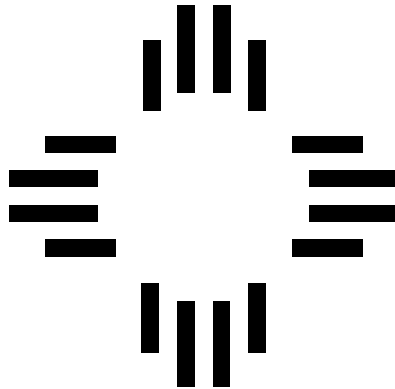


New Mexico Register

Volume XIII, Issue Number 12
June 28, 2002



The official publication for all notices of rulemaking and filings of
adopted, proposed and emergency rules in New Mexico

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Administrative Law Division
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New Mexico Register

Volume XIII, Number 12

June 28, 2002

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Adopted Rules and Regulations

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 by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register.” 14-4-5 NMSA 1978

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

Notice of Hearing

The South Central New Mexico Pink Bollworm Control District will hold a public hearing under the Pink Bollworm Control Act, 76-6B-1 to 76-6B-12, NMSA 1978, to set the special assessment to be collected from cotton producers to support pink bollworm control within the South Central New Mexico district. The hearing will be held in the conference room at the New Mexico Department of Agriculture, located at 3190 South Espina (corner of Gregg and Espina), Las Cruces, New Mexico, beginning at 1:30 p.m. on July 19, 2002. Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m. on July 19, 2002. Written statements, inquiries, or requests for copies of the rule should be directed to Bobby Sloan, 270 South 17th Street, Las Cruces, New Mexico 88005 or at (505) 541-0584.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PUBLIC NOTICE

The Children, Youth and Families Department will hold a Public Hearing to get input on proposed changes to the Child Care Assistance Regulations, 8.15.2 NMAC, the Child Care Licensing Regulations, 8.16.2 NMAC, and the Requirements Governing Registration of Non-licensed Family Child Care Homes, 8.17.2 NMAC. The Public Hearing will be held in Santa Fe on August 5, 2002 at 9:00 a.m. in Apodoca Hall of the P.E.R.A. Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

The proposed policies may be reviewed, or a copy obtained, during regular business hours of the Child Care Services Bureau, 8:00 A.M. to 5:00 P.M. Monday through Friday, 1120 Paseo de Peralta, P.E.R.A. Building, Room 109, Santa Fe, New Mexico, phone number (505) 827-7499.

Interested persons may testify at the hearing or submit written comments to the Child Care Services Bureau, P. O. Drawer 5160, Santa Fe, New Mexico 87502 or via fax 827-7361 no later than 5:00 p.m., August 5, 2002. Written comments will receive the

same consideration as oral testimony given at the Public Hearing.

If you are a person with a disability and you require this information in an alternative format or require special accommodation to participate in the public hearing, please contact the Department toll free at 1-800-610-7610 extension 9961 or (505) 827-9961. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO STATE GAME COMMISSION

STATE GAME COMMISSION

NOTICE OF MEETING

The State Game Commission will meet at the Village of Ruidoso, Council Chambers, 313 Cree Meadows Drive, Ruidoso, New Mexico 88341 on June 21, 2002 9:00 am-5:00 pm.

The proposed agenda may be found by accessing the web site of the New Mexico Department of Game and Fish at www.gmfsh.state.nm.us or by contacting the office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or calling 476-8015.

Proposed agenda items include:

Headquarters Building Phase II (sale of Richards Avenue property. Presented by Tod Stevenson

Depredation Assistance; Discussion and Amendment to the Rule, Forage Lease Value Considerations

Upland Game Rules: Adoption of Rule for 2002-2003 Seasons

Waterfowl Recommendations: Approval of Framework for 2002-2003 Seasons

Drawings for issuance of Bighorn Sheep Enhancement License Authorization and Elk and Oryx Incentive License Authorizations

State Game Commission Approval Sought for Habitat Stamp Program Projects

Shooting Preserve Application-Felix Rivera Ranch Inc.

Trapping and Furbearers; Opening the rule

for Input and Future Adoption

Preventative Lion Control; Opening the Preventative Lion Control Rule for amendment

Share with Wildlife Projects to be funded for FY 2003-2004

Aplomado Falcon

Bond Interest Retirement Fund for the purchase of Eagle Nest Lake

Comments about the agenda items will be accepted verbally during the meeting from meeting attendees who complete a "speaker card" available at the beginning of all meetings. Comments also will be accepted by mail. Written comments should be submitted to the New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504. Comments also may be submitted via the Department's website. Regulations are available by postal service mail only.

Persons with a disability who need any aid or auxiliary service to participate should call Shiley Baker, (505) 476-8029.

NEW MEXICO MINING COMMISSION

NOTICE OF PUBLIC MEETING AND HEARING OF THE NEW MEXICO MINING COMMISSION

The New Mexico Mining Commission will hold a regular meeting and hearing at 9:10 a.m. **Wednesday, August 28, 2002** in Porter Hall, the Oil Conservation Division (OCD) conference room on the 1st floor of the Energy, Minerals and Natural Resources Department building located at **1220 South St. Francis Drive** in Santa Fe, NM. If needed, the hearing may be continued in Porter Hall on Thursday, August 29 at 9:10 a.m. During the meeting the Mining Commission will conduct a public hearing on a joint petition for rulemaking submitted by Mining and Minerals Division and others on June 3, 2002 (02-01). The petition allows for an extension of the deadlines for certain applicants that would otherwise be required to obtain approval of their existing mine closeout plans by October 1, 2002, if certain requirements are met. The proposed new deadline for closeout plan approval is no later than October 1, 2007. Additionally,

to be eligible for such an extension an applicant must agree to: provide interim financial assurance pending closeout plan approval; provide a schedule of deadlines for obtaining closeout plan approval; and establish one or more advisory review boards of technical experts to assist the MMD Director with closeout plan applications and resolution of issues. The Mining Commission will also consider amending 19.10.5.501.E NMAC to extend the deadline for closeout plan approval to November 1, 2002.

Copies of the proposed rule change are available from the New Mexico Energy, Minerals & Natural Resources Department, Mining and Minerals Division. At the conclusion of the hearing, the Mining Commission may deliberate and make final decisions on the petition. Additionally, the Mining Commission may consider other issues that come before it.

Procedures which apply to the petition for rulemaking are as follows.

Rulemaking

The hearing on the petition for rulemaking will be conducted in accordance with the Mining Act and the Mining Commission's Guidelines for Rulemaking. All interested people may participate in the hearing, and will be given an opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses. In addition, people may also offer amendments to the proposed regulations.

Any person, including the petitioner, who intends to present technical testimony at the hearing shall file a notice of intent to present testimony. The notice shall identify the persons for whom the witness(es) will testify; identify each technical witness the person intends to present and state the qualifications of that witness including a description of the technical witness's education and experience; summarize, or include a copy of, the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness; include the text of any recommended modifications to the proposed regulatory change; and list and describe, or attach, all exhibits anticipated to be offered by the person at the hearing.

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with their testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement to the record proper, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Pursuant to section 303 of the Guidelines, notices of intent to present technical testimony must be received in the Office of the Mining Commission, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505 not later than 5 p.m. Tuesday, August 13, 2002, and should reference the petition number and the date of the hearing.

NEW MEXICO COMMISSION OF PUBLIC RECORDS HISTORICAL RECORDS ADVISORY BOARD

NOTICE OF REGULAR MEETING AND CHANGES MADE TO RULE #1.13.5 NMAC

The New Mexico Historical Records Advisory Board will meet on Wednesday July 31, 2002, at 9:00 A.M. The meeting will be held at the Farmington Museum at Gateway Park in the La Plata Room, Farmington, New Mexico. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Erica Garcia at the New Mexico State Records Center and Archives by July 5, 2002. Public documents, including proposed rules, the agenda, and minutes can be provided in various accessible formats. Please contact Erica Garcia at the State Records Center and Archives, 476-7936, if a summary or other type of accessible format is needed. A copy of the proposed agenda may be obtained at the State Records Center and Archives' website at <http://www.nmcpr.state.nm.us/>, or onsite at 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505.

NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

STATE OF NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL Standards and Facilities Subcommittee

NOTICE OF PUBLIC HEARING

A Public Hearing will be held for the pur-

pose of receiving comments from the public and school districts on the proposed Statewide Adequacy Standards for Public Schools. The meeting is open to the public and will be for the purpose of distributing copies of the final draft version of the proposed rules and collecting and forwarding to the Public Hearing Hearing Officer any written comments on the proposed standards (rules). Subsequent to the Public Hearing, the Public School Capital Outlay Council will review the comments, accept the Hearing Officer's report on the Public Hearings and entertain adoption of the proposed language as a Rule. The adopted standards will be codified, pursuant to State Law. The Public Hearing shall be held pursuant to the Open Meeting Act.

Public Hearing To Receive Comments on Proposed Statewide Adequacy Standards (Rules)

July 29, 2002 10:00 a.m. – 1:00 p.m.

Mr. Willard H. Davis Jr, Hearing Officer:

University of New Mexico
Lecture Hall- ground floor
801 University SE
Albuquerque, New Mexico 87131

Copies of the Proposed Rules may be obtained from:

Ms. Lisa Martinez, Legislative Council Service, (FAX: 505-986-4680) (voice 986-4657), Room 411 State Capitol, Santa Fe, NM 87501.

The public is invited to attend the **Public Hearing**. Written comments may be submitted by anyone mailed or faxed to the attention of: Mr. Willard Davis, Statewide Adequacy Standards for Public Schools Hearing Officer, in care of Ms. Martinez. Written comments must be received no later than 5:00 p.m., July 29, 2002. If anyone requires special accommodations, please advise Ms. Lisa Martinez of such need no later than 5:00 pm, July 19, 2002

Robert M. Unthank, Chair
Standards and Facilities Subcommittee
Public School Capital Outlay Council
725 St. Michael's Drive
Santa Fe, New Mexico 87505
505-827-7035

End of Notices and Proposed Rules Section

Adopted Rules and Regulations

This is a correction to Board of Finance rule 2.61.6 NMAC, Bond Project Disbursements, Section 9, published on pages 180 and 181 of the *New Mexico Register* on February 28, 2002 (Vol. XIII, No. 4). Section 9 was printed incorrectly and is being republished here in its entirety. In Paragraph 2 of Subsection A, "State Department of Public" is removed. In Subsection B, the correct number of business days is 6, not 56. The effective date remains 2-28-02. We regret any confusion this may have caused.

2.61.6.9 PAYMENT OF CAPITAL PROJECT EXPENSES, DRAW REQUEST PROCEDURES

A. The recipient of bond proceeds is the governmental entity that will carry-out the completion of the project. In many cases, the Agency named to receive the appropriation will also be the entity responsible for the project. In other cases, the named Agency will be an intermediate agency that is expected to make a grant to a local government entity to carry out the completion of the project. Either an intermediate Agency may make a Draw Request to the Board on behalf of a local government entity as recipient, or an Agency itself as recipient may make the request directly to the Board.

(1) Documentation to support Draw Requests from Agency:

(a) one Draw Request form for each project (1 original and 2 copies) per draw period, unless specified on the form that a draw has previously been made on the project during the same draw period;

(b) proof of payment - notarized certification from an authorized signatory that expenditures are valid or actual receipts.

(c) authorization agreement for wire transfer (if first-time payee by wire transfer);

(d) wire transfer information.

(2) Intermediate Agencies typically submitting Draw Requests to the Board on behalf of local entity recipients: Department of Environment, State Highway and Transportation Department, Office of Indian Affairs, Local Government, Education Department and State Agency on Aging:

(a) proof of payment - a notarized certification from an authorized signatory that expenditures are valid or actual receipts;

(b) authorization agreement for wire transfer (if first-time payee by wire transfer);

(c) wire transfer information.

B. Frequency – Draw Requests will be processed on the 10th and 20th day of each month or the next business day if the 10th and/or 20th falls on a weekend or holiday (the "Draw Request Deadline"). Draw Requests submitted on or before the Draw Request Deadline will result in funds available 6 business days after the Draw Request Deadline.

C. The minimum Draw Request amount per project shall be \$1,500 unless it is the final Draw Request.
[2.61.6.9 NMAC - N, 02-28-02]

NEW MEXICO BOARD OF EDUCATION

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 64 SCHOOL PERSON- NEL – COMPETENCIES FOR LICEN- SURE PART 13 COMPETENCIES FOR ENTRY-LEVEL PERFORMING ARTS AND VISUAL ARTS EDUCA- TION TEACHERS

6.64.13.1 ISSUING AGENCY:
State Board of Education
[6.64.13.1 NMAC – N, 07-01-02]

6.64.13.2 SCOPE: All persons seeking an endorsement in performing or visual arts education to a New Mexico educator license.
[6.64.13.2 NMAC – N, 07-01-02]

6.64.13.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, 22-10-3, and 22-10-22, NMSA 1978.
[6.64.13.3 NMAC – N, 07-01-02]

6.64.13.4 DURATION:
Permanent
[6.64.13.4 NMAC – N, 07-01-02]

6.64.13.5 EFFECTIVE DATE:
July 1, 2002, unless a later date is cited in the history note at the end of a section.
[6.64.13.5 NMAC – N, 07-01-02]

6.64.13.6 OBJECTIVE: This regulation establishes entry-level competencies that are based on what beginning performing and visual arts education teachers must know and be able to do to provide effective arts programs in New Mexico schools. The competencies were developed to ensure alignment with the New Mexico's Content Standards and Benchmarks and with the national standards for the arts. These standards must be used by New

Mexico institutions of higher education to establish performing and visual arts education preparatory programs.

[6.64.13.6 NMAC – N, 07-01-02]

6.64.13.7 DEFINITIONS:
[RESERVED]
[6.64.13.7 NMAC – N, 07-01-02]

6.64.13.8 CORE LICENSURE REQUIREMENTS: Persons seeking an endorsement in performing arts or visual arts to a New Mexico educator license must complete the following core requirements.

A. Hold a minimum of a baccalaureate degree from a regionally accredited college or university,

B. Have completed an approved educator preparation program that includes at least 14 weeks of supervised student teaching, and

C. Pass the State Board of Education's required licensure examination.
[6.64.13.8 NMAC – N, 07-01-02]

6.64.13.9 CORE COMPETENCIES FOR ALL ENTRY-LEVEL PERFORMING ARTS AND VISUAL ARTS EDUCATION TEACHERS: All teachers of the arts shall develop arts education programs that provide all students with a strong background of study in broad knowledge and skill areas. To accomplish this, the teacher of the arts shall demonstrate:

A. knowledge of content and pedagogy, skills and technical demands specific to their discipline (i.e., dance, music, theatre or visual arts).

B. an in-depth knowledge of the unique meaning and function of the arts in the creative development of all students.

C. an integrated knowledge of visual and performing arts and the connections and parallels among arts disciplines as well as other content areas.

D. an understanding of the purposes and dynamics of the creative process.

E. abilities to observe, discuss, analyze and make informed critical judgments about artistic works.

F. knowledge, understanding, and sensitivity of diverse peoples and cultures through visual and performing arts.

G. competence with the technological tools for art creation and pedagogy appropriate to their discipline.

H. abilities to interact with and engage communities in the arts.

I. knowledge and understanding of life-enrichment, career opportu-

nities and economic impact of the arts.
[6.64.13.9 NMAC – N, 07-01-02]

6.64.13.10 COMPETENCIES FOR ENTRY-LEVEL PERFORMING ARTS EDUCATION TEACHERS:

A. COMPETENCIES FOR ENTRY-LEVEL DANCE TEACH- ERS:

(1) The teacher will demonstrate content knowledge and understanding of dance history, skills and technical demands specific to dance through proficiency in the fundamentals and pedagogy of at least two of the following: ballet, world culture such as Flamenco and Native American, folk, jazz, modern, tap, social, musical theatre, interpretative/improvisation, mixability/inclusive for physically or mentally challenged dancers, evolutionary or new forms of dance.

(2) The teacher will demonstrate in-depth knowledge of the unique meaning and function of dance in the creative development of all students. The teacher will develop learning environments that promote kinesthetic awareness, promote confidence, emotional stability and social development through movement.

(3) The teacher will design lessons that integrate dance with the humanities and all other art forms.

(4) The teacher will demonstrate an understanding of the purposes and dynamics of the creative process by:

(a) designing lessons that encourage students to express abstract ideas through movement,

(b) creating opportunities for personal expression through improvisational movement,

(c) creating opportunities for all students to learn the basic principles and elements of choreography,

(d) demonstrate abilities to observe, discuss, analyze and make informed critical judgments about artistic works, and

(e) modeling and using dance vocabulary.

(5) The teacher will design lessons that teach the fundamentals of aesthetic inquiry, and create an environment in which students are able to reflect on their own and others' creative dance presentations

(6) The teacher will demonstrate competence with the technological tools for art creation and pedagogy appropriate to their discipline. The teacher will design lessons that incorporate:

(a) video technology,

(b) computer technology,

(c) sound, lighting and other stagecraft, and

(d) wardrobe, costuming and makeup.

(7) The teacher will demonstrate abilities to interact with and engage communities in dance by:

(a) organizing and promoting performances,

(b) considering the legal and logistical aspects of planning educational class trips,

(c) assuming financial responsibilities for activities and performances, and

(d) organizing community support of activities and performances.

B. COMPETENCIES FOR ENTRY-LEVEL MUSIC TEACH- ERS:

(1) The teacher implements a balanced curriculum of which the primary goal is to promote the understanding, participation, and applications of music.

(2) The teacher demonstrates content knowledge, skills and:

(a) technical demands specific to music history, theory and aural skills,

(b) technical demands specific to performance including wind, percussion, string instruments, keyboard, and voice, and

(c) technical demands in conducting appropriate assessment methodology and strategies.

(3) The teacher demonstrates an in-depth knowledge of the unique meaning and function of the arts in the creative development of all students. The teacher will:

(a) identify various categories of music,

(b) understand musical form,

(c) critically evaluate compositions and performances, and

(d) exercise aesthetic and pedagogical judgment in selecting music for use in the classroom.

(4) The teacher demonstrates an integrated knowledge of the connections among arts disciplines as well as other content areas.

(5) The teacher demonstrates an understanding of the purposes and dynamics of the creative processes in music: arranging, composing, and improvising.

(6) The teacher demonstrates abilities to observe, discuss, analyze and make informed critical judgments about artistic works in music. He or she will critically evaluate compositions and performances and will create experiences based on aesthetic and experiential philosophies of music education.

(7) The teacher demonstrates knowledge, understanding, and sensitivity of diverse cultures through music.

(8) The teacher demonstrates competence with the technological tools for

creation and pedagogy appropriate to music including notation/sequencing software, electronic music hardware, sound reinforcement/recording.

(9) The teacher demonstrates the ability to interact with and engage the community in music by:

(a) organizing and promotion of concerts,

(b) organizing community support (such as community arts and band booster organizations),

(c) legal and logistical consideration of educational class trips, and

(d) exercising financial responsibility in each of the above activities.

(10) The teacher demonstrates knowledge and understanding of life-enrichment, career opportunities, and economic impact of the arts.

C. COMPETENCIES FOR ENTRY-LEVEL THEATRE TEACH- ERS:

(1) The teacher demonstrates content knowledge, skills and technical demands specific to theatre by implementing a curriculum that includes:

(a) scriptwriting, including collaboration with actors and playwrights in refining scripts to clarify story and meaning to an audience,

(b) comparing and demonstrating various classical and contemporary cultural acting techniques and methods,

(c) effectively communicating directorial choices to a small ensemble for improvised or scripted scenes, and

(d) evaluating the validity and practicality of the information to assist in making artistic choices for informal and formal productions.

(2) The teacher demonstrates an in-depth knowledge of the unique meaning and function of theatre in the creative development of all students through:

(a) making connections between dramatic themes and the human experience,

(b) analyzing the physical, emotional, and social dimensions of characters found in dramatic texts from various genre and media.

(3) The teacher demonstrates an integrated knowledge of visual and performing arts and the connections and parallels among art's disciplines as well as other content areas through:

(a) illustrating the integration of several art's media,

(b) describing and comparing the basic nature, materials, elements and means of communication among the arts,

(c) determining how the non-dramatic art forms enhance the expression of ideas, and

(d) developing designs that use

visual and aural elements.

(4) The teacher demonstrates an understanding of the purposes and dynamics of the creative process through:

(a) creating and sustaining characters that communicate with audiences in an ensemble,

(b) comparing perceived artistic intent with the final aesthetic achievement.

(5) The teacher demonstrates abilities to observe, discuss, analyze and make informed critical judgments about artistic works through:

(a) analyzing and critiquing the whole and the parts of dramatic performances,

(b) evaluating their own and others collaborative efforts and artistic choices in informal and formal productions.

(6) The teacher demonstrates knowledge, understanding, and sensitivity of diverse peoples and cultures through theater arts by:

(a) identifying and comparing the lives, works and influences of representative theatre artists in various cultures and historical periods,

(b) analyzing a variety of dramatic texts from cultural and historical perspectives to determine production requirements.

(7) The teacher demonstrates competence with technological tools for art creation and pedagogy appropriate to theatre by applying technical knowledge and skills through:

(a) applying computer technology and available software,

(b) accessing technological support, and

(c) utilizing distance learning and electronic communication.

(8) The teacher demonstrates the ability to interact with and engage the community in the arts by effectively developing and communicating criteria for selection of text, interpretation and visual and aural artistic choices.

(9) The teacher demonstrates knowledge and understanding of life-enrichment, career opportunities, and economic impact of the arts.

[6.64.13.10 NMAC – N, 07-01-02]

6.64.13.11 COMPETENCIES FOR ENTRY-LEVEL VISUAL ARTS TEACHERS:

A. The teacher demonstrates sufficient entry-level knowledge, skills and technical demands specific to the visual arts. The teacher implements a well-rounded curriculum that helps all students to learn about the visual arts and produce art that is relevant in their lives. Competency is demonstrated through application of:

(1) the elements i.e., line, shape,

form, color and texture; and principles i.e., movement, balance, repetition, rhythm and contrast of visual arts design.

(2) various art media and related techniques.

B. The teacher demonstrates an in-depth knowledge of the unique meaning and function of the visual arts in the creative development of all students. The teacher develops a repertoire of teaching strategies appropriate to the needs of all students.

C. The teacher demonstrates an integrated knowledge of visual arts and the connections and parallels among art disciplines as well as other content areas. The teacher identifies and shares with colleagues, art resources that can be explored in an interdisciplinary manner, as a central part of the school curriculum.

D. The teacher demonstrates an understanding of the creative processes. The teacher identifies the established stages of individual artistic development in terms of both art-making and responses to art.

E. The teacher demonstrates knowledge of cultural and historical contexts surrounding works of art and abilities to observe, discuss, analyze and make informed critical judgments about artistic works. Competency is demonstrated through the observation and analysis of artwork on the basis of cultural as well as technical criteria.

F. The teacher demonstrates knowledge, understanding, and sensitivity of diverse peoples and cultures through the arts. The teacher will be familiar with the history of art, specific artists and art forms of various cultures. The teacher demonstrates knowledge of differing theoretical and philosophical approaches to art and engages in thoughtful oral and written inquiry into the nature of art. Competency is demonstrated by incorporating the elements of: artists and their works, art of various eras and cultures, and the influence of geographic location.

G. The teacher utilizes technological tools for art creation and pedagogy appropriate to visual arts. He or she incorporates a variety of technologies to support and enhance visual arts education.

H. The teacher demonstrates abilities to interact with and engage the community. He or she provides opportunities for all students to demonstrate their accomplishments in the visual arts to peers and the community using school-based and community resources.

I. The teacher demonstrates knowledge and understanding of life-enrichment, career opportunities and economic impact of visual arts, and com-

municates these ideas to all students, administrators and colleagues.

[6.64.13.11 NMAC – N, 07-01-02]

HISTORY OF 6.64.13 NMAC: [RESERVED]

NEW MEXICO BOARD OF EDUCATION

TITLE 6 PRIMARY AND SECONDARY EDUCATION

CHAPTER 64 SCHOOL PERSONNEL – COMPETENCIES FOR LICENSURE

PART 14 COMPETENCIES FOR ENTRY-LEVEL PHYSICAL EDUCATION TEACHERS

6.64.14.1 ISSUING AGENCY: State Board of Education
[6.64.14.1 NMAC – N, 07-01-02]

6.64.14.2 SCOPE: All persons seeking an endorsement in physical education to a New Mexico educator license.
[6.64.14.2 NMAC – N, 07-01-02]

6.64.14.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, and 22-10-3, NMSA 1978.
[6.64.14.3 NMAC – N, 07-01-02]

6.64.14.4 DURATION: Permanent
[6.64.14.4 NMAC – N, 07-01-02]

6.64.14.5 EFFECTIVE DATE: July 1, 2002, unless a later date is cited in the history note at the end of a section.
[6.64.14.5 NMAC – N, 07-01-02]

6.64.14.6 OBJECTIVE: This regulation establishes entry-level competencies that are based on what beginning physical education teachers must know and be able to do to provide effective physical education programs in New Mexico schools. The competencies were developed to ensure alignment with the New Mexico's Content Standards and Benchmarks, the 1999 Initial Physical Education Standards of the National Council for Accreditation of Teacher Education (NCATE), and the national standards of the American Alliance for Health, Physical Education, Recreation, and Dance and must be used by New Mexico institutions of higher education to establish physical education preparatory programs.

[6.64.14.6 NMAC – N, 07-01-02]

6.64.14.7 DEFINITIONS: [RESERVED]
[6.64.14.7 NMAC – N, 07-01-02]

6.64.14.8 CORE LICENSURE REQUIREMENTS: Persons seeking an endorsement in physical education to a New Mexico educator license must complete the following core requirements.

A. Hold a minimum of a baccalaureate degree from a regionally accredited college or university,

B. Have completed an approved educator preparation program that includes at least 14 weeks of supervised student teaching, and

C. Pass the State Board of Education's required licensure examination. [6.64.14.8 NMAC – N, 07-01-02]

6.64.14.9 COMPETENCIES FOR ENTRY-LEVEL PHYSICAL EDUCATION TEACHERS:

A. Content Knowledge: A physical education teacher understands and demonstrates physical education content, disciplinary concepts and tools of inquiry related to discovery and the development of a physically educated person. The physical education teacher:

(1) identifies critical elements for basic motor skills and develops appropriate sequences.

(2) models with competence basic motor skills, rhythms, physical activities (sports, games, outdoor pursuits, aquatics and dance.)

(3) describes and demonstrates concepts and strategies related to skill movement and physical activity.

(4) incorporates interdisciplinary learning experiences that allow learners to integrate knowledge and skills from multiple subject areas.

(5) describes and applies scientific and technological concepts of anatomy, physiology, biomechanics, motor learning, and motor development.

(6) analyzes current physical activity issues.

(7) employs concepts, assumptions, and debates central to the process of inquiry in the study of physical activity.

(8) creates and uses appropriate instructional cues and prompts for basic motor skills, rhythms, and physical activity.

B. Growth and Development: A physical education teacher understands how individuals learn and develop and can provide opportunities that support their psychomotor, cognitive, affective, and fitness development. The physical education teacher:

(1) assesses individual and group performance in order to design safe instruction that meets learner developmental needs in the psychomotor, cognitive, affective and fitness domains.

(2) identifies, selects, and imple-

ments appropriate learning/ practice opportunities based on expected progressions.

(3) demonstrates and applies knowledge of age and developmentally appropriate psychomotor and cognitive activities.

(4) stimulates learner reflection in prior knowledge, experiences, and skills and based on this reflection, encourages them to assume responsibility for their own learning.

C. Diverse learners: A physical education teacher plans and implements learning experiences that are sensitive to diverse learners. The physical education teacher:

(1) identifies, selects, and implements appropriate instruction that is sensitive to the strengths/weaknesses, multiple needs, learning styles, and experiences of learners.

(2) uses appropriate strategies, services, and resources to meet special and diverse learning needs.

(3) creates a learning environment which respects and incorporates learner's personal, family, cultural, and community experiences.

D. Management and Motivation: A physical education teacher uses a variety of strategies to institute active engagement in learning and behavioral change, manage resources, promote mutual respect and self-responsibility and motivate students in a safe learning environment. The physical education teacher:

(1) uses a variety of developmentally appropriate practices to motivate learners to participate in physical activity inside and outside of the school setting.

(2) uses strategies to help learners demonstrate responsible personal and social behaviors that promote positive relationships and a productive environment.

(3) uses strategies to promote mutual respect, support, safety, and cooperative participation.

(4) uses managerial and instructional routines which create smoothly functioning learning experiences.

(5) organizes, allocates, and manages resources (i.e. time, space, equipment, activities, and teacher/student interaction) to provide active and equitable learning experiences.

(6) uses strategies to help learners become self-motivated in their learning.

(7) describes strategies to teach learners various behavioral change techniques.

(8) supports and encourages learner expression through movement.

E. Communication: A physical education teacher demonstrates the use of assorted media and technology for

presentation of lessons, demonstrates sensitivity to all learners and models appropriate behavior, and illustrates communication strategies for building a community of learners. The physical education teacher demonstrates effective verbal, nonverbal, and multi-media communication techniques to foster inquiry, collaboration, and engagement in physical activity settings. The physical education teacher:

(1) communicates in ways that demonstrate sensitivity to all learners.

(2) demonstrates the use of assorted instructional information in a variety of ways including the use of bulletin boards, music, task cards, posters, video, and computer technology.

(3) describes and models various communication strategies for use with learners, the school, colleagues, parents/guardians and the community.

(4) uses computers and other technologies to communicate, network, and foster inquiry.

(5) describes and implements strategies for building a community of learners within a physical activity setting.

F. Planning and Instruction: A physical education teacher plans and implements a variety of developmentally appropriate instructional strategies to develop physically educated individuals. This standard deals specifically with pedagogical knowledge and application. The core of this standard will be a series of sequential and progressive field experiences that allow physical education teachers to refine, extend, and apply their teaching skills.

The physical education teacher:

(1) identifies, develops, and implements instructional and program goals that align with state content standards with benchmarks.

(2) selects and implements appropriate instructional strategies based on developmental levels, learning styles, and safety issues for diverse populations.

(3) applies content and pedagogical knowledge in developing and implementing safe learning environments and experiences.

(4) selects and implements teaching resources and curriculum materials based on their comprehensiveness, accuracy, utility, and safety.

(5) uses curricula which encourages learners to observe, question, and interpret physical activity from diverse perspectives.

