an Indian or an urban Indian as defined in paragraphs (13) and (28) of section 4 of the Indian Health Care Improvement Act.

(b) is a California Indian as described in section 809(a) of such Act; or

(c) has otherwise been determined eligible as an Indian for the Indian health service under the department of health and human services regulations.

(3) The individual is a parent, guardian, caretaker relative or family caregiver of a dependent child 13 years of age and under or a disabled individual.

(a) An individual who is a family caregiver is a specified excluded individual if they meet one of the following criteria:

(i) The individual primarily resides with a dependent child or disabled individual, for whom they provide assistance that occurs on a regular basis and is not solely incidental in nature.

(ii) The individual is a relative, as specified in the "caretaker relative" definition, without regard to the requirements to live with and to assume primary responsibility of a dependent child or disabled individual, as these terms are defined, for whom they provide assistance that occurs on a regular basis and is not solely incidental in nature, and with whom they do not reside.

(iii) The individual does not reside with and is not a relative, as specified in the "caretaker relative" definition, without regard to the requirements to live with and to assume primary responsibility of a dependent child or disabled individual, as these terms are defined, and provides not less than 80 hours of assistance that is not solely incidental in nature per month.

(b) In residences with more than one parent, guardian, caretaker relative, or family caregiver, multiple individuals who meet the relevant definitions may qualify as a specified excluded individual;

(4) The individual is a veteran with a temporary or permanent disability from the department of veterans affairs (VA), rated as one hundred percent (total) under 38 U.S.C. 1155. Some veterans receive total disability based on individual unemployability (TDIU), which allows veterans with service-connected disabilities to receive one hundred percent compensation if they cannot secure or maintain "substantial gainful employment," even if their combined rating is below one hundred percent. These veterans, due to receipt of one hundred percent compensation, are treated by the HCA in the same manner as all other veterans who have a combined disability rating of one hundred percent, thus meeting the exclusion. The HCA reverifies a veteran's temporary total disability status at least once every 12 months because the VA's determination of temporary conditions indicates they are subject to change and likely to improve.

(5) The individual is medically frail or otherwise has special medical needs. For purposes of this exclusion:

(a) An individual who is medically frail or otherwise has special medical needs is defined as an individual whose physical, mental, or other behavioral health condition significantly impairs the individual's ability to comply with the community engagement requirement and is an individual:

(i) Who is blind or disabled (as defined in section 1614 of the Social Security Act);

(ii) With a substance use disorder, excluding an individual in stable recovery (which means, an individual who is in recovery for five or more years);

(iii) With a disabling mental disorder;

(iv) With a physical, intellectual, or developmental disability that significantly impairs their ability to perform one or more activities of daily living; or

(v) With a serious or complex medical condition which is a medical condition that is life threatening, seriously disabling without necessarily being life threatening, causing significant pain or discomfort that can cause serious interruptions to life activities, requiring a major time or effort commitment from caregivers for a substantial period of time, requiring frequent monitoring, associated with severe consequences or negative consequences for someone else, affecting multiple organ systems, requiring management to tight physiological parameters, requiring coordination of multiple specialties, requiring treatment that carries a risk of serious complications, or requiring adjustment in non-medical environments.

(b) The HCA must develop a list of diseases, diagnoses, disorders, or other health conditions to identify individuals who meet the criteria of this section.

(i) The list must be auditable, justifiable, and consistent with the definitions established in this section.

(ii) The HCA must revise this list on a regular basis to add or remove diseases, diagnoses, disorders, or health conditions based on the HCAs experience applying this exclusion.

(iii) If an individual does not have a disease, diagnosis, disorder, or health condition on this list, the HCA must have reasonable processes and criteria in place for such individual to request consideration for the exclusion for individuals who are medically frail or otherwise have special medical needs.

(6) The individual is compliant with any requirements imposed by the HCA for the temporary assistance for needy families (TANF) benefits.

