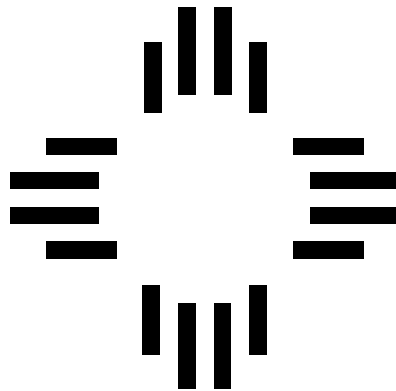


New Mexico Register

Volume XIII, Issue Number 16
August 30, 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 16

August 30, 2002

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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.

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Please note that the (*) entries obey the reformatting rules set forth in 1.24.10 NMAC, effective 2/29/00

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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

ALBUQUERQUE/ BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF POSTPONEMENT OF HEARING.

The public hearing of the Albuquerque/Bernalillo County Air Quality Control Board (Board) concerning the, Visible Fugitive Dust Control regulation, that was originally scheduled for August 14, then postponed until September 11, has now been reset for October 9, 2002, at 5:15 PM. The hearing will be held in the Council/Commission Chambers of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. The hearing to incorporate reformatted Board regulations into the New Mexico State Implementation Plan (SIP) for air quality, originally scheduled for September 11, has also been reset for October 9, 2002, at 5:15 PM.

The hearings will address:

- * Proposed repeal of 20 NMAC 11.20, Airborne Particulate Matter, and subsequent replacement with 20.11.20 NMAC, Visible Fugitive Dust Control

- * Proposal to incorporate the new 20.11.20 NMAC into the New Mexico State Implementation Plan (SIP) for air quality.

- * Proposal to incorporate the majority of Board Regulations recodified on May 8th, 2002 into the New Mexico State Implementation Plan (SIP) for air quality.

The purpose of the first hearing is to receive testimony on the proposal to repeal 20 NMAC 11.20, Airborne Particulate Matter and replace with 20.11.20 NMAC, Visible Fugitive Dust Control. This action would include: increasing filing and inspection fees, incorporating Reasonable Available Control Measures (RACMs) that will be required to be used during active earthwork operations and on unpaved public roadways, prohibiting the construction of new unpaved roadways in Bernalillo County without stabilizing the roadbed, establishing penalties for violations of the Part, and creating a reseeding specification for native plants.

Immediately after the Part 20 hearing clos-

es a second hearing will begin during which the Board will be asked to adopt the new regulation into the SIP.

The purpose of the final hearing is to receive testimony on the proposal to incorporate the recently reformatted regulations into the SIP.

The Air Quality Control Board is the federally delegated air authority for Albuquerque and Bernalillo County. Local delegation authorizes the Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons wishing to testify may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony should submit a written notice of intent to: Attn: October Hearing Record, Mr. Dan Warren, Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW, in advance of the hearing. The notice shall include:

- * Name and qualifications of each technical witness;
- * Identification of whether the witness is a proponent, opponent or interested party
- * Description of the nature of the anticipated testimony;
- * Anticipated length of each witness' presentation;
- * Identification of the specific aspects of the proposed action to which testimony will be directed and provide any alternative language proposals, where appropriate;
- * List and describe technical exhibits you anticipate submitting in connection with the witness' testimony.

In addition, written comments to be incorporated into the public record must be received at the above Post Office Box address, or Environmental Health Department office, before 5:00pm on October 2nd, 2002, and must identify the

individual submitting the statement. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or call Mr. Dan Warren at (505) 768-2600, dwarren@cabg.gov.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact Mr. Neal Butt, Environmental Health Department, Room 3023, A/BCGC, 768-2600 (Voice); 768-2617 (FAX); or 768-2482 (TTY); as soon as possible prior to the meeting date. Public documents, including agendas and minutes, can be provided in various accessible formats.

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health, will hold a public hearing on 7.7.2 NMAC "Requirements For General And Special Hospitals". The Hearing will be held at 9:00 a.m. on Tuesday, October 1, 2002, in the Harold Runnels Building, located at 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

The public hearing will be conducted to amend the Requirements For General and Special Hospitals Regulation regarding Certified Registered Nurse Anesthetists. The proposed amendment would amend the definition in 7.7.2.7E.(2) NMAC of Certified Registered Nurse Anesthetists.

A draft of the proposed amendment can be obtained from:

Suzanne Welton, Legal Assistant
Health Facility Licensing & Certification Bureau,
2040 S. Pacheco St 2nd Floor Rm. 413,
Santa Fe, New Mexico 87505.
(505) 476-9038.

Please submit any written comments regarding the proposed amendment to the attention of:

Wilma Hammer, Chief
Health Facility Licensing & Certification Bureau
2040 S. Pacheco St 2nd Floor Rm. 413
Santa Fe, New Mexico 87505.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aide or service to attend or

participate in the hearing, please contact Suzanne Welton, Legal Assistant, Health Facility Licensing & Certification Bureau, at (505) 476-9038. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

HUMAN SERVICES DEPARTMENT

NOTICE OF COMMENT PERIOD FOR TANF STATE PLAN

The Human Services Department is required to file its State plan for administration of the Temporary Assistance for Needy Families (TANF) cash assistance program with the Federal Department of Health and Human Services, Administration for Children and Families (ACF). The Department is required to file the TANF State Plan with ACF by December 1, 2002. The TANF State Plan will cover the period from January 1, 2003 through December 31, 2004.

The Department is required to establish a 45-day period for taking comments on the proposed TANF State Plan. The 45-day comment period begins on August 31, 2002 and ends at 5:00 pm on October 14, 2002. All comments received during the comment period will receive consideration for the development of the TANF State Plan.

Individuals may submit written or recorded comments to the address below. Individuals may also submit comments electronically to:

Sharon.Regensberg@state.nm.us

A copy of the proposed TANF State Plan can be requested by calling the Office of the Director, Income Support Division, in Santa Fe at 1-800-432-6217 or (505) 827-7250; or by writing to:

Human Services Department
Income Support Division
P.O. Box 2348
Pollon Plaza Room 111
Santa Fe, NM 87504-2348

A copy of the proposed TANF State plan is available as of August 31, 2002 on the Department's web site at:

<http://policymanuals.hsd.state.nm.us>

If you are a person with a disability and you require this information in an alternative format or require a special accommodation, please contact the Department toll free at 1-800-432-6217, TDD 1-800-609-4TDD (4833), or through the New Mexico Relay System toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO WATER QUALITY CONTROL COMMISSION

The New Mexico Water Quality Control Commission Notice of Public Comment Period and Hearing to Consider Proposed Revisions to the Statewide Water Quality Management Plan

The New Mexico Water Quality Control Commission (NMWQCC) opened a 30-day public comment period on the proposed revisions to the Water Quality Management Plan (WQMP). The comment period began August 13, 2002 at 12:00 p.m. MDT and will end September 12, 2002 at 12:00 p.m. MDT. During this period the public is invited to provide written comments and/or provide a written request for a hearing on the matter. **Formal comments for inclusion in the public record should be submitted to the Surface Water Quality Bureau in writing to Glenn Saums, of the NMED SWQB, at P.O. Box 26110, Santa Fe, New Mexico, 87502 or by calling (505) 827-2827 or e-mail: <glenn_saums@nmenv.state.nm.us>** (if possible, please submit an electronic copy as well). **Requests for a hearing should be submitted to Geraldine Madrid-Chavez at the Commission's office, Room N-2153, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2425.**

The WQMP document is a statewide planning tool developed to ensure that long-range goals of the Federal Water Pollution Control Act (a.k.a. Clean Water Act) are met. These goals include "restoring and maintaining the chemical, physical, and biological integrity of the nations waters." The WQMP establishes a process that assures continuous planning for and implementation of pollution control measures.

A public hearing has been scheduled for October 1, 2002, following the New Mexico Water Quality Control Commission's (NMWQCC) regular public meeting at 9:00 a.m. on Tuesday, October 1, 2002 in Room 317 of the NM State Capitol Building, Santa

Fe, New Mexico. However, if no formal requests for a hearing are received during the comment period, the hearing will be cancelled. The hearing, if conducted, will be recorded on audiotape. Should an interested party desire a written transcript of the hearing, the request should be made to the Commission along with the request for a hearing. It should be noted that the party requesting a transcript is responsible for costs incurred for the transcription.

The proposed revisions to the Water Quality Management Plan are available upon request and will be posted on the Surface Water Quality Bureau's website (by August 16), which can be found at: <http://www.nmenv.state.nm.us/swqb/swqb.html>. For more information, contact Glenn Saums, of the NMED SWQB, at P.O. Box 26110, Santa Fe, New Mexico, 87502 or by calling (505) 827-2827 or email <glenn_saums@nmenv.state.nm.us>.

The hearing will be conducted in accordance with NMSA 1978, Section 74-6-6 (1993), the Guidelines for Water Quality Control Commission Regulation Hearings, and other specific statutory procedures that may apply. A copy of the Guidelines for Water Quality Control Commission Regulation Hearings may be obtained from Geraldine Madrid-Chavez at the Commission's office, Room N-2153, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2425.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments (orally or in writing), to introduce relevant exhibits and to examine witnesses testifying at the hearing.

In accordance with Commission Guidelines, persons desiring to present technical testimony at the hearing must file a written notice with the Commission. The written notice shall:

- * identify the person for whom technical testimony will be presented;
- * identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their education and work background;
- * summarize or include a copy of the direct testimony of each technical witness;
- * state the anticipated duration of the testimony of each witness;
- * include the text of any recommended modifications to the proposed amendment; and

* list and describe, or attach, all exhibits anticipated to be offered by the person at the hearing.

The deadline for filing written notices shall be September 20, 2002, at 5:00 p.m. Written notices must be filed in the Commission's office and should reference the Statewide Water Quality Management Plan and the date of the hearing. Any person who wishes to submit a non-technical written statement in lieu of oral testimony may do so at or before the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid (e.g. translator or sign-language interpreter) to participate in any aspect of this process, please contact Cliff Hawley by September 15, 2002, at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2850 (TDD or TDY users please access his number via the New Mexico Relay Network. Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.) Copies of the proposed amendment will be available in alternative forms, e.g. audiotape, if requested by September 15, 2002.

NEW MEXICO WATER QUALITY CONTROL COMMISSION

The New Mexico Water Quality Control Commission Notice of Public Hearing to Consider Proposed Amendments to 20.6.4 NMAC Standards for Interstate and Intrastate Surface Waters

The New Mexico Water Quality Control Commission will hold a public hearing on Monday, September 30, 2002, beginning at 9:00 a.m., in Room 317 of the NM State Capitol Building, Santa Fe, New Mexico. The hearing will be held to consider proposed amendments to sections 20.6.4.12, 20.6.4.101, 20.6.4.105, 20.6.4.106, 20.6.4.114, 20.6.4.201, 20.6.4.202, 20.6.4.206, 20.6.4.207, 20.6.4.211, 20.6.4.216 and 20.6.4.900 of the Commission's Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC (December 16, 2001). The proposed amendments establish new and revised numeric criteria for the protection of the designated uses of irrigation, livestock watering and wildlife habitat. The proposed amendments also amend segment specific criteria for total dissolved solids, sulfate and chloride in several reaches of the Pecos River and the Rio Grande. The Commission

may make a decision on the proposed amendment at the conclusion of the hearing.