(6) designs and implements learning experiences that are safe, appropriate, realistic, and relevant based on principles of effective instruction. Such instruction shall activate learners' prior knowledge, anti-

pate preconceptions, encourage exploration and problem solving, and build on skills and experiences.

(7) uses demonstrations and explanations to link physical activity concepts to appropriate learning experiences.

(8) selects and utilizes varied roles in the instructional process based on content, purpose of instruction, and the needs of learners.

(9) develops short- and long-term plans that are linked to learner needs and to performance, instructional, and program goals, and adapts them to ensure learner progress, motivation, and safety.

(10) selects and models instructional tasks that facilitate learning in the physical activity setting.

(11) asks questions and poses scenarios to stimulate interactive learning opportunities such as helping learners articulate ideas, promoting risk taking, and developing critical thinking, problem solving, and decision making skills, which aid in becoming physically educated.

G. Learner assessment: A physical education teacher understands and uses formal and informal assessment strategies to foster psychomotor, cognitive, affective, and fitness development of learners in physical activity. The physical education teacher explores the use of various forms of authentic and formal assessment to guide instruction, provide feedback to students, and evaluate teaching. The physical education teacher:

(1) uses a variety of formal and informal assessment techniques to assess learner performance, provide feedback and communicate learner progress.

(2) uses assessment strategies to involve learners in self-assessment.

(3) selects and uses developmentally appropriate assessment strategies and instruments congruent with physical activity learning goals aligned with state content standards with benchmarks.

(4) identifies key components of various types of assessments, describes appropriate and inappropriate use, and addresses issues of validity, reliability, and bias.

(5) uses and interprets performance data to make informed instructional decisions.

H. Reflection and Professional Development: A reflective physical education teacher continually evaluates the effects of his/her actions on self and others, including learners, parents and guardians, and professionals in the learning community, and seeks opportunities to grow professionally. The physical education teacher:

(1) reflects upon and revises within the learning environment practice based

on observation of learners' performance.

(2) reflects on appropriateness of program design on the development of physically educated individuals.

(3) consults professional literature, colleagues, and other resources to develop professionally.

(4) participates in the professional physical education community at the local, state, district, and national levels and within the broader education field.

(5) reflects on appropriateness of program design on the development of physically educated individuals.

I. Collaboration: A physical education teacher fosters relationships with colleagues, parents/guardians, and community agencies to support learners' growth and well-being. The physical education teacher:

(1) uses strategies to become an advocate in the school and community for the purpose of promoting a variety of physical activity opportunities.

(2) solicits community resources and agencies to enhance physical activity opportunities.

(3) establishes productive partnerships with parents/ guardians, counselors, and other school health personnel to support learner growth and well-being.

(4) is culturally sensitive and identifies signs of learner distress and seeks help as appropriate.

(5) participates in collegial activities designed to make the school a more productive learning environment.

(6) has knowledge of state and federal laws and non-compliance consequences related to learner rights and teacher responsibilities.

[6.64.14.9 NMAC – N, 07-01-02]

6.64.14.10 IMPLEMENTATION: Institutions of higher education that prepare teachers shall deliver the competencies in a State Board of Education approved endorsement program within a range of twenty-four (24) to thirty-six (36) semester hours of credit. For secondary and K-12 licensed teachers, a minimum of twelve (12) semester hours must be upper division credit.

[6.64.14.10 NMAC – N, 07-01-02]

HISTORY OF 6.64.14 NMAC:
[RESERVED]

**NEW MEXICO ENERGY,
MINERALS AND
NATURAL RESOURCES
DEPARTMENT
STATE PARKS DIVISION**

TITLE 18 TRANSPORTATION

AND HIGHWAYS

CHAPTER 17 NAVIGATION AND BOATING

PART 3 CONSTRUCTION VISITOR PROVISIONS

18.17.3.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, State Parks Division ("division").

[18.17.3.1 NMAC – N, 7/1/2002]

18.17.3.2 SCOPE: This part applies to the construction and maintenance of private, non-commercial boat docks ("private boat docks") on lakes that are subject to the division's authority. This rule does not address the construction or maintenance of commercial boat docks or marinas, which are addressed in 19.5.5 NMAC.

[18.17.3.2 NMAC – N, 7/1/2002]

18.17.3.3 STATUTORY AUTHORITY: These rules are established under the authority of NMSA 1978, Section 16-2-7, or under such other authority or agreements that grant the division authority over such private boat docks (for purposes of this rule all such lakes being described as "lakes subject to the authority of the division").

[18.17.3.3 NMAC – N, 7/1/2002]

18.17.3.4 DURATION: Permanent.

[18.17.3.4 NMAC – N, 7/1/2002]

18.17.3.5 EFFECTIVE DATE: July 1, 2002 unless a later date is cited at the end of a section.

[18.17.3.5 NMAC – N, 7/1/2002]

18.17.3.6 OBJECTIVE: The objective of this part is to provide construction and maintenance standards for private boat docks on lakes that are subject to the authority of the division.

[18.17.3.6 NMAC – N, 7/1/2002]

18.17.3.7 DEFINITIONS:

A. "Boat Dock" or "Dock": a structure extending from the shore into the water to permit the landing and mooring of vessels. The term "boat dock" or "dock" includes the anchoring system, and any catwalks or bridges that will attach to the dock itself.

B. "Catwalk" or "Bridge": a passage that provides access from the land to a boat dock, marina, or other floating facility.

C. "Community Boat Dock": a private, non-commercial boat dock for use by the owner-members or other authorized residents of a residential com-

munity, such as a planned unit development or condominium, and is not available for commercial use. The imposition of a fee for the maintenance or use of a community boat dock by owner-members or other residents of a residential community served by a community boat dock will not result in the dock being characterized as a "commercial" dock.

D. "Dead Load": the permanent inert weight of the dock structure, including fixed or permanent attachments, such as bumpers, railings, winch stands, roof structures, etc.

E. "Decking": the surface material that forms the floor of the boat dock or catwalk.

F. "Flotation Live Load": the total load that a dock can carry without capsizing or sinking. The flotation live load is equal to the dead load plus the live load.

G. "Habitable Structure": any structure on a boat dock or catwalk, whether permanent or temporary, including tents, which humans may use for overnight occupancy of any duration.

H. "Hunt Absorption Test": a test documenting the rate at which flotation material absorbs liquid, as well as the quantity of liquid absorbed.

I. "Live Load": any moving or variable superimposed load on the boat dock.

J. "Registered Professional Engineer": a professional engineer currently registered with the New Mexico professional engineer and surveyors board, or its successor agency, with a specialization in civil or structural engineering.

K. "Sanitation Device": any enclosure or equipment used as a toilet or bathing facility, or device capable of holding refuse or trash.

L. "Shoreline": that line where the surface of the lake water and the land meet, regardless of the current lake elevation.

M. "Structural Live Load": the weight of the dock itself and its ability to support itself.

N. "Working Load Safety Factor": the ability of a boat dock anchoring system to hold or withstand loads. A safety factor of 3.0 means the anchoring system is rated to hold or withstand a load equal to three times the entire weight of the structure; e.g., if the structure weighs 1,000 pounds, the cable attached to the anchor will be able to hold 3,000 pounds.

[18.17.3.7 NMAC – N, 7/1/2002]

18.17.3.8 GENERAL PROVISIONS:

A. Boat docks approved

under these regulations shall be for personal, family, or community uses only and shall not be used for commercial activity.

B. The division operates a number of state parks under agreements with other entities. Those agreements and applicable federal, state, and local statutes, regulations, and ordinances may contain provisions that supersede these regulations. In addition, conditions at a particular lake, or the ownership of land on which a state park operates or around a lake may restrict the construction or use of boat docks at a particular lake. Provisions applicable to individual state parks are set forth at the end of this part.

C. Interpretation of these regulations shall be guided by the provisions of the New Mexico Boat Act, NMSA 1978, Sections 66-12-1 through 66-12-23, and statutory provisions applicable to the acquisition and management of state parks, including NMSA 1978, Section 16-2-11.

D. In reviewing project plans for a boat dock, the division may consider, without limitation: applicable federal, state, and local statutes, regulations, and ordinances; agreements with other public agencies and private parties, including concessionaires; the purposes for which the lake and the state park were created; the management plan for the state park; the health, safety, and welfare of other users and activities at the lake and state park, including the impact on boating, fishing and other recreation activities; and, conditions at a given location.

[18.17.3.8 NMAC – N, 7/1/2002]

18.17.3.9 APPROVED PLANS AND CERTIFICATION OF COMPLETION:

A. Persons seeking to construct a boat dock must submit to the division: two complete sets of project plans for the dock, including the anchoring system, and any catwalks or bridges that will attach to the boat dock; the surety bond required by 18.17.3.11 NMAC; and the permit or approval from other entities with authority over the lake or body of water.

(1) When a dock will use existing facilities as part of the new proposed dock, the project plans must include a complete description of the existing facilities, and those facilities must comply with the specifications set forth in these regulations.

(2) The plans must be signed and sealed by a registered professional engineer (RPE), and contain a statement that the proposed dock complies with the specifications set forth in these regulations.

(3) Each plan set also must include a copy of the manufacturer's certified plans for any components that will be a

part of a dock, such as floats, decking, railing, or awning systems.

(4) Both engineered plans and manufacturer's certified plans must be based upon the actual conditions at the site of the proposed dock.

B. Persons seeking approval for a boat dock are required to obtain a permit or written approval for the proposed dock from other entities with authority over the lake or body of water on which the proposed boat dock will be constructed or the land to which any part of the dock will be affixed.

(1) Persons seeking approval for a boat dock shall be responsible for determining what, if any, such permits or approvals are required, and for obtaining the permits or approvals.

(2) The division shall condition approval of the project plans for the boat dock upon receipt of proof that the person has received such other permits or approvals required to construct the boat dock.

C. During construction of a dock, a complete set of all permits and approvals required for construction of the dock must be posted in a readily visible location at or adjacent to the construction site, and one complete set of the approved plans must be kept available at the construction site.

D. Construction of a dock must be completed within six months of the date that the permit is approved by the permitting entity.

E. After a dock is completed, an RPE must submit to the division a signed and sealed certification that it was built in accordance with: the requirements set forth in these regulations; the plans submitted to and approved by the division and any entity issuing a permit or approval for construction of the dock; and, with any special conditions or requirements imposed by the this division or any entity issuing a permit or approval for the construction of a dock.

F. The number shown on an approved permit shall be permanently affixed to the end of boat dock facing the lake using reflective numbers and letters three inches in height, and of a color contrasting with the background. Example: **UT-00-001**.

[18.17.3.9 NMAC – N, 7/1/2002]

18.17.3.10 COMPLIANCE WITH OTHER STATUTES:

A. All docks shall be constructed in compliance with the provisions of the New Mexico Cultural Properties Act, NMSA 1978, Sections 18-6-1 through 18-6-17, and the Cultural Properties Protection

Act, NMSA 1978, Sections 18-6A-1 to 18-6A-6.

B. If federal land will be impacted in the construction or maintenance of a dock, federal law, including but not limited to the following acts, must be complied with: the Archaeological Resources Protection Act of 1979, 16 U.S.C. Section 470aa-11; the Native American Grave Protection and Repatriation Act of 1990, 25 USC Section 3001; and the National Historic Preservation Act of 1966, 16 U.S.C. Section 4691.

[18.17.3.10 NMAC – N, 7/1/2002]

18.17.3.11 LIABILITY AND SURETY BOND:

A. Dock owners are fully responsible for all damage, direct and indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and agree to release, hold harmless, and indemnify the state from any and all liability, claims or demands of any nature whatsoever, including the cost of defending against those claims or demands, arising out of or in any manner related to the ownership, construction, operation, maintenance, or use of a dock.

B. Boat dock owners shall provide evidence of a surety bond in favor of the permitting entity and the state of New Mexico and its agencies including the division issued by a corporate surety company qualified and authorized to do business in New Mexico, to cover the cost of salvage and removal by the division or permitting entity of any boat dock that: has come loose from its anchors or has become a hazard to navigation or to the use of state park lakes by virtue of its condition; or, was constructed in a manner that violates these regulations or other applicable statutes or regulations. The surety bond shall be in an amount not less than five thousand dollars (\$5,000), but a larger amount may be required based on the size and configuration of the proposed boat dock or conditions at the lake where the dock will be located. Boat dock owners shall provide evidence annually that the surety bond is in effect.

C. In addition to the surety bond required above, where a lake on which a dock will be constructed is owned or subject to the authority of an entity other than the division, persons applying for a permit to construct a boat dock may be required to secure an additional surety bond and insurance coverage in amounts satisfactory to, and for the purposes of, that entity.

D. A dock owner's failure to keep in effect the required surety bond and any required general liability coverage will be grounds for the permitting entity to

revoke the boat dock permit and to require the dock to be removed at the permit holder's expense.

[18.17.3.11 NMAC – N, 7/1/2002]

18.17.3.12 BOAT DOCK SIZE AND CONFIGURATION:

A. Except as otherwise provided by these regulations, boat docks shall not exceed 38 feet in length and 30 feet in width. Catwalks shall not be more than 32 feet in length. An entire dock, including catwalks and bridges, shall not project into a lake more than 70 feet from the shoreline at any time, regardless of lake elevation.

B. Docks located in coves or other narrow channels may not have a length greater than one-third of the distance to the opposite shoreline, or extend to within 25 feet of the center of the cove, whichever is more limiting, regardless of lake elevation.

C. Except as otherwise provided by these regulations for community docks, boat docks shall be constructed only in the following configurations: straight pier, T, L, F, or U-shaped.

D. Persons seeking approval for a community dock may propose alternate configurations, such as an E shape, where the use of such configurations would be appropriate. In evaluating whether to approve the use of an alternate configuration for a community dock, the permitting entity may consider the factors described below for limiting the length or configuration of a boat dock, catwalk, or dock.

E. Every dock shall have a minimum 50-foot setback from any other dock.

F. Notwithstanding the foregoing, based upon conditions at a given location the division or permitting entity may require length of a boat dock, catwalk, and an entire dock to be shorter than the lengths set forth above, or may require greater setbacks from other boat docks. In addition, the division or permitting entity may limit the acceptable configurations of a dock. Conditions that the division or permitting entity may consider when determining whether to limit lengths or acceptable configurations or in requiring greater setbacks include, without limitation, the width or depth of a lake, channel, or waterway at the location of the proposed dock, existing or proposed docks and docks in the vicinity of that location, and use of the surrounding area by others such as boaters, fishermen, and water recreationists.

G. Boat docks may not be configured or placed in a manner that will restrict public access to a lake where such access is otherwise permitted by law.

[18.17.3.12 NMAC – N, 7/1/2002]

18.17.3.13 GENERAL CONSTRUCTION GUIDELINES; MAINTENANCE:

A. Sanitation devices, electric power sources, or permanent storage facilities are not allowed on docks, or adjacent to floating facilities, whether permanent or temporary in nature.

B. No habitable structures shall be permitted on docks.

C. Docks shall be constructed with environmentally safe materials. The use of wood treated with creosote or penta is prohibited.

D. All steel used in docks shall be hot-dip galvanized. All holes, cuts, or welds on steel members shall be made prior to hot-dip galvanizing. Connectors shall be hot-dip galvanized steel or stainless steel.

E. Docks shall not have enclosed or partially enclosed structures or any type of attached siding above the surface of the decking.

F. American Society of Civil Engineers (ASCE) Manuals and Reports on Engineering Practice Number 50 "Planning and Design Guidelines for Small Craft Harbors" (as amended or modified), ISBN #0-7844-0033-4, which is available for purchase from the ASCE Bookstore at www.ASCE.org, is a recognized standard for the design of boat docks, and may be relied upon in designing boat docks and when seeking approval for a boat dock under these regulations. However, the requirements set forth in this part shall take precedence over the standards set forth in ASCE Number 50.

G. Maintenance, repairs, modifications, or alterations to an existing dock shall conform to the requirements set forth in these regulations.

[18.17.3.13 NMAC – N, 7/1/2002]

18.17.3.14 FLotation REQUIREMENTS:

A. Flotation material shall be extruded polystyrene, expanded polystyrene, or a copolymer of polyethylene and polystyrene and shall have a minimum density of 0.9 pounds per cubic foot, and be of consistent quality throughout the float. Beads shall be firmly fused together, and there shall be no voids inside the encasement. Flotation material shall have a water rate absorption of less than 3.0 pounds per cubic foot over 7 days when tested by the Hunt Absorption Test. Other flotation material may be considered if it meets all of the requirements set forth in this section.

B. Flotation material shall be encased in solid polyethylene or a polyurethane type coating, both of which

shall be watertight and have a nominal thickness of .125 inches.

C. Drums made of plastic, whether new or recycled, or metal shall not be used for encasements or floats.

D. All floats shall be warranted for a minimum of eight years against sinking, becoming waterlogged, cracking, peeling, fragmenting, or losing beads, and shall not be prone to damage by animals.

E. Floats that are punctured, exposing the foam to erosion or deterioration, shall be replaced immediately.

[18.17.3.14 NMAC – N, 7/1/2002]

18.17.3.15 L O A D I N G REQUIREMENTS:

A. Flotation devices for docks, catwalks, and bridges shall be designed to support the dead load plus 30-pounds per square foot (PSF) live load applied to deck area.

B. Boat dock and dock structural frame shall be designed to support 50 pounds PSF live load applied to the full surface area of the deck.

C. Roofs on docks shall have a minimum flotation live load of 12 pounds PSF and a structural live load of 15 pounds PSF.

D. Catwalks and bridges shall be designed to support a live load of 50 pounds PSF.

E. Catwalk and bridge handrails shall be designed to withstand a 200-pound load applied in any direction and at any point along the handrail.

F. Catwalks and bridges shall have a maximum slope under dead load of a 4:1 ratio in any direction.

G. Boat docks shall be able to withstand a minimum of two-foot high wave action. Based upon conditions at a specific site, the division may require a dock to withstand a larger wave loading.

H. Boat docks, anchoring systems, and connectors, including cables and chains, shall be designed to resist wind loads of up to 77 miles per hour (15 pounds PSF) in any direction.

I. Cables and chains used in anchoring systems shall be designed with a minimum working load safety factor of 3.0 for cables and 2.0 for chains.

[18.17.3.15 NMAC – N, 7/1/2002]

18.17.3.16 ANCHORING SYSTEMS: The anchoring systems for docks shall be designed and constructed in accordance with sound engineering practice and the actual soil properties encountered at the location of a proposed dock and shall meet the standards set forth above.

[18.17.3.16 NMAC – N, 7/1/2002]

18.17.3.17 INSPECTIONS,

REMOVAL FOR VIOLATIONS:

A. Docks may be subject to inspection by the division, or its authorized agents, without notice, at reasonable times. Dock owners shall also allow entities permitting or approving docks to conduct inspections in accordance with the guidelines established by that entity. If there are no such guidelines, the mandatory inspection guidelines in subsection C of 18.17.3.17 NMAC shall be followed.

B. Dock owners and boat docks must comply with these regulations and any requirements contained in a permit at all times.

C. Dock owners must have their docks inspected every five years by an RPE at their own expense. Inspections must cover every component of the entire dock, including boat dock, catwalk, anchorage, winches, cable, decking, and flotation material and encasements. After each inspection, dock owners must submit a letter to the division signed and sealed by the RPE who conducted the inspection stating that the entire dock meets or exceeds the design standards set forth in this part.

D. Failure to complete inspections, follow inspection guidelines set forth above, or to correct any violations of these rules within thirty days of receipt of written notice, may result in the division or permitting entity requiring removal of the dock at the dock owner's expense.

E. The division or permitting entity may remove docks that become hazards to navigation at the dock owner's expense.

[18.17.3.17 NMAC – N, 7/1/2002]

18.17.3.18 REMOVAL OF DOCKS: When a boat dock is removed for any reason whatsoever, including at the initiative of the dock owner or at the direction of the division or permitting entity, the dock owner shall be responsible for the complete removal of the entire dock including the boat dock, catwalk, anchoring system, cables, floats, and any other related components or materials installed in conjunction with the construction, maintenance, or use of the dock.

[18.17.3.18 NMAC – N, 7/1/2002]

18.17.3.19 SPECIAL RULINGS, ADDITIONAL REQUIREMENTS, AND VARIANCES: Where conditions on a lake or at a proposed dock location warrant, the division in the reasonable exercise of its discretion, may make special rulings, impose additional requirements, and allow appropriate variances from these regulations. In addressing these matters, the division may take into consideration, without limitation: applicable federal, state, and local statutes, regulations, and ordinances; agreements

with other public agencies and private parties, including concessionaires; the purposes for which the state park and the lake were created, the management plan for the state park; the health, safety, and welfare of other users and activities at the lake and state park, including the impact on boating, fishing, and other recreation activities; and, conditions at a given location.

[18.17.3.19 NMAC – N, 7/1/2002]

18.17.3.20 EMERGENCY USE BY PUBLIC AGENCIES: Dock owners shall allow the division, any other entity permitting or approving the dock, law enforcement agencies, fire departments, and emergency personnel to access and use a dock for emergency purposes, without charge or other compensation, or liability for such use.

[18.17.3.20 NMAC – N, 7/1/2002]

18.17.3.21 PROVISIONS APPLICABLE TO INDIVIDUAL PARKS:

A. This section addresses restrictions on obtaining permits for private boat docks under these regulations at state parks with or adjacent to lakes. The regulations state whether private boat docks are allowed on a lake and what entity must be contacted to obtain permission to build such a dock. Written authorization for a private boat dock must be obtained from the appropriate authority before an application is submitted to the division for a permit.

B. Bluewater Lake state park. Private boat docks are not permitted.

C. Bottomless Lakes state park. Because of the size of the lakes at this park, private boat docks are not permitted.

D. Brantley Lake state park. The division operates this park pursuant to an agreement with the bureau of reclamation of the United States department of the interior (BOR). Private boat docks are not permitted.

E. Caballo Lake state park. The division operates this park pursuant to an agreement with the BOR. Private boat docks are not permitted.

F. Clayton Lake state park. The division operates this park pursuant to an agreement with the New Mexico state game commission, and the state owns the land surrounding the lake. Private boat docks are not permitted.

G. Conchas Lake state park. The division operates this park pursuant to an agreement with the United States army corps of engineers. That part of the shoreline and lake operated by the division have been designated "public recreation use" areas by the corps and private boat docks are not allowed.

H. Elephant Butte Lake

state park. The division operates this park pursuant to an agreement with the BOR. Private boat docks are not permitted.

I. El Vado Lake state park. The division operates this park pursuant to an agreement with the BOR. Private boat docks are not permitted.

J. Fenton Lake state park. The division operates this park pursuant to an agreement with the New Mexico game and fish department. The game and fish department constructed the dam at the lake pursuant to an agreement with the forest service (USFS) of the United States department of agriculture. That agreement does not permit any structure other than a dam to be built or maintained on land owned by the USFS. The New Mexico game and fish department owns the remaining land around the lake. Private boat docks are not permitted.

K. Heron Lake state park. The division operates this park pursuant to an agreement with the BOR. Private boat docks are not permitted.

L. Morphy Lake state park. The division operates this park pursuant to an agreement with the New Mexico state game commission, under which the commission controls the use of boats and other floating devices on the lake. The state game commission operates the lake pursuant to an agreement with the Acequia de San Jose and the Acequia de la Isla of Le Doux (the acequias), which own the lake and the surrounding land. Private boat docks are not permitted.

M. Navajo Lake state park. The division operates this park pursuant to an agreement with the BOR. Private boat docks are not permitted.

N. Oasis Lake state park. The division operates this park pursuant to an agreement with the commissioner of public lands, which owns the land on which the park is located. The agreement does not authorize private boat docks.

O. Santa Rosa state park. The division operates this park pursuant to an agreement with the United States army corps of engineers. Pursuant to federal regulation, private boat docks are not permitted in the area operated by the division.

P. Storrie Lake state park. The division operates this park pursuant to an agreement with the Storrie project water users association. Private boat docks are not permitted.

Q. Sugarite Lake state park. The division operates this park pursuant to an agreement with the city of Raton. Private boat docks are not permitted.

R. Sumner Lake state park. The division operates this park pur-

suant to an agreement with the BOR. Private boat docks are not permitted.

S. Ute Lake state park. The division operates this park pursuant to an agreement with the New Mexico interstate stream commission. The commission must approve applications for private boat docks.

[18.17.3.21 NMAC – N, 7/1/2002]

HISTORY of 18.17.3 NMAC: [RESERVED]

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION BOARD OF FINANCE

This is an amendment to 1.5.23 NMAC, Sections 7, 8, 9, 10.

1.5.23.7 DEFINITIONS:

A. "Acquisition" means, unless usage indicates otherwise, obtaining title in fee simple absolute to real estate by purchase, trade, gift or donation.

B. "Board" means state board of finance.

C. "Consideration" means something which is of value, including but not limited to cash, another piece of real estate, or other form of compensation.

D. "Current" means; ~~[dated within six months of the date of submission of the proposed transaction to the Board for approval]~~

(1) In the context of an appraisal, dated within one year of the date of submission of the proposed transaction to the Board for approval, and

(2) In the context of a title binder, dated within six months of the date of the transaction's submission to the Board.

E. "Local public body" means all political subdivisions, except municipalities and school districts, of the state and their agencies, instrumentalities and institutions.

F. "Private entity" means any non-public entity, including but not limited to persons, associations, and both for-profit and non-profit corporations. It does not include Indian nations, tribes and pueblos.

G. "Public body" means a local public body, a state agency, a school district or state educational institution.

H. "Real property" means any interest in real estate, including but not limited to estates in fee simple, leaseholds, water rights and permanent easements.

I. "State agency" means the state of New Mexico or any of its

branches, agencies, departments, boards, instrumentalities, or institutions other than state educational institutions.

J. "School districts" means those political subdivisions of the state established for the administration of public schools.

K. "State educational institution" means Article XII, Section 11 educational institutions.

L. "Term" means the period of time during which a lease is in effect, and includes all renewal options or extensions.

[1.5.23.7 NMAC – N, 2-14-2001; A, 6-28-2002]

1.5.23.8 ACQUISITION OF REAL PROPERTY:

A. Public bodies requiring Board approval before acquiring real property include, but are not limited to, the following:

(1) General services department.

(2) Department of game and fish for expenditures from the game and fish capital outlay fund.

B. In order to attain approval for acquisition of real property, the Board requires that the following information be provided:

(1) The form of general warranty deed by which the public entity will take title in fee simple absolute containing legal description of the property and warranty covenants. Reversions or other forfeiture provisions in the deed are prohibited. Special warranty deeds will be accepted only under extraordinary circumstances. When the seller is a public body, transfer of title shall be by quitclaim deed.

(2) A copy of a current appraisal and a review from the property tax division of the taxation and revenue department if appraisal was not done by the division. When the seller is another public body, neither an appraisal nor department review is required.

(3) Site improvement survey plat to verify legal description and to identify the existence of recorded easements and encroachments, if applicable.

(4) A description of the proposed use.

(5) Sources of funds used for the purchase.

(6) Current title binder evidencing clear title, and agreement by the title company that it will delete General Exceptions 1 through 6, and the first two-thirds of 7.

(7) Purchase agreement, if applicable.

(8) Phase 1 environmental assessment.

(9) Resolution or minutes of the governing body, if applicable, authorizing the purchase and containing a provision making the acquisition subject to approval by the Board.
[1.5.23.8 NMAC – N, 2-14-2001; A, 6-28-2002]

1.5.23.9 SALE OR TRADE OF ~~PUBLIC~~ REAL PROPERTY:

A. If the sale or trade of real property is for a consideration of more than twenty-five thousand dollars (\$25,000), then prior Board approval is necessary for:

(1) State agencies (unless the consideration is one hundred thousand dollars (\$100,000) or more, in which case require approval by the legislature is required);

(2) School districts [~~except when the consideration is one hundred thousand dollars (\$100,000) or more, in which case approval by the state department of education~~]; and

(3) Local public bodies, include, but not limited to:

- (a) counties;
- (b) technical vocational institutes;
- (c) conservancy districts;
- (d) flood control authorities; and
- (e) municipalities, when Board approval is required pursuant to Section 3-46-34, NMSA.

B. In order to obtain approval for the sale or trade of real property, the Board requires that the following information be provided:

(1) The form of quitclaim deed from the public body transferring title to purchaser containing the legal description of the property;

(2) A copy of a current appraisal and review by the property tax division of the taxation and revenue department if the appraisal was not done by the division (for both properties if trade). When the buyer is another public body, neither an appraisal nor department review is required;

(3) A description of the reason for the sale or trade;

(4) Selection process used to determine purchaser; [~~e.g. bid, advertisement, word of mouth, etc.~~]; competitive sealed bid or public auction, unless purchaser is a Public body;

(5) Purchase price and if applicable, cost per square foot, cost per acre, or cost per acre foot of water rights, etc. (for both properties if trade);

(6) Sale agreements, if applicable;

(7) Resolution or minutes of the governing body, if applicable, authorizing the sale or trade and containing a provision making the sale or trade subject to approval by the Board; and

(8) Approval by the State engineer of any transfer of water rights.

C. Transfer for less than fair market value of real property owned by a public entity to any private entity is not permitted.

[1.5.23.9 NMAC – N, 2-14-2001; A, 6-28-2002]

1.5.23.10 LEASE OF REAL PROPERTY:

A. Board approval is required whenever certain public bodies wish to lease properties they own if the lease is: (1) for a period of more than five years, **or** (2) for a consideration of twenty-five thousand dollars (\$25,000) or more. Prior Board approval is necessary for:

(1) State agencies (unless consideration is one hundred thousand dollars (\$100,000) or more **and** the term is for a period of more than twenty-five years, in which case approval by the legislature is required).

(2) Counties.

(3) School districts [~~unless consideration is one hundred thousand dollars (\$100,000) or more and the term is for a period of twenty-five years or more, in which case approval by the state department of education is required~~]; and

(4) Local public bodies, which include, but are not limited to, the following:

- (a) technical vocational institutes;
- (b) conservancy districts; and
- (c) flood control authorities.

B. In order to obtain approval for leases of real property, the Board requires that the following information be provided:

(1) Current appraisal or other evidence of fair market value and a review from the property tax division of the taxation and revenue department if appraisal was not done by the division. When the lessee/tenant is another public body, neither an appraisal nor department review is required.

(2) Copy of the lease.

(3) Resolution from the governing body, if applicable, approving the lease, and containing a provision making the lease subject to Board approval.

(4) The reason for leasing.

(5) Description of the selection process used to determine lessee: competitive sealed bid or public auction, unless lessee is a Public body.

