NOTICE OF EMERGENCY RULEMAKING

The Health Care Authority (HCA) Income Support Division (ISD) is implementing a temporary emergency rule to be effective January 1, 2026, this does not permanently amend or repeal the existing rule and will only remain in effect until this permanent rule takes effect under the normal rule making process.

These temporary amendments are required as a result of House of Representatives Bill 1 (H.R. 1), which was signed into law by President Donald J. Trump on July 4, 2025. Section 10102 of H.R. 1 modifies Supplemental Nutrition Assistance Program (SNAP) work requirements for able-bodied adults, and Section 10108 modifies SNAP eligibility for non-citizens.

Under H.R. 1, the federal requirements were to be implemented no later than November 1, 2025. However, the Authority did not receive formal notification and detailed federal guidance from the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS):

- Section 10102 on October 3, 2025 SNAP Provisions of the One Big Beautiful Bill Act of 2025: ABAWD Waivers - Implementation Memorandum | Food and Nutrition Service
- Section 10108 on October 30, 2025 Supplemental Nutrition Assistance Program (SNAP) Implementation of the One Big Beautiful Bill Act of 2025 - Alien SNAP Eligibility | Food and Nutrition Service.

These changes became effective upon enactment. Due to the untimely receipt of federal guidance, the Authority was unable to meet the November 1, 2025, implementation date, and the earliest feasible implementation date is January 1, 2026.

Because the Authority does not have sufficient time to complete the regular rulemaking process while meeting the new implementation timeline, an emergency rule is being filed to ensure federal compliance.

Accordingly, the ISD is implementing a temporary emergency rule, effective January 1, 2026, to the following sections of the New Mexico Administrative Code (NMAC) 8.139.410:

Section 9:

Amended section to align with section 10108 of H.R.1 by:

"Participation in SNAP is limited to individuals who live in the United States and who are U.S. citizens or are otherwise eligible per the criteria below. The department will determine eligibility for non-citizens. No individual is eligible to participate in SNAP unless that individual is otherwise eligible and is:

A. a resident of the United States; and

B. One of the following:

(1) a citizen or national of the United States; or

(2) an individual who lawfully resides in the United States in accordance with Compacts of Free Association (COFA) citizens referred to in section 402(b)(2)(G) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; or

(3) a non-citizen who has been granted the status of Cuban and Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96– 422); or

(4) a non-citizen lawfully admitted for permanent residence (LPR) as an immigrant as defined by sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act, excluding, among others, visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign county must meet one of the following requirements:

(a) Have resided in the United States with a qualified alien status for a period of 5 years or more beginning on the date of their entry into the United States; or

(b) Exempt from the five-year waiting period by meeting one of the following below:

(i) under 18 years of age; or

(ii) individual with 40 qualifying quarters; or

(iii) lawfully residing in the U.S. and 65 or older on August 22, 1996; or

(iv) individuals with a military connection including veterans, active-duty personnel, and their spouses and dependents, the spouse or unmarried dependent child of an individual; or

(v) Hmong or Highland Laotian tribal members; or

(vi) blind or disabled; or

(**vii)** certain American Indian born abroad; or

(viii) a non-citizen is admitted as a refugee under section 207 of INA; or

(ix) a non-citizen is granted asylum under section 208 INA; or

(x) a non-citizen's deportation is withheld under section 243(h) INA or section 241(b)(3) INA; or

(xi) a non-citizen is admitted to the United States as an Amerasian; or

(xii) a non-citizen is admitted to the United States as an Iraqi or Afghan special immigrant (SIV-Special Immigrant Visa); or

(xiii) a non-citizen is a victim of human trafficking; or

(xiv) a non-citizen is admitted as an Afghan or Ukrainian parolee.

C. Verification of immigrant status is determined in accordance with 7 CFR 273.2(f) and reasonable opportunity is provided pursuant to 7 CFR 273.2(f)(1)(c).

D. Reporting undocumented aliens:

(1) HCA shall inform the local DHS office only when an official determination is made that any individual who is applying for or receives benefits is present in the U.S. in violation of the INA. An official determination that an undocumented immigrant is in the U.S. in violation of the INA is only made when:

(a) the undocumented alien's unlawful presence is a finding of fact or conclusion of law that is made by HCA as part of a formal determination about the individual's eligibility; and

(b) HCA finding is supported by a determination by DHS or the executive office of immigration review (EOIR) that the non-citizen is unlawfully residing in the US, such as a final order of deportation.

(2) A systematic alien verification for entitlements (SAVE) response showing no service record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present.

(3) Undocumented immigrant status is considered reported when ISD enters the information about the non-citizen into the household's computer file.

(4) When a household indicates inability or unwillingness to provide documentation of immigrant status for any household member, HCA must classify that member as an ineligible immigrant. When a person indicates inability or unwillingness to provide documentation of immigrant status, HCA must classify that person as an ineligible immigrant. In such cases HCA must not continue efforts to obtain that documentation."

Section 14:

- Updating subsection A. by:
  - Adding language "are ages 18-64" to clarify the applicable age range
  - Removing the table with "age limit" and "date ends".
- Updating subsection D. by:
  - Adding "Upon approval from Food and Nutrition Service (FNS), ISD will waive the three-month time limit requirement for the following individuals in accordance with 7 CFR 273.24(f)"
  - Removing language in "(1)" and "(2)".
- Updating subsection F. by:
  - Removing the following individuals "(3) homeless, (4) Veterans, (5) 24 years or younger".
  - Adding the following language:
    - "The time limit does not apply to an individual if he or she is:
    - (1)Under 18 or 65 years of age or older;
    - (2) (c) applying for or receiving disability benefits such as Supplemental Security Income (SSI) or General Assistance (GA) Disability.
    - (3) Carrying for a child under the age of 14;
    - (4) otherwise exempt from the SNAP general work rules under 7 U.S.C. 2015(d)(2) which includes a person who is:

(a) currently subject to and complying with a work registration requirement under title IV of the Social Security Act or the Federal-State unemployment compensation system;

(b) a student enrolled at least half time in any recognized school, training program, or institution of higher education unless ineligible ;

(c) a regular participant in a drug addiction or alcoholic treatment and rehabilitation program;

(d) employed a minimum of thirty hours per week or receiving weekly earnings which equal the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)), multiplied by thirty hours; or

(e) a person between the ages of sixteen and eighteen who is not a head of a household or who is attending school, or enrolled in an employment training program, on at least a half-time basis

- (5) Indians, also referred to as Native Americans, Alaska Natives, Indigenous Peoples, and Tribal Members:
- (a) an "Indian" as defined in 25 U.S.C 1603 (13)
- (b) an "Urban Indian" as defined in 25 U.S.C 1603 (18)
- (c) an "California Indian" as defined in 25 U.S.C 1679 (a)
- (6) a pregnant woman
- Adding the following language to subsection G: "discretionary"

Regulations issued pursuant to the act are contained in 7 CFR 270-282. Administration of the HCA, including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).
The Department must promulgate these rules and make them effective no later than January 1, 2026, to be in compliance with Federal law. The rulemaking process is necessary to avoid placing HCA in violation of federal law.

The register and rule language is available on the HCA website at: https://www.hca.nm.gov/lookingforinformation/income-support-division-registers-2/. If you do not have internet access, a copy of the final register and rules may be requested by contacting HCA Office of the Secretary at (505) 827-7750.