The proponent of the proposed amendment is the Surface Water Quality Bureau of the New Mexico Environment Department.

The proposed amendments may be reviewed during regular business hours at the office of the Commission, 1190 St. Francis Drive, Room N-2153, Santa Fe, New Mexico. For a copy of the proposed amendments or questions you may contact John Montgomery of the Department's Surface Water Quality Bureau, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 476-3671, <john_montgomery@nmenv.state.nm.us> or visit the New Mexico Environment Department's website at <<http://www.nmenv.state.nm.us/swqb>>.

The hearing will be conducted in accordance with NMSA 1978, Section 74-6-6 (1993), the Guidelines for Water Quality Control Commission Regulation Hearings, and other specific statutory procedures that may apply. A copy of the Guidelines for Water Quality Control Commission Regulation Hearings may be obtained from Geraldine Madrid-Chavez at the Commission's office, Room N-2153, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2425.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments (orally or in writing), to introduce relevant exhibits and to examine witnesses testifying at the hearing.

Persons desiring to present technical testimony at the hearing must file a written notice with the Commission. The written notice shall:

- * identify the person for whom technical testimony will be presented;
- * identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their education and work background;
- * summarize or include a copy of the direct testimony of each technical witness;
- * state the anticipated duration of the testimony of each witness;
- * include the text of any recommended modifications to the proposed amendment; and
- * list and describe, or attach, all exhibits anticipated to be offered by the person at the hearing.

The deadline for filing written notices shall be September 20, 2002, at 5:00 p.m. Written notices must be filed in the Commission's office and should reference 20.6.4 NMAC and the date of the hearing. Any person who wishes to submit a non-technical written statement in lieu of oral testimony may do so at or before the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid (e.g. translator or sign-language interpreter) to participate in any aspect of this process, please contact Cliff Hawley by September 13, 2002, at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2850 (TDD or TDY users please access his number via the New Mexico Relay Network. Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.) Copies of the proposed amendment will be available in alternative forms, e.g. audiotape, if requested by September 13, 2002.

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Notice is hereby given that on September 4, 2002, commencing at 9:00 a.m., the New Mexico Workers' Compensation Administration will conduct a public hearing on the emergency rule change to alter the process by which the annual update of the maximum allowable payment schedule for medical services is published and adopted by the Director.

The hearing will be conducted at the Workers' Compensation Administration, 2410 Centre Avenue S.E., Albuquerque, NM. The target effective date of the proposed amended rule listed in this Notice is August 7, 2002. Comments made in writing and at the public hearing will be taken into consideration.

Written comments pertaining to these proposals will be accepted until the close of business on Friday, September 6, 2002.

For further information call (505) 841-6000. Please inquire at the WCA Clerk's Office, 2410 Centre Avenue S.E., Albuquerque, NM, 87106, (505) 841-6000, for copies of the proposed new and amended rules. Copies will be available on August 7, 2002. If you intend to request a copy by mail, please inquire at the WCA Clerks' Office about the postage cost and

envelope size needed to accommodate your request. Plan on including a post-paid, self-addressed envelope with your request.

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 aide or service to attend or participate in the hearing or meetings, please contact Renee Blechner at (505) 841-6085. Or you may inquire about assistance through the New Mexico relay network at 1-800-659-8331. Public documents pertaining to this rule making can be provided in various accessible forms. Please contact Renee Blechner if a summary or any other type of accessible form is needed.

End of Notices and Proposed Rules Section

Adopted Rules and Regulations

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

This is an amendment to 16.30.1 NMAC, Section 7.

16.30.1.7 DEFINITIONS:

A. "architect" means an architect legally registered in New Mexico (Subsection A of Section 61-15-2 NMSA 1978).

B. "architectural services" means services for projects located in New Mexico and shall be performed by a legally registered architect or under the architect's responsible charge (Subsection B of Section 61-15-2 NMSA 1978).

C. "competence" means

(1) In the practice of architecture, an architect shall act with reasonable care and competence and shall apply the technical knowledge and skill that is ordinarily applied by architects of good standing practicing in New Mexico;

(2) An architect shall undertake to perform professional services only when the architect, together with those whom the architect may engage as consultants, is qualified by education, training and experience or ability in the specific technical areas involved; and

(3) An architect shall take into account all applicable state and municipal building codes, laws and regulations. An architect may rely on the opinion of others (example: attorneys, engineers, building officials) as to the intent and meaning of the codes, laws and regulations.

D. "consulting associate architect" means an architect who is acting in an advisory capacity to a registered architect, and whose present position is subordinate to the registered architect. (Subsection A (1) of Section 61-15-8 NMSA 1978).

E. "felony conviction" means conviction of a felony with a copy of the record of conviction, certified by the clerk of the court entering the conviction, serving as conclusive evidence (Subsection B (2) of Section 61-15-12 NMSA 1978).

F. "gross negligence" means

(1) Being habitually guilty of neglect; or

(2) Being found extremely careless and lacking in ordinary care and concern in the practice of architecture (Subsection A (3) of Section 61-15-12 NMSA 1978). Should the Board not discipline an architect for a single act of gross negligence, the board does not waive the

right to invoke sanctions against the architect for repeated acts of gross negligence.

G. "incidental practice of architecture and engineering" means:

(1) Architectural work incidental to engineering shall be that architectural work provided on projects with a building construction value not greater than four hundred thousand dollars (\$400,000) and having a total occupant load not greater than fifty (50);

(2) Engineering work incidental to architecture shall be that engineering work provided on projects with a building construction value not greater than four hundred thousand dollars (\$400,000) and having a total occupant load not greater than fifty (50);

(3) All buildings and related structures within the regulatory provisions of the New Mexico Building Code (NMUBC) will require the proper authentication of the building construction documents by all participating disciplines in accordance with their respective governing acts on projects with a building construction value greater than four hundred thousand dollars (\$400,000) or having a total occupant load greater than fifty (50), with the exception of:

(a) Single-family dwellings not more than two (2) stories in height;

(b) Multiple dwellings not more than two (2) stories in height containing not more than four (4) dwelling units of wood-frame construction; provided this paragraph shall not be construed to allow a person who is not registered under the Architectural Act to design multiple clusters of up to four (4) dwelling units each to form apartment or condominium complexes where the total exceeds four (4) dwelling units on any lawfully divided lot;

(c) Garages or other structures not more than two (2) stories in height which are appurtenant to buildings described in Subparagraphs (a) and (b) of Paragraph (3) of Subsection G of 16.30.1.7 NMAC; or

(d) Nonresidential buildings, as defined in the New Mexico Building Code (NMUBC), or additions having a total occupant load of ten (10) or less and not having more than two (2) stories in height, which shall not include E-3 Day Care), H (Hazardous) or I (Institutional) occupancies;

(e) Alterations to buildings or structures which present no unusual conditions, hazards or change of occupancy.

(4) The owner, user or using agency shall select the prime design professional (architect or engineer) for any project based on the requirements and nature of the

project.

(5) Occupant load shall be defined and determined by the method set forth in the current, adopted code.

H. "incompetency" means:

(1) Being adjudicated mentally incompetent by a court; or

(2) Engaging in conduct which evidences a lack of knowledge, ability or fitness to discharge the duty and responsibility owed by the architect to a client and to the public in order to safeguard life, health and property and to promote public welfare (Subsection A (3) of Section 61-15-12 NMSA 1978).

I. "intern architect" is a person who is actively pursuing completion of the requirements for diversified training in accordance with rules of the board (Subsection F of Section 61-15-2 NMSA 1978).

J. "misconduct" means:

(1) Knowingly preparing or stamping construction documents in violation of the codes, laws or regulations;

(2) Stamping and signing construction documents, specifications, reports or other professional work not prepared under the architect-of record's responsible charge, as defined in Subsection M of 16.30.1.7 NMAC.

(3) Engaging in any conduct involving fraud or deceit related to the business or practice of architecture;

(4) Making any false statement or giving any false information in connection with an application for registration or for renewal of registration;

(5) Being convicted of a crime related to the practice of architecture with a copy of the record of the conviction, certified by the clerk of the court entering the conviction, serving as conclusive evidence;

(6) Violating federal or state statute or rule that directly relates to the practice of architecture;

(7) Being unable to practice architecture with reasonable skill and safety to clients by reason of use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;

(8) Making any substantial misrepresentation in the course of practice, including but not limited to, false, misleading or deceptive advertising or fraudulent or misleading claims;

(9) Using or altering material prepared by another person without the knowledge and consent of that person;

(10) Using the professional seal of another person without the knowledge

and consent of that person;

(11) Engaging in any conduct in conflict with the Code of Conduct for Architects (16.30.4 NMAC);

(12) Engaging in conduct that the architects knows or should know through professional knowledge or experience is not within the acceptable standard for professional conduct that is ordinarily applied by architects of good standing practicing in the state of New Mexico and that is set forth in the board's Minimum Standards for the Practice of Architecture in New Mexico (16.30.6 NMAC);

(13) Repeatedly (more than three (3) times) violating the Architectural Act, Sections 61-15-1 through -13 NMSA 1978, the rules and regulations of the board, or the architectural laws of any other state or jurisdiction;

(14) Incurring a prior disciplinary action in another state or jurisdiction based upon acts or conduct by the registrant which if committed in this state would subject the registrant to disciplinary action by the board. Certified copies of the record of disciplinary action shall be conclusive evidence thereof; and

(15) Failing to report to the board any adverse action taken against the registrant by (1) the licensing board of another jurisdiction or (2) the National Council of Architectural Registration Boards (NCARB) for acts or conduct that would constitute grounds for disciplinary action by the board.

K. "practice of architecture" means rendering or offering to render those services described in Subsection B of Section 61-15-2 NMSA 1978 in connection with the design, construction, enlargement or alteration of a building or group of buildings and the space within the site surrounding those buildings which have as their principal purpose human occupancy or habitation (Subsection G of Section 61-15-2 NMSA 1978). "Offering to render" is defined as soliciting or executing architectural services.

L. "project" means the building or a group of buildings and the space within the site surrounding the buildings as defined in the construction documents (Subsection H of Section 61-15-2 NMSA 1978). Architectural and engineering stamps are required for any subsequent and physically linked construction to a project which, when seen together with the original construction, would have required architectural and engineering seals.