C. Rent or other consideration at less than fair market value to a private entity is not permitted.

[1.5.23.10 NMAC – N, 2-14-2001; A, 6-28-2002]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.400 NMAC, Sections 10, 13 and 14 which will be effective on July 1, 2002. The Medical Assistance Division made the following changes: section 10 adds subsections for Working Disabled Individuals and Breast and Cervical Cancer; section 13, 12-Month Continuous Eligibility for Children was renumbered to section 14 and; a new section was created for section 13, Presumptive Eligibility for Breast and Cervical Cancer.

8.200.400.10 BASIS FOR DEFINING GROUP: Individuals are eligible for Medicaid if they meet the specific criteria for one of the eligibility categories. In New Mexico, other medical assistance programs for individuals who do not qualify for Medicaid are available, such as the Children's Medical Services Program (Category 007) administered by the New Mexico Department of Health.

A. **Assistance Groups**
The HSD Income Support Division (ISD) determines eligibility for individuals applying for Medicaid.

(1) Category 002 provides Medicaid for families with dependent child(ren) for individuals who meet July 16, 1996 AFDC related eligibility criteria.

(2) Category 027 provides four (4) months of Medicaid if Category 002 Medicaid eligibility is lost due to increased child support.

(3) Transitional Medicaid (Category 028) extends Medicaid benefits up to twelve (12) months for families who lose Category 002 Medicaid eligibility due to increased earnings or loss of the earned income disregard.

(4) Category 033 provides Medicaid for individuals who are ineligible for Category 002 Medicaid due to income or resources deemed from a stepparent, grandparent, or sibling.

B. **Medical Assistance for Women and Children** ISD offices establish eligibility for Medical Assistance for Women and Children (MAWC) categories. For these categories, Medicaid coverage does not depend on one or both parents being dead, absent, disabled, or unemployed. Children and pregnant women in intact families may be eligible for these Medicaid categories.

(1) **Category 030:** This category provides the full range of Medicaid coverage for pregnant women in families meeting AFDC income and resource standards.

(2) **Category 031:** This category provides twelve (12) months of Medicaid

coverage for babies born to mothers who, at the time of the birth, were either eligible for and receiving New Mexico Medicaid or were deemed to have been eligible for and receiving New Mexico Medicaid. To receive the full twelve (12) months of coverage, all of the following criteria must be met:

(a) The mother remains eligible for New Mexico Medicaid (or would be eligible if she were still pregnant).

(b) The baby remains with the mother.

(c) Both mother and baby continue to reside in New Mexico.

(3) **Category 032:** This category provides Medicaid coverage to children who are under 19 years of age in families with incomes under 235% of Federal Income Poverty Guidelines. Children in families with income between 185-235% of FPL are eligible for the State Children's Health Insurance Program (SCHIP). Native American children are exempt from co-payments.

(4) **Category 035:** This category provides Medicaid coverage for pregnancy-related services for pregnant women and family planning services for women in families whose income is below 185% of the federal income poverty level. There is no resource test for this category.

C. Supplemental Security Income Eligibility for Supplemental Security Income (SSI) is determined by the Social Security Administration. This program provides cash assistance and Medicaid for eligible aged (Category 001), blind (Category 003) or disabled (Category 004) recipients. ISD offices determine Medicaid eligibility for individuals who are ineligible for SSI due to income or resources deemed from stepparents (Category 034).

D. Medicaid Extension: Medicaid extension provides Medicaid coverage for individuals who lose eligibility for SSI due to a cost of living increase in Social Security benefits and to individuals who lose SSI for other specific reasons. Under the "Pickle Amendment" to the Social Security Act, Medicaid coverage is extended to individuals who lose SSI for any reason which no longer exists and who meet SSI eligibility criteria when Social Security cost-of-living increases are disregarded.

(1) Individuals who meet the following requirements may also be eligible for Medicaid extension:

(a) Widow(er)s between sixty (60) and sixty-four (64) years of age who lose SSI eligibility due to receipt of or increase in early widow(er)s' Title II benefits. Eligibility ends when an individual becomes eligible for Part A Medicare or reaches age sixty-five (65);

(b) Certain disabled adult children (DACs) who lose SSI eligibility due to receipt of or increase in Title II DAC benefits;

(c) Certain disabled widow(er)s and disabled surviving divorced spouses who lose SSI eligibility due to receipt of or increase in disabled widow(er)s or disabled surviving divorced spouse's Title II benefit. Medicaid eligibility ends when individuals become eligible for Part A Medicare;

(d) Non-institutionalized individuals who lose SSI eligibility because the amount of their initial Title II benefits exactly equals the income ceiling for the SSI program; and

(e) Certain individuals who become ineligible for SSI cash benefits and, therefore, Medicaid as well, may receive up to two (2) months of extended Medicaid benefits while they apply for another category of Medicaid.

(2) Medicaid Extension categories include individuals who are sixty-five (65) years and older (Category 001), individuals who are less than sixty-five (65) years of age and blind (Category 003) and individuals who are less than sixty-five (65) years of age and disabled (Category 004).

E. Institutional Care Medicaid: ISD offices establish eligibility for Institutional Care Medicaid. Individuals who are aged (Category 081), blind (Category 083) or disabled (Category 084) must require institutional care in nursing facilities (NFs), intermediate care facilities for the mentally retarded (ICF-MRs), or acute care hospitals and meet all SSI eligibility criteria, except income, to be eligible for these Medicaid categories.

F. Home and Community-Based Waiver Services: ISD offices establish the financial eligibility for individuals who apply for Medicaid under one of the Home and Community Based Waiver programs. Individuals must meet the resource, income, and level of care standards for institutional care; however, these individuals receive services at home. The waiver programs are listed below:

(1) Acquired Immunodeficiency Syndrome (AIDS) and AIDS-Related Condition (ARC) Waiver. (Category 090).

(2) Disabled and Elderly Waiver - aged (Category 091), blind (Category 093), disabled (Category 094).

(3) Medically Fragile Waiver (Category 095).

(4) Developmental Disabilities Waiver (Category 096).

G. Qualified Medicare Beneficiaries: Medicaid covers the payment of Medicare premiums as well as deductible and coinsurance amounts for Medicare-covered services under the Qualified Medicare Beneficiaries (QMB)

program for individuals who meet certain income and resource standards (Category 040). To be eligible, an individual must have or be conditionally eligible for Medicare Hospital Insurance (Medicare Part A).

H. Qualified Disabled Working Individuals: Medicaid covers the payment of Part A Medicare premiums under the Qualified Disabled Working Individuals (QDs) program for individuals who lose entitlement to free Part A Medicare due to gainful employment (Category 042). To be eligible, individuals must meet the Social Security Administration's definition of disability and be enrolled for premium Part A. These individuals must also meet certain income and resource standards. They are not entitled to additional Medicaid benefits and do not receive Medicaid cards.

I. Specified Low-Income Medicare Beneficiaries: Medicaid covers the payment of Medicare Part B premiums under the Specified Low-Income Medicare Beneficiaries (SLIMB) program for individuals who meet certain income and resource standards (Category 045). To be eligible, individuals must already have Medicare Part A. They are not entitled to additional Medicaid benefits and do not receive Medicaid cards.

J. Medical Assistance for Refugees: Low-income refugees may be eligible for medical and cash assistance. Eligibility for refugee assistance programs is determined by the ISD offices. To be eligible for cash assistance and medical coverage (Category 019) or medical coverage only (Category 049), a refugee must meet the income criteria for AFDC programs. Refugee medical assistance is limited to an eight (8) month period starting with the month a refugee enters the United States. Refugee medical assistance is approved only in the following instances:

(1) Refugees meet the AFDC standard of need when the earned income disregard is applied;

(2) Refugees meet all criteria for refugee cash assistance but wish to receive only refugee medical assistance;

(3) Refugees receive a four (4) month refugee medical assistance extension when eligibility for refugee cash assistance is lost due to earned income; or

(4) Refugee spends-down to the AFDC standard of need (Category 059).

K. Emergency Medical Services for Aliens: Medicaid covers emergency services for certain nonqualified, illegal undocumented, or non-immigrant aliens who meet all eligibility criteria for one of the existing Medicaid categories, except for citizenship or legal alien status. These individuals must receive emergency

services from a Medicaid provider and then go to an ISD office for an evaluation of Medicaid eligibility. Once an eligibility determination is made, the alien must notify the servicing provider so that the claim can be submitted to MAD or its designee for a medical necessity evaluation and claim payment.

L. Children, Youth, and Families Medicaid:

Medicaid covers children in state foster care programs (Category 006, Category 046, Category 066, Category 086) and in adoption subsidy situations (Category 017, Category 037, and Category 047) when the child's income is below the AFDC need standard for one person. Medicaid also covers children who are the full or partial responsibility of the Children, Youth, and Families Department (CYFD) such as Category 060 and Category 061). The eligibility determination for these categories is made by CYFD.

M. Working Disabled

Individuals: The Working Disabled Individuals (WDI) program (Category 043) covers disabled individuals who are either employed, or who lost eligibility for Supplemental Security Income (SSI) and Medicaid due to the initial receipt of Social Security Disability Insurance (SSDI) and who do not yet qualify for Medicare.

N. Breast and Cervical

Cancer: The Breast and Cervical Cancer (BCC) program (Category 052) covers uninsured women, under the age of 65 who have been screened and diagnosed as having breast or cervical cancer, including pre-cancerous conditions by a contracted provider for the Centers for Disease Control and Prevention's National Breast and Cervical Cancer Early Detection Program (NBCCEDP).

[2-1-95; 1-1-97; 4-1-98; 6-30-98; 3-1-99; 8.200.400.10 NMAC – Rn, 8 NMAC 4.MAD.402 & A, 7-1-01; A, 7-1-02]

8.200.400.13 PRESUMPTIVE ELIGIBILITY FOR BREAST AND CERVICAL CANCER: A woman may be eligible to receive Medicaid services from the date presumptive eligibility is made until the end of the month following the month in which the determination was made, up to 60 days. The purpose of the presumptive eligibility is to allow needed treatment to begin as early as possible. Only one Presumptive Eligibility period is allowed per 12-month period.

[6-30-98; 8.200.400.13 NMAC – Rn, 8 NMAC 4.MAD.407, 7-1-01; N, 7-1-02]

~~[8.200.400.13]~~ **8.200.400.14 12-MONTH CONTINUOUS ELIGIBILITY FOR CHILDREN:** Children eligible for Medicaid will remain eligible for a period of twelve (12) months, regardless of

changes in income. This provision applies even if the family income exceeds the applicable federal income poverty guidelines. The 12 month continuance starts with the month of approval or redetermination, and is separate from any months of presumptive or retroactive eligibility.

[8.200.400.14 NMAC – Rn, 8.200.400.13 NMAC, 7-1-02]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 252 MEDICAID ELIGIBILITY – BREAST AND CERVICAL CANCER PROGRAM (CATEGORY 052)

PART 400 RECIPIENT POLICIES

8.252.400.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.252.400.1 NMAC – N, 7-1-02]

8.252.400.2 SCOPE: The rule applies to the general public.
[8.252.400.2 NMAC – N, 7-1-02]

8.252.400.3 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 and by the state Human Services Department pursuant to state statute. See NMSA 1978 27-2-12 et. seq. (Repl. Pamp. 1991)
[8.252.400.3 NMAC – N, 7-1-02]

8.252.400.4 DURATION: Permanent
[8.252.400.4 NMAC – N, 7-1-02]

8.252.400.5 EFFECTIVE DATE: July 1, 2002, unless a later date is cited at the end of a section.
[8.252.400.5 NMAC – N, 7-1-02]

8.252.400.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the Medicaid program.
[8.252.400.6 NMAC – N, 7-1-02]

8.252.400.7 DEFINITIONS: [RESERVED]

8.252.400.8 [RESERVED]

8.252.400.9 BREAST AND CERVICAL CANCER (BCC) - Category 052: The Human Services Department (HSD) is the single state agency designated

to administer the Medicaid program in New Mexico. The Department of Health (DOH) and the HSD are charged with developing and implementing a program for uninsured women under the age of 65 years, who have met screening criteria as set forth in the Centers for Disease Control and Prevention's (CDC) National Breast and Cervical Cancer Early Detection Program (NBCCEDP). The DOH is responsible for verifying that women referred for treatment have met screening requirements that include an income test of 250% of the Federal Poverty Guidelines, and diagnostic testing by a contracted CDC provider resulting in a diagnosis of breast or cervical cancer including pre-cancerous conditions. Women who have met CDC screening criteria and identified as needing treatment for a diagnoses of breast or cervical cancer, including pre-cancerous conditions will be referred for treatment that includes the completion of a Medicaid application for the BCC program. The Breast and Cervical Cancer Prevention and Treatment Act allows states to extend presumptive eligibility to applicants in order to ensure that needed treatment begins as early as possible.

[8.252.400.9 NMAC – N, 7-1-02]

8.252.400.10 BASIS FOR DEFINING THE GROUP: Women who have been determined as having met CDC program screening requirements will be identified and referred for treatment. Public Law 106-354 does not provide eligibility for men diagnosed with cancer.

[8.252.400.10 NMAC – N, 7-1-02]

8.252.400.11 GENERAL RECIPIENT REQUIREMENTS: Eligibility for the breast and cervical cancer program is always prospective. Women must meet, or expect to meet all Medicaid and CDC financial and non-financial eligibility criteria in the month for which determination of eligibility is made.

[8.252.400.11 NMAC – N, 7-1-02]

8.252.400.12 ENUMERATION: A woman must furnish her Social Security account number. Medicaid eligibility is denied or terminated for a woman who fails to furnish her Social Security number. If a woman does not have, a valid Social Security number, she must apply for one as a condition of Medicaid eligibility. Presentation of the application for a Social Security number, or proof that an application has been made at a Social Security Administration office, meets this requirement. A woman must provide her Social Security account number upon receipt of the number from SSA but no later than her next recertification.

[8.252.400.12 NMAC – N, 7-1-02]

8.252.400.13 CITIZENSHIP: Refer to Medical Assistance Program Manual Section MAD 412, 412.1, and 412.2 (Section 11 of 8.200.410 NMAC). Women who do not meet citizenship eligibility criteria may be eligible to receive coverage for emergency services under the Emergency Medical Services for Undocumented Aliens (EMSA) program.

[8.252.400.13 NMAC – N, 7-1-02]

8.252.400.14 RESIDENCE: To be eligible for Medicaid, a woman must be physically present in New Mexico on the date of application or final determination of eligibility, and must have intent to remain in the state.

A. Establishing

Residence: Residence in New Mexico is established by living in the state and carrying out the types of activities normally indicating residency, such as occupying a home, enrolling child (ren) in school, getting a state driver's license, or renting a post office box. A woman who is homeless is considered to have met the residence requirements if she intends to remain in the state.

B. Recipients Receiving

Benefits Out-of-State: A woman who receives medical assistance in another state is considered a resident of that state until the Income Support Division (ISD) staff receives verification from the other state agency indicating that it has been notified by the woman of the abandonment of residence in that state.

C. Abandonment:

Residence is not abandoned by temporary absences. Temporary absences occur when a woman leaves New Mexico for specific purposes with time-limited goals. Residence is considered abandoned when any of the following occurs:

(1) a woman leaves New Mexico and indicates that she intends to establish residence in another state;

(2) a woman leaves New Mexico for no specific purpose with no clear intention of returning;

(3) a woman leaves New Mexico and applies for financial, food or medical assistance in another state.

[8.252.400.14 NMAC – N, 7-1-02]

8.252.400.15 NON-CONCURRENT RECEIPT OF ASSISTANCE: A woman may not be receiving assistance in another Medicaid category.

[8.252.400.15 NMAC – N, 7-1-02]

8.252.400.16 SPECIAL RECIPIENT REQUIREMENTS: A woman must have been screened and diagnosed with

breast or cervical cancer or a pre-cancerous condition by a provider of the Centers for Disease Control and Prevention's (CDC) National Breast and Cervical Cancer Early Detection Program and be in need of treatment. Women identified as in need of treatment, will be given an application that includes the DOH's CDC contracted provider referral for treatment form. The DOH is responsible for verifying the referring physician is a contracted CDC provider.

[8.252.400.16 NMAC – N, 7-1-02]

8.252.400.17 AGE: To be eligible for this category, a woman must be under 65 years of age. Medicaid eligibility ends the last day of the month a woman turns 65 years of age.

[8.252.400.17 NMAC – N, 7-1-02]

8.252.400.18 THIRD PARTY LIABILITY: A woman must be uninsured.

A. A woman is considered uninsured when her health insurance policy has lifetime limits and she has exhausted those limits or, she is denied coverage due to a pre-existing condition.

B. Women with high deductibles, or limits on coverage, such as the limit of doctor visits or drug coverage that have not been exhausted are considered insured.

C. There is no penalty for dropping insurance.

[8.252.400.18 NMAC – N, 7-1-02]

8.252.400.19 PRESUMPTIVE ELIGIBILITY: A woman may be eligible to receive Medicaid services from the date the presumptive eligibility determination is made until the end of the month following the month in which the determination was made, for a period of up to 60 days. The purpose of the presumptive eligibility is to allow Medicaid payment for health care services furnished to a woman while her application for Medicaid is being processed. Only one presumptive eligibility period is allowed per twelve-month period. The period of presumptive eligibility begins when an approved presumptive eligibility provider establishes eligibility. Presumptive eligibility criteria are a simplified version of Category 052 eligibility requirements.

A. Processing
Presumptive Eligibility Information: The Medical Assistance Division (MAD) authorizes certain providers to make presumptive eligibility determinations. The provider must notify MAD through its claims processing contractor of the determination within 24 hours of the determination of presumptive eligibility.

B. Provider

Responsibility: The presumptive eligibility provider must process both presumptive eligibility as well as an application for Medical Assistance for the woman.

C. Provider Eligibility:

Entities who may participate must be a CDC Title XV grantees are those entities receiving funds under a cooperative agreement with CDC to support activities related to the National Breast and Cervical Cancer Detection Program.

[8.252.400.19 NMAC – N, 7-1-02]

8.252.400.20 RECIPIENT RIGHTS AND RESPONSIBILITIES: A woman or her representative is responsible for establishing her eligibility for Medicaid. As part of this responsibility, the woman must provide required information and documents, or take the actions necessary to establish eligibility. Failure to do so must result in a decision that eligibility does not exist. A woman must also grant the Human Services Department (HSD) permission to contact other persons, agencies or sources of information necessary to establish eligibility. See 8.200.430 NMAC, RECIPIENT RIGHTS AND RESPONSIBILITIES for specific information.

[8.252.400.20 NMAC – N, 7-1-02]

8.252.400.21 REPORTING REQUIREMENTS: A woman and/or any other responsible party must:

A. Report any changes in circumstances, which may affect the woman's eligibility within ten (10) days of the date of the change to the county ISD office.

B. The ISD worker must evaluate the effect of the change and take any required action as soon as possible; however, the action must take effect no later than the end of the month following the month in which the change took place.

[8.252.400.21 NMAC – N, 7-1-02]

HISTORY OF 8.252.400 NMAC:
[RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 252 MEDICAID ELIGIBILITY - BREAST AND CERVICAL CANCER PROGRAM (CATEGORY 052)

PART 500 INCOME AND RESOURCE STANDARDS

8.252.500.1 ISSUING AGENCY:
Human Services Department
[8.252.500.1 NMAC – N, 7-1-02]

8.252.500.2 SCOPE: This rule applies to the general public.
[8.252.500.2 NMAC - N, 7-1-02]

8.252.500.3 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 by the state Human Services Department pursuant to state statute. See NMSA 1978 27-2-12 et. seq. (Repl. Pamp. 1991).
[8.252.500.3 NMAC - N, 7-1-02]

8.252.500.4 DURATION: Permanent
[8.252.500.4 NMAC - N, 7-1-02]

8.252.500.5 EFFECTIVE DATE: July 1, 2002, unless a later date is cited at the end of a section.
[8.252.500.5 NMAC - N, 7-1-02]

8.252.500.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the Medicaid program.
[8.252.500.6 NMAC - N, 7-1-02]

8.252.500.7 DEFINITIONS: [RESERVED]

8.252.500.8 [RESERVED]

8.252.500.9 RESOURCES: Resources are not a factor of Medicaid eligibility for the Breast and Cervical Cancer program.
[8.252.500.9 NMAC - N, 7-1-02]

8.252.500.10 INCOME: Income is not factor of Medicaid eligibility for the Breast and Cervical Cancer program.
[8.252.500.10 NMAC - N, 7-1-02]

HISTORY OF 8.252.500 NMAC: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

**TITLE 8 SOCIAL SERVICES
CHAPTER 252 MEDICAID ELIGIBILITY - BREAST AND CERVICAL CANCER PROGRAM (CATEGORY 052)
PART 600 BENEFIT DESCRIPTION**

8.252.600.1 ISSUING AGENCY:

Human Services Department.
[8.252.600.1 NMAC - N, 7-1-02]

8.252.600.2 SCOPE: This rule applies to the general public.
[8.252.600.2 NMAC - N, 7-1-02]

8.252.600.3 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 by the state Human Services Department pursuant to state statute. See 1978 27-2-12 et seq. (Repl. Pamp. 1991).
[8.252.600.3 NMAC - N, 7-1-02]

8.252.600.4 DURATION: Permanent
[8.252.600.4 NMAC - N, 7-1-02]

8.252.600.5 EFFECTIVE DATE: July 1, 2002, unless a later date is cited at the end of a section.
[8.252.600.5 NMAC - N, 7-1-02]

8.252.600.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the Medicaid program.
[8.252.600.6 NMAC - N, 7-1-02]

8.252.600.7 DEFINITIONS: [RESERVED]

8.252.600.8 [RESERVED]

8.252.600.9 GENERAL BENEFIT DESCRIPTION: A woman who is determined eligible for Medicaid coverage under the Breast and Cervical Cancer program can receive the full range of Medicaid covered services under fee-for-service provisions, and is exempt from SALUD, New Mexico's Managed Care program.
[8.252.600.9 NMAC - N, 7-1-02]

8.252.600.10 BENEFIT DETERMINATION: Completed applications must be acted upon and notice of approval, denial, or delay sent out within forty-five (45) days of the date of application. A woman will have time limits explained, and be informed of the date by which the application should be processed.
[8.252.600.10 NMAC - N, 7-1-02]

8.252.600.11 INITIAL BENEFITS: Eligibility is always prospective and begins the month of application. When an eligibility determination is made, notice of the approval or denial is sent to the individual. If the application is denied, the notice shall include reason for denial and the woman's

right to request a fair hearing.
[8.252.600.11 NMAC - N, 7-1-02]

8.252.600.12 ONGOING BENEFITS: A woman is responsible to report changes affecting eligibility within ten (10) days in which the change took place. Changes in eligibility status will be effective the first day of the following month. A redetermination of eligibility is made every twelve (12) months.
[8.252.600.12 NMAC - N, 7-1-02]

8.252.600.13 RETROACTIVE BENEFIT COVERAGE: Up to three (3) months of retroactive Medicaid coverage can be furnished to applicants who have received Medicaid-covered services during the retroactive period and would have met applicable eligibility criteria had they applied during the three (3) months prior to the month of application. There is no retroactive Medicaid coverage prior to the BCC program implementation date of July 1, 2002.

A. Application for Retroactive Benefit Coverage: Application for retroactive Medicaid is made by indicating the existence of medical expenses in the three (3) months prior to the month of application on the Medicaid application form.

B. Approval Requirements: To establish retroactive eligibility, verification must be provided to demonstrate that all conditions of eligibility were met for each of the three (3) retroactive months, and that the individual received Medicaid-covered services. Eligibility for each month is approved or denied on its own merits.

C. Notice:
(1) **Notice to Applicant:** The applicant must be informed of the disposition of each retroactive month.

(2) **Recipient Responsibility to Notify Provider:** After the retroactive eligibility has been established, the recipient is responsible for informing all providers with outstanding bills of the retroactive eligibility determination. If the individual does not inform all providers and furnish verification of eligibility that can be used for billing, and the provider consequently does not submit the billing within 120 days from the date of approval of retroactive coverage, the individual is responsible for payment of the bill.
[8.252.600.13 NMAC - N, 7-1-02]

8.252.600.14 CHANGES IN ELIGIBILITY: A woman's eligibility ends when the department receives information from the treating physician or the woman that her course of treatment is completed. A case is closed, with provision of advance

notice, when the recipient becomes ineligible. If a recipient dies, the case is closed the following month.

[8.252.600.14 NMAC – N, 7-1-02]

HISTORY OF 8.252.600 NMAC:
[RESERVED]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.305.4 NMAC, Section 9 which will be effective on July 1, 2002. The Medical Assistance Division adds reference to Medicaid Category 052, Breast and Cervical Cancer program.

8.305.4.9 MANAGED CARE ELIGIBILITY: HSD determines eligibility for enrollment in the managed care program. All Medicaid eligible clients are required to participate in the Medicaid managed care program except for the following:

A. clients eligible for both Medicaid and Medicare (dual eligibles);

B. institutionalized clients, defined as those expected to reside in a nursing facility for long term care or permanent placement. This does not include clients placed in a nursing facility to receive subacute or skilled nursing care in lieu of continued acute care;

C. clients residing in intermediate care facilities for the mentally retarded;

D. clients participating in the Health Insurance Premium Payment (HIPP) program;

E. children and adolescents in out-of-state foster care or adoption placements;

F. Native Americans; ~~and~~

G. clients eligible for Medicaid Category 035, Family Planning Services Only; and

H. women eligible for Medicaid Category 052, Breast and Cervical Cancer program.

[8.305.4.9 NMAC – Rp 8 NMAC 4.MAD.606.3.1, 7-1-01; A, 7-1-02]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.312.3 NMAC, Sections 12 and 13 that will be effective on July 1, 2002. The Medical Assistance Division made the following amendments:

Subsection B of 8.312.3.12 language was added regarding the inflation factor. In Section 8.312.3.13 NHI was changed to MBI. This rule was also reformatted and renumbered from 8 NMAC 4.MAD.731-D to comply with current NMAC requirements.

8.312.3.12 ESTABLISHMENT OF PROSPECTIVE PER-DIEM RATES: Prospective per diem rates will be established as follows and will be the lower of the amount calculated using the following formulas, or the ceiling:

A. **Base Year:** Rebasement of the prospective per diem rate will take place every three years. Therefore, the operating years under this plan will be known as Year 1, Year 2, and Year 3. Because rebasing is done every three years, operating year 4 will again become year 1, etc. Cost incurred, reported, audited and/or desk reviewed for the provider's last fiscal year which falls in the calendar year prior to year 1 will be used to re-base the prospective per diem rate. Rebasement of costs in excess of 110% of the previous year's audited cost per diem times the index (as described further on in these regulations) will not be recognized for calculation of the base year costs. For implementation Year 1 (effective July 1, 1984) the base year is the provider's last available audited cost report prior to January 1, 1984. Rebasement will occur out of cycle for rates effective January 1, 1996, using the provider's FYE 1994 audited cost reports. The rate period January 1, 1996, through June 30, 1996, will be considered Year 1. The rate period July 1, 1996, through June 30, 1997, will be considered Year 2, and the rate period July 1, 1997, through June 30, 1998, will be considered Year 3. The rebasing cycle will resume for rates effective July 1, 1998, and continue as described in the first paragraph of this section.

B. **Inflation factor** to recognize economic conditions and trends during the time period covered by the provider's prospective per diem rate:

(1) Pursuant to budget availability and at the Department's discretion, an inflation factor may be used to recognize economic conditions and trends. A notice will be sent out every July informing each provider that a:

(a) MBI will or will not be authorized; and

(b) The percentage increase if the MBI is authorized.

(2) ~~The~~ If utilized, the index used to determine the inflation factor will be the ~~Health Care Financing Administration Nursing Home~~ Center for Medicare and Medicaid Services (CMS) Market Basket

Index ~~[NHI]~~ (MBI) or a percentage up to the MBI.

(3) Each provider's operating costs will be indexed up to a common point of 12/31 for the base year, and then indexed to a mid-year point of 12/31 for operating Year 1, if applicable. For ~~the~~ out-of-cycle rebasing occurring for rates effective January 1, 1996, through June 30, 1996, the mid-year point for indexing ~~for~~ in operating Year 1 will be 3/31.

(4) The inflation factor for the period July 1, 1996, through June 30, 1997, will be the percentage change in the ~~[NHI]~~ (MBI) for the previous year plus 2 percentage points. [For each rate period thereafter, the inflation factor will be change in the NHI for the previous year.]

C. **Incentives to Reduce Increases in Costs:** As an incentive to reduce the increases in the costs of operation, the Department will share with the provider in accordance with the following formula, ~~[described below]~~ the savings below the operating cost ceiling in effect during the state's fiscal year.

$$I = [1/2(M - N)] \leq \$2.00$$

Where

M = Current operating cost ceiling per diem

N = Allowable operating per diem rate based on the base year's cost report

I = Allowable incentive per diem

D. **Calculation of the Prospective Per Diem Rate:** The following formulas are used to determine the prospective per diem rate:

YEAR 1

$$PR = BYOC \times (1 + \Delta$$

~~[NHI]~~ MBI) + I + FC

Where

PR = Prospective per diem rate

BYOC = Allowable base year operating costs as described in A above, and indexed as described in B above.

NHI = The change in the ~~[NHI]~~ MBI as described in B above

I = Allowable incentive per diem

FC = Allowable facility costs per

diem

YEARS 2 and 3

$$PR = (OP + I) \times (1 + \Delta$$

~~[NHI]~~ MBI) + FC

Where

PR = Prospective per diem rate

OP = Allowable operating costs per diem

I = Allowable incentive per diem

NHI = The change in the ~~[NHI]~~ MBI as described in B above.

FC = Allowable facility costs per

diem

E. **Effective Dates of**

Prospective Rates: Rates are effective July 1 of each year for each facility.

F. Calculation of rates for existing providers that do not have 1983 actuals, and for newly constructed facilities entering the program after July 1, 1984.

(1) For existing and for newly constructed facilities entering the program that do not have 1983 actuals, the provider's interim prospective per diem rate will become the sum of:

(a) The applicable facility cost ceiling, and

(b) The operating cost ceiling.

(2) After six months of operation or at the provider's fiscal year end, whichever comes later, the provider will submit a completed cost report. This will be audited to determine the actual operating and facility cost, and retroactive settlement will take place. The provider's prospective per diem rate will then become the sum of:

(a) The lower of allowable facility costs or the applicable facility cost ceiling, and

(b) The lower of allowable operating costs or the operating cost ceiling.

(3) Such providers will not be eligible for incentive payments until the next operating Year 1, after rebasing.

