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New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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The New Mexico Register

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Telephone: (505) 476-7942; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

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New Mexico Register

Volume XXXI, Issue 15

August 11, 2020

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Notices of Rulemaking and Proposed Rules

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed repeal and replacement of rule, 7.28.2 NMAC, "Requirements of Home Health Agencies." The public hearing will be held on September 17, 2020, at 9:30 am via Cisco Webex online, via telephone, and, comments will be received via email through the day of the hearing until 5:00 pm.

The hearing is being held via internet, email and telephonic means due to the concerns surrounding Coronavirus and in accord with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of a Public Health Emergency, and any subsequent executive orders, and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. This hearing will be conducted to receive public comment regarding the proposed repeal and replacement of the emergency rule which governs public, profit or nonprofit home health agencies providing medically directed therapeutic or supportive services to a patient or client in their place of residence. All facilities licensed as home health agencies, pursuant to Subsection A of Section 24-1-5 NMSA 1978, are subject to all provisions of these regulations.

The hearing will be conducted to receive public comments regarding the proposed repeal and replacement of the emergency rule, 7.28.2 NMAC, including the following rule parts:

Amended Subsection A of 7.28.2.33 NMAC-Plan of Care: change to Subsection A and Paragraph (2) and (3) of Subsection A to expand the list of providers who can write and review a plan of care for a patient or client of a home health agency and who will be consulted to approve additions or modifications to the original plan.

The legal authority authorizing the proposed repeal and replacement of the rule by the Department is at Subsection E of Section 9-7-6, Subsection F of Section 24-1-2, Subsection J of Section 24-1-3 and Subsection B of Section 24-1-5 NMSA 1978. A free copy of the full text of the proposed rule can be obtained from the Department's website at <https://nmhealth.org/publication/regulation/>.

Any interested member of the public may attend the hearing and offer public comments on the proposed repeal and replacement of the rule during the hearing. To access the hearing by telephone: please call 1-408-418-9388. Your telephone comments will be recorded. To access the hearing via internet: please go to Webex.com; click the "Join" button; click the "Join a meeting" button; enter the following meeting number and password where indicated on screen-Meeting number (access code): 146 936 0124 #, Meeting password: 8jhCqugKY43; click the "OK" button. You may also provide comment via Chat during the live streaming.

Written public comments may also be submitted to the mailing address shown below. Please submit any written comments regarding the proposed rule to the attention of:

Christopher Burmeister
Division Director, Health Improvement
New Mexico Department of Health
2040 S. Pacheco,
Santa Fe, NM 87505
Christopher.Burmeis@state.nm.us
505-476-9074

Mailed written comments must be received by 5 pm MST on September 17, 2020. Written comments may also be submitted to the email address shown above through 5:00 pm MST on the date of the hearing. All written comments will be published on the agency website at <https://nmhealth.org/publication/regulation/> within 3

days of receipt, and will be available at the New Mexico Department of Health Office of General Counsel for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Sheila Apodaca by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico Human Services Department (HSD) will hold a public hearing to allow public comment to adopt the Temporary Assistance for Needy Families (TANF) State Plan for FY2021 to FY2023. The HSD is required by Federal Law to file a State Plan that describes how the Department will administer the State's TANF-funded cash assistance programs. The State Plan must be submitted every two years to the United States Department of Health and Human Services (DHHS), Administration for Children and Families (ACF). The Department is required to offer a 45-day comment period for the TANF State Plan prior to submittal. The TANF State plan was combined with Workforce Innovation and Opportunity Act (WIOA) and was received public comment on March 12, 2020. The proposed plan includes comments received during the March 12, 2020 comment period. These HSD proposals will ensure the TANF State Plan is in compliance with federal law which would otherwise place HSD in violation. The hearing will be held virtually through a GoTo Meeting at <https://global.gotomeeting.com/join/923136685> and a phone number is provided for individuals

who would like to participate by phone: United States: +1 (224) 501-3412, Access Code: 923-136-685, on Friday September 25, 2020 from 2 p.m. to 3 p.m. During the scheduled public hearing, written comment can be dropped off at the HSD Administrative Services Division (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM 87505; verbal comment must be submitted through the Go To Meeting or via phone.

The Human Services Register Vol. 43 No. 08 outlining the proposed regulations are available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. Individuals wishing to testify or to request a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Santa Fe, New Mexico 87504-2348, or by calling 505-827-7250 or 505-827-7254.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-6201 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, September 25, 2020. The agency shall post all written comments on its website, if one exists, as soon as practicable and no more than 3 business days following receipt to allow for public review. All written comments received by the agency shall also be available for public inspection at the main office of the agency. Please send comments to:

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

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

HUMAN SERVICES DEPARTMENT MEDICAL DIVISION

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) *8.215.500 NMAC-Supplemental Security Income Methodology, Income and Resource Standards; 8.240.500 NMAC-Qualified Medicare Beneficiaries, Income and Resource Standards; 8.242.500 NMAC-Qualified Disabled Individuals Whose Income Exceeds QMB and SLIMB, Income and Resource Standards; 8.245.500 NMAC-Specified Low Income Medicare Beneficiaries, Income and Resource Standards; 8.250.500 NMAC-Qualified Disabled Individuals, Income and Resource Standards.*

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: August 11, 2020
Hearing Date: September 25, 2020
Adoption Date: Proposed as January 1, 2021.
Technical Citations: Social Security Act Section 1905(p) and 1905(s)

The Department through these rules is proposing to eliminate the resource requirement for the following Medicare Savings Programs (MSPs): Qualified Medicare Beneficiaries (QMB), Specified Low Income Medicare Beneficiaries (SLIMB), Qualified

Disabled Working Individuals (QDWI), and Qualified Individuals 1 (QI1). The Department is eliminating the resource requirement to help more low-income individuals access assistance through the MSPs and to reduce the administrative burden for MSP applicants, beneficiaries, and the Income Support Division.