(7) The individual is a member of a household that receives supplemental nutrition assistance program (SNAP) benefits under 7 U.S.C. 2015 and is not exempt from a work requirement under such Act.

(8) The individual is participating in a drug addiction or alcoholic treatment and rehabilitation program, as defined in section 3(h) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(h)).

(9) The individual is an inmate of a public institution which means a person who is living in a public institution. An individual is not considered an inmate:

(a) If the individual is in a public educational or vocational training institution for purposes of securing education or vocational training; or

(b) If the individual is in a public institution for a temporary period pending other arrangements appropriate to their needs.

(10) The individual is pregnant or entitled to postpartum medical assistance under section 1902(e)(5) or (16) of the Act.

I. OPTIONAL EXCEPTION FOR SHORT TERM HARDSHIP EVENTS (42 CFR 435.555):

(1) The HCA provides that an applicable individual is deemed to have demonstrated community engagement for a month in which, for all or part of such month, the individual experiences any one of the short-term hardships described in this section.

(2) Procedures. The HCA must provide, including as part of the noncompliance procedures:

(a) Notice, informing applicable individuals that the HCA offers a short-term hardship exception from the community engagement requirement, and the anticipated end date of the exception;

(b) The HCA must also provide:

(i) Notice of the method by which an applicable individual or an individual acting on behalf of the applicable individual may request a short-term hardship exception;

(ii) Notice of the timeframe for requesting a short-term hardship exception;

(iii) A timely process for determining whether a request for a short-term hardship exception will be granted;

(iv) Notice to the applicable individual of the HCAs determination, which shall include the anticipated end date of the exception (if granted); and

(v) A process under which the applicable individual or an individual acting on behalf of the applicable individual can appeal an adverse determination.

(3) Short-term hardship event. A short-term hardship event exists when, for all or part of a month, the criteria for any of the following circumstances are met:

(a) The applicable individual receives:

(i) Inpatient hospital services, nursing facility services, services in an intermediate care facility for individuals with intellectual disabilities, or inpatient psychiatric hospital services including inpatient psychiatric services for individuals under the age of 21 without regard to whether such services are in an institution for mental diseases; or

(ii) Other services of similar acuity, including: Inpatient services furnished in a critical access hospital, inpatient services furnished in an emergency hospital, inpatient services furnished in an institution for mental diseases, inpatient services furnished by other facilities that are not covered under medicaid but are otherwise recognized by the HCA, and, noninstitutional services that an applicable individual receives that, but for the receipt of such services, would likely result in the applicable individual receiving services specified in this section, regardless of whether they are received in an institutional setting.

(iii) The HCA uses the federal definition of "inpatient" at 42 CFR 440.2 for any inpatient services described in this section which means a person who has been admitted to a medical institution as an inpatient on recommendation of a physician or dentist and who receives room, board and professional services in the institution for a 24 hour period or longer, or is expected by the institution to receive room, board and professional services in the institution for a 24 hour period or longer even though it later develops that the patient dies, is discharged or is transferred to another facility and does not actually stay in the institution for 24 hour.

(b) The applicable individual resides in a county or equivalent unit of local government in which there exists an emergency or disaster declared by the president pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.) or the Robert T. Stafford Disaster and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(i) A short-term hardship exception based on an emergency declared pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.) exists when the emergency affects the ability of applicable individuals to demonstrate community engagement in a particular county or other equivalent unit of local government, or multiple counties, or statewide.

(ii) The HCA must timely notify CMS of its plan to effectuate a short-term hardship exception based on an emergency declared pursuant to the National Emergencies Act.

(iii) CMS will review states' use and implementation of a short-term hardship exception based on an emergency declared pursuant to the National Emergencies Act to ensure compliance.

(iv) The duration of an exception for an emergency or disaster declared by the president pursuant to the Robert T. Stafford Disaster and Emergency Assistance Act (42 U.S.C. 5121 et seq.) will be the first month in which the incident period begins and through at least the end of the month in which the incident period ends, and may extend beyond such month if approved by CMS upon request of the HCA, based on information the HCA provides in support of an extended period. The HCA must base its request for a longer duration on information showing that barriers to demonstrating the community engagement requirement in the relevant area persist.