G. Changes of provider by sale of an existing facility:

(1) When a change of ownership occurs, the provider's prospective per diem rate will become the sum of:

(a) The lower of allowable facility costs determined by using the Medicare principles of reimbursement, or the facility cost ceiling, and

(b) The operating cost established for the previous owner/operator, or the median of operating costs for its category, whichever is higher.

(2) Such providers will not be eligible for incentive payments until the next operating Year 1, after rebasing.

H. Changes of provider by lease of an existing facility:

(1) When a change of ownership occurs, the provider's prospective per diem rate will become the sum of:

(a) The lower of allowable facility costs or the facility cost ceiling, as defined by this plan, and

(b) The operating cost established for the previous owner/operator, or the median of operating costs for its category, whichever is higher.

(2) Such providers will not be eligible for incentive payments until the next operating Year 1, after rebasing.

I. Sale/leaseback of an existing facility: When a sale/leaseback of an existing facility occurs, the provider's prospective rate will remain the same as before the transaction.

J. Replacement of an existing facility: When an existing facility is replaced, the provider's prospective rate will become the sum of:

(1) The lower of allowable facility costs or the facility cost ceiling as defined by this plan, and

(2) The operating cost plus incentive payment paid to the provider prior to the construction of the replacement facility.

K. Replaced facility re-entering the Medicaid Program:

(1) When a facility is replaced by a replacement facility and the replaced facility re-enters the Medicaid program either under the same ownership or under different ownership, the provider's prospective rate will become the sum of:

(a) The median operating cost for its category, and

(b) The lower of allowable facility costs or the applicable facility cost ceiling.

(2) Such providers will not be eligible for incentive payments until the next operating year 1, after rebasing.

L. Closed facility re-entering the Medicaid Program:

(1) When a facility has been closed and re-enters the Medicaid Program under new ownership, it shall be considered a change of ownership and either G or H, whichever is applicable, will apply.

(2) When a facility has been closed and re-enters the Medicaid program under the same ownership within 12 months of closure [~~under the same ownership~~], the provider's prospective rate will be the same as prior to the closing.

(3) When a facility has been closed and re-enters the Medicaid program under the same ownership more than 12 months after closure, [~~under the same ownership~~], the provider's prospective rate will be the sum of:

(a) the median operating cost for its category, and

(b) the lower of allowable facility costs or the applicable facility cost ceiling.

(4) Providers of such facilities will not be eligible for incentive payments until the next operating year 1, after rebasing.

[2/1/95, 12/30/95; 8.312.3.12 NMAC - Rn, 8 NMAC 4 MAD.731-D.IV & A, 7-1-02]

8.312.3.13 ESTABLISHMENT OF CEILINGS:

The following categories are used to establish ceilings [~~used in~~] for calculating prospective per diem rates: 1) State-owned and operated NF, 2) Non-state-owned and operated NF. The Department determines the status of each provider for exclusion from or inclusion in any one category. Ceilings will be separate-

ly established for each category as described above, and separately established for the two areas of allowable costs, i.e. operating costs and facility costs. The operating cost ceiling will be calculated using the base year costs for Year 1. For Years 2 and 3, the operating cost ceiling will not be recalculated. It will be indexed forward using the appropriate inflation factor. The facility cost ceiling of \$11.50 will be trended forward in Year 2 beginning July 1, 1985, by [~~NHH~~] MBI minus 1 percentage [~~points~~] point and then annually by the [~~NHH~~] MBI.

A. Operating Costs: The ceiling for operating costs will be established at 110% of the median of allowable costs for the base year, indexed to 12/31 of base year.

B. Facility Costs: For existing, replacement, and newly constructed facilities, including remodeling of a facility to become a long term care facility, facility costs will be limited as follows:

(1) Any facility that is participating in Medicaid by July 1, 1984, or has been granted Section 1122 approval by July 1, 1984, for construction (including bed additions to such facilities) will be paid the lower of actual allowable facility costs or the applicable facility cost ceiling for implementation Year 1. The facility cost ceiling will be eleven dollars and fifty cents (\$11.50).

(2) Any new facility not approved July 1, 1984, under Section 1122 for construction (including bed additions to such facilities) will be paid the lower of actual allowable facility costs or the median of facility costs for all other existing facilities [~~which are~~] in the same category.

(3) Effective for leases executed and binding on both parties on or after January 1, 1988, total allowable lease costs for the entire term of the lease for each facility will be limited to an amount determined by a discounted cash flow technique which will provide the lessor an annual rate of return on the fair market value of the facility equal to one time the average of the rates of interest on special issues of public debt obligations issued to the Federal Hospital Insurance Trust Fund for the twelve months prior to the date the facility became a provider in the New Mexico Medicaid program. The rates of interest for this fund are published in both the Federal Register and the Commerce Clearing House (CCH). The basis of the total investment will be subject to the limitations described in 1 and 2 above. The rate of return described above will be exclusive of any escalator clauses contained in the lease. The effect of escalator clauses will be considered at the time they become effective

and the reasonableness of such clauses will be determined by the inflation factor described in subsection B of 8.312.3.12 NMAC of these regulations. Any appraisal necessary to determine the fair market value of the facility will be the sole responsibility of the provider and is not an allowable cost for reimbursement under the program. The appraisals must be conducted by an appraiser certified by a nationally recognized entity, and such appraiser must be familiar with the health care industry, specifically long term care, and must be familiar with the geographic area in which the facility is located. Prior to the appraisal taking place, the provider must submit to the Department the name of the appraiser, a copy of his/her certification, and a brief description of the appraiser's relevant experience. The use of a particular appraiser is subject to the approval of the Department.

(4) For newly constructed facilities, reconstruction of a facility to become a long term care facility, and replacement facilities entering the Medicaid program on or after January 1, 1988, the total basis of depreciable assets shall not exceed the median cost of construction of a nursing home as listed in the Robert S. Means construction index, adjusted for New Mexico costs and for inflation in the construction industry from the date of publication to the date the provider is expected to enter the New Mexico Medicaid program. The costs of construction referred to herein is expected to include only the cost of the building and fixed equipment. A reasonable value of land and major moveable equipment will need to be added to obtain the value of the entire facility.

(5) When an existing facility is sold, facility costs per day will be limited to the lower of:

(a) Allowable facility costs determined by using the Medicare principles of reimbursement or

(b) The facility cost ceiling.

(6) When an existing facility is leased, the facility costs per day will be limited to the lower of:

(a) Actual allowable facility costs,

or

(b) for facilities owned or operated by the lessor for 10 years or longer, the applicable facility cost ceiling, or

(c) for facilities owned or operated by the lessor less than 10 years, 110% of the median of facility costs for all providers in the same category.

(7) When a replaced facility re-enters the Medicaid program either under the same ownership as existed prior to the replacement or under different ownership, facility costs per day will be limited to the lower of:

(a) Actual allowable facility costs or

(b) The median of facility costs for all other existing facilities ~~[which are]~~ in the same category.

[2/1/95; 8.312.3.13 NMAC - Rn, 8 NMAC 4.MAD.731-D.V & A, 7-1-02]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.314.5 NMAC that will be effective July 1, 2002. The Medical Assistance Division made amendments to sections to add new developmental disabilities (DD) waiver services, change the definition of DD to reflect the HCBW eligibility regulations in addition to the DD waiver renewal and to allow certified occupational therapy assistants (COTA) and physical therapy assistants (PTA) to provide services. This rule was renumbered from 8 NMAC 4.MAD.736 to 8.314.5 NMAC to conform to NMAC requirements.

8.314.5.9 DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES WAIVER:

The New Mexico Medicaid program (Medicaid) pays for medically necessary services furnished to eligible recipients. To help New Mexico recipients receive services in a cost-effective manner, the New Mexico Medical Assistance Division (MAD) has obtained a waiver of certain federal regulations to provide Home and Community-Based Services Waiver (HCBW) programs to recipients as an alternative to institutionalization. See Section 2176 of the Omnibus Budget Reconciliation Act of 1981, codified at 42 CFR 441.300 Subpart G. Annual Resource Allotment (ARA) replaces the previous annual unit cap system. This allows the individual to utilize flexible combinations of services that are of benefit to them up to the maximum of their available Annual Resource Allotment. The utilization of an Annual Resource Allotment offers the individual more flexibility in choosing and receiving desired services, without the confines of a capitated unit amount of any particular service. The Annual Resource Allotment is the individual's annual funding resource for HCBS waiver services for their Individualized Service Plan (ISP) year with the exception of Community Living Services, Environmental Modifications, and Outlier Services. Waivers to the ARAs for additional therapy hours are subject to approval by Long Term Services Division (LTSD) and in accordance with the LTSD DD Service Definitions and Standards.

Individuals currently on the Developmentally Disabled (DD) Waiver will transition into the ARA system at their annual Individual Service Plan reassessment. This section describes HCBSW eligible providers, covered waiver services, service limitations, and general reimbursement methodology, and services for recipients determined to have developmental disabilities.

[2/1/95, 10-31-96; 8.314.5.9 NMAC - Rn, 8 NMAC 4.MAD.736 & A, 7-1-02]

8.314.5.10 ELIGIBLE PROVIDERS:

A. Eligible providers must be ~~[agencies certified]~~ approved by the Long Term Services Division (LTSD) of the Department of Health (DOH) and have an approved Medicaid provider agreement with the New Mexico MAD.

B. Individual providers participate as employees or contractors of agencies except as otherwise recognized by these regulations. Providers may subcontract only with individuals who are qualified and must follow the general contract provisions for subcontracting. For professionals governed by various licensing boards, (Nurses, Social Workers, Counselors, Psychologists, Physical Therapists, Physical Therapy Assistants (PTAs), Occupational Therapists, Certified Occupational Therapy Assistants (COTAs), Speech Pathologists etc.) please contact the appropriate licensing body for information regarding the applicable licensure.

C. Once enrolled, providers receive a packet of information, including Medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from MAD and DOH. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.

D. **Qualifications of Case Management Agency Providers:** Case management agency providers must possess these qualifications:

(1) Licensed social worker as defined by the NM Board of Social Work Examiners; or

(2) Licensed registered nurse as defined by the NM Board of Nursing; or

(3) Bachelor's degree in social work, counseling, nursing, special education, or closely related field; plus

(4) One year clinical experience, related to the target population

(5) Case management agency providers must assure that case management services are performed by persons who meet specific qualification criteria in

accordance with the LTSD Developmental Disabilities Definitions and Service Standards.

E. Qualifications of Personal Care Providers: Personal care agencies must meet ~~[the minimum]~~ all qualifications set forth by the Long Term Services Division (LTSD) DD Definitions and Service Standards.

(1) Provider agencies must supervise personal care staff employees at a minimum of once every thirty (30) days through a supervisory home visit and a face to face interview with the individual served. Provider agencies must document the safety of the service and the quality of care provided in the individual case record.

(2) Agencies must arrange regular staff meetings and training programs. Personal Care attendants must demonstrate competency in performing assigned tasks. Personal care attendants must complete a forty (40) hour personal care training program and participate in ongoing training at a minimum of ten (10) hours per year after the first year. ~~[Personal care providers must meet all other qualification criteria in accordance with the LTSD DD Definitions and Service Standards.]~~

F. Qualifications of Respite Providers: Respite providers must meet ~~[the minimum]~~ all qualifications as set forth by the LTSD DD Definitions and Service Standards. Respite providers must complete a forty (40) hour training program and participate in ongoing training at a minimum of ten (10) hours per year, after the first year. ~~[Respite providers must meet all other qualification criteria in accordance with the LTSD DD Service Definitions and Standards.]~~

G. Qualifications of Private Duty Nursing Providers: Private duty nursing services must be provided by licensed home health agencies, licensed or certified rural health clinics, ~~[or]~~ community program or individual contractors. Direct nursing services are provided by individuals who are currently licensed as registered or licensed practical nurses by the New Mexico State Board of Nursing. Nurses must have a minimum of one year of supervised nursing experience, in accordance with the New Mexico Nurse Practice Act. Private duty nursing providers must meet all other qualification criteria in accordance with the LTSD DD Definitions and Service Standards.

H. Qualifications of Therapy Providers: ~~[Physical Therapy providers must be licensed physical therapists by the New Mexico Regulations and Licensing Department. Occupational Therapy providers must be licensed occupational therapists by the New Mexico~~

~~Regulations and Licensing Department. Speech Therapy providers must be licensed speech language pathologists or Clinical Fellows by the New Mexico Regulations and Licensing Department.]~~ Physical, occupational, ~~[and]~~ speech therapists PTAs, and COTAs must meet all ~~[other]~~ qualification criteria in accordance with the LTSD DD Service Definitions and Standards.

I. Qualifications for [Living Supports] Community Living Service Providers: Four types of ~~[living supports]~~ Community Living Service providers are eligible to furnish services to waiver recipients. The types are: Home-Based, Supervised Living, Supported Living and Assisted Living.

(1) Home Based Support service providers for children must meet standards established by the Children, Youth and Families Department (CYFD) for foster care. These requirements include receiving a minimum of forty (40) hours of training during the first year. Home Based Support service providers for adults must meet the qualifications for staff required by the LTSD DD Service Definitions and Standards. The direct care provider employed by or subcontracting with the provider agency must be approved through a home study completed prior to provision of services and conducted at subsequent intervals required of the provider agency. All Home Based sub-contracts must be approved by the LTSD. Home Based Support service providers must meet all other qualification criteria in accordance with the LTSD DD Service Definitions and Standards.

(2) Supervised Living service providers must hold a valid New Mexico Adult Residential Care Facility License issued by the Licensing and Certification Bureau of the DOH and meet all other qualification criteria in accordance with the LTSD DD Service Definitions and Standards.

(3) Supported Living service providers must meet the qualifications for residential facility staff in accordance with the LTSD DD Service Definitions and Standards.

(4) Assisted Living service providers must meet the qualifications for residential facility staff in accordance with the LTSD DD Service Definitions and Standards.

J. Qualifications of Day Habilitation Providers: ~~[Two types of day Habilitation providers are eligible to furnish services to Waiver recipients. Services may not be provided by an immediate family member i.e. father, mother, brother, sister, grandmother, grandfather and spouse.]~~

(1) Adult Habilitation service

providers must meet ~~[the minimum]~~ all qualifications as set forth by the LTSD DD Service Definitions and Standards.

(2) ~~[Habilitative]~~ Habilitation Day Care service providers must meet ~~[the minimum]~~ all qualifications set forth by the State Agency on Aging for adults or by the Child Care Unit of the Children, Youth and Families Department for children, if this service is provided in center-based facilities.

(3) Community Membership service providers must meet all qualifications as set forth by the LTSD DD Service Definitions and Standards.

(4) Agencies may not employ or subcontract direct care personnel who are an immediate family member or who are a spouse of the individual served, to work in the setting in which the individual is served.

(5) Habilitation providers must meet all other qualification criteria in accordance with the LTSD DD Service Definitions and Standards.

K. Qualifications of Supported Employment Providers: Group, Individual, and Intensive Supported Employment providers must meet the minimum qualifications as set forth by the LTSD DD Service Definitions and Standards.

L. Qualifications of Behavior Therapy Providers:

(1) Providers of behavior therapy must possess qualifications in at least one of the following areas: licensed psychiatrist, licensed clinical psychologist, licensed psychologist associate, (Masters or Ph.D. level), a licensed independent social worker (LISW), licensed master social worker (LMSW), licensed professional clinical counselor (LPCC), licensed professional counselor (LPC), a licensed psychiatric nurse ~~[or Masters Degree or Ph.D. in special education with current certification in Special Education from the State Department of Education. Exception: Behavior Therapy providers approved prior to 07/31/96 with a BA or BS in special education and teacher certification from the NM State Department of Education will maintain their therapist status; however, this exception will expire on 7/1/2000.]~~ (MSN/RNCS), NM licensed marriage and family therapist (LMFT), NM licensed practicing art therapist (LPAT). Other related licenses and qualifications may be considered with LTSD prior written approval.

(2) Providers of Behavior Therapy must have a minimum of one year of experience working with persons with developmental disabilities. All Behavior Therapists must maintain current New Mexico licensure with their professional field licensing body.

(3) Behavior Therapists must

meet all other qualification criteria in accordance with the LTSD DD Service Definitions and Standards.

M. Qualifications of Nutritional Counseling Providers: Nutritional counseling providers must be registered as Dietitians by the Commission on Dietetic Registration of the American Dietetic Association. Nutritional Counseling providers must meet all other qualification criteria in accordance with the LTSD DD Service Definitions and Standards.

N. Qualifications of Community Access Providers: Community Access providers must possess the following qualifications based on the type of Community Access Service they provide.

(1) Community Participant Support providers must possess a degree in social work, psychology, family therapy, early childhood, special education, counseling, rehabilitation services, therapeutic recreation, or be certified as a Developmental Specialist II or III by the Children, Youth and Families Department, Office of Child Development.

(2) To provide the Family Counseling option under the Community Access service, the provider must meet New Mexico State Licensing requirements to practice family therapy.

(3) Community Access providers must meet all qualification criteria in accordance with the LTSD DD Service Definitions and Standards.

O. Qualifications of Non-Medical Transportation Providers: All drivers shall: have current liability insurance; possess a valid New Mexico drivers license; be free of physical or mental impairment that would adversely affect driving performance; not have two or more driving violations or chargeable (at fault) accidents within the past two years; and have current CPR and First Aid certification. Non-Medical Transportation providers must meet all qualification criteria in accordance with the LTSD DD Service Definitions and Standards.

P. Qualifications of Environmental Accessibility Adaptation Providers: Environmental Accessibility Adaptation providers must possess a GB-2 Class Construction License. Environmental Accessibility Adaptation providers must meet all qualification criteria in accordance with the LTSD DD Service Definitions and Standards.

Q. Qualifications of Adaptation Consultant Providers: Adaptation Consultant providers must possess extensive knowledge of the principles and practices of architecture; of building

codes and regulations; of building materials and construction methods; of structural, mechanical and electrical systems; the ability to read, interpret, and prepare architectural working drawings and specifications; considerable knowledge of contracting practices and procedures; knowledge of Architectural design, standards and technical data relating to building design and construction. Adaptation Consultant providers must meet all qualification criteria in accordance with the LTSD DD Service Definitions and Standards.

[2/1/95, 10-31-96; 4-30-94; 9-1-98; 8.314.5.10 NMAC - Rn, 8 NMAC 4.MAD.736.1 & A, 7-1-02]

8.314.5.12 ELIGIBLE RECIPIENTS: [Medicaid recipients diagnosed as having developmental disabilities before reaching twenty-two (22) years of age by the Disabilities Determination Unit of the Division of Vocational Rehabilitation, NM Department of Education, using Social Security Disability guidelines and who require an intermediate care facility for the mentally retarded (ICF MR) level of care are eligible to participate in the Developmental Disabilities HCBSW program.] Waiver services are limited to individuals who meet the definition of developmental disability and mental retardation or specific related condition as determined by the Department of Health in accordance with approved DD Waiver criteria, including the following:

A. The individual has a severe chronic disability, other than mental illness, of a person that:

(1) is attributable to a mental or physical impairment, including the result from trauma to the brain, or a combination of mental and physical impairments;

(2) is manifested before the person reaches the age of twenty-two years;

(3) is expected to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activity:

(a) self-care;

(b) receptive and expressive language;

(c) learning;

(d) mobility;

(e) self-direction;

(f) capacity for independent living; and

(g) economic self-sufficiency;

and

(5) reflects the person's need for a combination and sequence of special, interdisciplinary or generic care treatment or other support and services that are of life long or extended duration and are individu-

ally planned and coordinated, and

B. The individual also has Mental Retardation or a specific related condition. Related conditions are limited to cerebral palsy, autism (including asperger syndrome), seizure disorder, chromosomal disorders (e.g. Downs), syndrome disorders, inborn errors of metabolism, and developmental disorders of brain formation. [2/1/95, 10-31-96; 9-1-98; 8.314.5.12 NMAC - Rn, 8 NMAC 4.MAD.736.3 & A, 7-1-02]

8.314.5.13 COVERED WAIVER SERVICES: This Medicaid waiver covers the following services for a specified and limited number of waiver recipients as a cost effective alternative to institutionalization in an ICF-MR. The program is limited to the number of federally authorized unduplicated recipient (UDR) positions and program funding.

A. Case Management Services: [Case management is a set of interrelated activities, based upon need and desired assistance, that are implemented in a collaborative manner through accessing appropriate services and supports in the community.] Case Management services are intended to support the individual in pursuing their desired life outcomes by assisting them in accessing supports and services necessary to achieve the quality of life that they desire, in a safe and healthy environment. Case management services include but are not limited to activities such as: facilitating eligibility determination for persons with developmental disabilities; [organizing] directing the service planning process; advocacy on behalf of the individual; coordinating service delivery; assuring services are delivered as described in the [Plan of Care (POC)] Individualized Service Plan (ISP); and maintaining a complete current central client record (e.g. [POC, POC budget] ISP, ISP budget, level of care documentation, assessments).

(1) Cost-effectiveness is a waiver program requirement mandated by federal policy. The fiscal responsibilities of the Case Manager include assuring cost containment by preventing the expense of Waiver services from exceeding a maximum cost established by DOH and by exploring other options to address expressed needs. [Cost effectiveness is a Waiver program requirement mandated by federal policy.]

(2) Case managers must evaluate and monitor direct service through face-to-face visits with the individual [in the residence] to ensure the health and welfare of the recipient, and adherence to the [POC] ISP.

(3) Case Management services

must be provided in accordance with the LTSD DD Service Definitions and Standards.

B. Personal Care Services: ~~[Personal care is a non-medical service assisting the individual with activities of daily living to maintain and/or improve personal care, self help and living skills. Services range from furnishing total personal care to assisting and enhancing the individual's skills and abilities in these areas. Personal care services must be provided as specified in the POC.]~~ Individuals receiving personal care services live in the community in their own home. Personal care services may include performing and/or assisting the individual with the following:

(1) Household services (mopping, dusting, changing linens, recipients laundry, cleaning bathrooms, cleaning the kitchen area) meal preparation and assistance, support service (~~[escort services]~~ appointments, shopping and/or errands, extension of skilled therapy services, individualized exercise program).

(2) Individual care services (hygiene/grooming, bathing-bath/shower, dressing, grooming, shaving, oral care with intact swallowing reflux, nail care, perineal care, toileting), minor maintenance of assistive device(s), skin care prevention/maintenance, and mobility assistance (ambulation, transfer, toileting).

(3) Individuals requiring the assistance for their individualized bowel and bladder program must be determined to be medically stable. A personal care direct care provider must demonstrate competency to perform individualized bowel and bladder programs.

(a) An individualized bladder program may include the following tasks: straight in and out catheterization; changing of catheter bag; application and care of external catheter; care of indwelling catheter; individualized Crede bladder massage if appropriate; care of indwelling catheter; irrigation of indwelling catheter with medicated or non-medicated solutions; and insertion and care of suprapubic catheter.

(b) An individualized bowel program may include the following tasks: insertion of medicated or non-medicated suppositories; digital stimulation; enemas; manual impaction removal; and ostomy care, including irrigations, changing, cleaning of bags and skin care.

(4) Assist individuals with self-administration of medication, including prompting and reminding. ~~[Please refer to]~~ This must be accomplished in accordance with the New Mexico Nurse Practice Act ~~[for further information].~~

(5) ~~[In the area of eating,]~~ Eating, assist the recipient as determined by the interdisciplinary team. The recipient must have an intact swallowing reflux in order to receive assistance. In the instance where the recipient requires tube feeding, the personal care attendant must be trained and supervised by a registered nurse or this task may be delegated to the personal care attendant as ~~[determined]~~ governed by the New Mexico Nurse Practice Act. ~~[Personal care may be provided along with other services as long as the combination is deemed appropriate in the POC and as long as personal care and the other services are not funded or reported for the same hours on the same day. Personal care services cannot be included in the POC for individuals receiving a Living Supports Service, nor provided for the same hours of the day as when the individual is receiving Day Habilitation, Respite or Supported Employment Services.]~~

(6) Personal Care can be provided with Respite services, Adult Habilitation, Habilitation Day Care-Child, Individual, Group and Intensive Supported Employment as long as the combination is deemed appropriate in the ISP and is not provided for the same hours of the same day.

(7) Personal Care cannot be included in the ISP in combination with any Community Living Support service (i.e. Home-Based Support, Supported Living, Assisted Living or Supervised Living). In addition, personal care services may not be provided to recipients by their spouses or to minor recipients by their parents. Other family members may be covered as personal care providers only if

(a) the family member meets the qualifications for providers of care;

(b) there are strict controls to assure that payment is made to the family member only in return for specific services rendered; and;

(c) there is adequate written justification as to why the family member is the only available provider of care (e.g. a lack of other qualified providers in the geographic area).

(8) Personal care services must be provided in accordance with the LTSD DD Service Definitions and Standards.

C. Respite Care Services: Respite is a flexible family support service. A trained attendant assists the family by providing relief, allowing periods of relaxation, peace of mind and time away from the care giver duties. The respite care provider assists the individual in activities of daily living to promote the individuals health and safety, as well as maintain a clean and safe environment. Respite will be

scheduled as determined by the ~~[family. The interdisciplinary team (IDT), is responsible for recommending the amount of respite needed. Respite may be provided along with other services as long as the combination is deemed appropriate in the POC and as long as respite is not funded or reported for the same hours on the same day.]~~ primary caregiver. The Primary caregiver is responsible for recommending the amount of respite needed to the Interdisciplinary Treatment Team (IDT). Respite services can be included in the ISP with Personal Care, Adult Habilitation, Individual, Group and Intensive Supported Employments, and Community Membership as long as the services are not provided for the same hours of the same day with the exception of therapies and Case Management. Respite services cannot be included in the [POC] ISP for individuals receiving [Supervised Living, Supported Living or Assisted Living Services] any Community Living Service. Respite may be provided in the client's own home, in a provider's home or in a community setting of the family's choice. Respite services must be provided in accordance with the LTSD DD Service Definitions and Standards.

D. Private Duty Nursing: Private Duty Nursing services are provided by registered nurses or licensed practical nurses. Nursing intervention are activities, procedures and treatments provided to treat a physical condition, physical illness or chronic physical disability. Activities, procedures and treatments may include, ~~[as examples:]~~ but not be limited to: aspiration precautions; bowel management; feeding tube management; health education; health screening; infection control; medication management; medication administration; nutrition management; oxygen management; seizure management; seizure precautions; self-care assistance, skin care; teaching of prescribed medication; weight management; wound care; and staff supervision of such activities, procedures and treatment.

(1) Private duty nursing services may be provided ~~[along]~~ with other services as long as the combination is deemed appropriate in the ~~[POC]~~ ISP and as long as nursing services and the other services are not funded or reported for the same hours on the same day. Nursing services cannot be included in the ~~[POC]~~ ISP for individuals receiving ~~[a Living Supports Service, nor provided for the same hours of the day as when the individual is receiving Day Habilitation or Supported Employment Services.]~~ a Community Living Service. Because nursing is included in the Day Habilitation rate, any nursing provided during the hours of Day Habilitation cannot be billed as a separate service.

(2) Private duty nursing services must be provided in accordance with the LTSD DD Service Definitions and Standards.

E. Therapy Services: ~~[Therapy services are performed by a licensed or certified practitioner as specified by applicable state law and regulations. Therapy services include evaluation, treatment, care giver/staff training and consultation as necessary. This Medicaid waiver covers the following therapy services:]~~

(1) Physical therapy is a skilled therapy service performed by a licensed physical therapist or a licensed Physical Therapist Assistant (PTA). Services must be reasonable and necessary to improve or maintain gross/fine motor skills, facilitate independent functioning or prevent progressive disabilities.

(2) Occupational therapy is a skilled therapy service performed by a licensed occupational therapist or Certified Occupational Therapy Assistant (COTA). Services must be reasonably necessary to improve and/or maintain fine motor skills, coordination, increase sensory integration, and/or facilitate the use of adaptive equipment or other assistive technology.

(3) Speech therapy is specialized therapy service performed by a licensed speech language pathologist. Services must be reasonably necessary to preserve and improve abilities for independent functioning in communication; to facilitate oral motor and swallowing function, to facilitate use of assistive technology and to prevent progressive disabilities. ~~[Up to four (4) hours of client specific consultation with other direct service providers may be reimbursed annually for each therapy. Up to eight (8) hours of client specific development of assistive technology (e.g. designing, fabrication, modification) may be reimbursed annually for each therapy.]~~

(4) Providers of therapy services must prepare progress notes and reports as required by the DOH or designee, including analysis of data, progress, effectiveness of strategies and significant events in the individuals life which may impact progress. Physical, occupational, and speech therapy services must be provided in accordance with the LTSD DD Service Definitions and Standards.

F. [Living — Support] Community Living Services: [Living] Community Support Services are intended to provide persons with the assistance and support needed in a home environment in order to increase or maintain an individuals capacity for independent functioning, self-determination, interdependence, productivity and integration in the community. ~~[Living supports are designed]~~ Community

Living Services are only available for individuals for whom no other residential or support options are clinically appropriate to [options are available or for whom respite/personal care and other supports cannot] meet the needs of the individual. The service encourages, counsels, supports and assists individuals to maintain a safe and healthy living environment; to maintain good health and nutrition, including nutritional counseling; and the safe and appropriate use of medications. Programmed activities are designed to increase or maintain the individuals skills in the areas of self-help, socialization, communication, leisure/recreational and adaptive skills for daily living. ~~[Living Supports]~~ Community Living Services must be justified by the IDT as the only service which can meet the needs of the individual.

(1) The individual retains the right to assume risk, balanced only by the individuals ability to assume responsibility for that risk and a reasonable assurance of health and safety. A person receiving services will be presumed able to manage his or her own funds unless the [POC] ISP documents and justifies limitations to self management and where appropriate, reflects a plan to increase this skill.

(2) This service includes personal care, nutritional counseling and nursing supports and, therefore, Personal Care, Nutritional Counseling and Private Duty Nursing services may not be included in a [POC] ISP for an individual receiving Living Support Services. Respite services may not be included in the [POC] ISP for individuals receiving Supervised Living, Supported Living, or Assisted Living Services. Room and board costs are reimbursed through the individual's SSI or other personal accounts and cannot be paid through the Waiver service.

(3) This Medicaid waiver covers the following four living supports services. Each of these services is a distinct service and must be billed in accordance with LTSD standards:

(a) **Home Based Support** services may be furnished by a companion, surrogate, foster or natural family member who has been studied and approved to provide Home Based Supports in the individual's home or the home of the Home Based Support provider. Home Based Supports offer more specialized but less structured training and supports in a more natural environment, than do supervised or supported living settings. The individual receiving services joins, and in effect becomes, a member of the household.