The Department is proposing to amend the rule as follows:

8.215.500 NMAC

Section 8 is amended to add the Departments new mission statement. Section 9 is amended to delete the reference to the MSP categories using Supplemental Security Income (SSI) methodology in determining countable resources. Section 12 is amended to delete the language referencing the resource standards for MSP categories.

8.240.500 NMAC

Section 8 is amended to add the Departments new mission statement. Section 9 is amended to remove the reference to resources and delete outdated language. Section 10 is amended to remove the resource requirement for the QMB category. Section 11 referencing resource transfer language is deleted. Sections 12, 13, 14, and 15 are renumbered to 11, 12, 13, and 14, respectively. Section 12 is amended to delete the language referencing the countable resources and resource exclusions.

8.242.500 NMAC

Section 8 is amended to add the Departments new mission statement. Section 9 is amended to remove the reference to resources and add income. Section 10 is amended to remove the resource requirement for the QDWI category. Section 11 referencing resource transfer language is deleted. Sections 12, 13, and 14 are renumbered to 11, 12, and 13, respectively.

8.245.500 NMAC

Section 8 is amended to add the Departments new mission statement.

Section 9 is amended to remove the reference to resources and add income.

Section 10 is amended to remove the resource requirement for the SLIMB category.

Section 11 referencing resource transfer language is deleted.

Sections 12, 13, 14, and 15 are renumbered to 11, 12, 13, and 14, respectively.

8.250.500 NMAC

Section 8 is amended to add the Departments new mission statement.

Section 10 is amended to remove the reference to resources and add income.

Section 11 is amended to remove the resource requirement for the QII category.

Section 12 referencing resource transfer language is deleted.

Sections 13, 14, 15, and 16 are renumbered to 12, 13, 14, and 15, respectively.

The Department has also submitted a request to the State Records and Archives Center to change the Chapter names for 8.242 NMAC and 8.250 NMAC. The purpose of these Chapter name changes is to accurately reflect the information in those NMAC Chapters.

The register for these proposed amendments to these rules will be available August 11, 2020 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement these rules effective January 1, 2021. A public hearing will be held **via conference call** on September 25, 2020 at 1:00 p.m., Mountain Time (MT). **Conference**

phone number: 1-800-747-5150.

Access Code: 2284263.

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5:00 p.m. MT on September 25, 2020. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

**HUMAN SERVICES
DEPARTMENT
MEDICAL DIVISION**

NOTICE OF RULEMAKING

The Human Services Department (the

Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.291.430, *Medicaid Eligibility - Affordable Care, Financial Responsibility Requirements*.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: August 11, 2020

Hearing Date: September 11, 2020

Adoption Date: Proposed as December 1, 2020

Technical Citations: Section 53103 and 40203 of the Bipartisan Budget Act of 2018 (BBA of 2018), 1902(e) (14) of the Social Security Act (SSA), Section 2113 of the SSA, Section 3004 of the HEALTHY KIDS Act, Section 11051, 11031, 11049 of the Tax Cuts and Jobs Act (TCJA)

The Department is proposing to amend the rule as follows:

Background

The Centers for Medicare and Medicaid Services (CMS) issued guidance on August 22, 2019 regarding the counting of qualified lottery and gambling winnings in Modified Adjusted Gross Income (MAGI)-based methods. Per 42 CFR 435.603(e)(1), found at 8.291.430.15(B)(1) NMAC, an amount received as a lump sum is counted as income only in the month received and a resource in subsequent months. Section 53103 of the BBA of 2018 supersedes the regulatory rule found at 42 CFR 435.603(e)(1) in the case of “qualified lottery winnings” and “qualified lump sum income” (i.e. gambling) of \$80,000 or greater. Section 53103 requires that covered lottery and gambling winnings of \$80,000 or greater, which are received in a single payout, be counted not only in the month received, but over a period of up to 120 months. Section 53103 provides a formula for

determining this period, depending on the amount of the winnings. States are required to apply this formula to qualified lottery or gambling winnings received beginning on or after January 1, 2018.

Section 1902e(14)(K)(v) of the SSA included in this rule defines “qualified lottery winnings” as winnings from a sweepstakes, lottery, or pool or winnings from “a lottery operated by a multistate or multijurisdictional lottery association.”

Multijurisdictional lotteries include those that include multiple entities of government.

While lottery winners generally have a choice between receiving a single payment or an annuity that pays out in installments over a period of time, the definition of “qualified lottery winnings” per the SSA applies to the single payout option. Lottery winnings paid out in installments are not required to be considered as “qualified lottery winnings.” Lottery winnings paid in installments would be treated the same as other types of recurring income per 42 CFR 435.603(e). Non-cash prizes continue to be counted as lump sum income in the month in which they are received and are not counted as “qualified lottery winnings.”

Section 1902(e)(14)(K)(vi) of the SSA defines “qualified lump sum income” as “income that is received as a lump sum from monetary winnings from gambling. Gambling activities include: betting pools; wagers placed through bookmakers; slot machines; roulette wheels; dice tables, lotteries; and bolita or numbers games, or the selling of chances therein.” Non-cash prizes are not counted as qualified lump sum income.

For qualified winnings from lotteries or gambling activities occurring on or after January 1, 2018, states must count the winnings according to the following formula:

Winnings less than \$80,000 are counted in the month received.

Winnings of \$80,000 but less than

\$90,000 are counted as income over two months, with an equal amount counted in each month. For every additional \$10,000 one month is added to the period over which total winnings are divided, in equal installments, and counted as income.