M. "responsible charge" means that all architectural services have been or will be performed under the direction, guidance and restraining power of a registered architect who has exercised pro-

fessional judgment with respect thereto. An architect's placing of the architect registration seal and signature on a document certifies that the architect has exercised direction, guidance and judgment on all issues pertaining to the health, safety and general welfare of the public, and accepts all legal responsibility for all architectural matters embodied within the document which shall meet the acceptable standards of architectural practice in the state of New Mexico as put forth by the board (Subsection I of Section 61-15-2 NMSA 1978).

N. "signature" shall mean handwritten or electronic as follows:

(1) A handwritten identification that represents the act of putting one's name on a document to attest to its validity. The handwritten identification must be:

(a) Original and written by hand;

(b) Permanently affixed to the original document(s) being certified;

(c) Applied to the document by the identified registrant; or

(2) An electronic identification that is attached to or logically associated with an electronic document. The electronic identification must be:

(a) Unique to the person using it;

(b) Under the sole control of the registrant using it;

(c) Linked to a document in such a manner that the electronic identification is invalidated if any data in the document is changed.

[16.30.1.7 NMAC - Rp 16 NMAC 30.1.7, 9/6/2001; A, 9/15/2002]

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

This is an amendment to 16.30.3 NMAC: Sections 8, 13, 14, 18, & 19

16.30.3.8 GENERAL QUALIFICATIONS:

A. The examination and reciprocity committee shall make its recommendations to the board regarding the qualifications of applicants for registration. A majority vote of the members of the board shall be required in determining those applicants qualified for registration.

B. The applicant shall be of good character and repute. Factors that the board may consider under this qualification are:

(1) Conviction of a felony;

(2) Misstatement or misrepresentation of fact by the applicant in connection with his or her application;

(3) Violation of any of the standards of conduct required by registration

holders and set forth in the statutes or rules and regulations; or

(4) Practicing architecture without a valid and current registration in the jurisdiction in which the practice took place;

C. Rules and procedures set out herein for obtaining registration in New Mexico apply equally to residents of the state and non-residents.

D. An oral interview before the board may be required of any applicant for New Mexico registration;

E. All applicants must pass the New Mexico architectural jurisprudence exam administered by the board. Failure to answer all questions may result in a failing grade. An applicant who has failed two (2) successive architectural jurisprudence exams shall not be eligible to apply for architectural registration for a period of one (1) year from the date of the last jurisprudence exam failed.

F. All registration and application fees are non-refundable [16.30.3.8 NMAC - Rp 16 NMAC 30.3.8, 9/6/2001; A, 9/15/2002]

16.30.3.13 RENEWAL OF AN EXPIRED CERTIFICATE:

A. In the event a registrant fails to timely renew his or her certificate, the registrant shall be required to pay to the board both the annual fee and a late fee. The late fee shall be fifty dollars (\$50.00) for the first late month (January), after which the late fee shall equal one (1) year's registration fee (one hundred twenty-five dollars (\$125.00) for out-of-state registrants and seventy-five dollars (\$75.00) for in-state residents)

B. In no event shall the annual fee and the late fee exceed twice the regular renewal fee for each year the registrant remains in default, for a period not to exceed three (3) years, after which time an expired certificate becomes inactive.

C. The former registrant shall complete continuing education requirements as stated in paragraph 7 of Subsection B of 16.30.3.11 NMAC. At the board's discretion, the former registrant may be required to present evidence to the board of continued proficiency, complete additional requirements, and appear personally before the board in order that the board may determine whether to renew the lapsed certificate.

[16.30.3.13 NMAC - Rp 16 NMAC 30.3.11.3, 9/6/2001; A, 9/15/2002]

16.30.3.14 CERTIFICATE EXPIRED FOR THREE (3) YEARS OR MORE AND RENEWAL OF SUCH A CERTIFICATE:

A. In the event a certificate has lapsed for a continuous period of three (3) years or more, then the certificate and the file shall be transferred to the state records center for storage.

B. To renew a certificate that has been expired three (3) years or more, the former registrant shall complete continuing education requirements as stated in paragraph 7 of Subsection B of 16.30.3.11 NMAC and shall be required to present evidence to the board of continued proficiency [and may be required to appear personally before the board in order that the board may determine whether to renew the lapsed certificate. The board may require the applicant to complete additional requirements and provide evidence of continuing education.] At the board's discretion, the former registrant may be required to complete additional requirements and may be required to appear personally before the board in order that the board may determine whether to renew the lapsed certificate. [16.30.3.14 NMAC - Rp 16 NMAC 30.3.11.4, 9/6/2001; A, 9/15/2002]

16.30.3.18 INDIVIDUAL SEAL AND DOCUMENT IDENTIFICATION:

A. Registration seal specifications: Each architect registered for practice within the state of New Mexico shall secure a registration seal of the following design: The seal shall secure a registration seal of the following design: The seal shall have two (2) concentric circles with the outer circle measuring 1-3/4 inches in diameter and the inner circle being 1-1/4 inches in diameter. The upper portion of the annular space between the two circles shall bear the words "STATE OF NEW MEXICO" and the lower portion shall bear the words "REGISTERED ARCHITECT". The space enclosed by the inner circle shall bear the name of the architect and his or her registration number. In no event shall the seal contain more than one name of an architect. By placement of a seal and signature on a drawing, an architect verifies that his or her registration is valid and that he or she is practicing in accordance with the Architectural Act, Sections 61-15-1 through -13 NMSA 1978 and these rules and regulations.

B. Use of registration seal:

(1) Each original sheet of construction drawings and each cover sheet of specifications, submitted for permitting, and reports, prepared by or under the responsible charge of an individual architect, must bear the imprint of the seal with the signature of that architect and the date of the signature closely aligned to the seal. The name and address of the architect must also appear on the sealed page. A registrant

may apply a seal, signature and date of signature by hand. A registrant may affix an electronically-generated seal, signature, and date of signature. An electronic signature may be utilized provided the registrant utilizes a secure method of affixation; the registrant does not authorize any other person to so affix; and the registrant and client have agreed to conduct transactions by electronic means. Drawings, reports or documents that are signed using an electronic signature shall employ an authentication procedure to ensure the validity of the electronic signature. Signature shall be as defined in Subsection N of 16.30.1.7 NMAC.

(2) As provided in the Architectural Act, Subsection A of Section 61-15-7 NMSA 1978, all plans, specifications, plats and reports prepared by an architect or under the architect's responsible charge shall be signed and sealed by that architect, including all plans and specifications prepared by the architect or under the architect's responsible charge on work described in Subsection B, Project Exemptions, of Section 61-15-9 NMSA 1978.

(3) Placing of multiple architectural seals on plans, specifications or reports shall not be permitted. The architect-of-record must seal, sign and date all construction drawings, specifications, and reports prepared by or under the supervision of that architect. In doing so, the architect-of-record assumes full responsibility for these documents.

(4) Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible charge because the reviewer has neither control over nor detailed knowledge of the content of such submissions throughout their preparation. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible charge by persons not employed in the office where the architect is resident, shall maintain and make available to the board upon request for at least five (5) years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation.

(5) An exception to Paragraph (4) of Subsection B of 16.30.3.18 NMAC above is made for architects who review, adapt, and seal prototypical projects provided that:

(a) The project qualifies as a prototypical project meaning the original plans were designed by other architects, engineers or architects and engineers with the intent of

being used in several diverse locations with local adaptations;

(b) The New Mexico registered architect has permission of the plan owner to adapt the documents; and

(c) All previous title blocks and seals have been removed. In applying his or her seal, the New Mexico registered architect assumes full responsibility for the documents as if prepared by or under the architect's responsible charge.

(6) An exception to Paragraph (4) of Subsection B of 16.30.3.18 NMAC above is made for kit-of-parts. A kit-of-parts is a manufactured item and the New Mexico registered architect is not responsible for the components.

(7) Architectural and engineering seals are required for any subsequent and physically linked construction to a project which, when seen together with the original construction, would have required both seals.

(8) A legally applied seal and signature is a permanent part of construction documents and may not be removed for non-payment of fees or other civil action.

C. In the case of termination or death: Prior to sealing, signing and dating work, a successor registered architect shall be required to notify the original architect, his successors, or assign, by certified letter to the last known address of the original registered architect, of the successor's intention to use or reuse the original registered architect's work. A successor registered architect must use his or her own title block, seal and signature and must remove the title block, seal and signature of the original architect before sealing, signing and dating any sealed construction drawings and specifications. The successor registered architect shall take full responsibility for the drawings as though they were the successor's original product.

D. Plan checking: Any authorized person checking documents for compliance with any applicable statutes, codes, ordinances, rules or regulations such as building codes, fire codes or zoning ordinances may "red-line" and list changes to meet such applicable statutes, codes, ordinances, rules and regulations, as this is not the practice of the profession. However, a person may not modify a professional document submitted for review unless that modification is supported by reference to an applicable code or standard. A non-registrant shall not modify, in any manner, a document embodying the discretion or judgment of a registrant without the express permission of the architect who is in responsible charge.

[16.30.3.18 NMAC - Rp 16 NMAC 30.3.14, 9/6/2001; A, 9/15/2002]

16.30.3.19 CHANGE OF ADDRESS: Registrants shall notify the board of a change of address to either their business address or residential address within 30 days of a move.
[16.30.3.19 NMAC - N, 9/15/2002]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to correct technical errors in Subsections A, B, C and D of 6.60.4.8 NMAC.

6.60.4.8 REQUIREMENTS:

A. Persons seeking a reciprocal level one license for elementary k-8, early childhood b-3, secondary 7-12, middle level 5-9, special education k-12, or grade k-12 shall meet the following requirements:

(1) Hold a bachelor's degree from a regionally accredited or state board of education ("SBE") approved college or university; and, ~~either,~~

(2) Hold and provide a copy of a valid teaching license issued by a state education agency that is comparable to the license they are seeking; ~~or~~ and

(3) Have completed a teacher preparation program accepted by the SBE; and either

(4) Have passed the applicable New Mexico teacher assessments ("NMTA") or other teacher competency test(s) satisfying requirements for teacher licensure in another state; or

(5) Have, on a form acceptable to the professional licensure unit ("PLU") of the SDE, provided evidence of having satisfactorily taught under their out of state license; and

(6) Submit to and satisfactorily clear a fingerprint-based background check pursuant to section 22-10-3.3, NMSA 1978.

B. Persons seeking a level two license for elementary k-8, early childhood b-3, secondary 7-12, middle level 5-9, special education k-12, or grade k-12 shall meet the following requirements:

(1) Hold a bachelor's degree from a regionally accredited or state approved college or university; and either

(2) Hold a valid certificate issued by the national board for professional teaching standards; or

(3) Hold and provide a copy of a valid teaching license issued by a state education agency that is comparable to the license they are seeking; and

(4) Have completed a teacher preparation program accepted by the SBE; and ~~either~~

(5) Have, on a form acceptable to the PLU, provided evidence of having satis-

factorily taught under their out of state license for at least five complete school years at any time preceding their application for licensure; ~~or~~ and

(6) Have passed the applicable NMTA or other teacher competency test(s) satisfying requirements for teacher licensure in another state; and

(7) Submit to and satisfactorily clear a fingerprint-based background check pursuant to section 22-10-3.3, NMSA 1978.