(c) Through a request from the HCA to CMS made in an electronic or hard-copy format, the HCA demonstrates and CMS determines, based on data from the U.S. Bureau of Labor Statistics or another reliable source such as a state labor department, that the applicable individual resides in a county or equivalent unit of local government in which the unemployment rate is at or above the lesser of:

(i) eight percent; or

(ii) 1.5 times the national unemployment rate.

(d) The applicable individual, or the dependent of such individual, must travel 45 miles or more outside of their community of residence for an extended period of time (24 hours or more or for an overnight stay) to receive medical services necessary to treat a serious or complex medical condition that are not available within their community of residence.

(i). If the applicable individual does not travel with the dependent, then, during the month or months in which the dependent must travel, the applicable individual must demonstrate having taken leave from employment or having absented themselves from other community engagement activities for reasons related to the dependent's condition or travel, such as, but not limited to taking the dependent to local medical appointments related to or in preparation for the medical appointment that requires the travel, conducting logistical activities relating to the travel, and maintaining primary responsibility for communicating with the dependent's medical providers.

(4) An applicable individual, or an individual acting on behalf of the applicable individual, must make a request for a short-term hardship exception described in Subparagraph (a) and (d) of Paragraph (3) of Subsection I of 8.296.400.11 NMAC. The HCA does not require an applicable individual, or an individual acting on behalf of the applicable individual, to make a request for a short-term hardship exception described in Subparagraph (b) and (c) of Paragraph (3) of Subsection I of 8.296.400.11 NMAC.

(5) Excluded individuals. The HCA does not apply short-term hardship exceptions described in this section to a specified excluded individual.

J. ASSESSING COMPLIANCE WITH THE COMMUNITY ENGAGEMENT REQUIREMENT (435.556):

(1) The HCA requires applicable individuals to demonstrate community engagement or be deemed to demonstrate community engagement if applicable, as a condition of eligibility for other adults medicaid. The HCA requires:

(a) For an applicable individual who files an application for medical assistance under a state plan, or a waiver of such plan, demonstration of community engagement for at least one month, immediately preceding the month of application.

(b) For an applicable individual who is enrolled and receiving medical assistance under a state plan, or waiver of such plan, demonstration of community engagement for one month:

(i) During the period between the effective date of such individual's most recent determination or redetermination at renewal, as applicable, and the date the individual's renewal is due, consistent with section 1902(e)(14)(L) of the Act since the HCA has not opted to conduct more frequent verifications of community engagement compliance; or

(ii) During the period between the effective date of such individual's most recent determination or redetermination at renewal, and the end of the month prior to the month in which the individual becomes an applicable individual as a result of a redetermination based on a change in circumstances.

(2) The HCA does not require an applicable individual to demonstrate community engagement for a period that exceeds the period specified in Subparagraph (a) and (b) of Paragraph (1) of Subsection J of 8.296.400.11 NMAC.

(3) The HCA does not apply the requirements in Subparagraph (a) and (b) of Paragraph (1) of Subsection J of 8.296.400.11 NMAC to a specified excluded individual.

(4) The HCA informs applicants and beneficiaries of the HCAs eligibility determination which includes a clear statement of eligibility or a statement of the HCAs intended action and the specific reasons for the action which must specify whether the individual:

(a) Meets the criteria as a specified excluded individual; or

(b) Is determined to be an applicable individual, and whether the individual demonstrates community engagement or is deemed to have demonstrated community engagement for the month(s) specified in accordance with Subparagraph (a) and (b) of Paragraph (1) of Subsection J of 8.296.400.11 NMAC.