The maximum period of time over which winnings may be counted is 120 months, which would apply to winnings of \$1,260,000 and above.

Under section 53103(b)(2) of the BBA of 2018 the requirement to count qualified lottery and gambling winnings in household income over multiple months applies only to the individuals receiving the winnings.

The determination of household income for other members of the individual’s household is not affected.

Thus, for example, the total amount of qualified lottery or gambling winnings of a spouse or parent continues to count only in the month received in determining the eligibility of the other spouse and children.

States may accept self-attestation or require other verification of lottery and gambling winnings. If a state requires other verification, per regulations at 42 CFR 435.952(c), the agency will access electronic data sources (such as a state lottery winner database, if available, and may accept self-attestation of lottery and gambling winnings before requesting documentation from the individual.

Section 1902(e)(14)(K)(iii) of the SSA requires that states establish an “undue medical or financial hardship” exemption through a procedure and based on a standard established by the state for individuals impacted by the new treatment of lottery and gambling winnings. States should develop a procedure and establish a reasonable standard for this hardship exemption.

Applicants and beneficiaries affected by the counting of lottery or gambling winnings maintain their ability to request a determination on a non-MAGI basis. The SSA specifies that the state agency provide notice to affected individuals of the date

on which the lottery or gambling winnings no longer will be counted for the purpose of Medicaid or CHIP eligibility. States are required to notify affected individuals of the hardship exemption.

The August 22, 2019 CMS guidance letter references other changes to countable income regarding the exclusion of parent mentor compensation, alimony received, and discharged student loan debt. Changes to deductions are referenced regarding moving expenses, alimony paid, and tuition and fees. These changes have been incorporated into the proposed rules.

Section 8

The current mission statement is being added.

Section 10

Section 10 is revised to reflect the new Federal Poverty Level amounts that go into effect on April 01, 2020.

Section 15 Changes to Countable Income

Paragraph (1) of Subsection B is revised to reference qualified lottery and gambling winnings as an exception to lump sum counted as income only in the month received.

Section 15 is revised to add a new Subsection D regarding counting qualified lottery and gambling winnings in MAGI-based income in accordance with the CMS guidance. The Department will require verification of lottery winnings, but will access electronic data sources, if available, before requesting documentation. In terms of a hardship exemption the Department will apply a medical exemption if the individual can demonstrate that the counting of lottery or gambling winnings may deprive the individual of medical care such that the individual’s health or life would be endangered. A medical exemption request must be made in writing and submitted to the Medical Assistance Division for review. Exemption request details will be included in the

Notice of Case Action (NOCA) along with the other notice requirement to provide the date on which the lottery or gambling winnings will no longer be counted.

Section 15 is revised to add a new Subsection E regarding the exclusion of a nominal amount of Parent Mentor Compensation. A "parent mentor" is a parent or guardian of a Medicaid or CHIP-eligible child who is "trained to assist families with children who have no health insurance coverage with respect to improving the social determinants of the health of such children." Section 3004 of the HEALTHY KIDS Act amends section 1902(e)(14) of the SSA to exclude parent mentor compensation from their MAGI-based household income. Any nominal amount received by an individual as compensation, including a stipend, for participation as a "parent mentor" in a grant-funded program under section 2113 of the SSA shall be disregarded for purposes of determining income eligibility of such individual for medical assistance. The disregard of parent mentor income applies only in the case of parent mentors working with a grantee organization under section 2113 of the SSA. The Department is defining a nominal amount as \$1,600 per month. Parent mentor income above \$1,600 per month is counted in the MAGI calculation.

Section 15 is revised to add a new Subsection F regarding discharged student loan debt. Student loan debt that is discharged, forgiven or cancelled is generally treated as taxable income to the borrower, and therefore the amount of discharged debt is included in MAGI-based income. Under section 11031 of the TCJA discharged student loan debt is not included in the income (and not counted in the MAGI-based income) of a borrower for tax years 2018 through 2025 if the debt is discharged on account of the death or the permanent and total disability of the student. The borrower and the student may or may not be the same person. Student loan debt discharged under the foregoing circumstances is

not counted as income in determining household income for other members of the borrower's household.

Section 15 is revised to add a new Subsection G regarding alimony received. Section 11051 of the TCJA modified the alimony rules. Under the TCJA, alimony payments received under separation or divorce agreements finalized after December 31, 2018, or pre-existing agreements modified after December 31, 2018, are not included in the income of the recipient. For individuals with alimony agreements finalized on or before December 31, 2018, alimony continues to be included in the income of the recipient for the duration of the agreement or until the agreement is modified. Self-attestation is accepted for the verification of the date of execution of separation or divorce agreements that include the provision of alimony.

Section 15 Changes to Deductions

Section 15 is revised to add a new Subsection H regarding alimony paid. Under the TCJA, alimony payments under separation or divorce agreements finalized after December 31, 2018 or pre-existing agreements modified after December 31, 2018, are not deductible by the payer. For individuals with alimony agreements finalized on or before December 31, 2018 alimony payments continue to be deductible. Self-attestation is accepted for the verification of the date of execution of separation or divorce agreements that include the provision of alimony.

Section 15 is revised to add a new Subsection I regarding moving expenses. Section 11049 of the TCJA eliminates the deduction for qualified moving expenses for tax years 2018 through 2025. Moving expenses, including expenses incurred by the individual as well as reimbursements from an employer, should no longer be deducted in calculating MAGI. This change does not apply to active duty members of the military who are ordered to move or change duty station.

Section 15 is revised to add a new Subsection J regarding the payment of tuition and fees for qualified education expenses for postsecondary education. Amounts paid for these expenses for the taxpayer, spouse or tax dependent typically could be deducted in computing adjusted gross income. Section 40203 of the BBA of 2018 eliminates this deduction effective January 1, 2018. Such tuition and fees paid are no longer deductible in calculating MAGI, effective January 1, 2018.