C. Persons seeking reciprocal administrative licensure shall meet the requirements for a level two teaching license set forth in subsection B of ~~6.6.60.4 NMAC~~ section 8 of 6.60.4 NMAC above, and shall meet the following additional requirements:

(1) Hold a master's degree from a regionally accredited or state approved college or university; and either,

(2) Hold a valid administrator's license issued by a state education agency; or

(3) Have completed an education administrator preparation program accepted by the SBE.

D. Persons holding a valid administrative license from another state who are seeking one or more of the level two teaching licenses listed in subsection B of section 8 of 6.60.4 NMAC above, shall be exempt from satisfying the requirements of paragraph 5 of subsection B of section 8 of 6.60.4 NMAC above, provided that they present evidence to the PLU of having satisfactorily served under their out of state administrative license during the three consecutive, complete school years preceding their application for licensure.

[6.60.4.8 NMAC - Rp 6 NMAC 4.2.2.3.8, 07-01-01; A, 06-01-02; A, 08-30-02]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.313.3 NMAC, section 12 which will be effective on September 1, 2002. The Medical Assistance Division amended section 12 by changing language to reflect that the inflation factor may be used to recognize economic conditions and trends.

8.313.3.12 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 any applicable ceiling:

A. Base Year

(1) For implementation Year 1 (effective September 1, 1990), the providers base year will be for cost reports filed for

base year periods ending no later than June 30, 1990. Since these cost reports will not be audited at the time of implementation, an interim rate will be calculated and once the audited cost report is settled, a final prospective rate will be determined. Retrospective settlements of over or under payments resulting from the use of the interim rate will be made.

(2) Re-basing 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. Since re-basing is done every three years, operating year 4 will again become Year 1.

(3) Costs 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. Re-basing costs in excess of 110% of the previous year's reported cost per diem times the index (as described further on in these regulations) will not be recognized for calculation of the base year costs.

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

(1) MBI will or will not be authorized for determining rates for the year; and

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

~~(4)~~ (3) 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 (MBI).

~~(5)~~ (4) Each provider's operating costs will be indexed to a mid-year point of February 28 for operating Year 1.

~~(6)~~ (5) If utilized, the inflation factor will be the actual MBI for the previous calendar year.

C. Incentive to Reduce Increases in Cost

(1) As an incentive to reduce the increases in the Administrative and General (A&G) and Room and Board (R&B) cost center, the Department will share with the provider the savings below the A&G/R&B ceiling in accordance with the formula described below:

$$A = [1/2 (B-C)] \leq \$1.00$$

(2) Where:

$$A = \text{Allowable}$$

Incentive per diem
 $B = A \&G/R\&B \text{ ceiling}$
 per diem
 $C = \text{Allowable A\&G/R\&B per diem from the base year's cost report}$

D. Cost Centers for Rate Calculation: For the purpose of rate calculation, costs will be grouped into four major cost centers. These are:
 (1) Direct Patient Care (DPC)
 (2) Administration and General (A&G)
 (3) Room and Board (R&B)
 (4) Facility costs (FC)

E. Case-Mix Adjustment
 (1) In assuring the prospective reimbursement system addresses the needs of residents of ICF-MR facilities, a case mix adjustment factor will be incorporated into the reimbursement system. The case-mix index (CMI) will be used to adjust the reimbursement levels in the Direct Patient Care cost center. The key objective of the CMI is to link reimbursement to the acuity level of residents in a facility. To accomplish this objective, the Department utilizes level of care criteria which classify ICF-MR residents into one of three levels, with Level I representing the highest level of need. Corresponding to each level of care, the relative values are as follows:

- Level I 1.077
- Level II 0.953
- Level III 0.768

(2) Using these level specific relative values, a provider specific base year CMI will be calculated. The CMI represents the weighted average of the residents' level of care divided by the total number of residents in the facility. The CMI is calculated as follows:

$$[(A \times 1.077) + (B \times .953) + (C \times .768)] / N = \text{CMI}$$

(3) WHERE: A = Number of Level I residents
 B = Number of Level II residents
 C = Number of Level III residents
 N = Total number of provider's residents

F. Calculation of the Prospective Per Diem Rate

(1) A prospective per diem rate for each of the three levels of ICF-MR classification will be determined for each provider. Payment will be made based on the rate for the level of classification of the recipient.

(2) The provider's Direct Patient Care (DPC) allowable cost will be divided by the provider's CMI to determine the cost at a value of 1.00 for the base year. The adjusted DPC is then multiplied by the rela-

tive value of the level of classification to determine the DPC component of the rate. To this, will be added the allowable A & G and R & B amount and the allowable facility cost. The formula for the rates will be as follows:

(3) The formula for Year 1 is: $(A1 \times RV) + C1 + D + E = PR \text{ (Year 1)}$

(4) The formula for Year 2 is: $[(A1 \times RV) + C1] \times (1 + MBI) + D + E = PR \text{ (Year 2)}$

(5) The formula for Year 3 is: $[(A2 \times RV) + C2] \times (1 + MBI) + D + E = PR \text{ (Year 3)}$

(6) Where:
 A = Allowable DPC per diem adjusted to a value of 1.00
 B = The relative value of the level of classification.
 C = Allowable A&G and R&B per diem
 D = Allowable incentive per diem
 E = Allowable facility cost per diem
 MBI = Market Basket Index
 PR = prospective rate
 RV = the relative value for the level

"1" = The numerical subscript means the date of the data used in the formula. For example, "A1" means the base direct patient care costs established in the base year, while "A2" would refer to the base direct patient care costs adjusted by the MBI.

G. Effective Dates of Prospective Rates: Rates will be effective September 1 of each year for each facility.

H. Calculation of rates for existing providers that do not have actuals as of June 30, 1990, and for new providers entering the program after September 1, 1990. For existing and for new providers entering the program that do not have actuals, the provider's interim prospective per diem rate will become the sum of:

- (1) The state wide average patient care cost per diem for each level plus;
- (2) The A&G and R&B ceiling per diem plus;
- (3) Facility cost per diem as determined by using the Medicare principles of reimbursement.

(4) 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 allowable and reasonable cost for the provider. A final prospective rate will be established at that time, and retroactive settlement will take place.

I. Changes Of Provider By Sale Of An Existing Facility: When a change of ownership occurs, the provider's prospective rate per diem will become the sum of:

- (1) The patient care cost per diem for each level, established for the previous owner plus;
- (2) The A&G and R&B per diem established for the previous owner; plus
- (3) Allowable facility costs determined by using the Medicare principles of reimbursement.

J. Changes Of Ownership By Lease Of An Existing Facility: When a change of ownership occurs, the provider's prospective per diem rate will become the sum of:

- (1) The patient care cost per diem for each level established for the previous owner; plus
- (2) The A&G and R&B per diem established for the previous owner; plus
- (3) The lower of allowable facility cost or the ceiling on lease cost as described by this plan.

K. Sale/Leaseback Of And Existing Facility: When a sale/leaseback of an existing facility occurs, the provider's prospective rate will remain the same as before the transaction.

[2-1-95; 8.313.3.12 NMAC - Rn, 8 NMAC 4.MAD.732.D.IV & A, 11-1-00; A, 9-1-02]

**NEW MEXICO
 PUBLIC SCHOOL CAPITAL
 OUTLAY COUNCIL**

**TITLE 6 PRIMARY AND
 SECONDARY EDUCATION
 CHAPTER 27 PUBLIC SCHOOL
 CAPITAL OUTLAY COUNCIL
 PART 30 STATEWIDE ADE-
 QUACY STANDARDS**

6.27.30.1 ISSUING AGENCY. Public School Capital Outlay Council [6.27.30.1 NMAC - N, 9/1/2002]

6.27.30.2 SCOPE. The purpose of this rule is to provide statewide adequacy standards for public school buildings and grounds, including buildings and grounds of charter schools. These standards will serve to establish the acceptable level of standards necessary to provide the environment to meet the educational and technology needs of public schools and to assist their staff in developing their buildings and grounds. The New Mexico Public School Facility Adequacy Standards are dynamic and the council plans to review them regularly and change them as time and circumstances require.

[6.27.30.2 NMAC - N, 9/1/2002]

6.27.30.3 STATUTORY AUTHORITY. The Public School Capital Outlay Act, Section 22-24-5 NMSA 1978.
[6.27.30.3 NMAC - N, 9/1/2002]

6.27.30.4 DURATION.
Permanent
[6.27.30.4 NMAC - N, 9/1/2002]

6.27.30.5 EFFECTIVE DATE.
September 1, 2002, unless a later date is cited at the end of a section.
[6.27.30.5 NMAC - N, 9/1/2002]

6.27.30.6 OBJECTIVES.
A. **APPLICATION:** The *New Mexico Public School Facility Adequacy Standards* establish the acceptable levels for the physical condition and capacity of school buildings, the educational suitability of those facilities and the need for technological infrastructure at those facilities. The standards are not intended to restrict a facility's size.

B. **CRITICAL HEALTH OR SAFETY ISSUES - NOTICE OF INTERIM HEALTH OR SAFETY ISSUES DURING ASSESSMENT PERIOD:** Until the completion of an initial statewide assessment of school facilities in accordance with the *New Mexico Public School Facility Adequacy Standards*, a school district may notify the Public School Capital Outlay Council of any outstanding serious code deficiencies in public school buildings and grounds, including buildings and grounds of charter schools, that may adversely affect the health or safety of students and school personnel. Correction of a critical health or safety deficiency issue is subject to council review and action pursuant to Section 22-24-4.1 NMSA 1978.
[6.27.30.6 NMAC - N, 9/1/2002]

6.27.30.7 DEFINITIONS.
Unless otherwise specified, the following definitions apply:

A. "art education program" includes visual (jewelry, photography, painting, etc.) and performing (orchestra, chorus, band, etc.) arts;

B. "combination school" means a school that contains the elementary, middle school/junior high school and high school or any combination thereof;

C. "council" means the Public School Capital Outlay Council;

D. "design capacity" means the maximum student capacity of the facility when all phases of construction are fully completed;

E. "equipment" means a specified item not affixed to the real proper-

ty of a school facility;

F. "exterior envelope" means the exterior walls, floor and roof of a building;

G. "fixture" means a specified item that is affixed to the real property of a school facility;

H. "general use classroom" means a classroom space that is or can be appropriately configured for instruction in at least the areas of language arts, mathematics and social studies;

I. "qualified student or MEM" means those terms as defined in Section 22-8-2 NMSA 1978;

J. "school-aged persons" means that term as defined in Section 22-1-2 NMSA 1978;

K. "school facility" means a building or group of buildings and outdoor area that are administered together to comprise a school;

L. "school site or school campus" means one or more parcels of land where a school facility is located. More than one school facility may be located on a school site or school campus;

M. "space" means the net square footage located within the interior of a building;

N. "specialty classroom" means a classroom space that is or can be appropriately configured for instruction in a specific subject such as science, physical education, special education or art; and

O. "teacherage" means a residence that houses a teacher or administrator on site.

[6.27.30.7 NMAC - N, 9/1/2002]

6.27.30.8 GENERAL REQUIREMENTS. These standards are intended to supplement, but not to supersede or omit, compliance with applicable Building, Fire, Life Safety, Health or Accessibility Code or any other code, regulation, law or standard that has been adopted by a governmental agency having jurisdiction at the site of the school. Existing school buildings are not required to comply with current requirements for new buildings unless this compliance is specifically mandated by law or by the code, regulation or standard of the jurisdiction where the building is located. Design of a facility shall include: ease of maintenance; centralized common use areas; natural light; ease of supervision and security; and site-specific covered (protected) circulation if needed.