K. VERIFYING COMPLIANCE WITH OR EXCEPTION OR EXCLUSION FROM THE COMMUNITY ENGAGEMENT REQUIREMENT (42 CFR 435.557):

(1) Requirement to verify eligibility. The HCA establishes processes to use reliable information available to the HCA to verify that an applicable individual has demonstrated community engagement or was deemed to have demonstrated community engagement, or that an individual is a specified excluded individual before requesting additional information from the individual.

(a) The HCA:

(i) Identifies data sources that provide reliable information relevant to verifying that that an applicable individual demonstrated or is deemed to have demonstrated community engagement or that an individual is a specified excluded individual.

(ii) May determine that establishing a connection to or process to obtain information from a data source would not be effective, but the HCA considers such factors as the administrative costs associated with establishing and using the data match compared with the administrative costs associated with relying on documentation and the impact on program integrity in terms of the potential for ineligible individuals to be enrolled and for eligible individuals to be denied coverage.

(iii) Documents in its verification plan its policies and procedures for verifying compliance with the community engagement requirement, including an identification of the electronic data sources that the HCA uses.

(iv) Requests and uses information from the data sources identified and documented in its verification plan.

(b) Except with respect to verifying an individual is a specified excluded individual on the basis of being medically frail or otherwise having special medical needs, when there is no reliable information available to the HCA or the reliable information available to the HCA is not reasonably compatible with the information provided by or on behalf of the individual, the HCA seeks additional information from the individual to verify the individual has demonstrated or is deemed to have demonstrated community engagement or that the individual is a specified excluded individual, in accordance with the following rules:

(i) Before January 1, 2028, the HCA may require documentation or accept other information as provided when there is no reliable information available to the HCA or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual.

(ii) Beginning on January 1, 2028, when there is no reliable information available to the HCA or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual, the HCA requires documentation whenever documentation is reasonably available.

(iii) The HCA accepts information other than documentation to verify an individual's eligibility when there is no reasonably available documentation, and may not deny or terminate eligibility solely because the individual is unable to produce documentation where none exists or is reasonably available but may establish criteria for requiring the individual to provide specific information considered sufficient to verify the individual's eligibility in the absence of reasonably available documentation.

(c) The HCA provides individuals with the opportunity to furnish information and documentation required to verify that the individual has demonstrated community engagement or is deemed to have demonstrated community engagement, or is a specified excluded individual, before terminating or denying eligibility based on reliable information available to the HCA.

(d) The HCA accepts information and documentation related to the community engagement requirement from the individuals and via the modalities specified at Subsection A of 8.291.410.18 NMAC.

(e) Verification at application and renewal. The HCA verifies that an applicable individual has demonstrated or is deemed to have demonstrated community engagement for the period specified at Subsection J of 8.296.400.11 NMAC.

(f) Requirement to check all reliable information available to the HCA. The HCA does not limit the reliable information available to the HCA that is checked to specific activities or other means of

demonstrating community engagement, or to specific means of being deemed to have demonstrated community engagement, or to specific specified excluded individual statuses, but continues to check reliable information available to the HCA until the HCA verifies whether an individual who appears to be an applicable individual has demonstrated community engagement, is deemed to have demonstrated community engagement, or is not an applicable individual because they are a specified excluded individual.

(g) The HCA attempts to verify the individual's specified excluded individual status or that the individual demonstrated community engagement or was deemed to have demonstrated community engagement using all reliable information available to the HCA for all relevant months before requesting additional information from the individual.

(i) Only after checking all reliable information available to the HCA without successfully verifying compliance, deemed compliance, or specified excluded individual status will the HCA request additional information from the individual and initiate noncompliance procedures as appropriate.

(ii) An individual must not be required to provide documentation or other additional information unless information needed by the HCA could not be verified using reliable information available to the HCA, including when there is no reliable information available to the HCA or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual.

(iii) The HCA is not required to continue checking reliable information available to the HCA after the HCA verifies compliance, deemed compliance, or status as a specified excluded individual, unless the HCA has information indicating an individual whom the HCA verified demonstrated or is deemed to have demonstrated community engagement may qualify as a specified excluded individual.