The register for these proposed amendments to this rule will be available August 11, 2020 on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx>. If you do not have Internet access, a copy of the proposed rule may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement these rules effective December 1, 2020. A public hearing will be held **via conference call** on September 11, 2020 at 9:00 a.m., Mountain Time (MT). **Conference phone number: 1-800-747-5150.** **Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5:00 p.m. MT on September 11, 2020. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <http://www.hsd>.

state.nm.us/2017-comment-period-open.aspx along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

LIVESTOCK BOARD

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Livestock Board (NMLB) will hold a video/telephonic rulemaking hearing on September 10, 2020 at 12:30 p.m. The hearing will be held via a virtual format. Instructions on how to join the virtual rulemaking hearing will be posted on the NMLB's website, www.nmlbonline.com.

The NMLB will consider a proposed amendment to 21.32.2 NMAC, **BRANDING OF LIVESTOCK**. The purpose of the proposed rule amendment to Subsection J of 21.32.2.7 NMAC is to provide NMLB clarity on the term "Confined Feeding" as used in the field in regards to branding requirements. The purpose of the proposed rule amendment to Subsection B of 21.32.2.9 NMAC is to allow dairy producers to be able to move cattle from one confined feeding operation to another without branding, provided there is no change of ownership.

Full copies of text of the proposed new rule can be obtained from the agency's website at www.nmlbonline.com. To request a copy of the proposed rule by mail, contact the NMLB at (505)841-6161. Visit www.nmlbonline.com for instructions on how to attend the virtual public hearing.

Interested persons may submit written comments on the proposed changes to 21.32.2 NMAC at www.nmlbonline.com or individuals may mail written comments to: NMLB/Rule Comments, 300 San Mateo Blvd NE, Suite 1000, Albuquerque, NM 87108. Comments are due by 4:30 p.m. on Wednesday, September 9, 2020. The final proposed rule will be voted on by the board during the public hearing on Thursday, September 10, 2020. Interested persons may also provide data, views or arguments, orally or in writing, at the virtual public rule hearing to be held on September 10, 2020 at 12:30 pm.

Legal authority for this rulemaking can be found in the Livestock Code 77-2-7, et seq. NMSA 1978; Livestock Board's power to establish rules and regulations 77-2-7, et seq. NMSA 1978.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the agency at (505) 841-6161 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the NMLB at (505) 841-6161 if a summary or other type of accessible format is needed.

End of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.15.2 NMAC Sections 10, 13 and 17 effective August 11, 2020.

8.15.2.10 APPLICATION PROCESS:

A. Clients apply for child care assistance benefits by presenting the following documents to establish eligibility in person at the local child care office. Upon a need or request by the client, the department may approve a client to submit their initial application by fax, email, or mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Under documented extenuating circumstances and with approval from the early childhood services director, clients may be given longer than 14 days but no more than 30 days to submit required documentation:

- (1) a completed signed application form;
- (2) current proof of earned income or participation in the temporary assistance to needy families (TANF) program; social security numbers or assigned TANF identification numbers may be used to verify TANF participation or receipt of child care support;
- (3) school schedule or verification of educational activity, if applicable;
- (4) verification of birth for all applicant's household children;
- (5) proof of unearned income;
- (6) proof of New Mexico home address; and
- (7) CYFD approved provider.

B. Assistance is provided effective the first day of the month of application if all of the following apply:

- (1) the client is utilizing child care services;
- (2) the client is employed, attending school or a training program. In the case of a public health emergency, the department secretary may waive the requirement for employment, attending school or a training program; and
- (3) the eligible provider to be paid was providing care from the first day of the month forward.

[8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 10/1/2016; A/E, 03/16/2020; A, 8/11/2020]

8.15.2.13 CLIENT RESPONSIBILITIES:

Clients must abide by the regulations set forth by the department and utilize child care assistance benefits only while they are working, attending school or participating in a training or educational program.

A. Co-payments: Co-payments are paid by all clients receiving child care assistance benefits, except for CPS child care, at-risk child care, and qualified grandparents or legal guardians as defined in Paragraph (2) of Subsection C of 8.15.2.11 NMAC. In the case of a public health emergency, the department secretary may waive co-payments for families receiving child care. The department will pay providers the client's approved rate, during the time of the public health emergency. Co-payments are determined by income and household size. The co-payment schedule is published yearly at <https://cyfd.org/child-care-services>.

B. Co-payments described in Subsection A of 8.15.2.13 NMAC, are used for determining the base co-payment for the first eligible child. The formula for calculating the co-payment for the first full time child is (low end of the monthly income bracket on the co-payment schedule ÷ 200 percent of annual federal poverty level for household size) X (low end of the monthly income bracket on the co-payment schedule) X 1.1 = monthly copayment for first full time child. Base co-payments for each additional child are determined at one half of the co-payment for the previous child.

(1) The first child is identified as the child requiring the most hours of child care.

(2) Each additional child will be ranked based on the most number of hours needed for child care to the least number of hours needed for child care.

C. Each child's co-payment will be adjusted based on the units of services described in Subsection E of 8.15.2.17 NMAC, as follows:

- (1) full time care will be based on one hundred percent of the base co-payment;
- (2) part time 1 care will be based on seventy-five percent of the base co-payment;
- (3) part time 2 care will be based on fifty percent of the base co-payment; and
- (4) part time 3 care will be based on twenty-five percent of the base co-payment.

D. Clients pay co-payments directly to their child care provider and must remain current in their payments. A client who does not pay co-payments may be subject to sanctions.

E. The co-payment for a child shall not exceed the monthly

provider reimbursement rate. If this situation arises, the co-payment may be reduced in the amount by which it exceeds the monthly provider reimbursement rate.