(i) Home Based Supports can be provided to no more than two individuals with developmental disabilities

in the home environment at a time.

(ii) The direct support provider must be present when the individual is in the home, as described in the [POC] ISP or other coverage specified below.

(iii) The direct support provider is responsible for services up to twenty-four (24) hours per day as described in the [POC] ISP, but does not include time when an individual is in an employment, school, habilitation or other day program. Twenty-four hour support includes coverage in the residential setting during times when the individual is unable to attend other scheduled services and/or activities due to reasons beyond their control (e.g. illness). The direct support provider is responsible for arrangements for back-up supports and staffing. The person(s) providing back-up supports and staffing must be listed with and meet the requirements of the provider agency.

(iv) The provider agency is responsible for providing on-call emergency staffing coverage. The twenty-four (24) hour per day requirement may be met through the emergency on-call system, when necessary. If the individual requires emergency staffing services, those services must reach the individual within sixty (60) minutes. ~~[Home Based Support services may be used by both children and adults. The individual receiving services joins, and in effect becomes, a member of the household.] Both children and adults may use Home Based Support services.~~

(v) All home based direct support providers must complete all LTSD requirements for approval, including completion of a home study, and compliance with all relevant policies, procedures, standards, requirements and training.

(vi) Home Based Supports cannot be included in the [POC] ISP for individuals receiving any other Living Support service.

(vii) **Adults:** ~~[Home Based services can be provided to no more than two adults with developmental disabilities in a single home environment at a time.]~~ The home-based direct support provider may be a single person, couples, roommates, companions, friends, and natural family members. The direct support provider may not be the spouse of the individual served. Family members providing direct supports to the recipient with developmental disabilities must meet all the requirements for approval and ongoing service provision as other home based direct support providers.

(viii) **Children:** ~~[Home based services can be provided to no more than two children with developmental disabilities (except in situations where the sib-~~

ling group is larger than two) in the direct support provider home environment at a time.] For this program, a child is defined as a minor under the age of eighteen (18). Children ~~[provided]~~ receiving services through this model must reside with a foster or surrogate family, not related by blood, marriage, adoption or guardianship to the child. The direct support provider may not be the parent or blood relative of a minor child. Blood or marriage exclusions apply to the father (includes father-in-law, step-parent), mother (includes mother-in-law, stepparent), brother (includes half-brother, step-brother), sister (includes half-sister, step-sister), natural grandfather, and natural grandmother and spouse relationship to the recipient.

(ix) Home Based support services must be provided in accordance with the LTSD DD Service Definitions and Standards.

(b) **Supervised Living** services are furnished in a licensed residential care facility (group home setting) where five or more individuals with developmental disabilities receive various personal care and social skills training services. Supervised Living is an individualized intervention and support service that provides 24 hours per day of staff support, but does not include time when the recipient is in an employment, school, habilitation or other day program. Twenty-four hour staff support includes coverage in the residential setting during times when individuals are unable to attend other scheduled services and/or activities due to reasons beyond their control (e.g. illness). Additional residential staff support will be available in an emergency through an on-call system. If an individual requires on-call services, those services must reach the individual within sixty (60) minutes. These supports are not provided in the employment or day habilitation setting. Supervised Living cannot be included in the ~~[POC]~~ ISP for individuals receiving any other Living Supports Service. The home must meet the residential facility requirements of the Licensing and Certification Bureau, DOH. Supervised Living support services must be provided in accordance with the LTSD DD Service Definitions and Standards. This service will only be approved for individuals who are already in this service. No new admissions will be allowed into this service, this service will be phased out.

(c) **Supported Living** services are provided in a home setting to four (4) or fewer individuals. This services model can only be accessed by individuals for whom all other residential services are clinically inappropriate and is documented in the ~~[POC]~~ ISP. Supported Living services must

be available up to 24 hours per day, as determined by the IDT, but does not include time when an individual is in an employment, school, habilitation or other day program. Supported Living is not an appropriate model for individuals needing less than 340 hours of face-to-face service and support per month. Twenty-four hour staff support includes coverage in the residential setting during times when persons are unable to attend other scheduled services and/or activities due to reasons beyond their control (e.g. illness). Additional residential staff support may also be available in an emergency through an on-call system. If the individual requires on-call services, those services must reach the individual within sixty (60) minutes. ~~[Supported Living cannot be included in the POC for individuals receiving any other Living Support Service. Providers who support individuals through providing them with a compensated companion, surrogate, foster or natural family member may not be reimbursed through the Supported Living rates.]~~ Supported Living provider services must be provided in accordance with the LTSD DD Service Definitions and Standards.

(d) **Assisted Living** is an individual intervention and support service promoting a more independent environment and life style. Assisted Living supports are only provided in the individual's home and community in groups of three or fewer individuals with developmental disabilities. Individuals must be at least 18 years of age. Staff support is available as needed and is furnished on a planned periodic schedule of less than 24 hours per day as required in the ~~[POC]~~ ISP. Unscheduled staff support may be available through an on-call system. If the individual requires on-call services, those services must reach the individual within sixty (60) minutes. Assisted Living will be reimbursed at two levels based on the number of support hours needed. Providers serving individuals requiring at least 20 but less than 100 hours of support per month will be reimbursed at level II rates. Individuals requiring 100 or more hours per month will receive level I funding. Assisted Living cannot be included in the ~~[POC]~~ ISP for individuals receiving any other Living Support Service. Assisted Living services must be provided in accordance with the LTSD DD Service Definitions and Standards.

G. Day Habilitation Services: ~~[Day Habilitation Services are intended to provide opportunities for the individual to increase or maintain his or her capacity for independent functioning, self-determination, interdependence, productivity and typical activities of community life, including: work, community education or~~

~~training, and retirement. These services encourage, counsel, support and assist individuals to build relationships in the community; to maintain good health and nutrition; and to use medications safely and appropriately. Programmed activities are designed to maintain or increase skills in socialization, communication, self-help, leisure/ recreation, pre-vocational, and adaptive skills. Services and supports are designed to meet the unique needs of each person.]~~ Day Habilitation services are intended to provide meaningful and structured activities that result in the accomplishment of the individual's outcomes. An individual's outcomes are obtained based on the participant's interests and abilities. Each person's outcomes relate back to the ISP and support his or her long-term vision. Individual outcomes under Day Habilitation may include: building skills in activities of daily living, self-advocacy skill-building, having personal relationships, volunteering, participating in educational opportunities, engaging in experiences within the community, exploring work through vocational skill-building and participating in retirement activities. These services should enable the individual to increase or maintain his/her capacity for independent functioning and self-determination. Services and supports are designed to meet the unique needs of each individual. Day Habilitation Services are provided as an alternative to the institutionalization of Waiver recipients. The individual retains the right to assume risk, balanced only by the individuals ability to assume responsibility for that risk and a reasonable assurance of health and safety. This Medicaid waiver covers the following ~~[two]~~ three Day Habilitation Services:

(1) **Adult Habilitation Services** are designed to meet the needs of individuals 18 years of age or older and consist of a daily program of activities designed to increase the individual's skills in performing routine functions. ~~[Services are aimed at preparing the individual for paid or unpaid employment, but are not job task oriented. When compensated, individuals are typically paid at less than fifty percent (50%) of minimum wage in compliance with the Federal Fair Labor Standards Act.]~~ Services are provided to persons who are not expected to be able to join the general work force or participate in a transitional sheltered workshop within one year (excluding supported employment programs). If the recipient is compensated, they are compensated at less than 50 percent of the minimum wage.

(a) Adult Habilitation services and supports must take place outside of the individual's home or any other residential setting and may include community out-

ings, and attendance at community centers and habilitation centers. Exception: For individuals who are unable to participate in habilitation services and supports outside the home, appropriate documentation and justification must be submitted for written approval by LTSD or its designee.

(b) Staff supports must increase the ability of the individual to acquire, retain and/or improve skills or supports important to employment and/or community inclusion. For individuals for whom these goals are not appropriate, the [POC] ISP will outline Adult Habilitation services to prevent regression and maintain skills.

(c) Adult habilitation services are designed to promote maximum participation in community life; support individuals in achieving personal goals; and enhance the individuals independence by teaching adaptive, self-help or socialization skills. Adult habilitation services are designed to assist the individual in developing skills which may lead to an eventual reduction of or dependence on specialized services. Services may be provided in an integrated environment that enhances the persons contribution to the community. Integrated environments may include, but are not limited to:

- (i) volunteer opportunities and activities;
- (ii) social/leisure activity centers;
- (iii) cultural activities and events. [~~Adult Habilitation services are described in the POC and may include: behavior supports/implementation; training, education and experience on rights and responsibilities in the community; transportation and arrangement of transportation options; personal care and activities of daily living (such as eating, toileting and individual hygiene); reminding/observing/monitoring of medication and pharmacy needs; assistance with self administration of medication; medication administration (includes certified medication aides); nursing; assistance with the development of choice making skills; assistance with the development of natural support networks to replace paid supports; development of social and individual relationships; assistance to individuals who require a wheelchair for mobility and need physical assistance for toileting and transfers.]~~

(d) Personal care, nutritional counseling and nursing supports are included in the reimbursement rate for Adult Habilitation services. [~~and~~] Therefore, Personal Care, Nutritional Counseling and Private Duty Nursing services may not be included as separate billable services in the [POC] ISP for the time period in which the individual is receiving Adult Habilitation

Services. [~~for individuals receiving this service; except that Personal Care services may be co-funded with Adult Habilitation so long as the combination is deemed appropriate in the POC and is not funded or reported for the same hours on the same day. Individuals funded for Adult Habilitation services and supports may also be co-funded and reported in combination with Group, Individual, or Intensive Supported Employment as long as the combination is deemed appropriate in the POC, is not duplicative of Adult Habilitation services, and is not provided for the same hours of the same day. The Adult Habilitation units in combination with Respite, Personal Care or Group, Individual, or Intensive Supported Employment services may not exceed co-fund limits established by LTSD.]~~

(e) Adult Habilitation services must be provided in accordance with the LTSD DD Service Definitions and Standards.

(2) [~~Habilitative~~] **Habilitation Day Care** services consists of recreational, leisure, cultural, social activities and other care provided [~~in~~] individually or groups, preferably in integrated settings, under the following conditions:

(a) to allow the usual care giver, e.g. parent or guardian, to accept or maintain employment; or

(b) to enable an adult for whom participation in habilitation or employment is not appropriate, e.g. due to age, to participate in supervised daytime activities, such as senior citizen center programs or other retirement activities.

(c) If [~~habilitative~~] habilitation day care is provided in a center-based facility, it must be approved, registered, or licensed by the Children, Youth and Families Department, Child Care Unit or by the State Agency on Aging. [~~Habilitative day care may be co-funded with any other services as long as the combination is deemed appropriate in the POC, is not duplicative of other waiver services, and is not billed for the same hours of the same day. Individuals funded for Habilitative day care may be co-funded with Adult Habilitation, Supported Employment, Personal Care, and Respite in accordance with limits established DOH.]~~

(d) Habilitation Day-Care can be provided with any other services, as long as the combination is deemed appropriate in the ISP and as long as the services are not provided for the same hours on the same day; However, therapy services are reimbursable when provided simultaneously.

H. **Community Membership** services are designed to meet the needs of individuals 18 years of age or

older. This service is specifically intended to address the individual's independence, long-term vision and goals as stated in the ISP. Community Membership services are designed to promote maximum participation in community life, to support individuals in achieving their personal goals, promote self-advocacy, and to enhance an individual's ability to control their environment through a focus on teaching adaptive, self-help, or socialization skills. Community Membership services are designed to assist individuals in developing skills, which will lead to an eventual reduction or independence from specialized supports.

(1) Community Membership services are those which assist in acquiring skills, behaviors and other attributes that support or lead to an increased capacity to reside and participate in home, community and potential occupational settings. Community Membership includes the objective of support for participation in job settings, but not teaching vocational skills, as is the role of a job coach.

(2) Community Membership services may be provided in a group (not to exceed three (3) persons), or individual arrangement as outlined in the ISP. Services should accommodate non-traditional hours (e.g., evenings) as outlined in the ISP. Services are to be provided in integrated environments that enhance the person's contribution to the community and increase independence.

(3) Community Membership cannot replace, supplant, or duplicate services included in Community Living Services.

(4) Community Membership services can be provided with any other service, as long as the combination is deemed appropriate in the ISP and as long as the services are not provided for the same hours of the same day, except for therapies.

(5) This service becomes effective when the individual moves into the ARA system.

(6) Community Membership services must be provided in accordance with the LTSD DD Service Definitions and Standards.

I. **Supported Employment Services:** Supported Employment services are intended to provide ongoing supports, as needed for persons seeking or maintaining community based employment for which compensation, if it is covered work, would be made in compliance with the Fair Labor Standards Act (FLSA) and New Mexico Labor Laws. Supported Employment services may be conducted in a variety of settings, [~~particularly in work sites in which persons without disabilities are employed~~] in which most persons employed do not have disabilities.

Activities are designed to increase or maintain the individuals skills and independence; and may include job development, job placement, and job coaching. Individuals are eligible for DD Waiver Supported Employment services insofar as the service is not otherwise available or appropriate under a program funded under the Rehabilitation Act of 1973, VI-C funds available through the Division of Vocational Rehabilitation, New Mexico Department of Education (as amended, 1992). The individual retains the right to assume risk, balanced only by the individuals ability to assume responsibility for that risk and a reasonable assurance of health and safety. A person receiving services will be presumed able to manage his or her own funds unless the [POC] ISP documents and justified limitations to self management and where appropriate, reflects a plan to increase this skill. DOH will require reporting on supported employment services as specified in the LTSD DD Service Definitions and Standards. [Employment Services are provided as an alternative to the institutionalization of Waiver recipients] The following three supported employment services are covered:

(1) **Group Supported Employment** offers on-site supervision of persons with developmental disabilities working as part of a group in a community-based employment setting, including employment by the provider agency, which [preferably] promotes opportunities for integration with non-disabled people. Supervision and support is usually furnished on a continual basis as scheduled by the provider or may include full or part-time supervision by the employer.

(a) When supported employment services are integrated, the type of employment may include, but is not limited to enclaves, integrated bench work or integrated work crew models. [An integrated work group means at least 33% of persons employed must be non-disabled, and does not include the job coaches, and other provider agency staff. When the enclave model is used, people are not to be separated into a different room unless at least 33% of the people employed in the room are non-disabled.] Services must be provided in an integrated work setting. An integrated work setting is considered a setting in which most individuals employed do not have disabilities and persons are co-workers (not including agency employees). In addition, a person has consistent and regular opportunities for interacting with non-disabled individuals.

(b) Reimbursement to the recipient must be at prevailing hourly wage with regard to productivity and in compliance

with the Federal Fair Labor Standards Act. Wages are to be commensurate with the hourly wages or salaries of those performing the same or similar work.

(c) **Group Supported Employment** services are described in the [POC] ISP. Provider agencies are responsible for implementation of the [POC] ISP services and supports [which may include: job development; job site analysis; job placement; job coaching; situational vocational assessments; skills training; behavior supports related to the workplace; education on rights and responsibilities in the work place; education on self advocacy in the work place; transportation and arrangement of transportation options; personal care activities of daily living supporting the person in the work place such as eating, toileting and individual hygiene; assistance with self administration of medication; medication administration, including use of certified medication aides; nursing; reminding/observing/monitoring of medication and pharmacy needs; assistance to individuals who require a wheelchair for mobility and need physical assistance for toileting and transfers. Individuals funded for Group Supported Employment can be co-funded with Personal Care, Respite, Day Habilitation, Individual Supported Employment or Intensive Supported Employment services as long as the combination is deemed appropriate in the POC; and the hours are not reported for the same hours of the same day. The total number of units cannot exceed annual limits established by DOH.] Group Supported Employment services must be provided in accordance with the LTSD DD Service Definitions and Standards.

(d) **Group Supported Employment** services can be provided with any other service, as long as the combination is deemed appropriate in the ISP and as long as the services are not provided for the same hours of the same day; however, therapy services are reimbursable when provided simultaneously.

(2) **Individual Supported Employment** offers one-to-one support to persons placed in community-based employment, including cottage industry settings. Support includes contact with prospective or current employers on behalf of specific individuals when required by the [POC] ISP. Providers must perform documented time spent on allowable activities on behalf of the individuals and includes at least two face-to-face contacts with the individual each month in order to receive reimbursement. Persons served in this model must have opportunities for integration, e.g. where other persons in the workplace are non-disabled, not including job coaches and

other provider agency staff.

(a) Supervision and supports are furnished in response to the individual's needs and preferences. Full time support may be needed at the beginning of employment. The fading of support is required in accordance with the [POC] ISP Supported Employment fading plan as the recipient stabilizes in the job. A fading plan must include supports and training needed for a specified period of time at a defined level or degree. The plan will specify natural supports available to the recipient and will address related training for the employer's staff who will be providing the supports. The provider agency will furnish coordination activities including assistance in arranging transportation, job development and job placement. Job development services prior to job placement may be furnished for a maximum of [ninety (90) days] 180 days (6 months) per job held (Job development services may extend beyond 180 days with LTSD written approval).

(b) Recipients are placed in [regular community jobs] jobs in the community and support is provided at the work site as needed for the individual to learn and perform the work. Reimbursement to the recipient must be paid at prevailing hourly wages with regard to productivity and in compliance with the Federal Fair Labor Standards Act. Wages are to be commensurate with the hourly wages or salaries of those performing the same or similar work.

(c) Supported Employment services are described in the [POC and may include: job or career development services prior to job placement; job site development and site analysis; job placement; job coaching; vocational profiles, functional vocational assessments and job sampling assessments; behavior supports related to the workplace; education on rights and responsibilities in the work place; education on self advocacy in the work place; transportation and arrangement of transportation options; personal care activities of daily living supporting the person in the work place; assistance with self administration of medication; medication administration including use of certified medication aides; nursing; reminding/observing/monitoring of medication and pharmacy needs; assistance to individuals who require a wheelchair for mobility and need physical assistance for toileting and transfers. Individuals funded for Individual Supported Employment can be co-funded with Personal Care, Respite, Day Habilitation or Group Supported Employment services as long as the combination is deemed appropriate in the

POC; and as long as the hours are not reported for the same hours of the same day. The total number of units cannot exceed annual limits established by DOH.] ISP and must be provided in accordance with the LTSD DD Service Definitions and Standards. Individual Supported Employment services can be provided with any other service, as long as the combination is deemed appropriate in the ISP and as long as the services are not provided for the same hours on the same day; however, therapy services are reimbursable when provided simultaneously.

(3) **Intensive Supported Employment** offers individual 1:1 job coaching of employed persons placed in integrated community-based work settings. Offers individual (one to one) job coaching of persons placed in community-based employment. This unit of service is intended for individuals for whom individual supported employment average job coaching hours exceeds 32 hours per month. Individuals eligible for this service includes persons with one of the following: documented multiple disabilities, severe medical or physical limitations, behavioral conditions which interfere with the performance of job duties or are persons who: 1) were previously institutionalized or 2) have a Level of Care One (LOC I).

(a) The IDT must assess the appropriateness and benefits of continuing the Intensive Supported Employment at least every 180 days (6 months) and modify the [POC] ISP accordingly.

(b) Intensive Supported Employment ~~[can not be included in the POC for individuals receiving Individual Supported Employment, but may be co-funded with Personal Care, Respite, Day Habilitation or Group Supported Employment as long as the combination is deemed appropriate in the POC, and is not billed for the same hours of the same day. The total number of units shall not exceed the limits established by DOH.]~~

(c) Individuals are placed in regular community jobs and support is provided at the work site as needed for the individual to learn and perform the work. Ongoing support begins as continual one to one training and is gradually reduced over a period of time based on the fading plan. A fading plan must include supports and training needed for a specified period of time at a defined level or degree. The plan will specify natural supports available to the recipient and will address related training for the employer's staff who will be providing the supports. Reimbursement to the recipient may be paid at piece rate, prevailing hourly wages with regard to productivity and must be in compliance with the Federal Fair

Labor Standards Act. Wages are to be commensurate with the hourly wages or salaries of those performing the same or similar work.

(d) Intensive Supported Employment services ~~[are described in the POC and may include: job coaching; behavior supports related to the work place; education on rights and responsibilities in the work place; transportation and arrangement of transportation options; personal care activities of daily living supporting persons in the work place; assistance with self administration of medication; medication administration including using certified medication aides; nursing; reminding/observing/monitoring of medication and pharmacy needs; assistance to individuals who require a wheelchair for mobility and need physical assistance for toileting and transfers. Intensive Supported Employment services must be provided in accordance with the LTSD DD Service Definitions and Standards.]~~ must be provided in accordance with the LTSD DD Service Definitions and Standards.

J. **Behavior Therapy Services:** Behavior therapy is a skilled therapy service performed by a licensed or certified practitioner as specified in the LTSD DD Waiver service definitions and standards, and by applicable state laws and regulations. Services must be necessary to improve or maintain adaptive behaviors or decrease those challenging behaviors which interfere with [of] an individuals daily living. Challenging behaviors are those behaviors that put an individual at risk of exclusion from typical community settings, services and supports [of] present a risk to the health and safety of the person or others or a significant risk to property. Behavior Therapy includes evaluation, development and management of a behavior support plan, treatment, care giver/staff training and consultation, as necessary. A specified number of hours of client specific consultation ~~[may be]~~ may be reimbursed annually in accordance with LTSD DD Services Definitions and Standards. Providers of behavior therapy must prepare progress notes and reports as required by DOH or its designee, including progress, effectiveness of strategies and significant events in the individuals life which may impact progress. Behavior Therapy services must be provided in accordance with the LTSD DD Service Definitions and Standards.

K. **Nutritional Counseling Services:** Nutritional counseling is designed to meet unique food and nutrition needs presented by persons with developmental disabilities. ~~[Examples of individuals who may require nutritional counseling are persons with Prader Willi,~~

~~children or adults who require specialized formulas.]~~ This service does not include oral-motor skill development services, such as those services provided by a speech pathologist. ~~[Nutritional counseling services cannot be included in the POC for individuals receiving Living Support Services or Day Habilitation Services.]~~ Because Nutritional Counseling is included in the reimbursement rate for Living Support Services and Day Habilitation, Nutritional Counseling cannot be billed as a separate service during the hours of Living Support or Day Habilitation. Nutritional Counseling services must be provided in accordance with the the LTSD DD Service Definitions and Standards.

L. **Outlier Services** cover individuals recognized as having extreme medical needs or behavioral issues requiring services of a frequency, duration, and intensity that surpass those described in other covered DD Waiver services. Outlier services ~~[reimburses]~~ reimburse providers for those few individuals that meet outlier services criteria. Reimbursement is only available after approval has been given by the LTSD or its designee. Outlier Residential services are available only to individuals who receive Supported Living Services. Outlier Habilitation services are available to only individuals in Adult Habilitation. For individuals receiving Outlier Habilitation services, Habilitation Day Care may not be included in the [POC] ISP. For individuals receiving Outlier Residential Services, neither Respite, Supervised Living nor Homebased Support Services may be included in the [POC] ISP. Personal Care services may not be included in the [POC] ISP of an individual receiving Outlier Residential services. The Outlier Services are intended to meet the needs of individuals with severe chronic needs. Individuals with acute support needs are covered within the existing rates or through supports available through the ~~[individual's regular Medicaid card]~~ regular Medicaid state plan package. Individuals with extraordinary need fit into one of two categories: 1.) High Medical Necessity ~~[and]~~ or 2.) Behavioral Outlier.

(1) **High Medical Necessity Outlier:** To be considered for the High Medical Necessity Outlier rate of reimbursement, individuals must first meet the definition for High Medical Necessity. High Medical Necessity is defined as a chronic physical condition, including brain disorders, which results in a prolonged dependency on medical care for which daily skilled (nursing) intervention is medically necessary and is characterized by one or more of the following:

(a) There is a life threatening condition characterized by frequent periods of acute exacerbation which require frequent medical supervision, and/or physical consultation and which in the absence of such supervision or consultation, would require hospitalization.

(b) The individual requires frequent time consuming administration of specialized treatments which are medically necessary.

(c) The individual is dependent on medical technology such that without the technology a reasonable level of health could not be maintained. Examples include, ventilators, dialysis machines, enteral or parenteral nutrition support and continuous oxygen. Individuals who meet the definition for High Medical Necessity may qualify for the Outlier services and corresponding funding if the frequency, duration, and intensity of staff supports greatly surpass those described in service definitions rates and the following conditions and criteria are met.

(2) High Medical Necessity Criteria:

(a) All requests for High Medical Necessity Outlier funding must be in writing and must be accompanied by written documentation that meets the definition for High Medical Necessity.

(b) The IDT will initiate the request for Outlier funding.

(c) The IDT will gather all pertinent reports and documentation and ensure timely submission to the LTSD by the case manager.

(d) Documentation for High Medical Necessity Outlier funding will be submitted to LTSD or its designee for review and approval.

(e) Staffing ratios must be submitted for the Habilitation or Residential setting as applicable to the request. This information will be used when determining the need for additional enhanced support hours for an individual with an intense staffing need.

(f) Documentation ~~[which]~~ that shows the number of hours necessary to meet the individual's needs, in relation to the total number of hours of staff time available within the setting.

(g) In order for the request to be considered for outlier funding the number of hours of enhanced support hours must exceed 360 hours per month within the residential setting; except in the situation where the hours of enhanced supports are nursing hours, an equivalent amount of enhanced support hours may be considered.

(h) In order for the request to be considered for outlier funding the number of hours of enhanced support hours must

exceed 84 hours per month within the habilitation setting; except in ~~[the situation]~~ situations where the number of hours of enhanced supports are nursing hours, then an equivalent amount of enhanced support hours may be considered.

(i) All generic resources must be identified and accessed prior to requesting Outlier funding. The request must be accompanied by documentation of successful or unsuccessful attempts at accessing generic resources.

(j) Documentation must include a signed attending physician's evaluation report which documents the individual's medical status as it relates to the High Medical Necessity definition and a signed detailed Nursing Plan that outlines all procedures to be completed and indicates why the staffing within the setting must include the enhanced hours.

(k) The ~~[POC]~~ ISP incorporates a detailed Nursing Plan which specifically addresses the individual's condition, needs and outlines the duties of additional or specialized staff.

(l) Outlier rates will be approved for a specified number of days per year not to exceed the annual Waiver billing limits. Each approval will not exceed 180 days.

(3) Behavioral Outlier: To be considered for the Behavioral Outlier rate of reimbursement individuals must exhibit frequent or regular episodes of behavior that is historical, chronic, and predictable. Examples include suicidal behavior, self injurious behavior, physical aggression towards others with intent to cause injury, disruption of most activities which requires intensive staff attention, personal withdrawal from all contact with staff and others, dangerous elopement, or serious criminal activities that are dangerous to others or to the recipient (e.g., rape, manslaughter, battery). Individuals who meet the definition for Behavioral Outlier may qualify for the Outlier services and corresponding funding if the frequency, duration, and intensity of staff supports greatly surpass those described in the service definitions and the following conditions and criteria are met.

Behavioral Criteria:

(a) All requests for outlier funding must be in writing and must be accompanied by written documentation from an appropriate mental health professional (psychiatrist, psychologist, neurologist) that addresses the chronic care criteria that meets the definition of Behavioral Outlier.

(b) The IDT will initiate the request for outlier funding.

(c) The IDT will gather all pertinent reports and documentation and ensure timely submission by the case manager to the LTSD or its designee.

(d) Documentation for behavioral outlier funding will be submitted to the LTSD or its designee for review and approval.

(e) Staffing ratios must be submitted for the Habilitation or Residential setting, as applicable to the request. This information will be used when determining the need for additional enhanced support hours for an individual with an intense staffing need.

(f) Documentation ~~[which]~~ that shows the number of hours necessary to meet the individual's needs, in relation to the total number of hours of staff time available within the setting.

(g) In order for the request to be considered for outlier funding the number of hours of enhanced support hours must exceed 360 hours per month within the residential setting.

(h) In order for the request to be considered for outlier funding the number of hours of enhanced support hours must exceed 84 hours per month within the habilitation setting.

(i) All generic resources must be identified and accessed prior to requesting Outlier funding. The request must be accompanied by documentation of successful or unsuccessful attempts at accessing generic resources.

(j) Documentation must include the psychiatric/neurological/ psychological evaluation report which documents the individual's mental health/health status as it relates to the Behavioral Outlier definition; and provides justification for the use of additional or specialized staffing.

(k) The psychiatric/neurological/psychological evaluation must be completed by a professional who is not employed by the agency providing Supported Living or Adult Habilitation Services.

(l) Individuals being considered for Behavioral Outlier funding must have a current active behavior support plan that outlines the specific duties of additional staff; and the plan is intensively monitored by the Behavior Therapist.

(m) The Behavior Plan must be in compliance with the DD Policy Governing the Process of Behavioral Support Service Planning for Persons with Developmental Disabilities.

(n) The ~~[POC]~~ ISP specifically addresses the individual's condition, needs and outlines the daily responsibilities of additional or specialized staff.

(o) Outlier rates will be approved for a specified number of days per year not to exceed the annual Waiver billing limits. Each approval will not exceed 180 days.

M. Community Access

Services (Children's Package):

Community Access Services are designed to meet the needs of individuals under the age of 18 years. The purpose of the Community Access Service is to support the family in understanding and promoting their child's development. This service prevents untimely residential placement, and promotes the acquisition and retention of skills necessary for the child to participate successfully in their family and community life. The Community Access Service is designed to promote maximum participation in community life, to support the family's goals for the child, and their ability to address the needs of their child. Services are designed to develop self-help, cognitive, physical/motor, communication, and social skills, leading to eventual reduction in dependence on specialized supports. This service is individually planned and coordinated through the child's ISP. The frequency, duration and scope of these services are determined by the individual's needs. This service may not supplant the responsibility of the public school education system for educational services. Community Access services may not be used, nor reimbursement provided, for activities which are the responsibility of the public education system for 3-18 year olds, or of the NM Family Infant Toddler Program for Early Intervention services, in accordance with the Individuals with Disabilities Education Act (IDEA). The ISP must be coordinated with the child's Individual Education Plan (IEP) or Individualized Family Service Plan (IFSP) so as to ensure that neither supplanting nor duplication occur, and to ensure that all ISP services are based on medical necessity, not education needs. This service becomes effective when the individual moves into the ARA system. This Medicaid waiver covers the following five (5) Community Access Services:

(1) Community Participant

Support: is an essential and required core element of the children's Community Access Service package and must be a part of all ISPs when community access is a selected service. Community Participant Support is provided by a Community Access Coach and consists of providing information and training to natural supports to increase their knowledge and sensitivity. Natural supports are people who work in or are present in community activities in which the individual participates. Support is typically a one-to-one (1:1) activity and is informal child-specific information sharing, consisting of:

(a) Gathering information about the child's developmental and medical needs, interests and goals of the child/family

(b) Assisting families in identifying natural supports and in understanding their role with these supports

(c) Coaching the natural supports about needs, interests and goals of the child

(d) Coaching natural supports about special precautions and considerations of the child's disability, medications, or other special concerns

(e) Developing activities with natural supports that make personal and social goals possible with the involvement of natural supports.