(h) Requirement to apply exclusions. The HCA must determine that an individual is a specified excluded individual whenever the HCA has sufficient information to determine the individual qualifies as such, regardless of whether the individual also demonstrates community engagement or meets the criteria for an exception.

(i) Requirement to enroll eligible individuals and verify potential exclusion post enrollment. If the HCA has sufficient information to verify an individual meets or is deemed to meet the community engagement requirement and has information that suggests, but needs more information to verify that the individual is a specified excluded individual, the HCA must enroll the individual promptly using the verified information and attempt to verify eligibility for the exclusion post-enrollment or, if the individual is already enrolled, following the redetermination of eligibility.

(j) Requirement to use the electronic service established by the secretary. The HCA obtains information regarding compliance with or exception or exclusion from the community engagement requirement through the electronic data service established by the secretary to the extent the information is available through such service except for allowed exceptions.

(i) If information from a new data source becomes available through the electronic data service established by the secretary that contains reliable information relevant to verifying the community engagement requirement in this subpart, the HCA must establish a connection though such service, or establish a direct connection to or implement an alternative data source or mechanism if approved for flexibility to obtain such information from that data source as soon as practicable, but no later than 12 months after information from the data source first becomes available through the service established by the secretary.

(ii) For the purposes of verifying compliance or deemed compliance with, or exclusion from, the community engagement requirement, the secretary may determine a waiver is not required for the HCA to establish a direct connection or use an alternative mechanism to access information available from a federal data source that is accessible through the service established by the secretary. In the event the HCA does not access the federal data source through the service established by the secretary and the secretary determines that a waiver is not necessary, the HCA must establish a direct connection or alternative mechanism within the timeframe specified in Subsection K of 8.296.400.11 NMAC.

(k) Verification of medical frailty and privacy requirements for certain populations: The HCA must attempt to verify that an individual is a specified excluded individual on the basis that the individual is medically frail or otherwise has special medical needs using reliable information available to the HCA, including claim(s) relevant to the individual that has been adjudicated in the preceding 12 months, including those that have been paid, pended or denied, and encounter data, as relevant to the individual:

(i) Before January 1, 2028, when there is no reliable information available to the HCA or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual, the HCA may require documentation or accept a statement or other information under penalty of

perjury that provides sufficient information, as determined by the HCA, to verify an applicant or beneficiary is medically frail or otherwise has special medical needs, each time the HCA verifies an individual's medical frailty.

(ii) Beginning on January 1, 2028, the HCA may accept a statement or other information provided under penalty of perjury that provides sufficient information, as determined by the HCA, to verify qualification for the exclusion only once during the beneficiary's period of enrollment when there is no reliable information available to the HCA or the reliable information available to the HCA is not reasonably compatible with the information provided by or on behalf of the individual.

(iii) At the individual's first regularly scheduled redetermination after such status was determined using the individual's statement provided under penalty of perjury or other information the HCA must verify that the individual is medically frail or otherwise has special medical needs using reliable information available to the HCA, or, if reliable information available to the HCA is not sufficient for verification, using documentation submitted by or on behalf of the individual.

(iv) If an enrollee declares specified excluded individual status on the basis of being medically frail or otherwise having special medical needs after having sought such status on or after January 1, 2028, on the basis of a statement provided under penalty of perjury or other information the HCA must verify that status using reliable information available to the HCA, or, if reliable information available to the HCA is not sufficient for verification, using documentation submitted by or on behalf of the individual.

(v) After verifying an individual's specified excluded individual status on the basis of being medically frail or otherwise having special medical needs using reliable information available to the HCA or documentation submitted by or on behalf of the individual, the HCA must reverify this status at least every 12 months.

(vi) The HCA must comply with all applicable federal privacy requirements including section 1902(a)(7) of the Act; the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d et seq.) and any other applicable federal privacy laws when accessing, storing, and handling data obtained to verify that an individual is medically frail or otherwise has special medical needs or is participating in a drug addiction or alcoholic treatment and rehabilitation program.