F. In-home providers:

Parents who choose to use an in-home provider become the employer of the child care provider and must comply with all federal and state requirements related to employers, such as the payment of all federal and state employment taxes and the provision of wage information. Any parent who chooses to employ an in-home provider releases and holds the department harmless from any and all actions resulting from their status as an employer. Payments for in-home provider care are made directly to the parent.

G. Notification of changes: Clients must notify the department of changes that affect the need for care, which include but are not limited to any non-temporary change in activity, or household members moving in or out, within five business days of the change. Clients who do not comply with this requirement may be sanctioned.

H. Required application with New Mexico human services department's child support enforcement division (CSED):

(1) When one or both of the child's parents are absent from the home, the client shall apply for child support through CSED within 12 months of initial application with the child care assistance program.

(2) The following exceptions include but are not limited to: the client is receiving TANF; the client is already receiving child support; the client is receiving financial support, including but not limited to housing, clothing, food, transportation and funds, from the non-resident parent; there is a joint custody agreement and neither parent is ordered to pay support; parental rights have been terminated; the parent is a foster parent to the child; the parent is an adoptive parent and provides proof of a single parent adoption; at-risk child care; a parent

is temporarily out of the home and is still considered part of the household; the client is a teen parent; the client is a grandparent; guardian; parent is deceased or when good cause exists.

(3) Good

cause for refusal to apply may be granted when such application is not in the best interest of the child or parent, including but not limited to the following circumstances:

(a)

there is possible physical or emotional harm to the child, parent or guardian;

(b)

the child was conceived as a result of incest or rape;

(c)

legal proceedings for adoption of the child are pending before a court; or

(d)

the client is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(4) The

applicant or recipient who makes a claim for good cause shall supply written documentation to establish the claim. The caseworker shall not deny, delay, or discontinue subsidized child care benefits pending a determination of good cause if the applicant or recipient has complied with the requirements to furnish information.

(5) If the client

is not exempted from applying with CSED and has not applied within the required timeframe, the client's case will be closed.

[8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 10/1/2016; A, 10/1/2019; A/E, 03/16/2020; A, 8/11/2020]

8.15.2.17 PAYMENT FOR

SERVICES: The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child's enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at

any time during the month. The following describes circumstances when placements may be closed and payment discontinued at a time other than the end of the month:

A. When the child

care placement agreement expires during the month, or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. Upon a change

of provider the client and former provider have three days after the fifth day of nonattendance to notify the department. If this requirement for notification was met, the provider will be paid through the 14th day following the first date of nonattendance. If notification requirement is not met, the provider will be paid through the last date of attendance. The agreement with the new provider shall become effective when payment to the previous provider ceases. If the client notifies the department of the change in providers fewer than 14 days before the change will take place or after the change has taken place, the client is responsible for payment to the new provider beginning on the start date at the new provider and continuing up until the final date of payment to the former provider, as described above. Payment to the former provider will be made through the last day that care is provided if the child is withdrawn from the provider because the health, safety or welfare of the child is at risk, as determined by a substantiated complaint against the child care facility.

C. The department

shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care. The registration/educational fee will discontinue when a placement closes as a result of a client changing

providers, a provider discontinuing services, a child care placement agreement expiring, or a provider’s license being suspended or expiring.

D. The amount of the payment is based upon the age of the child and average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

E. The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2 (only for split custody or in cases where a child may have two providers)	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 8-29 hours per week per month	Care provided for an average of 8-19 hours per week per month	Care provided for an average of 7 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

F. Hours of care shall be rounded to the nearest whole number.

G. Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
\$720.64	\$589.55	\$490.61	\$436.27
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
\$586.07	\$487.11	\$427.13	\$422.74
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
\$566.98	\$463.50	\$411.62	\$406.83
Registered homes and in-home child care			
Infant	Toddler	Pre-school	School-age
\$289.89	\$274.56	\$251.68	\$251.68

H. The department pays a differential rate according to the license or registration status of the provider, national accreditation status of the provider if applicable, and star level status of the provider if applicable. In the case of a public health emergency, the department secretary may approve a differential rate be paid to licensed providers.

I. Providers holding and maintaining CYFD approved national accreditation status will receive the differential rate listed in Subsection I. below, per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child. All providers who maintain CYFD approved national accreditation status will be paid at the accredited rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement.

(1) Providers who receive national accreditation on or before December 31, 2014 from an accrediting body that is no longer approved by CYFD will no longer have national accreditation status, but will remain eligible to receive an additional \$150 per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child until December 31, 2017.

(a) In order to continue at this reimbursement rate until December 31, 2017 a provider holding accreditation from accrediting bodies no longer approved by CYFD must maintain licensing standards and maintain accreditation without a lapse.

(b) If the provider fails to maintain their accreditation, the provider reimbursement will revert to the base reimbursement rate unless they have achieved a FOCUS star level or regain national accreditation status approved by CYFD.

(2) The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee's national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. All providers are required to notify the department immediately when a change in accreditation status occurs.

J. The department will pay a differential rate per child per month for full time care above the base reimbursement rate to providers achieving higher Star levels by meeting FOCUS essential elements of quality as follows:

2+ Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$88.00	\$88.00	\$88.00	\$88.00
3 Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
4 Star FOCUS Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$180.00	\$180.00	\$180.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$250.00	\$250.00	\$250.00	\$250.00
4 Star FOCUS Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$280.00	\$280.00	\$250.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$550.00	\$550.00	\$350.00	\$250.00

K. In order to continue at the FOCUS reimbursement rates, a provider must meet and maintain the most recent FOCUS eligibility requirements and star level criteria. If the provider fails to meet the FOCUS eligibility requirements and star level criteria the provider reimbursement will revert to the FOCUS criteria level demonstrated.