(f) Anticipatory guidance regarding the child's developmental status and behavior, and

(g) Monitoring the effectiveness of each enhancement option in relation to ISP goals.

(h) The Community Access Coach must possess a degree in social work, psychology, family therapy, early childhood, special education, counseling, or rehabilitation services.

(2) Peer Mentorship: Peer Mentorship is an optional element of the Community Access service. Peer mentorship is developed through the Community Access Coach. Services consist of on-going guidance, functional modeling, and support by typical peers to promote interaction and social skills of the eligible child, as well as to create opportunities to access age-appropriate activities in the community. Peer mentorship may consist of:

(a) Assisting the child/family in identifying potential peer mentors who are relevant to the child's interests and needs

(b) Recruiting peer mentor(s)

(c) Coaching the peer mentor for the purpose of building social relationships, friendships, and participation in community/school extra-curricular activities

(d) Organizing or selecting/arranging for co-participation in activities and other opportunities for interaction between the typical peer and the eligible child.

(3) Stipends: Stipends may be provided to purchase informational materials (e.g. videos, books), fees, admission and transportation to events and activities that are relevant to the scope of service of the Children's Category. Stipends may only be provided to the individual's family through the Community Access Coach.

(4) Family/Child/Information/Training: Family/Child Information/Training supports the family in achieving their goals for their child. Services assist the child in interacting with the home and community environment in self-directed and growth promoting ways with their parents and other caregivers. Family/Child training promotes the development of skills that will assist the

child with access to and participation in typical activities and functions of community life. Examples may include recreational and leisure skills, travel training, money management, pre-vocational exploration, and social skills. Family/Child Training may consist of:

(a) Developmental and/or adaptive skills assessment to determine the functioning levels of the child

(b) Individualized guidance either in groups or 1:1

(c) Coordination of the ISP with the child's Individualized Education Plan (IEP) (3-18 year olds) or Individualized Family Support Plan (IFSP) (birth to three year olds in the Early Intervention Program).

(5) Family Counseling: Family counseling addresses the social/emotional or behavioral development of the individual served or issues facing the caregiver/family in meeting the needs of the individual as a result of the disability. Family counseling may be provided one-to-one (1:1) or in groups and may occur in any setting. To provide this service, the Community Access Coach must meet New Mexico State Licensing requirements to practice Family Therapy. Community Access services must be provided in accordance with the LTSD DD Service Definitions and Standards.

N. Non-Medical Transportation:

Non-Medical Transportation serves the purpose of allowing the individual access to other waiver supports and activities identified in the Individual Service Plan to promote an inclusive community life. Non-Medical transportation services enable eligible individuals to gain personal physical access to non-medical community services and resources. The need for transportation must be appropriately documented to fulfill identified activities and supports in the Individual Service Plan and the associated ISP goals or outcomes. This service is to be considered only when transportation is not available through the State Medicaid Plan or when other arrangements are not available to the individual. Individuals access this service through a LTSD approved non-medical transportation provider. Transportation Supports are only provided as a waiver service when transportation is not otherwise available as an element of another waiver service. It is not to be used at the same time as other Medicaid waiver services that include transportation as a part of the waiver service definition. Whenever possible, independent arrangements, or transportation services without charge must be promoted and used whenever available. This service cannot be used for transportation to medical care appointments. This service cannot be

used to supplant the transportation responsibility of the Community Living Supports provider or the Day Habilitation provider. This service becomes effective when the individual moves into the ARA system. Non-Medical Transportation services must be provided in accordance with the LTSD DD Service Definitions and Standards.

Q. Environmental Accessibility Adaptation: Environmental Accessibility Adaptations are specific adaptations, modifications or improvements in an eligible individual's existing home setting, which are based on medical necessity. These adaptations should enable the individual to effectively function in the home's physical environment. Adaptations involve equipment and/or physical adaptations to the individual's residence that are necessary to ensure the health, welfare and safety of the individual or enhance the individual's level of independence. The equipment/adaptations are required because of the individual's illness, impairment or disability and are identified in the Individual Service Plan. The adaptations may include purchase, installation, and repairs. No duplicate adaptations, modifications or improvements shall be approved regardless of the payment source. For example, if the client has a safe and usable ramp, a second ramp shall not be approved. Home modifications, adaptations, or improvements cannot be part of new construction costs. Adaptations, modifications improvements or repairs to the existing home, which are not of direct medical or remedial benefit to the individual, and automobile / vehicle retrofitting shall not be approved. Such non-beneficial adaptations, modifications or improvements include, but are not limited to carpeting, roof repair, central air conditioning, furnace replacement, remodeling bare rooms and other general household repairs. An Occupational Therapist shall assess the individual's needs and the effectiveness of the requested Environmental Accessibility Adaptation and submit a written recommendation consistent with these standards to the Case Manager. In geographical areas where an Occupational Therapist is not available, the services of Physical Therapist or other qualified individual approved by the LTSD may be substituted. A complete report specifying how the Environmental Accessibility Adaptations would contribute to the individual's ability to remain in or return to his/her home, and how the modification, or improvements would increase the individual's independence and decrease the need for other services, such as personal care, must be completed on a LTSD prescribed form. The report must be completed and submitted to the 'Adaptation Consultant' for

approval before the contractor can be authorized to begin construction. This evaluation must be submitted to the LTSD with the Prior Authorization Request (PAR). The Case manager must assure that 'Adaptation Consultants' are used as required.

(1) Environmental Accessibility Adaptations may include:

- (a) Ramps
- (b) Lifts/elevators
- (c) Modifications/additions of bathroom facilities
- (d) Roll-in showers
- (e) Sink modifications
- (f) Bathtub modifications/grab bars
- (g) Toilet modification/grab bars
- (h) Floor urinal and bidet adaptations and plumbing modifications
- (i) Turnaround space adaptations
- (j) Widening of doorways/hallways
- (k) Handrails, door handle adaptations, trapeze and mobility tracks for home ceilings
- (l) Automatic door opener/doorbells
- (m) Voice activated, light activated, motion activated and electronic devices
- (n) Fire safety adaptations
- (o) Glass substitutes for windows and doors.

(2) Each environmental accessibility adaptation must be:

- (a) Documented with written recommendations from a qualified professional that specifies the model and type of equipment;
- (b) Deemed medically necessary by a physician or appropriate licensed professional;
- (c) Approved by LTSD in accordance with written policy including defined qualifying criteria prior to start of adaptations;
- (d) Documented as not otherwise available as a Medicaid State Plan service;
- (e) Completed under the supervision of a DOH Adaptation Consultant;
- (f) Completed by a DOH approved modification / adaptation provider that has a GB-2 Class Construction License.

(3) The provider of the Environmental Accessibility Adaptations service cannot also be the 'Adaptation Consultant' provider, or have any relationship that creates a perception of 'conflict of interest'.

(4) Environmental Accessibility Adaptation services must be provided in accordance with the LTSD DD Service Definitions and Standards.

P. Adaptation Consultant

(1) Adaptation Consultant is a

provider that has professional staff available to offer technical assistance and oversight to environmental accessibility adaptation projects funded through the Developmentally Disabled Waiver Program. The consultant may be required to work with any of the following entities: LTSD staff, the recipient of services under the Developmentally Disabled Waiver Program, family members, case managers, IDT teams, provider of developmental disability services; such PT, OT, residential providers and be licensed contractors. Adaptation Consultant duties include but are not limited to performing the following:

- (a) Ensuring proper design criteria is addressed in planning and design;
- (b) Providing guidance in evaluating the needs for environmental adaptations as well as guidance related to the actual construction;
- (c) Conducting pre-plan reviews and reviews plans and specifications for construction projects prior to construction activities;
- (d) Interpreting codes and clarifies building procedures;
- (e) Reviewing plans submitted by contractors for environmental adaptation and ensure that the plans are architecturally sound and that the safety and accessibility needs of the consumer are taken into account;
- (f) Approving and/or recommends amendments to plans for environmental adaptations;
- (g) Reviewing reasonableness of costs proposed in the environmental adaptation plan;
- (h) Inspecting the final environmental adaptation to ensure that the adaptations meet all state and federal requirements as established by LTSD and to ensure that the adaptations meet the *approved plan* submitted for environmental adaptation; and
- (i) Recommends approval to LTSD of all environmental adaptations for final payment.

(2) The Adaptation Consultant Provider must demonstrate competency in the following areas:

- (a) Extensive knowledge of the principles and practices of architecture; of building codes and regulations; of building materials and construction methods; of structural, mechanical and electrical systems;
- (b) Ability to read, interpret, and prepare architectural drawings and specifications and to resolve contractual problems;
- (c) Considerable knowledge of contracting practices and procedures; of construction cost estimating.
- (d) Knowledge of Architectural design, standards and technical data relating

to building design and construction:

(e) Ability to interpret, implement and insure compliance with all laws, rules and regulations of the State of New Mexico, including the State of New Mexico Building Codes;

(f) Ability to interpret, implement and insure that Federal ADA (Americans with Disabilities Act) Standards and regulations and applicable guidelines are followed in all environmental adaptations;

(g) Knowledge of reasonable costs to accomplish the adaptations.

(3) Adaptation Consultant services must be provided in accordance with the LTSD DD Service Definitions and Standards.

[2/1/95; 10-31-96; 11-15-96; 2-28-97; 4-30-97; 9-1-98; 8.314.5.13 NMAC - Rn, 8 NMAC 4.MAD.736.4 & A, 7-1-02]

8.314.5.14 NON-COVERED SERVICES: Only the services listed as covered waiver services are covered under the HCBSW program. Ancillary services may be available to waiver recipients through the regular Medicaid program. Ancillary services are subject to the limitations and coverage restrictions ~~[which] that~~ exist for other Medicaid services. See Section 8.301.3 NMAC, GENERAL NON-COVERED SERVICES for an overview of non-covered services. Medicaid does not cover room and board as waiver service or ancillary services.

[2/1/95; 10-31-96; 8.314.5.14 NMAC - Rn, 8 NMAC 4.MAD.736.5 & A, 7-1-02]

8.314.5.15 [PLAN OF CARE] INDIVIDUALIZED SERVICE PLAN (ISP): An individualized ~~[plan of care]~~ Service Plan (ISP) must be developed by a team of professionals in consultation with the recipient and others involved in the recipient's care ~~[in accordance with 7.26.5 NMAC. The interdisciplinary team must review the treatment plan at least every six (6) months or more often if indicated. The following must be contained in the plan of care or documents used in the development of the plan of care. The plan of care and all supporting documents must be available for review in the recipient's file. Long term vision, individual preferences (capabilities and strengths) and a statement of the nature of specific problems, and needs of the recipient. Description of the functional level of the recipient, including an assessment and evaluation of the following: Mental status assessment; Intellectual function assessment; Psychological assessment; Educational assessment; Vocational assessment; Social assessment; Medication assessment; and Physical assessment. Statement of the least restrictive conditions~~

~~necessary to achieve the purposes of treatment; Description of outcomes, goals and objectives with a projected timetable for their attainment and the duration and scope of services; Description of strategies for achieving these goals, including provision for review and modification of the plan; and Specification of responsibilities for various activities including: areas of care, description of needs, and orders for medication(s), treatments, restorative and rehabilitative services, assistive technology, therapies, social services, diet, and special procedures recommended for the health and safety of the recipient. Identification of available supports and services for the individual within their community. Individual service plan budget. The POC is submitted to LTSD or its designee for final approval. Any changes to the POC must be approved by LTSD or its designee]. The ISP must be in accordance with the LTSD DD Waiver Services Definitions and Standards. The ISP is submitted to LTSD or its designee for final approval. LTSD or its designee must approve any changes to the ISP.~~

[2/1/95; 10-31-96; 9-1-98; 8.314.5.15 NMAC - Rn, 8 NMAC 4.MAD.736.6 & A, 7-1-02]

8.314.5.16 PRIOR APPROVAL AND UTILIZATION REVIEW: All Medicaid services, including services covered under this Medicaid waiver, are subject to utilization review for medical necessity and program compliance. Reviews may be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See Section 8.302.5 NMAC, PRIOR APPROVAL AND UTILIZATION REVIEW. Once enrolled, providers receive instructions and documentation forms necessary for prior approval and claims processing.

A. **Prior Approval:** To be eligible for HCBSW program services, Medicaid recipients must require the level of care of services provided in an intermediate care facility for the mentally retarded (ICF-MR) [level of care]. Level of Care (LOC) determinations are made by MAD or its designee. The ~~[POC]~~ ISP must specify the type, amount and duration of services. Certain procedures and services specified in the ~~[POC]~~ ISP can require prior approval from MAD or its designee. Services for which prior approval was obtained remain subject to utilization review at any point in the payment process.

B. **Eligibility Determination:** Prior approval of services does not guarantee that individuals are eligible for Medicaid. Providers must verify that individuals are eligible for Medicaid or

other health insurance prior to the time services are furnished.

C. **Reconsideration:** Providers who disagree with prior approval request denials or other review decisions can request a re-review and a reconsideration. See Section 8.350.2 NMAC, RECONSIDERATION OF UTILIZATION REVIEW DECISIONS.

[2/1/95; 10-31-96; 8.314.5.16 NMAC - Rn, 8 NMAC 4.MAD.736.7 & A, 7-1-02]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.323.5 NMAC that will be effective July 1, 2002. This rule was renumbered from MAD.746.4 to conform to NMAC requirements. The Medical Assistance Division made changes to the complete Part regarding controlling symptoms and maintenance therapy for speech and language pathology, occupational therapy and physical therapy services. The name of the Part was also changed.

TITLE 8 SOCIAL SERVICES CHAPTER 323 ENHANCED EPSDT - OUTPATIENT PROVIDERS PART 5 [~~L I C E N S E D~~ ~~SPEECH AND LANGUAGE PATHOLOGISTS~~] EPSDT REHABILITATION SERVICES

8.323.5.1 ISSUING AGENCY: New Mexico Human Services Department [1-1-95; 8.323.5.1 NMAC - Rn, 8 NMAC 4.MAD.000.1, 7-1-02]

8.323.5.2 SCOPE: The rule applies to the general public. [1-1-95; 8.323.5.2 NMAC - Rn, 8 NMAC 4.MAD.000.2, 7-1-02]

8.323.5.3 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 and by the state Human Services Department pursuant to state statute. See NMSA 1978 27-2-12 et. seq. (Repl. Pam. 1991). [1-1-95; 8.323.5.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 7-1-02]

8.323.5.4 DURATION: Permanent [1-1-95; 8.323.5.4 NMAC - Rn, 8 NMAC 4.MAD.000.4, 7-1-02]

8.323.5.5 EFFECTIVE DATE:

January 1, 1995.

[1-1-95; 8.323.5.5 NMAC – Rn, 8 NMAC 4.MAD.000.5, 7-1-02]

8.323.5.6 OBJECTIVE: The objective of these regulations is to provide policies for the service portion of the New Mexico Medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement.

[1-1-95; 8.323.5.6 NMAC – Rn, 8 NMAC 4.MAD.000.6, 7-1-02]

8.323.5.7 DEFINITIONS: [RESERVED]

8.323.5.8 MISSION STATEMENT: The mission of the New Mexico Medical Assistance Division (MAD) is to maximize the health status of Medicaid-eligible individuals by furnishing payment for quality health services at levels comparable to private health plans.

[1-1-95; 8.323.5.8 NMAC – Rn, 8 NMAC 4.MAD.002, 7-1-02]

8.323.5.9 [LICENSED SPEECH AND LANGUAGE PATHOLOGISTS] EPSDT REHABILITATION SERVICE PROVIDERS: The New Mexico Medicaid program (Medicaid) pays for medically necessary services furnished to eligible recipients, including outpatient services furnished to recipients under twenty-one (21) years of age by licensed physical therapists; occupational therapists; and master's level speech and language pathologists. This section describes eligible providers, covered services, service limitations, and general reimbursement methodology.

[1-1-95; 8.323.5.9 NMAC – Rn, MAD Rule 746.4 & A, 7-1-02]

8.323.5.10 ELIGIBLE PROVIDERS:

A. Upon approval of New Mexico Medical Assistance Provider Participation Applications by the New Mexico Medical Assistance Division (MAD), licensed physical therapists, occupational therapists and master's level speech and language pathologists are eligible to be reimbursed for furnishing services to recipients under twenty-one (21) years of age. See 8.325.8 NMAC, REHABILITATION SERVICE PROVIDER, for information on service provision to provisions for adult Medicaid recipients [of any age]. See 8.320.6 NMAC, EPSDT SCHOOL-BASED SERVICES, for information [of services provision] on service provisions as part of school-based services. [Speech or language pathologists must be licensed by the Board of Speech-Language Pathology and

Audiology under the Department of Regulation and Licensing.] The following providers are eligible to be reimbursed for furnishing outpatient rehabilitation services to recipients:

(1) Master's level speech and language pathologists licensed by the Board of Speech-Language Pathology and Audiology within the Regulation and Licensing Department;

(2) Physical therapists licensed as physical therapists by the New Mexico Physical Therapy Board within the Regulation and Licensing Department;

(3) Occupational therapists licensed as occupational therapists by the Board of Examiners for Occupational Therapy within the Regulation and Licensing Department;

(4) Outpatient Rehabilitation centers with a primary emphasis on physical therapy, occupational therapy or speech therapy, licensed by the Department of Health;

(5) Home Health agencies licensed and certified by the Department of Health; and

(6) General hospitals eligible to provide outpatient rehabilitation services licensed and certified by the Department of Health.

B. Once enrolled, providers receive a packet of information, including Medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from MAD. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.

[1-1-95; 8.323.5.10 NMAC – Rn, MAD Rule 746.41 & A, 7-1-02]

8.323.5.11 PROVIDER RESPONSIBILITIES:

A. Providers who furnish services to Medicaid recipients must comply with all specified Medicaid participation requirements. See 8.302.1 NMAC, GENERAL PROVIDER POLICIES.

B. Providers must verify that individuals are eligible for Medicaid at the time services are furnished and determine if Medicaid recipients have other health insurance.

C. Providers must maintain records [which] that are sufficient to fully disclose the extent and nature of the services furnished to recipients. See 8.302.1 NMAC, GENERAL PROVIDER POLICIES.

[1-1-95; 8.323.5.11 NMAC – Rn, MAD Rule 746.42 & A, 7-1-02]

8.323.5.12 COVERED

SERVICES: [Medicaid covers evaluations, individual therapy, and group therapy which are furnished in an outpatient setting. Services must be furnished for the purpose of diagnostic study or treatment and be designed to improve the recipient's condition. Medicaid covers speech therapy services furnished to Medicaid recipients under twenty-one (21) years of age which control symptoms and maintain the functional level to avoid further deterioration.]

(1) All services must be medically necessary to treat a condition identified in the Tot to Teen Healthcheck screen.] Medicaid covers speech therapy, physical therapy and occupational therapy services provided to Medicaid recipients under twenty-one (21) years of age. Medicaid covers evaluations, individual therapy and group therapy in an outpatient setting. Services must be medically necessary and provided for the purpose of diagnostic study or treatment. Services must be designed to improve, restore or maintain the recipient's condition including controlling symptoms and maintaining the functional level to avoid further deterioration.

A. Physical, occupational, and speech therapy services must be specifically related to active written treatment plans developed by qualified physical, occupational, or speech therapists with authorization from the physician or primary care provider.

B. Services must be performed within the scope and practice of the speech and language pathology [profession] physical therapy and occupational therapy professions, as defined by New Mexico state law.

C. All services [furnished] provided by speech and language pathologists [require a physician referral], physical therapists and occupational therapists must be prescribed or ordered by the individual's physician or other primary care provider (PCP). The PCP must be a physician or doctor of osteopathy, certified nurse practitioner, or physician assistant licensed to practice in New Mexico.

[1-1-95; 8.323.5.12 NMAC – Rn, MAD Rule 746.43 & A, 7-1-02]

8.323.5.13 NONCOVERED SERVICES:

A. Services furnished by speech and language pathologists, physical therapists and occupational therapists are subject to the limitations and coverage restrictions [which] that exist for other Medicaid services. See 8.301.3 NMAC, GENERAL NONCOVERED SERVICES.

B. Medicaid does not cover these specific services:

(1) Services furnished to individ-

uals who are not eligible for EPSDT services;

(2) Services for which prior approval has not been received;

(3) Services ~~[which] that~~ are not within the scope of practice of the speech and language pathologist physical therapist or occupational therapist;

(4) Services furnished without ~~[a physician referral; and] the order or prescription of a physician or PCP~~;

(5) Services ~~[which] that~~ are primarily educational or vocational in nature; and

(6) Services related to activities for the general good and welfare of recipients, such as general exercises to promote overall fitness and flexibility and activities to provide general motivation, are not considered physical or occupational therapy for Medicaid reimbursement purposes.

[1-1-95; 8.323.5.13 NMAC – Rn, MAD Rule 746.44 & A, 7-1-02]

8.323.5.14 PRIOR APPROVAL AND UTILIZATION REVIEW: All Medicaid services are subject to utilization review for medical necessity and program compliance. Reviews may be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC, PRIOR APPROVAL AND UTILIZATION REVIEW. Once enrolled, providers receive instructions and documentation forms necessary for prior approval and claims processing.

A. All ~~[speech and language pathology services]~~ therapy services with the exception of the initial evaluation require prior authorization from MAD or its designee. ~~[The request for prior approval must indicate if any services are being furnished through the school system and explain how the requested services are necessary to augment services furnished in the schools.]~~ Even if a child is receiving or can receive physical, speech or occupational therapies at a school, it is possible that the child may need additional medically necessary therapies. Services for which prior approval were obtained remain subject to utilization review at any point in the payment process.

B. Prior approval of services does not guarantee that individuals are eligible for Medicaid. Providers must verify that individuals are eligible for Medicaid at the time services are furnished and determine if Medicaid recipients have other health insurance.

C. Providers who disagree with ~~[prior approval request]~~ denials or other review decisions can request a review and ~~[a]~~ reconsideration. See

8.350.2, RECONSIDERATION OF UTILIZATION REVIEW DECISIONS.

[1-1-95; 8.323.5.14 NMAC – Rn, MAD Rule 746.45 & A, 7-1-02]

8.323.5.15 REIMBURSEMENT:

A. Providers of speech and language ~~[pathologist] pathology, physical therapy and occupational therapy services~~ must submit claims for reimbursement on the HCFA-1500 claim form or its successor. See 8.302.2, BILLING FOR MEDICAID SERVICES. Once enrolled, provider receive instructions an documentation, billing, and claims processing.

B. Reimbursement to licensed master's level speech and language pathologists, licensed physical therapists and licensed occupational therapists is made at the lesser of the following:

(1) The provider's billed charge; ~~[or]~~

(a) The provider's billed charge must be their usual and customary charge for service.

(b) "Usual and customary" refers to the amount an individual practitioner charges the general public in the majority of cases for a specific procedure or service.

(2) The MAD fee schedule for the specific services. Medicaid does not pay a professional component amount to a physical, occupational or speech pathologist if therapy is performed in a hospital setting. Medicaid reimburses the institutional provider for all components of the service. [1-1-95; 8.323.5.15 NMAC – Rn, MAD Rule 746.46 & A, 7-1-02]

HISTORY OF 8.323.5 NMAC

Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives: MAD Rule 746.4 Licensed Speech And Language Pathologists, 12/16/94.

History of Repealed Material: [Reserved]

NEW MEXICO BOARD OF MEDICAL EXAMINERS

This is an amendment to 16.10.9 NMAC, Section 8.

16.10.9.8 PHYSICIAN FEES:

A. Application fee of \$100 for applicants providing source documentation through FCVS.

B. Application fee of \$350 for applicants applying to the Board and not using the Federation Credential Verification Service.

C. Interim permit fee of

\$40.

D. Triennial license renewal fee of \$220 plus a triennial fee to support the impaired physicians program of \$90.

E. Temporary license fee for a temporary camp or school license of \$25.

F. Temporary license fee for a temporary teaching/research license of \$100.

G. Processing fee of \$25 for placing a license on inactive status;

H. Late fee of \$100 for all physicians who renew their license to active status, or provide required documentation after June 30 but no later than August 15 of the year of expiration.

I. Late fee of \$150 for physicians who renew their licenses to active status, or provide required documentation between August 16 and October 1 of the year of expiration.

J. Reinstatement fee of \$200, for reinstatement of a suspended license, which shall be in addition to other fees due and payable to the Board.

K. Duplicate license fee of \$30.

L. Duplicate renewal certificate fee of \$15.

M. Postgraduate training license fee of \$10.

N. Public service license fee of \$50 annually.

O. Biennial application fee of \$100 for a physician supervising a pharmacist clinician.

P. Telemedicine initial licensing and triennial renewal fee of \$180. [16.10.9.8 NMAC – Rp 16 NMAC 10.9.8.1, 7/15/01; A, 5/1/02; A, 7/14/2002]

NEW MEXICO BOARD OF PHARMACY

16 NMAC 19.20, Occupational and Professional Licensing, Pharmacists, Controlled Substances, is being repealed and replaced with the new part 16.19.20 NMAC to conform with current NMAC requirements, effective 07-15-2002.

NEW MEXICO BOARD OF PHARMACY

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 19 PHARMACISTS
PART 20 CONTROLLED SUBSTANCES**

16.19.20.1 ISSUING AGENCY: Regulation and Licensing Department -

Board of Pharmacy, 1650 University Blvd, NE - Ste. 400B, Albuquerque, NM 87102, (505) 841-9102.

[16.19.20.1 NMAC - Rp 16 NMAC 19.20.1, 07-15-02]

16.19.20.2 SCOPE: All persons or entities that manufacture, distribute, dispense, administer, prescribe, deliver, analyze, or conduct research using controlled substances.

[16.19.20.2 NMAC - Rp 16 NMAC 19.20.2, 07-15-02]

16.19.20.3 STATUTORY AUTHORITY: Section 30-31-11 of the Controlled Substances Act, "30-31-1 through 30-31-42 NMSA 1978, authorizes the Board of Pharmacy to promulgate regulations and charge reasonable fees for the registration and control of the manufacture, distribution and dispensing of controlled substances.

[16.19.20.3 NMAC - Rp 16 NMAC 19.20.3, 07-15-02]

16.19.20.4 DURATION: Permanent.

[16.19.20.4 NMAC - Rp 16 NMAC 19.20.4, 07-15-02]

16.19.20.5 EFFECTIVE DATE: July 15, 2002, unless a different date is cited at the end of a Section.

[16.19.20.5 NMAC - Rp 16 NMAC 19.20.5, 07-15-02]

16.19.20.6 OBJECTIVE: The objective of Part 20 of Chapter 19 is to protect the public health and welfare of the citizens of New Mexico by controlling and monitoring access to controlled substances and to give notice of the Board's designation of particular substances as controlled substances.

[16.19.20.6 NMAC - Rp 16 NMAC 19.20.6, 07-15-02]

16.19.20.7 DEFINITIONS: (Reserved)

[16.19.20.7 NMAC - Rp 16 NMAC 19.20.7, 07-15-02]

16.19.20.8 REGISTRATION REQUIREMENTS: Persons required to register:

A. Manufacture - term includes repackagers;

B. Distributors - term includes wholesale drug distributors;

C. Dispensers - pharmacies, hospital pharmacies, clinics (both health and veterinarian);

D. Practitioners - includes physicians (medical and osteopathic), vet-

erinarians, dentists and podiatrists, licensed in the state and authorized by applicable state laws to prescribe controlled substances for legitimate medical purposes when acting in the usual course of his professional practice or treatment;

E. Scientific investigators or researchers;

F. Analytical laboratories and chemical analysis laboratories;

G. Teaching institutes;

H. Special projects and demonstrations which bear directly on misuse or abuse of controlled substances - may include public agencies, institutions of higher education and private organizations.

[16.19.20.8 NMAC - Rp 16 NMAC 19.20.8, 07-15-02]

16.19.20.9 REGISTRATION AND EXPIRATION DATES

A. Any person who is required to be registered and who is not registered may apply for registration at any time.

B. In December 1982 all registrant renewal dates will be assigned to one of 12 groups which shall correspond to the months of the year. Thereafter, any person who first registers will also be assigned to one of the 12 groups.

C. Expiration date of the registration of all individuals or businesses within any group will be the last day of the month designated for that group. Renewal date will be within 30 days of the date shown on the registration permit and will expire on that date if not renewed by the registrant.

D. Renewal applications will be mailed to the address indicated on the application on file or as amended by change of address supplied by the registrant to the Board of Pharmacy.

[16.19.20.9 NMAC - Rp 16 NMAC 19.20.8(1), 07-15-02]

16.19.20.10 REGISTRATION FEE:

A. The registration fee or annual renewal fee required by the Controlled Substances Act shall be \$60.00 for registrants.

B. Research applicants registered as a practitioner shall not be required to register as a scientific investigator if he is registered as a practitioner. However, this does not exempt him from the regulations applicable to a scientific investigator.

C. Duplicate license - \$10.00

[16.19.20.10 NMAC - Rp 16 NMAC 19.20.9, 07-15-02]

16.19.20.11 APPLICATION FORMS: Application forms may be obtained from the Board of Pharmacy, Albuquerque, New Mexico.

[16.19.20.11 NMAC - Rp 16 NMAC 19.20.10, 07-15-02]

16.19.20.12 SCHEDULES: Applications shall designate the schedule of controlled substances and whether the application is for narcotic or non-narcotic in Schedules I through V.

[16.19.20.12 NMAC - Rp 16 NMAC 19.20.10(1), 07-15-02]

16.19.20.13 SEPARATE REGISTRATION OF EACH PRINCIPAL PLACE OF BUSINESS:

Separate registration is required for each principal place of business or professional practice with the address indicated on the application if drugs are dispensed or distributed from the different locations. **NOTE:** This does not include warehouse storage areas; office used by agents for soliciting which contain no controlled substances other than samples, physicians office where controlled substances are prescribed but not administered or otherwise dispensed.