A. **Building Condition.** A school facility must be safe and capable of being maintained.

(1) **Structural.** A school facility must be structurally sound. A school facility shall be considered structurally sound

and safe if the building presents no imminent danger or major visible signs of decay or distress.

(2) **Exterior Envelope.** An exterior envelope is safe and capable of being maintained if:

(a) walls and roof are weather tight under normal conditions with routine upkeep; and

(b) doors and windows are weather tight under normal conditions with routine upkeep, and the building structural systems support the loads imposed on them.

(3) **Interior Surfaces.** An interior surface is safe and capable of being maintained if it is:

(a) structurally sound;

(b) capable of supporting a finish; and

(c) capable of continuing in its intended use, with normal maintenance and repair.

(4) **Interior Finishes.** An interior finish is safe and capable of being maintained if it is:

(a) free of exposed lead paint;

(b) free of friable asbestos; and

(c) capable of continuing in its intended use, with normal maintenance and repair.

B. **Building Systems.** Building systems in a school facility must be in working order and capable of being properly maintained. Building systems include roof, plumbing, telephone, electrical and heating and cooling systems as well as fire alarm, 2-way internal communication, appropriate technological infrastructure and security systems.

(1) **General.** A building system shall be considered to be in working order and capable of being maintained if all of the following apply.

(a) The system is capable of being operated as intended and maintained.

(b) Newly manufactured or refurbished replacement parts are available.

(c) The system is capable of supporting the adequacy standards established in this rule.

(d) Components of the system present no imminent danger of personal injury.

(2) **Plumbing Fixtures.** A school facility shall be equipped with sanitary facilities in accordance with the New Mexico Building Code. Fixtures shall include, but are not limited to, water closets, urinals, lavatories and drinking fountains.

In all new construction, restrooms shall be available so students will not have to exit the building. In existing facilities, restrooms shall be available for classrooms for grades 5 and below, and special needs classrooms, without having to exit the building,

wherever possible within reasonable cost constraints.

(3) Fire Alarm. A school facility shall have a fire alarm system as required by applicable state fire codes.

(4) 2-way Communication System. A school facility shall have a 2-way internal communication system between a central location and each classroom, library, physical education space and the cafeteria.

[6.27.30.8 NMAC - N, 9/1/2002]

6.27.30.9 CLASSIFICATION OF PUBLIC SCHOOLS. Public schools shall be classified as defined in Section 22-1-3 NMSA 1978. The typical size of each classification is:

A. Elementary School: Generally 200 students and generally ranges from 25 - 1,000

B. Middle School/Junior High School: Generally 400 students and generally ranges from 50 - 1,000

C. High School: Generally 1,200 students and generally ranges from 50 - 2,000

[6.27.30.9 NMAC - N, 9/1/2002]

6.27.30.10 SCHOOL SITE. A school site shall be of sufficient size to accommodate safe access, parking, drainage and security and be of an area large enough to accommodate a school facility that complies with the net classroom square footage requirements established for the number of students at that facility. Additionally, the site shall be provided with an adequate source of water and appropriate means of effluent disposal.

A. Safe Access. A school site shall include a student drop-off area or pedestrian pathway that allows students to enter the school facility without crossing vehicular traffic or allows students to use a designated crosswalk. If buses are used to transport students, a student drop-off area must be configured to accommodate bus width and turning requirements. For K-5 students, if buses are used to transport students, the site shall include a separate bus drop-off area, as well as a separate parent drop-off area.

B. Parking. A school site shall include a maintainable surfaced area that is stable, firm and slip resistant and is large enough to accommodate 1.5 parking spaces /staff FTE and one student space /four high school students. If this standard is not met, alternative parking may be approved after the sufficiency of parking at the site is reviewed by the council using the following criteria:

(1) availability of street parking around the school;

(2) availability of any nearby parking lots;

(3) availability of public transit;

(4) number of staff who drive to work on a daily basis; and

(5) average number of visitors on a daily basis.

C. Drainage. A school site shall be configured such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding or erosion resulting in a threat to health, safety or welfare.

D. Security. A school site shall include a fenced or walled play/physical education area for students in programs for preschool children with disabilities and kindergarten and students in grades 1 through 6. This standard is met if the entire school is fenced or walled. If this standard is not met, alternative security may be approved after the sufficiency of security at the site is reviewed by the council using the following criteria:

(1) amount of vehicular traffic near the school site;

(2) existence of hazardous or natural barriers on or near the school site;

(3) amount of animal nuisance or unique conditions near the school site;

(4) visibility of the play/physical education area; and

(5) site lighting, as required to meet safe, normal access conditions.

[6.27.30.10 NMAC - N, 9/1/2002]

6.27.30.11 SITE RECREATION AND OUTDOOR PHYSICAL EDUCATION. A school facility shall have area, space and fixtures, in accordance with the standard equipment necessary to meet the educational requirements of the state board of education, for physical education activity.

A. Elementary School. A play area and playground adjacent to the school shall be provided for physical education activities. Equipment shall be based on the design capacity of the school.

B. Middle School/Junior High School. A paved multipurpose play surface and a playing field for physical education activities shall be provided. Playing fields and equipment shall be based on the design capacity of the school.

C. High School. A paved multipurpose play surface and a playing field for physical education activities shall be provided. Playing fields and equipment shall be based on the design capacity of the school.

D. Combination School. A combination school shall provide the elements of the grades served by subsections A, B and C above without duplication, but

shall meet the highest standard.

[6.27.30.11 NMAC - N, 9/1/2002]

6.27.30.12 ACADEMIC CLASSROOM SPACE. Classroom space is measured from interior wall to interior wall.

A. Classroom Space - Classroom space shall be sufficient for appropriate educational programs for the class level needs.

B. Classroom Fixtures and Equipment

(1) Each general and specialty classroom shall contain a work surface and seat for each student in the classroom. The work surface and seat shall be appropriate for the normal activity of the class conducted in the room.

(2) Each general and specialty classroom shall have an erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction, and a display surface. A single surface may meet one or more of these purposes.

(3) Each general and specialty classroom shall have storage for classroom materials or access to conveniently located storage.

(4) Each general and specialty classroom shall have a work surface and seat for the teacher and for the aide assigned to the classroom, and it shall have secure storage for student records that is located in the classroom or is convenient to access from the classroom.

C. Classroom Lighting

(1) Each general, science and arts classroom shall have a light system capable of maintaining at least 50 foot-candles of light.

(2) The light level shall be measured at a work surface located in the approximate center of the classroom, between clean light fixtures.

D. Classroom Temperature

(1) Each general, science and arts classroom shall have a heating, ventilation and air conditioning (HVAC) system capable of maintaining a temperature between 68 and 82 degrees Fahrenheit with full occupancy.

(2) The temperature shall be measured at a work surface in the approximate center of the classroom.

E. Classroom Acoustics

(1) Each general, science and arts classroom shall be maintainable at a sustained background sound level of less than 55 decibels.

(2) The sound level shall be measured at a work surface in the approximate center of the classroom.

F. Classroom Air Quality

(1) Each general, science and arts

classroom shall have an HVAC system that continually moves air and is capable of maintaining a CO₂ level of not more than 1,200 parts per million.

(2) The air quality shall be measured at a work surface in the approximate center of the classroom.

[6.27.30.12 NMAC - N, 9/1/2002]

6.27.30.13 GENERAL USE CLASSROOMS (LANGUAGE ARTS, MATHEMATICS AND SOCIAL STUDIES). Cumulative classroom net square foot (sf) requirements, excluding locker space and general storage space, shall be at least:

- A. Kindergarten
60 net sf/student
- B. Grades 1 - 5
32 net sf/student
- C. Grades 6 - 8
28 net sf/student
- D. Grades 9 - 12
25 net sf/student

[6.27.30.13 NMAC - N, 9/1/2002]

6.27.30.14 SPECIALTY CLASSROOMS.

A. Science:

(1) For grades K through 5, no additional space is required beyond the classroom requirement.

(2) For grades 6 through 12, 4 net sf/student of practical and instructional science space is required. The space shall not be smaller than the average classroom at the facility. This space is included in the academic classroom requirement and may be used for other instruction. The space shall have science fixtures and equipment, in accordance with the standard equipment necessary to meet the educational requirements of the state board of education. If an alternate science delivery method is used by a school district, the district shall verify the appropriate alternate fixtures and equipment to the council.

B. Technology. Each classroom at a school facility shall have Internet access. Each school facility shall have at least one network multimedia computer, available for student use, for every 15 students or an appropriate alternate delivery method. Computer equipment is subject to assessment under the Building Systems category.

C. Art Education Programs. A school facility shall have space to deliver art education programs, including visual, music and performing arts programs, or have access to an alternate delivery method. The space shall not be smaller than the average classroom at the facility. This space may be included in the academic classroom requirement and may

be used for other instruction.

(1) Elementary School. A music/drama or art classroom may be the same room as the classroom or may also be used as a general use classroom, plus storage of 60 net sf.

(2) Middle School/Junior High School. A band/orchestra/drama classroom shall have a minimum of 2.5 net sf/student up to a maximum of 1,500 net sf for band/orchestra/drama, including group practice, music storage and storage rooms, two individual practice rooms and an office. A chorus room shall have a minimum of 2.5 net sf/student up to a maximum of 800 net sf, including group practice rooms, an office and library. An art room shall have a minimum of 2.5 net sf/student up to a maximum of 800 net sf, including storage and an office.

(3) High School. A band/orchestra/drama classroom shall have a minimum of 2.5 net sf/student up to a maximum of 2,000 net sf, including group practice, music storage and storage rooms, two individual practice rooms and an office. A chorus room shall have a minimum of 2.5 net sf/student up to a maximum of 1,200 net sf with a practice area and an office. An art room shall have a minimum of 2.5 net sf/student up to a maximum of 1,200 net sf, including storage and an office.