(l) Verification of mandatory and optional exceptions:

(i) The HCA must comply with the requirements in Subparagraph (l) of Paragraph (l) of Subsection K of 8.296.400.11 NMAC when verifying qualification for a mandatory exception except that if the individual provided information on an application, renewal or other HCA form, or when reporting a change in circumstances indicating they qualify for an exception and there is no reliable information available to the HCA.

(ii) The HCA must attempt to use reliable information available to the HCA before seeking additional information from the individual to verify whether, for part or all of a month for which an applicable individual is required to demonstrate community engagement, the applicable individual received care specified at Subparagraph (a) of Paragraph (3) of Subsection I of 8.296.400.11 NMAC or the applicable individual or their dependent had to travel outside of their community of residence for an extended period of time to receive medical services specified at Subparagraph (d) of Paragraph (3) of Subsection I of 8.296.400.11 NMAC.

(iii) The HCA must apply an automatic short-term hardship exception to applicable individuals if, for part or all of a month for which such applicable individuals are required to demonstrate community engagement, the individuals reside in a county or equivalent unit of local government in which there exists an emergency or disaster at Subparagraph (b) of Paragraph (3) of Subsection I of 8.296.400.11 NMAC or for which the secretary has approved an unemployment-based short-term hardship exception as specified at Subparagraph (c) of Paragraph (3) of Subsection I of 8.296.400.11,without requesting any additional information from such applicable individuals.

L. NONCOMPLIANCE PROCEDURES (42 CFR 435.558):

(1) Provision of notice of noncompliance. If the HCA is unable to verify that an applicable individual has met the requirement to demonstrate community engagement, or is deemed compliant, the HCA must:

(a) Provide such individual with the notice of noncompliance described in Subsection K of 8.296.400.11 NMAC;

(b) Provide such individual with a period of 30 calendar days beginning on the date on which such notice of noncompliance is received by the individual to make a satisfactory showing to the HCA:

(i) Of compliance with such requirement, including, as applicable, by showing that such individual demonstrated or should be deemed to have demonstrated community engagement for each month required; or

(ii) That such requirement does not apply to such individual on the basis that such individual does not meet the definition of applicable individual, including by meeting the criteria for one or more of the categories of a specified excluded individual.

(c) Continue to furnish medicaid for an enrolled beneficiary until the individual is determined ineligible.

(2) Defining "unable to verify" community engagement. The HCA is considered to be unable to verify that an applicable individual is compliant with the requirement to demonstrate community engagement as follows:

(a) At application, the HCA is unable to verify compliance with community engagement when it does not have sufficient information after reviewing the information provided by the individual at application and the reliable information available to the HCA to determine that the individual has demonstrated or is deemed to have demonstrated community engagement for the number of months required.

(b) As part of a renewal, the HCA is unable to verify compliance with community engagement when it does not have sufficient information to determine that the individual has demonstrated or is deemed to have demonstrated community engagement for the number of months required after:

(i) Reliable information available to the HCA accessed at renewal is not sufficient to verify compliance with the community engagement requirement; or

(ii) The renewal form provided to the beneficiary is not returned or the information returned on the renewal form is not sufficient to verify compliance with community engagement.

(c) If applicable, as part of the more frequent verification of compliance, the HCA is unable to verify compliance with the community engagement requirement when it does not have sufficient information to determine that the individual has demonstrated or is deemed to have demonstrated community engagement for the number of months required after:

(i) Accessing reliable information and the information is not sufficient; or

(ii) Accessing reliable information when the requested information is not returned or the information returned is not sufficient.