[16.19.20.13 NMAC - Rp 16 NMAC 19.20.10(2), 07-15-02]

16.19.20.14 INFORMATION REQUIRED:

A. The board shall register an applicant to manufacture or distribute controlled substances unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board may consider the following factors from information listed on the application:

(1) maintenance of effective controls against diversion of controlled substances;

(2) compliance with applicable state and local law;

(3) any convictions of the applicant under any federal or state laws relating to any controlled substance;

(4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under the Controlled Substances Act;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and

safety.

B. Each application shall include all information as required on the application form, including but not limited to a current DEA registration and/or professional license, and shall be signed by the applicant.

[16.19.20.14 NMAC – Rp 16 NMAC 19.20.10(3), 07-15-02]

16.19.20.15 FACILITY INSPECTION: The Board of Pharmacy may direct the drug inspector to inspect the facilities prior to approval of any application for security provision and other applicable standards as required by the Controlled Substances Act.

[16.19.20.15 NMAC – Rp 16 NMAC 19.20.10(4), 07-15-02]

16.19.20.16 PROCEDURE SUMMARY: A scientific investigator or research applicant shall submit a summary of procedures indicating the nature, extent and duration of such research. The summary shall also include the names of individuals engaged in the project (other than those exempt under the Controlled Substances Act) the name or names of the substances to be used in the research project, the adequacy of safeguards against diversion of the controlled substance(s) to be used, source of supply of controlled substance(s) if applicable, and evidence of FDA and DEA approval and registration if registered by the federal agencies.

[16.19.20.16 NMAC – Rp 16 NMAC 19.20.10(5), 07-15-02]

16.19.20.17 ANALYTICAL LABORATORIES:

A. Analytical laboratory applicants shall submit application on the form provided by the Board. All applicable questions on the application shall be filled in and signed by the person in charge of the facility.

B. Quantities of controlled substances in possession of analytical laboratories shall be limited to such quantities as required for reference standards, assays or other scientific purposes.

[16.19.20.17 NMAC – Rp 16 NMAC 19.20.10(6), 07-15-02]

16.19.20.18 EXEMPTION OF LAW ENFORCEMENT OFFICIALS:

Registration is waived for the following persons:

A. Any officer or employee of the state or federal customs agency, the state police, or any enforcement officer of any political subdivision of the state, who is engaged in the enforcement of any federal, state and local law relating to controlled

substances and is duly authorized to possess controlled substances in the course of his official duties.

B. Any official exempted by this section may procure any controlled substance in the course of an inspection pursuant to Section 31 of the Controlled Substances Act or in the course of any criminal investigation involving the person from whom the substance was procured.

C. Laboratory personnel, when acting in the scope of their official duties, are also exempt from registration under the Controlled Substances Act.

[16.19.20.18 NMAC – Rp 16 NMAC 19.20.11, 07-15-02]

16.19.20.19 MODIFICATION, TRANSFER AND TERMINATION OF REGISTRATION:

A. Modification of a registration to authorize additional controlled substances may be made by filing an application in the same number as an application for a new registration. No fee shall be required for such modification.

B. Registration shall terminate if and when a registrant dies, discontinues business or professional practice, has his professional license revoked or suspended, no longer possesses a DEA registration and/or has had his DEA registration revoked or suspended, or changes his name or address as shown on the registration. In such instances, the registrant or his estate shall notify the Board of Pharmacy promptly of such fact and return certificate of registration to the Board within 30 days.

C. Inventories and records of controlled substances listed in Schedules II, III, IV and V shall be maintained either separately from all other records or in such form that the information required is readily retrievable from ordinary business records of the registrant.

D. In the event of a change in name or address the person shall file an application in the same number as an application for modification of a registration. No fee shall be required for such modification.

E. Registration under the Controlled Substances Act shall not be transferable.

[16.19.20.19 NMAC – Rp 16 NMAC 19.20.12, 07-15-02]

16.19.20.20 INVENTORY RECORDS:

A. All registrants are required to keep inventory and procurement records.

B. All registrants shall comply with the following inventory requirements: Schedule I, II, III, IV and V Annual Inventory

C. The annual inventory date shall be May 1 for the initial inventory by the registrant or on the registrant's regular general physical inventory date, provided that date does not vary by more than 6 months before or after May 1. The registrant shall notify the Board of Pharmacy of the date on which the annual inventory will be taken, if different from May 1. The actual taking of the inventory should not vary more than four (4) days from the annual inventory date.

D. Controlled substances added to the Controlled Substances Act after date of enactment, which substance was, immediately prior to that date, not listed on any schedule, every registrant who possesses that substance shall take an inventory of all stock of the substance on hand and file this record with the other inventory records as required.

[16.19.20.20 NMAC – Rp 16 NMAC 19.20.13, 07-15-02]

16.19.20.21 INVENTORY RECORDS OF MANUFACTURERS AND REPACKAGERS: Manufacturers and repackagers inventory records shall contain the following information:

A. Finished form:

(1) name of substance;

(2) each finished form of the substance (10 milligram tablet, etc.)

(3) the number of units or volume of each finished form in each commercial container (100 tablet bottle, etc.)

(4) the number of commercial containers of each such finished form.

B. Controlled substances not included above such as damaged, defective impure substances awaiting a disposal giving total quantity and the name of the substance. A statement of reason for the substance being included in this category.

[16.19.20.21 NMAC – Rp 16 NMAC 19.20.13(1), 07-15-02]

16.19.20.22 DISTRIBUTION INVENTORY RECORDS: Distributor inventory records shall contain the same information required of manufacturers.

[16.19.20.22 NMAC – Rp 16 NMAC 19.20.13(2), 07-15-02]

16.19.20.23 INVENTORY REQUIREMENTS - RESEARCH:

A. Research registrant shall include in his inventory the name of the substance, each finished form of the substance, the number of units or volume of each finished form in each commercial container (100 tablet bottle, etc.) and the number of commercial containers of each such finished form.

B. A commercial container

which has been opened shall be the exact count or measure of substances listed in Schedule I or Schedule II. If the substance is listed in Schedule III, IV or V, he shall make an estimated count or measure of the contents, unless the container holds more than 1,000 tablets or capsules in which case the count must be exact.

[16.19.20.23 NMAC – Rp 16 NMAC 19.20.13(3), 07-15-02]

16.19.20.24 ANALYTICAL LABORATORIES: Analytical laboratories shall include in the inventory record the same information required of manufacturer's.

[16.19.20.24 NMAC – Rp 16 NMAC 19.20.13(4), 07-15-02]

16.19.20.25 CONTROLLED SUBSTANCES INVENTORIES AND RECORDS:

A. Pharmacies, hospitals, clinics and practitioners who dispense controlled substances shall maintain inventories and records of controlled substances listed in Schedules II and II-N separately from all of the other prescription records.

B. "Readily retrievable" means records kept in such a manner as to be easily separated out from all other records in a reasonable time or records are kept on which certain items are redlined, starred or in some manner are visually identifiable apart from other items appearing on the record.

[16.19.20.25 NMAC – Rp 16 NMAC 19.20.13(5), 07-15-02]

16.19.20.26 PROCUREMENT RECORDS:

"Order Forms" refer to DEA form 222 required for distribution or procurement of a Schedule I or II controlled substance under the federal act. Order forms are issued in books of six (6) forms in triplicate to registrants by requisition from DEA Registration Branch, Department of Justice, P.O. Box 28083, Central Station, Washington, DC 20005.

[16.19.20.26 NMAC – Rp 16 NMAC 19.20.14, 07-15-02]

16.19.20.27 ORDER FORMS AS RECORDS:

Order forms for Schedule I and II controlled substances shall be deemed proper record of receipt, if the purchaser records on Copy 3 of the order form the number of commercial or bulk containers furnished of each item and the date on which such containers are received by the purchaser.

[16.19.20.27 NMAC – Rp 16 NMAC 19.20.14(1), 07-15-02]

16.19.20.28 INVENTORY

RECORDS: All Schedule I and II narcotic substance inventory records and procurement records will be kept separate from other records of the registrant.

[16.19.20.28 NMAC – Rp 16 NMAC 19.20.14(2), 07-15-02]

16.19.20.29 PROCUREMENT RECORDS:

Procurement records, other than the inventory, may be kept at a central location, rather than at the registered location, if prior approval has been obtained under the federal regulations; provided such records are delivered, upon request of the Board, to the registered location within 48 hours of such request.

[16.19.20.29 NMAC – Rp 16 NMAC 19.20.14(3), 07-15-02]

16.19.20.30 DISPOSITION RECORDS:

Practitioner's disposition records shall include date of dispensing, name of patient, name and strength of substance and amount dispensed.

[16.19.20.30 NMAC – Rp 16 NMAC 19.20.15, 07-15-02]

16.19.20.31 PHARMACY AND HOSPITAL PRESCRIPTION AND DISPENSING RECORDS:

A. Prescriptions for Schedule II shall be maintained in a separate file. The name of the pharmacist filling the prescription and the date filled shall be inscribed on the face of the prescription. (A rubber stamp or typewritten or printed name are accepted.)

B. Prescriptions for Schedules III, IV and V shall have the name of the dispensing pharmacist and the date filled inscribed on the face of the prescription. (Typewritten, printed or rubber stamp are acceptable.)

C. Prescriptions for Schedule III, IV and V shall be maintained either in a separate file only, or in such form that they are readily retrievable from other records of the pharmacy. "Readily retrievable" means that at the time of filing, the face of the prescription is stamped in red ink in the lower right hand corner with the letter "C" no less than 1" high.

D. Prescriptions so marked may then be filed with prescriptions for Schedule II substances, or in the usual consecutively numbered prescription file for non-controlled drugs.

E. Pharmacies employing automatic data processing systems or other electronic record keeping systems for prescriptions which permits identification by prescription number and retrieval of original documents by prescriber's name, patient's name, drug dispensed, and date filled, need not mark the hard copy of the

prescription with a red "C".

F. Hospital floor stock records. A record of controlled substances administered from floor stock shall contain the following information:

- (1) name of patient;
- (2) date and time administered;
- (3) name of drug;
- (4) strength of drug;
- (5) amount administered;
- (6) name of prescribing physician;

(7) name of person administering the controlled substance.

[16.19.20.31 NMAC – Rp 16 NMAC 19.20.15(1), 07-15-02]

16.19.20.32 RESEARCH DISPOSITION RECORDS:

A. A registered person using any controlled substance under FDA regulations in research at a registered establishment which maintains records in accordance with FDA approved research requirements is not required to keep records if he notifies the DEA and the Board of Pharmacy of the name, address and all registration numbers of establishments maintaining such records.

B. A registered person using any controlled substance in preclinical research or in teaching at a registered establishment which maintains records of such substances is not required to keep records if he notifies the DEA and the Board of Pharmacy of the name, address and all registration numbers of the establishments maintaining the records.

[16.19.20.32 NMAC – Rp 16 NMAC 19.20.15(2), 07-15-02]

16.19.20.33 MANUFACTURERS AND REPACKAGERS:

A. Disposition records shall be maintained on all controlled substances. Schedule I and II records shall be maintained separately from all other records.

B. Disposition records for Schedules III, IV and V shall be maintained either separately from all other records or in such form that the information required is readily retrievable from the ordinary business records of the registrant.

[16.19.20.33 NMAC – Rp 16 NMAC 19.20.15(3), 07-15-02]

16.19.20.34 WHOLESALE DISTRIBUTORS:

Wholesale distributors disposition records shall contain the same information required of manufacturers.

[16.19.20.34 NMAC – Rp 16 NMAC 19.20.15(4), 07-15-02]

16.19.20.35 ANALYTICAL LAB-

ORATORIES RECORDS: Analytical laboratories records shall include:

- A. name of substance;
 - B. the form or forms in which substance is received, imported or manufactured and the concentration of the substance;
 - C. quantity and strength received;
 - D. date of receipt;
 - E. name and DEA registry number of supplier;
 - F. adequate record of distribution.
- [16.19.20.35 NMAC – Rp 16 NMAC 19.20.15(5), 07-15-02]

16.19.20.36 REPORT OF LOSS OR THEFT OF A CONTROLLED SUBSTANCE:

A. The registered supplier shall be responsible for reporting in-transit losses of controlled substances by a common carrier or contract carrier selected by the supplier upon discovery of such loss or theft. Registrant shall complete DEA Form 106 as required and furnish a copy to the Board of Pharmacy.

B. A significant loss or theft of a controlled substance shall be reported in writing to the Board of Pharmacy and DEA on Form 106 as required by federal regulations. "Significant loss" includes suspected diversions, in-transit losses or any other unexplained loss and must be reported to the Board of Pharmacy within five (5) days of becoming aware of that loss. DEA Form 106 may be obtained from the Board of Pharmacy or DEA.

[16.19.20.36 NMAC – Rp 16 NMAC 19.20.16, 07-15-02]

16.19.20.37 HOSPITALS, INSTITUTIONS AND CLINICS: Disposal of excess or undesirable controlled substances resulting from extemporaneous amounts of residue or wasted controlled substances. A registrant who needs to dispose of excess or undesirable controlled substances resulting from injections from ampules or less than the full ampule or other such circumstances shall keep a written memorandum report on the hospital narcotic records and periodically file a report on DEA Form 41 with DEA pursuant to the requirements of the Federal DEA Regulations 1307.21(c).

[16.19.20.37 NMAC – Rp 16 NMAC 19.20.16(1), 07-15-02]

16.19.20.38 DISPOSITION OF DAMAGED, OUTDATED OR UNWANTED CONTROLLED SUBSTANCES: Any registrant in possession of any controlled substances and desiring or

required to dispose of such substances(s) may contact the Regional Director of DEA for authority and instructions to dispose of such substance.

[16.19.20.38 NMAC –Rp 16 NMAC 19.20.17, 07-15-02]

16.19.20.39 EXEMPTION FOR PHARMACY REGISTRATION AS A DISTRIBUTOR, DISTRIBUTION BY A DISPENSER TO ANOTHER PRACTITIONER REGISTERED TO DISPENSE CONTROLLED SUBSTANCES: A registrant who is registered to dispense controlled substances may distribute a quantity of such substances to a registered practitioner for general dispensing to his patients if:

A. the distribution is recorded by the pharmacist indicating the number of units or volume of such finished forms and/or commercial containers dispensed, the date and manner of disposition;

B. the same information is recorded as a procurement by the registrant receiving the substance;

C. if the substance is listed in Schedule I or II, an order form is used as required by the federal regulations;

D. the total number of dosage units of all controlled substances distributed by the pharmacy by this method during the 12 month period in which the practitioner is registered to dispense does not exceed five percent of the total number of dosage units of all controlled substances distributed and dispensed by the pharmacy during the 12 month period.

[16.19.20.39 NMAC – Rp 16 NMAC 19.20.18, 07-15-02]

16.19.20.40 DISTRIBUTION UPON TRANSFER OR DISCONTINUANCE OF BUSINESS:

A. Upon transfer of a business from one owner to another, the registrant may dispose of the controlled substances in his possession as follows:

(1) On the date of transfer of controlled substances, a complete inventory of all controlled substances being transferred shall be taken in accordance with 16.19.20.19 NMAC, Board of Pharmacy Regulations to Title 21, Section 1304.11-1304.14 of the Federal DEA Regulations. This inventory of the registrant-transferee, and a copy of the inventory shall be included in the records of each person. It shall not be necessary to file a copy of the inventory with DEA or the Board of Pharmacy unless requested by either agency. Transfer of Schedule I or II substances require the use of Order Forms (Form DEA 222c).

(2) All records required to be kept by the registrant-transferor with reference to

the controlled substances being transferred, shall be transferred to the registrant-transferee. Responsibility for the accuracy of records prior to the date of transfer remains with the transferor, but responsibility for custody and maintenance shall be upon the transferee.

(3) All Schedule II substances must be transferred pursuant to order forms as required by the federal regulations. A copy of the inventory will constitute a record of receipt for the purchaser.

B. Upon discontinuance of business, if there are controlled substances which are not transferred to another registrant, these substances shall be handled as unwanted controlled substances under 16.19.20.37 NMAC.

[16.19.20.40 NMAC – Rp 16 NMAC 19.20.19, 07-15-02]

16.19.20.41 PRESCRIPTIONS:

A. A prescription for a controlled substance may be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice, and who is registered under the Controlled Substances Act. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

B. A prescription may not be issued in order for a practitioner to obtain controlled substances for supplying the practitioner for the purpose of general dispensing to patients.

C. A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule to a narcotic dependent person for the sole purpose of continuing his dependence upon such drugs.

D. A prescription may not be issued for the dispensing of the narcotic drugs listed in any schedule to a narcotic drug-dependent person in the course of conducting an authorized clinical investigation in the development of a narcotic addict rehabilitation program.

[16.19.20.41 NMAC – Rp 16 NMAC 19.20.20, 07-15-02]

16.19.20.42 PRESCRIPTION REQUIREMENTS:

A. Prescriptions for controlled substances shall be dated and signed as of the date of issue, and shall contain the full name and address of the patient, the name, address and federal registration number of the prescribing practitioner. Prescriptions for controlled substances listed in Schedule II shall be written in ink, indelible pencil, or typewritten and manually signed by the practitioner.

B. A prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in 16.19.20.41.C NMAC, 16.19.20.41.D NMAC, and 16.19.20.42.E NMAC. The original prescription shall be maintained in accordance with 16.19.20.31 NMAC.

C. A prescription prepared in accordance with 16.19.20.41.A NMAC written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, or subcutaneous infusion may be transmitted by the practitioner or the practitioner's agent to the Parenteral Products Pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this paragraph and it shall be maintained in accordance with 16.19.20.31 NMAC.

D. A prescription prepared in accordance with 16.19.20.41.A NMAC written for a Schedule II substance for a resident of a Long Term Care Facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this sub-section and it shall be maintained in accordance with 16.19.20.31 NMAC.

E. A prescription prepared in accordance with 16.19.20.41.A NMAC written for a Schedule II narcotic substance for a patient enrolled in a hospice program certified by Medicare under Title XVIII or licensed by the state may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or the practitioner's agent will note on the prescription that the patient is a hospice patient. The facsimile serves as the original written prescription for purposes of this sub-section and it shall be maintained in accordance with 16.19.20.31 NMAC.

F. A pharmacist may dispense directly a controlled substance listed in Schedule III or IV, which is a prescription drug as determined under the New Mexico Drugs and Cosmetics Act, only pursuant to either a written prescription signed by a practitioner or a facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy or pursuant to an oral prescription made by an individual practitioner and promptly reduced to written form by the pharmacist containing all information required for a prescription except the signature of the practitioner.

[16.19.20.42 NMAC – Rp 16 NMAC 19.20(1), 07-15-02]

16.19.20.43 PRESCRIPTIONS NOT TO BE REFILLED: Prescriptions for Schedule II drugs may not be refilled.

[16.19.20.43 NMAC – Rp 16 NMAC 19.20.20(2), 07-15-02]

16.19.20.44 REFILL PROCEDURE: Each refilling of a Schedule III, IV or V controlled substance prescription shall be entered on the back of the prescription, indicating the amount dispensed, if less than the amount called for on the prescription, the date of refill and the initials of the pharmacist dispensing the substance.

[16.19.20.44 NMAC – Rp 16 NMAC 19.20.20(3), 07-15-02]

16.19.20.45 PRESCRIPTION REFILL REQUIREMENTS:

A. Prescriptions for Schedule III or IV substances shall not be filled or refilled more than six (6) months after the date of issue or be refilled more than five (5) times unless renewed by the practitioner and a new prescription is placed in the pharmacy files.

B. Schedule V prescriptions may be refilled only as expressly authorized by the prescribing physician on the prescription. If no such authorization is given, the prescription may not be refilled. [16.19.20.45 NMAC – Rp 16 NMAC 19.20.20(4), 07-15-02]

16.19.20.46 PRESCRIPTION - PARTIALLY REFILLED:

A. A Schedule II prescription may be partially filled if the amount is recorded on the prescription. The remaining portion may be filled within 72 hours of the partial filling. Pharmacist must notify the prescribing physician if remaining portion cannot be filled within a 72 hour period.

B. Partial filling of a prescription for Schedule III or IV shall be recorded in the same manner as a refill, providing the total quantity of partial filling does not exceed the total quantity prescribed and no dispensing occurs after six (6) months from date of prescription.

C. A prescription for a Schedule II controlled substance written for a patient in a Long Term Care Facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities, to include individual dosage units.

(1) If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially fill-

ing the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist shall record on the prescription whether the patient is "terminally ill" or an "LTCF patient".

(2) A prescription that is partially filled and does not contain the notation "terminally ill" or LTCF patient" shall be deemed to have been filled in violation of this regulation. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist.

(3) The total quantity of Schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed. Schedule II prescriptions, for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness, shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of medication.

[16.19.20.46 NMAC – Rp 16 NMAC 19.20.20(5), 07-15-02]

16.19.20.47 EMERGENCY DISPENSING:

A. Emergency dispensing of Schedule II controlled substances. "Emergency situation" means the prescribing physician determines:

(1) that immediate administration of a controlled substance is necessary for proper treatment of the intended patient;

(2) that no appropriate alternative treatment is available, including administration of a drug which is not a controlled substance under Schedule II; and

(3) that it is not reasonably possible for the prescribing practitioner to provide a written prescription to be presented to the person dispensing the substance prior to the dispensing.

B. A pharmacy may dispense a Schedule II controlled substance in the above instance only if he receives oral authorization of a practitioner or authorization via facsimile machine and provided:

(1) the quantity prescribed is limited to the amount needed to treat the patient during the emergency period;

(2) the pharmacist shall reduce the prescription to a written form and it contains all information required of a Schedule II controlled substance prescription except the signature of the prescribing practitioner;

(3) the prescribing physician, within 7 days after authorization of the

emergency dispensing, shall furnish a written, signed prescription to the pharmacist. The signed prescription shall have written on the face "AUTHORIZATION FOR EMERGENCY DISPENSING" and the date of the oral order or facsimile order;

(4) the signed prescription shall be attached to the oral emergency prescription order or the facsimile emergency prescription order and be filed as other Schedule II prescriptions.

C. In the event the prescribing physician fails to deliver a signed written prescription to the pharmacist, within the 7 days period, the pharmacist shall notify the nearest DEA office, and the Board of Pharmacy.

[16.19.20.47 NMAC – Rp 16 NMAC 19.20.20(6), 07-15-02]

16.19.20.48 SECURITY REQUIREMENTS:

A. All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances.

B. In evaluating the overall security system of a registrant or applicant, the following factors may be considered, where applicable to the need for strict compliance with security requirements:

- (1) the type of activity;
 - (2) the type and form of controlled substances handled;
 - (3) the quantity of controlled substances handled;
 - (4) the location of the premises and relationship such location bears on security needs;
 - (5) the type of building construction of the facility and the general characteristics of the building;
 - (6) the type of vault, safe, and secure enclosures or other storage system used;
 - (7) the type of closures on vaults, safes, and secure enclosures;
 - (8) the adequacy of key control systems and/or lock control system;
 - (9) the extent of unsupervised public access to the facility;
 - (10) the adequacy of supervision over employees having access to storage or distribution areas;
 - (11) the procedures for handling business guests, visitors, maintenance personnel and non-employee service personnel;
 - (12) the adequacy of the registrant's or applicant's system for monitoring the receipt, manufacture, distribution and disposition of controlled substances in its' operation.
- [16.19.20.48 NMAC – Rp 16 NMAC 19.20.21, 07-15-02]

16.19.20.49 MANUFACTURERS, REPACKAGERS AND WHOLESALE DISTRIBUTORS: Security requirements which meet the federal DEA provision, shall be deemed adequate under New Mexico Controlled Substances Act.

[16.19.20.49 NMAC – Rp 16 NMAC 19.20.21(1), 07-15-02]

16.19.20.50 PHARMACIES, HOSPITALS, EMPLOYING STAFF PHARMACISTS: Controlled substances listed in Schedule I shall be stored in a securely locked, substantially constructed cabinet. Controlled substances listed in Schedule II, III, IV and V shall be stored either in securely locked, substantially constructed cabinets or dispersed throughout the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the substances.

[16.19.20.50 NMAC – Rp 16 NMAC 19.20.21(2), 07-15-02]

16.19.20.51 HOSPITALS SERVED BY CONSULTANT OR PART-TIME PHARMACISTS, CLINICS AND PHYSICIANS: Controlled substances listed in Schedule I through V shall be stored in a securely locked, substantially constructed cabinet.

[16.19.20.51 NMAC – Rp 16 NMAC 19.20.21(3), 07-15-02]

16.19.20.52 RESEARCH REGISTRANTS AND CHEMICAL ANALYSIS LABORATORIES: Controlled substances listed in Schedules I and II shall be stored in a securely locked, substantially constructed cabinet. Schedules III, IV and V substances shall be stored either in a securely locked, substantially constructed cabinet or dispersed in with the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the substances.

[16.19.20.52 NMAC – Rp 16 NMAC 19.20.21(4), 07-15-02]

16.19.20.53 DISPENSING WITHOUT PRESCRIPTION:

A. A controlled substance listed in Schedule V and a substance listed in Schedules II, III, or IV *which is not a prescription drug* as determined by FDA and the Drug and Cosmetic Act, may be dispensed by a pharmacist without a prescription provided:

- (1) such dispensing is made by a pharmacist or registered pharmacist intern and not by a non-pharmacist employee;
- (2) not more than eight (8) ounces of any controlled substance containing opium, nor more than 48 dosage units is dispensed at retail to the same person in any

given 48 hour period;

(3) not more than four (4) ounces of any other controlled substance or more than 24 dosage units may be dispensed at retail to the same person in any given 48 hour period;

(4) the purchaser is at least 18 years of age;

(5) the pharmacist requires every purchaser of such substance, not known to him to furnish suitable identification (including proof of age where appropriate).

B. A bound record book for dispensing such substances is maintained requiring the signature and address of the purchaser, the name and quantity of the controlled substance purchased, the date of each purchase and the name or initials of the pharmacist who dispensed the substance; The book shall contain a statement on each page where purchaser is required to sign, stating no purpose of such substance has been made within the given 48 hour period at another pharmacy and the purchaser shall be made aware of such statement before signing the record.

[16.19.20.53 NMAC – Rp 16 NMAC 19.20.22, 07-15-02]

16.19.20.54 EXEMPTED OVER-THE-COUNTER DRUGS: (Information published by D.E.A.)

[16.19.20.54 NMAC – Rp 16 NMAC 19.20.23, 07-15-02]

16.19.20.55 EXEMPT CHEMICAL PREPARATIONS: The Board hereby exempts such chemical preparations and mixtures which are intended for laboratory, industrial, educational, or special research purposes, which are not intended for general administration to a human being or other animal and which:

A. contains no narcotic controlled substances and is packaged in such a form or concentration that the package quantity does not present any significant potential for abuse, or;

B. contains either a narcotic or nonnarcotic controlled substance and one or more adulterating or denaturing agent in such a manner, combination, quantity, proportion or concentration, that the preparation or mixture does not present any potential for abuse, and the narcotic substance cannot in practice be removed, and;

C. are exempt from Federal regulations (CFR 21 Part 1308.24).

[16.19.20.55 NMAC – Rp 16 NMAC 19.20.24, 07-15-02]

16.19.20.56 HEARINGS, DENIAL OF REGISTRATION, REVOCATION OR SUSPENSION OF REGISTRATION: Proceedings to suspend or

revoke a registration or to refuse renewal of a registration shall be held pursuant to the Uniform Licensing Act.

[16.19.20.56 NMAC – Rp 16 NMAC 19.20.25, 07-15-02]

16.19.20.57 ADMINISTRATIVE INSPECTION – DEFINED:

Administrative inspection means - the inspection of any place where registrants are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substances. When authorized by an administrative inspection warrant, the inspector may:

A. inspect and copy records required by the Controlled Substances Act;

B. inspect the restricted area and all pertinent equipment, all container substances, containers and labeling found at the controlled area;

C. make a physical inventory of specific items or all controlled substances on-hand at the premises;

D. collect samples, if applicable;

E. check records and information of distribution of controlled substances by the registrant as they relate to total distribution;

F. examination of records, invoices, appropriate for verification of the records or otherwise bearing on the provisions of the Controlled Substances Act.

[16.20.20.57 NMAC – Rp 16 NMAC 19.20.26, 07-15-02]

16.19.20.58 VOLUNTARY CONSENT TO INSPECTION:

The Board inspector will ask the registrant to voluntarily consent to the inspection. He will inform the registrant of his constitutional rights to an inspection warrant, however, if the registrant consents to inspection without warrant, the inspector will obtain a signed consent waiver statement from the registrant before proceeding with an accountability audit or inspection.

[16.19.20.58 NMAC – Rp 16 NMAC 19.20.26(1), 07-15-02]

16.19.20.59 WRITTEN CONSENT:

A. The written consent shall contain the following information:

(1) that the owner, or agent in charge of the premises has been informed of his constitutional right not to have an administrative inspection made without an administrative inspection warrant;

(2) of his right to refuse to consent to such an inspection;

(3) of the possibility that anything of an incriminating nature which may be found may be seized and used against him

in a Board hearing or a criminal prosecution;

(4) that he had been presented with a notice of inspection;

(5) that the consent given by him is voluntary and without threats of any kind; and

(6) that he may withdraw his consent at any time during the course of inspection.

B. Written consent shall be produced in duplicate and one copy shall be retained by the person being inspected and one copy shall be retained by the inspector for filing in the Board office.

[16.19.20.59 NMAC – Rp 16 NMAC 19.20.26(2), 07-15-02]

16.19.20.60 ADMINISTRATIVE WARRANT:

A. A copy of the Administrative Warrant need not be given to the registrant unless items are seized or confiscated.

B. To serve the warrant all that is required is to announce possession of it, the contents of the warrant need not be stated to the person upon whom the warrant is served.

[16.19.20.60 NMAC – Rp 16 NMAC 19.20.26(3), 07-15-02]

16.19.20.61 CONSENT TO CHARGES:

Unless the person in charge of the premises so consents in writing, these regulations shall not extend to financial data, sales data other than shipping date, or pricing data.

[16.19.20.61 NMAC – Rp 16 NMAC 19.20.26(4), 07-15-02]

16.19.20.62 ADMINISTRATIVE WARRANT - NOT REQUIRED:

An administrative warrant shall not be required for a new pharmacy or drug distribution facility applying for initial registration under the Controlled Substances Act or the Pharmacy Act, or in any other situation where a warrant is not constitutionally required.