(4) Combination School. A combination school shall provide the elements of the grades served by paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

D. Career Education

(1) Elementary School. No requirement.

(2) Middle School/Junior High School. Cooking, sewing, wood shop classrooms, etc., shall have a minimum of 15 net sf/student aggregate, with a minimum of 3,000 net sf.

(3) High School. An office education, marketing, shorthand, accounting, food, nutrition, sewing, drawing, graphics, wood tech, metal tech, auto tech, transportation tech, coop training, etc., space shall have a minimum of 15 net sf/student aggregate, with a minimum of 5,000 net sf. If a school has a child development program, the space shall have a minimum of 1,100-1,500 net sf, including a lab, an observation area, a kitchen, an office, restrooms for children and adults and an outside play area of 75 net sf/child with a minimum of 1,000 net sf.

(4) Combination School. A combination school shall provide the elements of the grades served by paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

E. Computer and

Keyboarding Labs. A school facility shall have space to deliver computer and keyboarding lab programs or have access to an alternate delivery method.

(1) Elementary School. Lab classrooms shall have a minimum of 15 net sf/student aggregate, with a minimum of 1,000 net sf.

(2) Middle School/Junior High School. Lab classrooms shall have a minimum of 15 net sf/student aggregate, with a minimum of 1,500 net sf.

(3) High School. Lab classrooms shall have a minimum of 15 net sf/student aggregate, with a minimum of 2,000 net sf.

(4) Combination School. A combination school shall provide the elements of the grades served by paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

F. Alternate Delivery Method. If an alternate delivery method is used by a school district to deliver instruction in science, technology, art, career education or computer and keyboarding technology, G.R.A.D.S programs and special needs classroom(s), the alternate method may be approved following review by the council.

[6.27.30.14 NMAC - N, 9/1/2002]

6.27.30.15 PHYSICAL EDUCATION.

A. General Requirements. A school facility shall have an area, space and fixtures for physical education activity. This space may have more than one function and may fulfill more than one standard requirement.

(1) Elementary School. For an elementary school facility, an indoor physical education teaching facility that shall be the greater of 2,400 net sf or the square footage equal to 7 net sf multiplied by one-half of the design capacity.

(2) Middle School/Junior High School. For a middle school/junior high school facility, an indoor physical education teaching facility that shall have a minimum of 5,200 net sf plus bleachers for 1.5 design capacity.

(3) High School. A physical education complex shall have a minimum of 6,500 net sf plus bleachers for 1.5 design capacity.

(4) Combination School. Shall provide the elements of the grades served by paragraphs (1), (2) and (3) above without duplication, but meeting the higher net sf standards with bleacher capacity for 2.0 design capacity. If the school includes an elementary, then it shall contain the requirements for an elementary school.

B. Additional Physical Education Requirements. In addition to

space requirements in subsection A:

(1) Elementary School. One office shall be provided, with physical education equipment storage with a minimum of 150 net sf. This space may have more than one function and may fulfill more than one standard requirement.

(2) Middle School/Junior High School. Two dressing rooms shall be provided, with lockers, showers and restroom fixtures. Two offices shall be provided, each with a minimum of 150 net sf. Each shall be provided with a telephone. Physical education equipment storage space shall be provided.

(3) High School. Two dressing rooms shall be provided, with lockers, showers and restroom fixtures. Two offices shall be provided, each with a minimum of 150 net sf. Each shall be provided with a telephone. Physical education equipment storage space shall be provided. Additionally, a fixed or temporary platform shall be provided, which may have more than one function and may fulfill more than one standard.

(4) Combination School. A combination school shall provide the elements of the grades served by paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

[6.27.30.15 NMAC - N, 9/1/2002]

6.27.30.16 LIBRARIES AND MEDIA CENTERS/RESEARCH AREA - GENERAL REQUIREMENTS.

A. A school facility shall have space for students to access research materials, literature, non-text reading materials, books and technology. This shall include space for reading, listening and viewing materials.

(1) Elementary School. For an elementary school facility, this space shall be the greater of 1,000 sf or the square footage equal to 30 net sf/student for 10 percent of the design capacity.

(2) Middle School/Junior High School or High School. For a middle school/junior high school or high school facility, this space shall be the greater of 2,000 sf or the square footage equal to 30 net sf/student for 10 percent of the design capacity.

(3) Combination School. A combination school shall provide the elements of the grades set out in subsections A and B above without duplication, but meeting the higher standards.

B. A school facility shall have library fixtures, equipment and resources in accordance with the standard equipment necessary to meet the educational requirements of the state board of education.

[6.27.30.16 NMAC - N, 9/1/2002]

6.27.30.17 FOOD SERVICE STANDARDS.

A. Cafeterias - General Requirements

(1) Serving and Dining. A school facility shall have a covered area or space, or combination, to permit students to eat within the school site, outside of general classrooms. This space may have more than one function and may fulfill more than one adequacy standards requirement (for example, auditorium and/or indoor physical education).

(2) Serving area shall be .5-.8 net sf/capacity of dining room; dining area shall be 10-15 net sf/seated student.

(a) Elementary School: should seat up to 200 students per sitting.

(b) Middle School/Junior High School: should seat up to 250 students per sitting.

(c) High School: should seat up to 250 students per sitting.

(d) Combination School: shall provide the elements of the grades served by subparagraphs (a), (b) and (c) above without duplication, but meeting the higher standards.

(3) Fixtures and Equipment. A school facility shall have space, fixtures and equipment accessible to the serving area, in accordance with the standard equipment required, for the preparation, receipt, storage or service of food to students.

(a) The space, fixtures and equipment shall be appropriate for the food service program of the school facility. Food service facilities and equipment shall comply with *The Food Service and Food Processing Regulations* of the New Mexico Department of Environment.

(b) Fixtures and equipment should include: food prep area, including sink, oven, range and serving area (unless separate buffet), dishwashing area, hot storage, cold storage, dry storage (can be shared with office space) and other related appropriate staff space.

B. Kitchen. Kitchen and equipment shall comply with either the Food Preparation Kitchen or the Serving Kitchen standards defined as follows:

(1) Food Preparation Kitchen - 2 net sf/meal served:

(a) Elementary School: 1,000 net sf minimum

(b) Middle School/Junior High School: 1,600 net sf minimum

(c) High School: 1,700 sf minimum

(d) Combination School: shall provide the elements of the grades served by subparagraphs (a), (b) and (c) above

without duplication, but meeting the higher standards.

(2) Serving Kitchen. Where food is not prepared, there shall be a minimum of 200 net sf with a hand wash sink and a phone.

[6.27.30.17 NMAC - N, 9/1/2002]

6.27.30.18 OTHER FACILITY AREAS.

A. Parent Workspace. If parents are invited to assist with school activities, a school facility shall include a workspace for use by parents. If this space is provided, it shall consist of 1 net sf/student with a minimum of 150 net sf and a maximum of 800 net sf. The space may consist of more than one room and may have more than one function.

B. Administrative Space. A school facility shall have space to be used for the administration of the school. The space shall consist of a minimum of 150 net sf, plus 1.5 net sf/student, up to a maximum of 2,500 net sf.

C. Student Health, Counseling and Ancillary Space. A school facility shall have space to isolate a sick student from the other students and may include space for the delivery of other health, counseling, testing and ancillary programs. This space shall be a designated space that is accessible to a restroom, and shall consist of 1 net sf/student with a minimum of 150 net sf and a maximum of 800 net sf. The space may consist of more than one room and may have more than one function. This space shall include a telephone.

D. Faculty Workspace or Teacher Lounge. A school facility shall have workspace available to the faculty. This space is in addition to any workspace available to a teacher, in or near a classroom. The space shall consist of 1 net sf/student, with a minimum of 150 net sf and a maximum of 800 net sf. The space may consist of more than one room and may have more than one function. This space shall include a break area with a sink.

[6.27.30.18 NMAC - N, 9/1/2002]

6.27.30.19 GENERAL STORAGE (EXCLUDES LOCKERS, JANITORIAL, KITCHEN OR SPECIALTY CLASSROOMS). For storage, 3 net sf /K-5 grade student, and 2 net sf/6-12 grade student may be distributed in or throughout any type of room or space, including classrooms, but may not count toward required minimum room square footages. General storage must include some secured storage.

[6.27.30.19 NMAC - N, 9/1/2002]

6.27.30.20 MAINTENANCE OR

JANITORIAL SPACE. Each school shall designate .5 net sf /student aggregate for maintenance or janitorial space. Janitorial space shall include a janitorial sink. [6.27.30.20 NMAC - N, 9/1/2002]

6.27.30.21 TEACHERAGES. Teacherages shall meet standards required by the United States Department of Housing and Urban Development. [6.27.30.21 NMAC - N, 9/1/2002]

6.27.30.22 STANDARDS VARIANCE. The council may grant a variance from any of the adequacy standards. The council shall grant a variance if it determines that the intent of the standard can be met by the school district in an alternate manner, or if a variance is required for appropriate programmatic needs as demonstrated by the district. If the council grants the variance, the school district shall be deemed to have met the standard. [6.27.30.22 NMAC - N, 9/1/2002]

HISTORY OF 6.27.30 NMAC: [Reserved]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT MANUFACTURED HOUSING DIVISION

This is an amendment to 14.12.2.20 NMAC:

14.12.2.20 [DOWN PAYMENTS]: ~~This regulation shall apply to all down payments in the sales of manufactured homes by licensed manufactured home sellers. This regulation does not apply to real estate transactions.~~

A. ~~A seller shall not accept or retain a down payment until both buyer and seller sign a bona fide purchase agreement or buyer's order and the buyer has been provided a copy. The purchase agreement or buyer's order shall state, but is not limited to:~~

~~(1) The make, year, model, manufacturer, serial number if known, approximate size of home;~~

~~(2) The purchase price, amount of down payment, method of purchase;~~

~~(3) That if the seller fails to deliver pursuant to the terms of the agreement, then buyer shall be entitled to a full refund of the down payment.~~

~~(4) The text of Sections B and C in its entirety in a clear and conspicuous manner.~~

B. ~~Down Payments in non-retail installment contract transactions:~~

~~(1) A seller will refund the down payment in full if a seller fails to deliver the home within the time specified in the purchase agreement or buyer's order, or if no time is specified, if the home is not delivered within forty five (45) days after the purchase agreement or buyer's order has been signed by both buyer and seller.~~

~~(2) A seller shall be entitled to retain the down payment, or any portion thereof, if the purchase agreement or the buyer's order explicitly provides for such retention and so long as the amount is the actual costs incurred by the seller in the transaction, plus liquidated damages not to exceed 5% of the contract sales price.~~

C. ~~Down payments in retail installment contract transactions:~~

~~(1) Seller will refund the down payment in full if the buyer cancels the transaction for any reason before the New Mexico Retail Installment Sales Act has been complied with.~~

~~(2) Once the New Mexico Retail Installment Sales Act has been complied with, then the down payment may be treated as if under Section B.~~

D. ~~When a buyer is entitled to a refund, the timetable for refund of down payments shall be:~~

~~(1) Cash down payments shall be refunded within ten (10) business days from the seller's receipt of the buyer's written request for a refund.~~

~~(2) Check down payments shall be refunded within ten (10) business days from the time the check is credited to the seller's bank or the seller's receipt of the buyer's written request for a refund, whichever date is later.~~

~~(3) Down payments other than cash or check shall be refunded or returned ten (10) business days from the seller's receipt of the buyer's written request for a refund.]~~

DEPOSITS:

A. Consumer deposits for a manufactured home transaction will not be collected without a bona fide purchase agreement or buyer's order signed by both buyer and seller which shall include but is not limited to: year, model, manufacturer, serial number if unit is in stock, purchase price, required deposit and financing terms of the purchase.