L. Differential rates determined by achieving higher star levels determined by AIM HIGH essential elements of quality will be discontinued effective December 31, 2017. The department will pay a differential rate to providers achieving higher star levels determined by the AIM HIGH essential elements of quality until December 31, 2017 as follows: 3-Star at \$88.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$122.50 per month per child for full time care above the base reimbursement rate, and 5-Star at \$150.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent AIM HIGH star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the base reimbursement rate.

M. The department pays a differential rate equivalent to five percent, ten percent or fifteen percent of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%

N. If a significant change occurs in the client's circumstances, (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement may be modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

O. The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

P. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds. [8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 10/1/2016; A, 10/1/2019, A/E, 03/16/2020; A, 8/11/2020]

PUBLIC LANDS, COMMISSIONER OF

This is an amendment to 19.2.100 NMAC, Section 71, effective August 11, 2020.

19.2.100.71 TEMPORARY SHUT-IN OF OIL WELLS DUE TO SEVERE REDUCTION IN THE PRICE OF OIL:

A. Basis for allowing shut in of oil wells: Pursuant to Section 19-10-6 NMSA 1978, the commissioner has determined that, because of a severe reduction in the price of oil, the beneficiaries of state trust lands will be better served if oil wells are allowed to be temporarily shut in rather than produced at a low price.

B. Effective period: [Pursuant to Section 14-4-5.6 NMSA 1978 and 19.2.16.14 NMAC, this emergency rule shall be effective immediately upon filing. Pursuant to 19.2.16.14 NMAC, this rule shall expire in 30 days unless within that time period the commissioner commences proceedings to adopt the rule under the normal rulemaking process, in which case this emergency rule shall remain in effect until a rule is adopted in accordance with the normal rulemaking process, but in no event shall this emergency rule remain in effect for more than 120 days.]

(1) Unless extended by the commissioner after a subsequent notice and public hearing or terminated sooner by a subsequent regulation of the commissioner after finding that the price of oil is no longer severely reduced, 19.2.100.71 NMAC shall remain in effect for a period of one year from the effective date of this rule.

(2) Any termination of 19.2.100.71 NMAC before one year from the effective date of this rule shall not be effective until 30 days after the commissioner has by certified mail sent notice of such prospective termination to each lessee whose lease is being extended by the operation of this section.

C. Any oil and gas lease issued by the commissioner of public lands and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations shall not expire if:

(1) There is at least one well capable of producing oil located upon some part of the lands included in the lease and all such wells are shut in because of the severe reduction in the price of oil;

(2) The lessee timely notifies the commissioner in writing, within 30 days of the date all oil wells capable of producing [oil] have been shut in [~~on a form made available by the commissioner for that purpose;~~], with the following information: the API (american petroleum institute well number), the well name and number, the lease number, the date the well was shut in, and the date the last well on the lease was shut in. Notice may be filed via electronic mail to oilSIRnotice@slo.state.nm.us or may be mailed to the state land office. Said notice shall be accompanied by a form C-103 filed with the oil conservation division or other written oil conservation division approval of the shut-in for each well shut in; and

(3) The lessee timely pays an annual shut-in royalty within 90 days from the date all wells capable of producing oil have been shut in and thereafter before each anniversary of such date. Each payment remitted under this section shall accompany a form made available by the commissioner which shall specify the shut-in well, along with other applicable information. The amount of the shut-in royalty shall be twice the annual rental due by the lessee under the terms of the lease but not less than three hundred twenty

dollars (\$320) per well per year, the fee established by the state legislature in Section 19-10-6 NMSA 1978. If the other requirements of this subsection are satisfied, the timely payment of the shut-in royalty shall be considered for all purposes the same as if oil were being produced in paying quantities until the next anniversary of the date the well was first shut in; provided, that this [emergency] rule [and any rule adopted in accordance with the normal rulemaking process] continues to be in effect.

(a)
A state land office lease may be maintained in effect by virtue of one or more wells located within an area covered by a unit agreement where all such wells have been temporarily shut in pursuant to this rule. For such shut-in wells located on a state land office lease, the lessee of each state lease maintained in effect by virtue of such wells shall pay royalty per well calculated by multiplying the base shut-in royalty that would be due for that lease by the percentage of acreage of that lease within the area; but in no event shall the lessee pay less than three hundred twenty dollars (\$320) per well per year.

(b)
A state land office lease may be maintained in effect by virtue of one or more wells located within an area covered by a communitization agreement, or constituting a pooled unit or cooperative area, where all such wells have been temporarily shut in pursuant to this rule. The lessee of the largest state lease within the communitized area shall pay the base shut-in royalty due for that lease; but in no event shall the lessee pay less than three hundred twenty dollars (\$320) per well per year.

(c)
If the date when a shut-in royalty payment is due falls on a Saturday, Sunday or legal state or federal holiday, the shut-in royalty may be timely paid if received on the next calendar day which is not a Saturday, Sunday or holiday

(d)
Under the standard business practice of the state land office, the date

that the state land office stamps or otherwise marks the shut-in royalty payment or check establishes the date of actual receipt by the state land office.

D. If the lessee fails to timely comply with the requirements of Subsection C of 19.2.100.71 NMAC, no action by the commissioner or the state land office may ratify, re-grant or revive the expired lease or estop the commissioner from treating the lease as expired, unless such relief is granted expressly in writing signed by the commissioner.