[16.19.20.62 NMAC – Rp 16 NMAC 19.20.26(5), 07-15-02]

16.19.20.63 ADMINISTRATIVE WARRANT – REFUSAL:

If a registrant or any person subject to the Controlled Substances Act refuses to permit execution of an administrative warrant or impedes the inspection in the execution of that warrant, he shall be advised that such refusal or action constitutes a violation of Section 30-31-32, Controlled Substances Act.

[16.19.20.63 NMAC – Rp 16 NMAC 19.20.26(6), 07-15-02]

16.19.20.64 CONTROLLED SUBSTANCE PRECURSORS:

See

16.19.21 NMAC – Drug Precursors

[16.19.20.64 NMAC – Rp 16 NMAC 19.20.27, 07-15-02]

16.19.20.65 SCHEDULE I:

A. NMSA 1978 Section 30-31-6 Schedule I shall consist of the following drugs and other substances, by whatever name, common or usual name, chemical name or brand name designated, listed in this section; **OPIATES**, unless specifically exempt or unless listed in another schedule, any of the following opiates, including its' isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol
- (2) Allyl prodine
- (3) Alphacetylmethadol
- (4) Alphameprodine
- (5) Alphamethadol
- (6) Alpha-methyl fentanyl
- (7) Benzethidine
- (8) Betacetylmethadol
- (9) Betameprodine
- (10) Betamethadol
- (11) Betaprodine
- (12) Clonitazene
- (13) Dextromoramide
- (14) Diampromide
- (15) Dimethylthiambutene
- (16) Difenoxin
- (17) Dimenoxadol
- (18) Dimepheptanol
- (19) Dimethylthiambutene
- (20) Dioxaphetyl Butyrate
- (21) Dipipanone
- (22) Ethylmethylthiambutene
- (23) Etonitazene
- (24) Etoxeridine
- (25) Furethidine
- (26) Hydroxypethidine
- (27) Ketobemidone
- (28) Levomoramide
- (29) Levophenacymorphan
- (30) Morpheridine
- (31) Noracymethadol
- (32) Norlevorphanol
- (33) Normethadone
- (34) Norpipanone
- (35) Phenadoxone
- (36) Phenampromide
- (37) Phenomorphan
- (38) Phenoperidine
- (39) Piritramide
- (40) Proheptazine
- (41) Properidine
- (42) Propiram
- (43) Racemoramide
- (44) Tilidine
- (45) Trimeperidine

B. OPIUM DERIVATIVES: Unless specifically exempt or unless listed in another schedule, any of the following opium derivatives, its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine
- (2) Acetyl dihydrocodeine
- (3) Benzyl morphine
- (4) Codeine methylbromide
- (5) Codeine-N-Oxide
- (6) Cyprenorphine
- (7) Desomorphine
- (8) Dehydro morphine
- (9) Etorphine
- (10) Heroin
- (11) Hydromorphenol
- (12) Methyl desorphine
- (13) Methyl dihydromorphine
- (14) Morphine methylbromide
- (15) Morphine methylsulfonate
- (16) Morphine-N-Oxide
- (17) Myrophine
- (18) Nicocodeine
- (19) Nicomorphine
- (20) Normorphine
- (21) Pholcodine
- (22) Thebacon
- (23) Drotebanol
- (24) Beta-Hydroxy-3-Methylfentanyl
- (25) 3-Methylthiofentanyl
- (26) Acetyl-Alpha-Methyl fentanyl
- (27) Alpha-Methylthiofentanyl
- (28) Beta-hydroxyfentanyl
- (29) Para-Fluoro fentanyl
- (30) Thiofentanyl

C. HALLUCINOGENIC SUBSTANCES. Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation (for purpose of this sub-section only, the term "isomers" includes the optical position, and geometric isomers):

- (1) 3,4 -methylenedioxy amphetamine
- (2) 5 - methoxy - 3,4-methylenedioxy amphetamine
- (3) 3,4,5 -trimethoxy amphetamine
- (4) Bufotenine
- (5) Diethyltryptamine; DET
- (6) Dimethyltryptamine; DMT
- (7) 4-methyl-2,5-dimethoxy-amphetamine; DOM or STP
- (8) Lysergic acid diethylamide

- (9) Lysergic acid diethylamide
- (10) Marijuana
- (11) Mescaline
- (12) Peyote
- (13) N-ethyl-3-piperidyl benzilate
- (14) N-methyl-3-piperidyl benzilate
- (15) Psilocybin
- (16) Psilocyn
- (17) Tetrahydrocannabinols
- (18) Parahexyl (synthetic analog of delta-9-tetrahydrocannabinol (THC) an active ingredient of cannabis)
- (19) Hashish
- (20) 2,5 -dimethoxyamphetamine; 2, 5-DMA
- (21) 4-bromo-2, 5-dimethoxy-amphetamine; 2,5-DMA
- (22) 4-methoxyamphetamine; PMA
- (23) Ethylamine N-ethyl-1-phenylcyclohexylamine (PCE)
- (24) Pyrrolidine 1-(1-phenylcyclohexyl)-pyrrolidine (PCPy), (PHP) analog of the drug phencyclidine
- (25) Thiophene (analog of phencyclidine) TCP or TCP

D. DEPRESSANTS. Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its' salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Mecloqualone
- (2) Methaqualone
- (3) Benzodiazepines
- (a) bromazepam
- (b) camazepam
- (c) clobazam
- (d) cloxazolam
- (e) delorazepam
- (f) ethyl loflazepate
- (g) fludiazepam
- (h) flunitrazepam
- (i) haloxazolam
- (j) ketazolam
- (k) loprazolam
- (l) lormetazepam
- (m) medazepam
- (n) nimetazepam
- (o) nitrazepam
- (p) nordiazepam
- (q) oxazolam
- (r) pinazepam
- (s) tetrazepam
- (4) Gamma hydroxybutyric acid and any chemical compound that is metabolically converted to GHB.
- (5) Gamma butyrolactone and any chemical compound that is metabolical-

ly converted to GHB.

(6) 1-4 butane diol and any chemical compound that is metabolically converted to GHB.

E. STIMULANTS. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its' salts, isomers, and salts of isomers.

- (1) Fenethylline
 - (2) N-ethylamphetamine
- F.** Any material, compound, mixture of preparation which contains any quantity of the following substances:

- (1) 3-Methylfentanyl(N-3-methyl-1-(2-phenyl-ethyl)-4-Piperidyl)-N-phenylpropanamide, its' optical and geometric isomers, salts and salts of isomers.
- (2) 3,4-methylenedioxy-methamphetamine (MDMA), its' optical, positional and geometric isomers, salts and salts of isomers.
- (3) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its' optical isomers, salts, and salts of isomers.

(4) 1-(-2-phenylethyl)-4-phenyl-4-acetoxy piperidine (PEPAP), its' optical isomers, salts and salts of isomers. [16.19.20.65 NMAC – Rp 16 NMAC 19.20.28, 07-15-02]

16.19.20.66 SCHEDULE II

A. Shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section. Substance, vegetable origin or chemical synthesis. Unless specifically exempt or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(1) Opium and opiate, and any salts, compound, derivative, or preparation of opium or opiate excluding naloxone, dextrophan, nalbuphine, naltrexone and apomorphine but including the following:

- (a) raw opium
- (b) opium extracts
- (c) opium fluid extracts
- (d) powdered opium
- (e) granulated opium
- (f) tincture of opium
- (g) codeine
- (h) ethylmorphine
- (i) etorphine hydrochloride
- (j) hydrocodone
- (k) hydromorphone

- (l) metopon
- (m) morphine
- (n) oxycodone
- (o) oxymorphone
- (p) thebaine
- (q) alfentanil

(2) Any salt, compound derivative, or preparation thereof, which is chemically equivalent or identical with any of the substances referred to in 16.19.20.66.A.(1) NMAC, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include de-cocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

B. OPIATES. Unless specifically excepted or unless in another schedule any of the following opiates, including its' isomers, esters, ethers, salts and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation except dextrose and levopropoxyphene:

- (1) Alphaprodine
- (2) Anileridine
- (3) Bezitramide
- (4) Diphenoxylate
- (5) Dihydrocodeine
- (6) Dextropropoxyphene (bulk)

non-dosage form

- (7) Fentanyl
- (8) Isomethadone
- (9) Levomethorphan
- (10) Levorphanol
- (11) Metazocine
- (12) Methadone
- (13) Methadone-Intermediate
- (14) Monamide-Intermediate
- (15) Pethidine
- (16) Pethidine-Intermediate A
- (17) Pethidine-Intermediate B
- (18) Pethidine-Intermediate C
- (19) Phenazocine
- (20) Piminodine
- (21) Racemethorphan
- (22) Racemorphan
- (23) Sufentanil
- (24) Carfentanil
- (25) Levo-alphaacetylmethadol

(LAAM)

C. STIMULANTS.

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following sub-

stances having a stimulant effect on the central nervous system.

(1) Amphetamine, its' salts, optical isomers and salts of its' optical isomers.

(2) Methamphetamine, its' salts, isomers and salts of isomers.

(3) Phenmetrazine and its' salts.

(4) Methylphenidate.

(5) Immediate Precursors.

See 16.19.21 NMAC- Drug Precursors

D. DEPRESSANTS.

Unless specifically exempt or unless listed in another schedule any material, compound mixture or preparation which contains any quantity of the substance having a depressant effect on the central nervous system, including its' salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Amobarbital
- (2) Secobarbital
- (3) Pentobarbital
- (4) Phencyclidine

(5) Dronabinol (synthetic) - in sesame oil and encapsulated in soft gelatin capsules in a drug product approved by the U.S. Food and Drug Administration

(6) Glutethimide

E. HALLUCINOGENIC SUBSTANCES.

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its' salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purpose of this paragraph only, the term "isomers" includes the optical position, and geometric isomers): Nabilone [16.19.20.66 NMAC - Rp 16 NMAC 19.20.28(1), 07-15-02]

16.19.20.67 SCHEDULE III: Shall Consist of Drugs and Other Substances, By Whatever Official Name, Common or Usual Name Designated Listed in This Section.

A. STIMULANTS.

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant, amphetamine, phenmetrazine or methamphetamine previously exempt, for which the exemption was revoked by FDA Regulation Title 21, Part 308.13, and any other drug of the quantitative composition shown in that regulation for those drugs or which is the same except

that it contains a lesser quantity of controlled substances.

- (2) Benzphetamine
- (3) Phendimetrazine
- (4) Chlorphentermine
- (5) Clortermine

B. DEPRESSANTS.

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:

- (a) Amobarbital,
- (b) Secobarbital,
- (c) Pentobarbital,

(d) Butalbital; or any salt thereof and one or more active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

- (a) Amobarbital,
- (b) Secobarbital,

(c) Pentobarbital; or any salt of any of these drugs approved by the FDA for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid.

- (4) Chlorhexadol
- (5) Lysergic Acid
- (6) Lysergic Acid Amide
- (7) Methypyrrol
- (8) Sulfondiethylmethane
- (9) Sulfonethylmethane
- (10) Sulfonmethane
- (11) Tiletamine/zolazepam

(Telazol)

(12) Ketamine Hydrochloride

C. Nalorphine (a narcotic drug)

D. NARCOTIC DRUGS.

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage units, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

E. ANABOLIC STEROIDS. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth. Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances listed in this section:

- (1) boldenone
- (2) chloro testosterone
- (3) clostebol
- (4) dehydrochlormethyltestosterone
- (5) dihydrotestosterone
- (6) drostanolone
- (7) ethylestrenol
- (8) fluoxymesterone
- (9) formebolone
- (10) mesterolone
- (11) methandienone
- (12) methandranone
- (13) methandriol
- (14) methandrostenolone
- (15) methenolone
- (16) methyltestosterone
- (17) mibolerone
- (18) nandrolone
- (19) norethandrolone
- (20) oxandrolone
- (21) oxymesterone
- (22) oxymetholone
- (23) stanolone
- (24) stanozolol
- (25) testolactone
- (26) testosterone

(27) trenbolone; and

(28) any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

F. The following anabolic steroid containing compounds, mixtures, or preparations have been exempted by the Board from 16.19.20.67.E NMAC, Schedule III:

Continued: Please see page 608

TABLE OF EXEMPT ANABOLIC STEROID PRODUCTS

| Trade Name | Company | NDC No. | Form | Ingredients | Quantity |
|----------------------------------|---|-----------|------|--|---------------------|
| Androgyn L. A. | Forest Pharmaceuticals, St. Louis MO | 0456-1005 | Vial | Testosterone enanthate Estradiol valerate | 90 mg/ml 4mg/ml |
| Andro-Estro 90-4 | Rugby Laboratories, Rockville Centre, NY | 0536-1605 | Vial | Testosterone enanthate Estradiol valerate | 90 mg/ml 4mg/ml |
| depANDROGY N | Forest Pharmaceuticals, St. Louis, MO | 0456-1020 | Vial | Testosterone cypionate Estradiol cypionate | 50 mg/ml 2mg/ml |
| DEPO-T.E | Quality Research Pharm., Carmel, IN | 52728-257 | Vial | Testosterone cypionate Estradiol cypionate | 50mg/ml 2mg/ml |
| DepTESTROGE N | Martica Pharmaceuticals, Phoenix, AZ | 51698-257 | Vial | Testosterone cypionate Estradiol cypionate | 50mg/ml 2mg/ml |
| Dumone | Wintec Pharmaceutical Pacific, MO | 52047-360 | Vial | Testosterone enanthate Estradiol valerate | 90mg/ml 4mg/ml |
| DURATESTRI N | W.E. Hauck Alpharetta, GA | 43797-016 | Vial | Testosterone cypionate Estradiol cypionate | 50mg/ml 2mg/ml |
| DUP-SPAN II | Primedics Laboratories Gardena, CA | 0684-0102 | Vial | Testosterone cypionate Esterified cypionate | 50mg/ml 2mg/ml |
| Estratest | Solvay Pharmaceuticals Marietta, GA | 0032-1026 | TB | Esterified estrogens Methyltestosterone | 125mg 2.5mg |
| Estratest HS | Solvay Pharmaceuticals Marietta, GA | 0032-1023 | TB | Esterified estrogen Methyltestosterone | 0.625 mg 1.25 mg |
| PAN ESTRATEST | Pan American Labs Covington, LA | 0525-0175 | Vial | Testosterone cypionate Estradiol cypionate | 50mg/ml 2mg/ml |
| Premarin with Methyltestosterone | Ayerst Labs, Inc. New York, NY | 0046-0879 | TB | Conjugated estrogens Methyltestosterone | 1.25mg 10.0mg |
| Premarin with Methyltestosterone | Ayerst Labs, Inc. New York, NY | 0046-878 | TB | Conjugated estrogens Methyltestosterone | 0.625 mg 5.0 mg |

| | | | | | |
|---|---|-----------|------|---|---------------------|
| Synovex H Pellets In process | Syntex Animal Health Palo Alto, CA | | Drum | Testosterone Propionate Estradiol benzoate | 25mg 2.5 mg |
| Synovex H Pellets in process granulation | Syntex Animal Health Palo Alto, CA | | Drum | Testosterone Propionate Estradiol bensoate | 10 parts 1 part |
| TEST-ESTRO Cypionate | Rugby Laboratories Rockville Center NY | 0536-9470 | Vial | Testosterone cypionate Estradiol cypionate | 50mg/ml 2mg/ml |
| Testagen | Clint Pharmaceuticals Nashville, TN | 55553-257 | Vial | Testosterone cypionate Estradiol cypionate | 50mg/ml 2mg/ml |
| Testosterone Cyp 50 Estradiol Cyp 2 | I.D.E. Interstate Amityville, NY | 0814-7737 | Vial | Testosterone cypionate Estradiol cypionate | 50mg/ml 2mg/ml |
| Testosterone Cypionate- Estradiol Cypionate injection | Best Generics, No. Miami Beach, FL | 54274-530 | Vial | Testosterone cypionate Estradiol cypionate | 50mg/ml 2mg/ml |
| Testosterone Cypionate- Estradiol Cypionate injection | Goldline Labs Ft. Lauderdale, FL | 0182-3069 | Vial | Testosterone cypionate Estradiol cypionate | 50mg/ml 2mg/ml |
| Testosterone Cypionate- Estradiol Cypionate injection | Schein Pharmaceuticals Port Washington, NY | 0364-6611 | Vial | Testosterone cypionate Estradiol cypionate | 50mg/ml 2mg/ml |
| Testosterone Cypionate- Estradiol Cypionate injection | Steris Labs Inc. Phoenix, AZ | 0402-0257 | Vial | Testosterone cypionate Estradiol cypionate | 50mg/ml 2mg/ml |
| Testosterone Enanthate- Estradiol Valerate Injection | Goldline Labs Ft. Lauderdale, FL | 0182-3073 | Vial | Testosterone enantate Estradiol valerate | 90mg/ml 4mg/ml |
| Testosterone Enanthate- Estradiol Valerate Injection | Schein Pharmaceuticals Port Washinfon, NY | 0364-6618 | Vial | Testosterone enantate Estradiol valerate | 90 mg/ml 4 mg/ml |

| | | | | | |
|---|----------------------------------|-----------|------|---|---------------------|
| Testosterone Enanthate- Estradiol Valerate Injection | Steris Labs, Inc. Phoenix, AZ | 0402-0360 | Vial | Testosterone enantate Estradiol valerate | 90 mg/ml 4 mg/ml |
| Testosterone Cypionate- Estradiol Cypionate Injection | The Upjohn Co. Kalamazoo, MI | 0009-0253 | Vial | Testosterone Cypionate Estradiol cypionate | 50 mg/ml 2 mg/ml |

[16.19.20.67 NMAC - Rp 16 NMAC 19.20.28(2), 07-15-02]

16.19.20.68 SCHEDULE IV: Shall consist of the Drugs and Other Substances, by Whatever Official Name, Common or Usual Name, Chemical Name, or Brand Name Designated, Listed in this Section:

A. DEPRESSANTS.

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam
- (2) Barbitol
- (3) Chloral Betaine
- (4) Chloral Hydrate
- (5) Chlordiazepoxide
- (6) Clonazepam
- (7) Clorazepate
- (8) Clotiazepam
- (9) Diazepam
- (10) Estazolam
- (11) Ethchlorvynol
- (12) Ethinamate
- (13) Flurazepam
- (14) Halazepam
- (15) Lorazepam
- (16) Mebutamate
- (17) Meprobamate
- (18) Methohexital
- (19) Methylphenobarbital
- (20) Midazolam
- (21) Oxazepam
- (22) Paraldehyde
- (23) Petrichloral
- (24) Phenobarbital
- (25) Prazepam
- (26) Quazepam
- (27) Temazepam
- (28) Triazolam

B. FENFLURAMINE.

Any material, compound, mixture or preparation which contains any quantity of the following substance, including its' salts, isomers (whether optical position, or geometric) and its' salts, or such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

Fenfluramine

C. STIMULANTS.

Unless specifically exempt or unless listed in another schedule any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its' salts, isomers (whether optical position, or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Diethylpropion
- (2) Phentermine
- (3) Pemoline (including organometallic complexes and chelates thereon)

- (4) Pipradrol
- (5) SPA ((-)-1-dimethyl amino-1,2-diphenylmethane)

- (6) Mazindol
- (7) Cathine
- (8) Fencamfamin
- (9) Fenproporex
- (10) Mefenorex

D. OTHER SUBSTANCES. Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its' salts:

- (1) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane)

- (2) Pentazocine
- (3) Carisoprodol
- (4) Nalbuphine Hydrochloride
- (5) Butorphanol Tartrate
- (6) Dezocine
- (7) Dichloralphenazone

E. NARCOTIC DRUG.

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof: Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

F. EXEMPTION OF

CHLORAL. When packaged in a sealed, oxygen-free environment, under nitrogen pressure, safeguarded against exposure to the air. Chloral when existing under the above conditions, is a substance which is not intended for general administration to a human being or another animal, and contains no narcotic controlled substances and is packaged in such a form that the package quantity does not present any significant potential for abuse. All persons who engage in industrial activities with respect to such chloral are subject to registration; but shall be exempt from Section 30-31-16 through 19 of the New Mexico Controlled Substances Act and 16.19.20.19 NMAC through 16.19.20.52 NMAC of the Board of Pharmacy regulations.

G. EXEMPT COMPOUNDS. Librax and Menrium are preparations which contain chlordiazepoxide, a depressant listed in Schedule IV, 16.19.20.68.A.5 NMAC and other ingredients in such combinations, quantity, preparation or concentration as to vitiate the potential for abuse of chlordiazepoxide, and are hereby exempt preparations.

- (1) Librax
- (2) Menrium, 5-2
- (3) Menrium, 4-5
- (4) Menrium, 10-4

[16.19.20.68 NMAC - Rp 16 NMAC 19.20.28(3), 07-15-02]

16.19.20.69 SCHEDULE V: Shall consist of the Drugs and Other Substances By Whatever Official Name, Common or Usual Name, Chemical Name or Brand Name Designated, Listed in this Section. Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone.

A. Not more than 200 mil-

ligrams of codeine per 100 milliliters or per 100 grams.

B. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

C. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

D. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

E. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

F. Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

16.19.20.69 NMAC – Rp 16 NMAC 19.20.28(4), 07-15-02]

16.19.20.70 EXEMPT DANGEROUS DRUGS (PRESCRIPTION STATUS DRUGS): The drugs set forth in the Federal DEA Table of Excepted Prescription Drugs published in a separate volume under Code of Federal Regulations, Title 21, Chapter II, Part 1308.32 have been exempt by the New Mexico Board of Pharmacy. Any deviation from the quantitative composition of any of the listed drugs shall require a petition for exemption to the Federal DEA in order that a drug may be exempt by DEA and the New Mexico Board of Pharmacy.

[16.19.20.70 NMAC – Rp 16 NMAC 19.20.28(5), 07-15-02]

History of 16.19.20 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

BOP 69-2, Rules and Regulations of the State Board of Pharmacy, filed 06-13-69; BOP 69-3, New Mexico Laws and Regulations, Pharmacy Act, Drug and Cosmetic Act, Narcotic Drug Act, Poisons Act, Board of Pharmacy Rules and Regulations, filed 08-15-69;

BOP 72-1, New Mexico Board of Pharmacy Rules and Regulations Promulgated Pursuant to New Mexico Drug and Cosmetic Act, Pharmacy Act, Controlled Substances Act, filed 04-01-69;

Regulation No. 20, Controlled Substances, filed 02-07-80;

Regulation No. 20, Controlled Substances, filed 10-24-85;

Regulation No. 20, Controlled Substances, filed 02-02-87;

Regulation No. 20, Controlled Substances, filed 07-27-90.

History of Repealed Material: 85-1, Repealer, filed 10-29-85.

16 NMAC 19.20, Pharmacists - Controlled Substances, filed 05-01-98, **repealed** effective 07-15-2002.

Other History:

Regulation No. 20, Controlled Substances, filed 07-27-90; renumbered, reformatted to 16 NMAC 16.4, Pharmacists - Controlled Substances, filed 02-02-96;

16 NMAC 19.20, Pharmacists - Controlled Substances, filed 07-25-96;

16 NMAC 19.20, Pharmacists - Controlled Substances, filed 05-01-98;

16 NMAC 19.20, Pharmacists - Controlled Substances, filed 05-01-98, **replaced** by 16.19.20 NMAC, Controlled Substances, effective 07-15-2002.

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.4.9 NMAC:

16.19.4.9 DEFINING UNPROFESSIONAL OR DISHONORABLE CONDUCT:

A. Preamble: In defining "unprofessional conduct" the definitions of professional conduct and a pharmacist's duty should be considered.

B. Professional conduct may be defined as complying with all the laws and regulations that apply to a given professional activity.

C. Definition: Unprofessional or dishonorable conduct by a pharmacist shall mean, among other things, but not be limited to:

(1) Violation of any provision of the Pharmacy Act as determined by the Board.

(2) Violation of the Board of Pharmacy Regulations as determined by the Board.

(3) Violation of the Drug and Cosmetic Act as determined by the Board.

(4) Violation of the Controlled Substances Act as determined by the Board.

(5) Failure of the pharmacist to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public, other health professions and fellow pharmacists.

(6) Failure to keep his pharmacy and/or area of professional practice clean, orderly, maintained and secured for the proper performance of his professional duties.

(7) Acquiring prescription stock from unlicensed sources.

(8) Failure to hold on the strictest confidence all knowledge concerning patrons, their prescriptions, and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms, or where required for proper compliance with legal authorities.

(9) Participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare.

(10) The solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon.

(11) Failure to report a theft or loss of controlled substances in accordance with 16.19.20.36 NMAC.

(12) Failure to report an impaired licensee in compliance with Subparagraph a of Paragraph 1 of Subsection C of 16.19.4.12 NMAC.

(13) Failure to train or supervise adequately supportive personnel or the use of supportive personnel in activities outside the scope of their permitted activities.

(14) Conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substances Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States.

(15) Suspension, revocation, denial, or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States.

[03-01-93; 16.19.4.9 NMAC - Rn, 16 NMAC 19.4.9, 03-30-02; A, 07-15-02]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.5.8 NMAC:

16.19.5.8 SUMMARY OF OBJECTIVES:

A. Internship training, using academic training as a foundation, is to provide a learning experience in real life situations that will result in a complete professional, who is competent to practice pharmacy, and render professional services on his own, without supervision, at the time of licensure. The objectives shall be:

(1) A practically, accurately and safely trained intern.

(2) An ethically trained intern.

(3) A legally trained intern.
Standards of Practice and Internship

Program constitute the basic implementation of the approved internship program.

B. Instructional Materials, Affidavits, Evaluation Forms and Reports:

(1) Forms shall be made available by the Board.:

(a) Application for Registration of Intern;

(b) Employers Affidavit for Internship;

(c) Employers Affidavit for Externship/Clinical;

(d) Annual Preceptors Evaluation of Intern;

(e) Annual Intern Evaluation of Preceptor;

(f) Certification as Approved Preceptor by the Board Standards of Practice

(2) Reports and project assignments as may be required to accompany forms under the approved program.

(3) This regulation relating to the internship program shall be furnished to the intern. All other laws and regulations or manuals shall be available at a nominal fee or at reimbursement cost to the Board.

C. Requirements for Approved Training: Areas will include retail and hospital pharmacies, radiopharmacies, state and county institutions, federal installations, agencies and clinics, and Board approved researchers, drug manufacturers who participate in the approved NPI programs.

(1) General Requirements include:

(a) Current license or permit.

(b) No deficiencies relevant to the observance of all federal, state and municipal laws and regulations governing any phase of activity in which the facility is engaged.

(c) Required References: 1. One current professional reference book of choice.

(2) A preceptor will be in direct supervision of all repackaging, labeling and dispensing of drugs for distribution in field offices by state and county health offices.

D. Requirements for Preceptor: Each Preceptor shall:

(1) Be certified as a preceptor by the Board or be an approved preceptor for intern training in another state, by that state Board of Pharmacy.

(2) Have been actively engaged in the practice of pharmacy for one year.

(3) Be engaged in full-time practice of pharmacy.

(4) Not have been convicted of violation of any laws or regulations relating to pharmacy, **unless this provision is waived by the Board on an individual basis.**

(5) Submit all required forms, affidavits, and evaluations to the Board on or before the due date.

(6) Be aware and responsible for following regulations governing legal and ethical professional conduct as outlined in the Standards of Practice and train the intern in this area.

(7) Notify the Board of any change of address or employment in writing, within ten (10) days. Change of employment shall serve to suspend certification as preceptor in the former place of employment where the individual was training an intern.

(8) Not be permitted to leave the intern alone to assume the responsibility of a pharmacist.

E. Requirements for Intern:

(1) Application shall be made to the Board on the required application form provided by the Board prior to the beginning of internship. An applicant for registration as a pharmacist intern shall have satisfactorily completed not less than 30 semester hours or the equivalent thereof, in a college of pharmacy curriculum accredited by the ACPE and meet other requirements established by regulations of the Board.

(2) The intern shall wear the standard identification tag, approved and issued by the Board during any pharmacy area employment. A nominal fee is applicable. The intern will be responsible for imprinting his/her name on the identification tag.

(3) The intern shall make such reports and certifications as required under the approved program.

(4) The intern is responsible for the knowledge and observation of the extent of his legal liability and legal restrictions applicable under the federal, state and municipal laws and regulations.

(5) The intern shall be responsible for ascertaining proper certification for himself, completion of all assignments, submittal of all forms, and reports under the approved program. After all assignments have been completed the preceptor will certify the affidavit and verify the completion of all requirements. Internship will not be evaluated or certified by the Board until all forms are turned in to the Board office in the form of certified affidavits.

(6) Employment and the internship training period are not to be interpreted as being the same. An intern may work in excess of his computed time. A maximum of 48 hours per week, however, shall be considered computed time for the purpose of completing the internship requirement of 1500 hours.

(7) The intern shall submit, annually, at the time of registration renewal, all

completed required forms for the prior year or period of computed time.

(8) Any or all of the training period may be obtained after graduation.

(9) The intern shall notify the Board of any change of address, employment or preceptor, in writing, within ten (10) days of such change.

(10) The intern certificate of registration and renewal shall be displayed in the training area where the intern is employed.

(11) The registration shall be renewable under the following conditions:

(a) the intern has received a degree from an ACPE accredited college of pharmacy, but has not completed the required intern hours to take the state Board examination; or the intern has not completed the required number of hours and is enrolled as a pharmacy student;

(b) a candidate who has failed the NAPLEX Exam and/or the state Board Jurisprudence examination may renew intern registration to be valid until the next scheduled examination date; provided the renewal does not exceed the period allowed under 16.19.2 NMAC; or

(c) by prior approval or by direction of the Board.

(12) The intern registration must be renewed annually on/or before the last day of September. Annual renewal fee is \$10.00.

F. Revocation of Suspension of Certification or Certificate: A certification or certificate may be revoked or suspended upon violation of a statute or regulation; the failure to comply with the approved program or internship; or suspension of an intern from university or college attendance; and after due notice is filed pursuant to the Uniform Licensing Act.

G. Out-of-State Training:

(1) New Mexico registered interns wishing to earn intern hours out of state must comply with the regulation relating to internship and the approved program, or the equivalent thereof; certification of the preceptor shall be made to the Board by the Board of Pharmacy in the reciprocal state.

(2) Out of state registered interns or students wishing to earn internship hours in New Mexico must comply with the regulations relating to internship and the approved program of this state and shall register with the Board.

(3) Computed time, under equivalent approved programs, submitted to the Board by out-of-state applicants for licensure, will be evaluated.

[08-27-90; A, 03-02-99; 16.19.5.8 NMAC - Rn, 16 NMAC 19.5.8, 03-30-02; A, 07-15-02]

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