B. Deposits will be refunded in full if financing is denied or terms of approval are significantly different from original agreement. If the buyer fails to complete his obligation for the purchase, deposits will be refunded as follows:

(1) Deposits on units in stock will be refunded in full less all actual costs incurred by the seller, such costs to be a minimum of \$150.00 and a maximum of 5% of the purchase price.

(2) Deposits on ordered units ordered for a specific purchaser will be refunded in full, less all actual costs incurred by the seller, such costs to be a maximum of 10% of the purchase price. Seller must fully disclose that the unit will be ordered.

(3) Deposits on homes requiring repairs, upgrades, modifications or changes agreed to by both buyer and seller in writing will be refunded in full less actual costs of repairs, upgrades, modifications, or changes.

C. The timetable for refund of deposits is:

(1) Cash deposits should be refunded within one (1) business day, but in no case, later than five (5) business days after the request for refund.

(2) Check deposits should be refunded within one (1) business day after clearing the maker's bank, but in no case, later than five (5) business days, after the refund request.

(3) Deposits other than cash or check will be refunded no later than two (2) days after the refund request.

[14.12.2.20 NMAC - Rp, 14 NMAC 12.2.20, 9-14-00; A, 8-30-02]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an emergency amendment to 11.4.7 NMAC, Sections 8 and 9 and repeal of Section 18, CPT 4 Code Use Disclaimer, effective 8-7-2002. This rule was also renumbered and reformatted from 11 NMAC 4.7 to comply with current NMAC requirements. The effective date of renumbering is 8-30-2002.

11.4.7.8 GENERAL PROVISIONS

A. These rules apply to all charges and payments for medical, other health care treatment, and related non-clinical services covered by the New Mexico Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law.

B. These rules shall be interpreted to the greatest extent possible in a manner consistent with all other rules promulgated by the Workers' Compensation Administration (WCA). In the event of an irreconcilable conflict between these rules and any other rules, the more specific set of rules shall control.

C. Nothing in these rules shall preclude the separate negotiation of fees between a practitioner and a payor within the MAP for any health care service

as set forth in these rules.

D. These rules and the Director's annual order adopting the Schedule of Maximum Allowable Payments [apply to the 1997 Physicians' Current Procedural Terminology, Fourth Edition, Copyright 1996, unless otherwise noted. If there is a conflict between these rules and that publication, these rules apply.] utilize the edition of the Physicians' Current Procedural Terminology referenced in the Director's annual order, issued pursuant to Paragraph (1)(c) of Subsection B, 11.4.7.9 NMAC. All references to specific CPT provisions in these rules shall be modified to the extent required for consistency with the Director's annual order.

E. A carrier who subcontracts the bill review services remains fully responsible for compliance with these rules.

F. Employers are responsible for timely good faith payment as defined in Subsection A of 11.4.7.11 NMAC for all reasonable and necessary health care services for work-related injuries and diseases.

G. Employers are required to inform a Worker of the identity and source of their coverage for the injury or disablement.

H. The provision of services gives rise to an obligation of the employer to pay for those services. Accordingly, all services are controlled by the rules in effect on the date the services were provided.

I. Fees and payments for all physician professional services, regardless of where those services are provided, are reimbursed within the Schedule of Maximum Allowable Payments.

J. Diagnostic Coding shall be consistent with the International Classification of Diseases, 9th Edition, Fourth Revision, Clinical Modification (ICD-9-CM) or Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) guidelines as appropriate.

11.4.7.9 PROCEDURES FOR ESTABLISHING THE MAXIMUM AMOUNT OF REIMBURSEMENT DUE

A. Assigned Ratio Discount Method For Hospitals and FASCs

(1) The assigned ratio is applied toward all charges for compensable services provided during a hospital inpatient stay, emergency department visit, outpatient surgery, or FASC visit.

(2) This ratio does not include procedures that are performed in support of ambulatory surgery, even if performed on the same day and at the same surgical site as the surgery.

(3) Filing Requirements

(a) All hospitals and FASCs shall annually file, in accordance with generally accepted accounting principals, a complete and correct Workers Compensation Ratio Report Worksheet, even if the hospital or FASCs calculated ratio is anticipated to be less than 0.8. Filing shall be accomplished by actual delivery to the Medical Cost Containment Bureau or by deposit in the US mail with first class postage attached.

(b) Hospitals and FASCs with fiscal years ending January 1 through June 30 shall file a ratio report no later than January 15 of the next calendar year.

(c) Hospitals and FASCs with fiscal years ending July 1 through December 31 shall file a ratio report no later than July 15 of the next calendar year.

(d) Upon any change in its documented fiscal year currently on file with the Administration, each hospital or FASC shall file a "Fiscal Year Reporting Form". (see Appendix E)

(e) A hospital or FASC failing to file the information required by this Subsection by the due date above will be assigned a Workers' Compensation Ratio of .80 which will remain in effect until the next required annual filing. All information required by these rules must be provided in order for the filing to be considered complete.

(f) All filings must be submitted to the Director at the WCA.

(g) Repeated failures to file on a timely basis may subject the violator to administrative penalties in addition to any other remedies provided by these rules. For purpose of this rule, each 30 day period of continuous violation constitutes a separate offense.

(4) Special Provisions for New Hospitals

(a) Upon receipt of its license from the New Mexico Department of Health, a new hospital or FASC shall notify the Director of its status, including the date it commenced operation and the beginning and ending dates of its fiscal year.

(b) New hospitals or FASCs shall be assigned a Workers' Compensation Ratio of .90 until the hospital or FASC has filed its first required ratio report and has been assigned a new ratio and effective date by the WCA.

(5) Calculation of a Workers' Compensation Ratio

(a) Based on information filed pursuant to Paragraph (3) of Subsection A of 11.4.7.9 NMAC, above, the Administration will calculate and assign a specific Workers' Compensation Ratio for each hospital or FASC seeking reimbursement for compensable hospital services and items. The hospital or FASC shall be noti-

fied by mail of the assigned ratio which shall be effective upon the date assigned by the Administration. The Workers' Compensation Ratio is calculated as follows:

$$\text{ADJUSTED RATIO} = \frac{\text{ADJUSTED OPERATING EXPENSES}}{\text{ADJUSTED NET REVENUE}}$$

(b) The assigned ratio shall not be less than .80 and shall not be greater than 1.00.

(c) Any previously assigned ratio shall remain in full force and effect until a new ratio and effective date are assigned by the Administration pursuant to these rules.

(d) All hospitals and FASCs are responsible for notifying payors of any changes in their Workers' Compensation Ratio. All bills must have the assigned ratio on them.

(6) Appeal of Assigned Ratio by Hospital or FASC

(a) A written appeal may be filed with the Director. The Administration will review the appeal and respond with a written determination. The Administration may require the hospital or FASC to provide additional information prior to a determination.

(b) If the hospital or FASC is not satisfied with the Administration's written determination, within ten (10) calendar days of the date of the determination, the hospital or FASC may request that a formal hearing be set and conducted by the Director. The Director's ruling in all such formal hearings shall be final.

B. Maximum Allowable Payment Method

(1) Basic Provisions

(a) These rules apply to all charges for medical and other health care treatment provided on an outpatient basis, including procedures that are performed in support of ambulatory surgery, even on the same day and at the same site as the surgery.

~~(b) These rules and the Schedule of Maximum Allowable Payments apply to the 1998 Physicians' Current Procedural Terminology, Fourth Edition, Copyright 1997, unless otherwise noted. If there is a conflict between these rules and that publication, these rules apply.~~

~~(b)~~(b) The MAP is procedure-specific and provider-neutral. Any code listed in the [CPT 4 1998] edition of the Physicians' Current Procedural Terminology adopted in the Director's annual order may be used to designate the services rendered by any qualified practitioner within the parameters set by that practitioner's licensing regulatory agen-

cies combined with applicable state laws, rules, and regulations.

(c) For purposes of NMSA 1978, Section 52-4-5(A) (1990), the Director shall issue an order not less than once per annum setting the schedule of maximum allowable payments for medical services. The order shall contain the revised fee schedule, a brief description of the technique used for derivation of the fee schedule and a reasonable identification of the data upon which the fee schedule was based. The fee schedule order shall be available at the WCA Clerk's office not less than ten (10) prior to its effective date.

(2) Evaluation and Management (E/M) Services:

(a) The definition for "new patient" is unique to New Mexico, differing from the definition presented in [~~CPT-4 1998~~] the Physicians' Current Procedural Terminology. (See Subsection EE of 11.4.7.7 NMAC)

(b) E/M CPT codes shall not be pro-rated.

(3) Independent Medical Examinations

(a) All IMEs and their fees must be authorized by the claims payor prior to the IME scheduling and service, regardless of which party initiates the request for an IME. In the event of an IME ordered by a Judge, the Judge will set the fee.

(b) In the event a Worker fails to provide 48 hours notice of cancellation of an IME appointment, the HCP may be reimbursed either 60% of the pre-approved fee or up to 60% of the HCP's usual and customary fee if a fee was not pre-approved. "Missed IME" should be written next to the code.

(4) Physical Impairment Ratings

(a) All PIRs and their fees shall be authorized by the claims payor prior to their scheduling and performance regardless of which party initiated the request for a PIR. The PIR is inclusive of any evaluation and management code.

(b) Impairment ratings performed for primary and secondary mental impairments shall be billed using CPT Code 90899 (Unlisted Psychiatric Service/Procedure) and shall conform to the guidelines, whenever possible, presented in the most recent edition of the AMA Guides to the Evaluation of Permanent Impairment.

(c) A PIR is frequently performed as an inherent component of an IME. Whenever this occurs, the PIR may not be unbundled from the IME. The HCP may only bill for the IME at the appropriate level.