E. Lessees utilizing the temporary shut-in provisions of this rule, and assignees of any lease that is maintained in effect by virtue of this rule, remain fully responsible for compliance with all laws, regulations of the state land office and other state agencies, and lease terms regarding operations on the leased premises, including with respect to environmental protection. Lessees shutting in under this rule, and assignees of any lease that is maintained in effect by virtue of this rule, shall remain subject to all present state land office bonding requirements, and shall be subject to any future bonding requirements upon adoption. No lessee whose actions or omissions have caused expenditures to be made from the state trust lands restoration and remediation fund may shut in under the provisions of this rule until that lessee has reimbursed the state trust lands restoration and remediation fund in the amount of the expenditure.

F. Under no circumstances will the commissioner refund any portion of the shut-in royalty paid for a shut-in well up to the amount required by Subsection C of 19.2.100.71 NMAC.

G. Upon the termination of 19.2.100.71 NMAC, automatically or by action of the commissioner, a lease maintained in effect by payment of shut-in royalty shall expire unless there is actual production in paying quantities within 90 days thereafter, unless the time is further extended, in writing, on an

individual lease basis, upon request at the discretion of the commissioner; provided that if the commissioner shortens the effective period of this rule to less than one year pursuant to Subsection B of 19.2.100.71 NMAC, a lease maintained in effect by payment of shut-in royalty shall expire unless there is actual production in paying quantities within 120 days thereafter.

[19.2.100.71 NMAC, Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016; 19.2.100.71 NMAC - N, 10/31/2016; A/E, 4/22/2020; A, 08/11/2020]

End of Adopted Rules

Other Material Related to Administrative Law

HEALTH,
DEPARTMENT OFPUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH CABINET
SECRETARY KATHYLEEN M.
KUNKEL

JULY 30, 2020

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, May 27, 2020, June 1, 2020, June 12, 2020, June 15, 2020, and June 30, 2020 and July 13, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). Continued social distancing and self-isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. While this Order continues some loosened restrictions on mass gatherings and business operations, the core directive underlying all prior public health initiatives remains intact; all New Mexicans should be staying in their homes for all but the most essential activities and services. When New Mexicans are not in their homes, they must strictly adhere

to social distancing protocols and wear face coverings to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;

B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries; and

C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19.

3. The July 13, 2020 Public Health Emergency Order Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, May 27, 2020, June 1, 2020, June 12, 2020, June 15, 2020, and June 30, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings

Due to COVID-19 is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through August 28, 2020;

WHEREAS, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen to over 19,500 and confirmed cases in the United States have risen to more than 4.4 million, with significant recent spikes in cases in some of our neighboring states;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, social distancing and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating

impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-IOA-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) "Essential business" means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;

c. Childcare facilities;

d. Grocery stores, supermarkets, food banks, farmers' markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers,

data centers, technology support operations, and telecommunications systems;

g. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

h. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

i. Veterinary and livestock services, animal shelters and facilities providing pet adoption, grooming, daycare, or boarding services;

j. Media services;

k. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products;

l. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

m. Hardware stores;

n. Laundromats and dry cleaner services;

o. Funeral homes, crematoriums and cemeteries;

p. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;

q. Businesses providing mailing and shipping services;

r. Laboratories and defense and

national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

s.

Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

t. Logistics,

and also businesses that store, transport, or deliver groceries, food, materials, goods or services directly to residences, retailers, government institutions, or essential businesses.

(2) “Close-contact business” includes barbershops, hair salons, gyms, group fitness classes, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, gyms, and personal training services.

(3) “Food and drink establishments” include restaurants, breweries, wineries, distillers, cafes, coffee shops, or other similar establishments that offer food or drink. For purposes of this section, “breweries” are those businesses licensed pursuant to NMSA 1978, § 60-6A-26. I (2019); “distillers” are those businesses licensed pursuant to NMSA 1978, § 60-6A-1 (2019); and “wineries” are those businesses licensed pursuant to NMSA 1978, § 60-A-11 (2019).

(3) “Houses of worship” means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(4) “Close-contact recreational facilities” include indoor movie theaters, museums, bowling alleys, miniature golf, arcades, amusement parks, aquariums, casinos, concert venues, sports venues, event venues, bars, dance clubs, performance venues, go-kart courses, automobile racetracks, adult entertainment venues, and other places of recreation or entertainment. For purposes of this section, a “bar”

is defined as any business that generated more than half of its revenue from the sale of alcohol during the preceding fiscal year.

(5) “Outdoor recreational facilities” include outdoor golf courses, public swimming pools, outdoor tennis courts, summer youth programs, youth livestock shows, horseracing tracks, botanical gardens, outdoor zoos, and New Mexico state parks.

(6) “Places of lodging” means all hotels, motels, RV parks, and short-term vacation rentals.

(7) “Retail space” means any business that sells goods or services directly to consumers or end-users and includes the following “essential businesses” identified in the categories above: l(d), (l)k, (l)m, and (l)n.

(8) “Mass gathering” means any public gathering, private gathering, organized event, ceremony, parade, organized amateur contact sport, or other grouping that brings together more than five (5) individuals in a single room or connected space, confined outdoor space or an open outdoor space. “Mass gathering” does not include the presence more than five (5) individuals where those individuals regularly reside. “Mass gathering” does not include individuals who are public officials or public employees in the course and scope of their employment.

(9) “COVID-Safe Practices” (“CSPs”) are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”. That document may be obtained at the following link <https://cv.nmhealth.org/covid-safe-practices/>.

I HEREBY DIRECT AS FOLLOWS:

(1) Except as provided elsewhere in this Order, all “mass gatherings” are hereby prohibited under the powers and authority set

forth in the Public Health Act. An indoor or outdoor parade of any sort is a mass gathering; parades are therefore prohibited under this Order.