(3) Content and form of noncompliance notice. A notice of noncompliance:

(a) Must include clear statements containing the following information:

(i) How to make a satisfactory showing of compliance with the community engagement requirement, including which month(s) will be assessed by the HCA;

(ii) How to show the individual demonstrated community engagement; and

(iii) How to show the individual should be deemed to have demonstrated community engagement;

(iv) How to make a satisfactory showing that the community engagement requirement does not apply to the individual on the basis that the individual does not meet the definition of an applicable individual, including because the individual meets the criteria for one or more of the categories of a specified excluded individual;

(v) The deadline for providing the information to the HCA;

(vi) A description of how the information may be submitted to the HCA through any of the modalities described in Subsection A of 8.291.410.18 NMAC;

(vii) A description of the consequences of noncompliance with the community engagement requirement and failure to respond to the notice of noncompliance for medicaid eligibility and eligibility for advance payments of the premium tax credit (APTC) and the premium tax credit (PTC) used to pay for coverage through a health insurance exchange;

(viii) How such individual may reapply for medical assistance if the individual's application is denied or the individual is disenrolled from coverage, as applicable; and

(ix) The information about short-term hardship events.

(b) Must be provided to applicants and beneficiaries in plain language and in a manner that is accessible and timely.

(c) Must, if provided in electronic format:

(i) ensure that the individual's election to received notices electronically is confirmed by regular mail;

(ii) ensure that the individual is informed of their right to change such an election to receive notices through regular mail;

(iii) post notices to the individual's electronic account within one business day of notice generation;

(iv) send an email or other confirmation alerting the individual that a notice has been posted to their account. The HCA must not include confidential information in the email or electronic alert;

(v) send a notice by regular mail within three business days of the date of a failed electronic communication if an electronic communication is undeliverable; and

(vi) at the individual's request provide through regular mail any notice posted to the individual's electronic account.

(d) Is considered to be received five days after the date on the notice, unless the applicant or beneficiary shows that they did not receive the notice within the five-day period.

(4) HCA responsibilities in the event of no satisfactory showing. If no satisfactory showing is made after the 30-calendar day period, the HCA must:

(a) Consider all other bases of eligibility for medical assistance prior to denying coverage at application or determining that an individual is ineligible;

(b) For individuals determined ineligible after considering all bases of eligibility, as applicable:

(i) Deny such individual's application and provide written notice and fair hearing right;

(ii) Disenroll such beneficiary not later than the end of the month following the month in which the 30-calendar day period ends and after the provision of advance written notice and fair hearing rights prior to the disenrollment;

(iii) Include in the clear statement of the specific reasons supporting the intended action that the individual failed to make a satisfactory showing of compliance with the community engagement requirement, including by meeting the criteria for an exception to be deemed as having demonstrated community engagement for the month(s) specified, and make a satisfactory showing that the community engagement requirement does not apply to the individual on the basis that the individual does not meet the definition of applicable individual, including failure to demonstrate the individual meets the criteria for one or more of the categories of a specified excluded individual; and

(iv) Determine the individual's or beneficiary's potential eligibility for other insurance affordability programs.

(5) Prohibition on restrictions to re-applying for coverage. The HCA must not impose any restriction on an applicable individual's ability to re-apply for coverage or their ability to receive coverage if determined eligible upon reapplication based on a prior denial of eligibility or disenrollment for noncompliance under this section.

(6) Reconsideration period. The HCA reconsiders if an individual, who was enrolled with eligibility based on MAGI, was disenrolled for failure to submit information requested in a notice of noncompliance and submits the information during the reconsideration period.

8.296.400.~~[10]~~ 11 OTHER ADULT ASSISTANCE UNIT AND BUDGET GROUP: To be considered in the other adult assistance unit, an individual must apply and be determined eligible. Individuals living with the other adult who meet criteria in 8.291.430 NMAC are included in the budget group.
[8.296.400.10 NMAC - Rp, 8.296.400.10 NMAC, 1/1/2019; A, xx/xx/xxxx]

HISTORY OF 8.296.400 NMAC:

History of Repealed Material:
8.296.400 NMAC, Recipient Requirements, filed 9/17/2013 - Duration expired 12/31/2013.
8.296.400 NMAC, Recipient Requirements, filed 12/17/2013 - Repealed 1/1/2019.