(2) “Essential businesses” may open but must comply with the pertinent “COVID-Safe Practices (CSPs)” section(s) of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers” and any identified occupancy restrictions. “Essential businesses” identified as a “retail space” may not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department. Further, an “essential business” identified as a “retail space” may not allow a person who is without a mask or multilayer cloth face covering to enter the premises except where that person is in possession of a written exemption from a healthcare provider.

(3) “Close contact businesses” may operate at up to 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department.

(4) “Close-contact recreational facilities” must remain closed.

(5) “Food and drink establishments” may not provide dine-in service in indoor seating areas. “Food and drink establishments” may provide dine-in service only in outdoor seating areas and must space tables at least six feet apart. No more than six patrons may be seated at any single table. Patrons must be seated in order to be served food or drink unless ordering food for carryout. No bar or counter seating is permitted. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law.

(6) “Houses of worship” may hold services and other functions, indoors or outdoors,

or provide services through audiovisual means. "Houses of worship" may not exceed 25% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department.

(7) "Outdoor recreational facilities" may operate provided they comply with the pertinent "All Together New Mexico: COVID-Safe Practices for Individuals and Businesses." Further, state parks shall only be open to New Mexico residents and may open for day use only. Camping areas, visitor centers, and any other large enclosed indoor spaces at state parks shall remain closed. As a condition of entering a state park, all visitors must demonstrate proof of residency through one of the following means: a New Mexico license plate on their vehicle; a New Mexico driver's license or ID card; a valid New Mexico vehicle registration; a federal document attesting to residency; or a military identification. In addition, public swimming pools are limited to lane-swimming and lessons only. Play and splash areas shall be closed. Horseracing tracks may not allow spectators.

(8) "Places of lodging" shall not operate at more than 50% of maximum occupancy. Healthcare providers who are engaged in the provision of care to New Mexico residents or individuals utilizing "places of lodging" for extended stays, as temporary housing, or for purposes of quarantining shall not be counted for purposes of determining maximum occupancy.

(9) Any business that is not identified as an "essential business", "close contact business", "food and drink establishment", "house of worship", "indoor recreational facility", "outdoor recreational facility", or "place of lodging" may open provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the

business's premises, as determined by the relevant fire marshal or fire department.

(10) Any entity, including businesses and houses of worship, operating pursuant to this public health order must comply with the pertinent "COVID-Safe Practices (CSPs)" section(s) of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers" and also any identified occupancy restrictions.

(11) Private educational institutions serving children and young adults from pre Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other requirements for in-person instruction described in the document "Reentry Guidance" published by New Mexico's Public Education Department on June 20, 2020 and as updated from time to time thereafter, and shall operate with a maximum occupancy of 25% of any enclosed indoor space, with the occupancy restriction herein to govern in the event of any discrepancy with the "Reentry Guidance."

(12) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating or drinking.

(13) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(14) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula,

diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-10A-6 (2012).

I FURTHER DIRECT as follows:

(1) This Public Health Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Public Health Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) Nothing in this Public Health Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Public Health Order shall take effect on July 30, 2020 and remain in effect through August 28, 2020.

I FURTHER ADVISE the public to take the following preventive precautions:

-- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**

-- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.

-- Avoid crowds.

-- Avoid all non-essential travel including plane trips and cruise ships.

DONE AT THE EXECUTIVE OFFICE THIS 30TH DAY OF JULY 2020

**ATTEST:
/S/ MAGGIE TOULOUSE
OLIVER
SECRETARY OF STATE**

WITNESS MY HAND AND THE

**GREAT SEAL OF THE STATE OF
NEW MEXICO**

**/S/ KATHLEEN M. KUNKEL
SECRETARY OF THE STATE OF
NEW MEXICO DEPARTMENT
OF HEALTH**

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION****NOTICE OF PUBLIC COMMENT**

The Human Services Department is required by the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act) to submit a CSBG State Plan Amendment to the U.S. Department of Health and Human Services, Office of Community Services in order to receive the supplemental funding in the CARES Act. The Department is required to offer a 10-business day comment period for the proposed CSBG State Plan Amendment prior to submittal.

The proposed CSBG State Plan Amendment is available on the Human Services Department website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx>. If you do not have Internet access, a copy of the proposed State Plan Amendment may be requested by contacting the Income Support Division's Work and Family Support Bureau (WFSB) at 505-827-7251. The Department proposes to implement the plan effective September 1, 2020.

A public hearing is not required. The Department is required to offer a 10-business day comment period for the proposed CSBG State Plan Amendment prior to submittal. The comment period will begin at 8:00 AM on August 11, 2020 and end at noon on August 24, 2020.

If you are a person with a disability and you require this information in an alternative format, please

contact the American Disabilities Act Coordinator, at 505-827-7701 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779.

Interested persons may address written or recorded comments to:

Human Services Department
Gayla Delgado, CSBG Program
Manager, at
Gayla.delgado2@state.nm.us or
1.505.827.7251

Interested persons may also address comments via electronic mail to:
HSD-isdrules@state.nm.us

**End of Other Material
Related to Administrative
Law**

2020 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXI, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 6	January 14
Issue 2	January 16	January 28
Issue 3	January 30	February 11
Issue 4	February 13	February 25
Issue 5	February 27	March 10
Issue 6	March 12	March 24
Issue 7	March 26	April 7
Issue 8	April 9	April 21
Issue 9	April 23	May 5
Issue 10	May 7	May 19
Issue 11	May 28	June 9
Issue 12	June 11	June 23
Issue 13	July 6	July 14
Issue 14	July 16	July 28
Issue 15	July 30	August 11
Issue 16	August 13	August 25
Issue 17	August 27	September 15
Issue 18	September 17	September 29
Issue 19	October 1	October 13
Issue 20	October 15	October 27
Issue 21	October 29	November 10
Issue 22	November 13	November 24
Issue 23	December 3	December 15
Issue 24	December 17	December 29

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