(d) In the event that a PIR with a specific HCP is ordered by a Judge and the

HCP and claims payor are unable to agree on a fee for the PIR, the Judge may set the fee or take other action to resolve the fee dispute.

(5) Special Physical Medicine (SPM) Services

(a) All special physical medicine services must be authorized by the claims payor prior to their scheduling and performance.

(b) The appropriate alphanumeric code and descriptor in these rules must be used for billing by practitioners.

(c) Services provided by care givers (e.g., technicians, exercise physiologists) must be pre-authorized and paid pursuant to Paragraph (13) of Subsection B of 11.4.7.9 NMAC.

(d) In the event a Worker fails to provide 48 hours notice of cancellation of an FCE appointment, the practitioner may be reimbursed up to 60% of the MAP for a four hour appointment.

(e) There are two unique codes which apply in New Mexico:

(i) SPM 99-50 for the Functional Capacity Evaluation (FCE) which tests, quantifies, and compares a Worker's capacities against established standards.

(ii) SPM 99-60 for all Work Hardening/Conditioning treatments at one hour increments.

(6) Materials Supplied under CPT Code 99070

(a) Supplies and materials must be itemized.

(b) Supplies and materials are reimbursed at the practitioner's invoice cost plus 25%, plus tax, shipping and handling charges.

(c) A copy of the invoice shall be provided either at the time of billing or upon the payor's request.

(7) Service Component Modifiers -- Radiology and Pathology/Laboratory

(a) Use of the technical and professional component modifier codes are required for the billing of all radiology and pathology/laboratory procedures.

(b) The dollar value listed as the MAP for a specific radiology or pathology/laboratory procedure represents the combined maximum allowable payment for both the technical and professional components of that procedure:

(i) The entity billing for the technical component shall be paid at no more than 60% of the MAP for the procedure when the service is provided on an outpatient basis.

(ii) If the procedure is performed on an inpatient basis, the service is reimbursed according to the assigned ratio.

(iii) The entity billing for the professional component shall be paid at no more than 40% of the MAP for the billed procedure, whether the service was provided on an inpatient or an outpatient basis.

(8) Surgical Modifiers

(a) Bilateral procedure "-50"

(i) When performed during the same operative session, the first or major procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of billed charges or the MAP.

(ii) The second procedure shall be coded with the same CPT code plus the "-50" modifier code and shall be paid at no more than 50% of the MAP.

(b) Multiple procedures "-51"

(i) The primary or major surgical procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of the billed charges or the MAP.

(ii) The second and third procedure shall be coded with the respective CPT code plus the "-51" modifier code and shall be paid at 50% of the MAP.

(iii) The fourth and subsequent procedures will be paid BR.

(c) Assistant surgeon "-80"

(i) The attending surgeon shall bill using the appropriate CPT code(s) and modifiers, if applicable, for the procedure(s) performed and shall be paid at the lesser of the billed charges or the MAP, subject to the percentages for modifiers in this Section.

(ii) The assistant surgeon shall bill using the appropriate CPT codes(s) plus the modifier for the procedures performed and shall be paid at no more than 25% of the MAP.

(9) Unlisted services or procedures are billable and payable on a BR basis.

(10) Performance of BR services.

(a) The fee for the performance of any BR service is negotiated between the practitioner and the payor prior to delivery of the service. Payors should insure that a CPT code with an established MAP is not available.

(b) Performance of any BR service requires that the practitioner submit a written report with the billing to the payor.

(i) The report shall substantiate the rationale for not using an established CPT code.

(ii) The report shall include pertinent information regarding the nature, extent, and special circumstances requiring the performance of that service and an explanation of the time, effort, per-

sonnel, and equipment necessary to provide the service.

(iii) Information provided in the medical record(s) may be submitted in lieu of a separate report if that information satisfies the requirements of Paragraph (1) of Subsection D of 11.4.7.10 NMAC.

(iv) No separate charge is allowed for the report.

(v) In the event a dispute arises regarding the reasonableness of the fee for a BR service, the practitioner shall make a prima facie showing that the fee is reasonable. In that event, the burden of proof shall shift to the payor to show why the proposed fee is not reasonable.

(vi) Any disputes shall be submitted pursuant to Section 13 of this rule.

(11) Special reports shall be billed with CPT Code "99080" and the descriptor "Special Report". The Form Letter to Health Care Provider is a special report. The MAP is \$45.

(12) The use of global fees is encouraged, however global fee shall not be used unless payor and provider agree. Agreement for use of a global fee may be sought and obtained before, during or after provision of services. All services not covered by the global fee shall be coded and paid separately, to the extent substantiated by medical records. Agreement to use a global fee creates a presumption that the HCP will be allowed to continue care throughout the global fee period.

(13) Care Giver services are subject to the payor's pre-authorization prior to the scheduling and performance of any service. All services provided by care givers are paid BR.

(14) Durable Medical Equipment (DME) shall be pre-authorized by the payor. However, reasonable and necessary prosthetic/orthotics training and/or adjusting is excluded from the cost of the DME and may be billed separately.

(a) Rental of DME shall not exceed 90 days unless it is determined by the payor to be more cost efficient to do so.

(b) Rental fees shall not exceed the cost of purchase established in the Subparagraph, below. Rental fees paid for the first 30 days of rent may be applied against the purchase price. Subsequent rental fees may not be applied against the purchase price. The decision to purchase should be made within the first 30 days of rental.

(c) Purchases of DME are paid at the practitioner's invoice cost plus 25% plus taxes, shipping and handling charges.

(d) A copy of the invoice shall be provided either at the time of billing or upon

the payor's request.

(15) Prorating

(a) The prorating of the practitioner's fees for time spent providing a service, as documented in the provider's treatment notes, is not prohibited by these rules; provided however, that EOB -- 13 is sent to the practitioner. (see item (iii) of Subparagraph (e) of Paragraph (4) of Subsection C of 11.4.7.11 NMAC)

(b) The practitioner's fees should not be prorated to exclude time spent in pre- and post-treatment activity, such as equipment setup, cleaning, disassembly, etc., if it is directly incidental to the treatment provided and is adequately documented.

(16) Referrals

(a) If a referral is made within the initial sixty (60) day care period as identified by NMSA 1978, 52-1-49(B) (Repl. Pamp. 1996), the period is not enlarged by the referral.

(i) When referring the care of a patient to another provider, the referring provider shall submit complete medical records for that patient, upon request of the referral provider, at no charge to the patient, referral provider or payer.

(ii) When transferring the care of a patient to another provider, the transferring provider shall submit complete medical records for that patient to the subsequent provider at no charge to the patient, subsequent provider or payer.

(b) If, subsequent to the completion of a consultation, a referral is made to the consultant for the assumption of responsibility for the management of a portion or all of the patient's condition(s), the following procedures apply:

(i) Follow up consultation codes shall not be used.

(ii) Evaluation and Management codes shall be used.

(iii) Only established patient codes shall be used.

(c) If a practitioner who has been requested to examine a patient assumes responsibility immediately for primary provision of the patient's care, it shall be considered a referral and not a consultation.

(i) Consultation codes shall not be used.

(ii) Evaluation and Management codes shall be used.

(iii) For the first visit only, a new patient code may be used.

(iv) HCPs and care givers may negotiate with the payor, prior to performing the service, regarding the use of Consultation Codes in appropriate circumstances.

(17) Physical Therapy

(a) Initial physical therapy evaluations shall be billed using alpha-numeric

Code PT-EV-1. Evaluation and Management codes are not appropriate for this purpose.

(b) Physical therapy reevaluations shall be billed using alpha-numeric Code PT-EV-2. Evaluation and Management codes are not appropriate for this purpose.

(c) Physical therapy bills may include all codes which are reasonable and necessary for the evaluation and treatment of a worker in a single day.

(d) An initial failed appointment, without providing 48 hours notice to the Physical Therapist, may be billed at 60% of the MAP for alpha-numeric Code PT-EV-1.

(e) PT-EV-3 should be used when physical therapy evaluations are greater than thirty (30) minutes.

(18) Failed Appointments

(a) An initial failed appointment, when the new patient fails to provide 48 hours notice to the HCP, may be billed at the level of a New Outpatient/Expanded Problem Focused H&E/Low to Moderate Severity/Straightforward Medical Decision Making/Evaluation and Management service, using CPT Code 99202 and annotated as "FAILED INITIAL APPOINTMENT/NEW PATIENT"

(b) A failed appointment by an established patient may not be billed.

(19) Facility Fees

(a) Charges for the use of a room for other than an emergency room visiting or operating and recovery rooms for inpatient or outpatient surgery are prohibited by these rules.

(b) For instances of outpatient services, where two or more HCPs combine in delivery of the service, the maximum total payment is based on the MAP for the specific service. The HCPs may allocate the payment among themselves.

(20) Charges for copies of radiographic film (X-rays) may be billed to the requestor by the X-ray facility following By Report (BR) procedures.

(21) Second medical opinions requested by a party are deemed medically reasonable and necessary for payment purposes.

C. Pharmacy Maximum Allowable Payment (Pharm MAP) is based upon the maximum payment that a pharmacy or authorized HCP is allowed to receive for any prescription drug, not including NMGRT.

(1) Basic Provisions

(a) Pharmacies and authorized HCPs must include patient identification and information. No specific form is required.

(b) Any medications dispensed and administered in excess of a 24 hour sup-

ply to a registered emergency room patient shall be paid according to the MAP.

(c) Any nationally recognized publication, issued not less frequently than monthly, which lists the AWP may be used to determine the AWP.

(d) Any bill that is submitted without an NDC number will be paid at the lowest AWP available for the month in which the drugs were dispensed.

(2) Average Wholesale Price (AWP)

(a) The date that shall be used to determine the AWP and calculation of the Pharm MAP shall be the date on which the drugs were dispensed, regardless of AWP changes during the month.

(b) Use of a prorated calculation of AWP will often be necessary in the formulas. For each drug dispensed, the prorated AWP shall be based on the AWP for the "100s ea" quantity of the specific strength of the drug, as listed in a nationally recognized publication, with the following exceptions:

(i) If an AWP listed in the publication is based on the exact quantity of the drug dispensed, e.g., #15, #60, 15 ml, 3.5 gm, etc., the AWP for the exact quantity shall be used with no proration calculation made.

(ii) If the drug is dispensed as a quantity based on volume (grams, ounces, milliliters, etc.) rather than single units ("ea"), the prorated AWP shall be calculated in accordance with the highest quantity (volume) listed for the specific strength of drug.

(iii) Subject to items (i) and (ii) of Subparagraph (b) of Paragraph (2) of Subsection C of 11.4.7.9 NMAC, in cases of a conflict between referenced publications, the lower price shall prevail.

(3) Formulas

(a) The formula for billing of brand name prescription drugs is: Pharm MAP(\$)= (\$) AWP x 1.04 + \$6.50.

(b) The formula for billing of generic prescription drugs is: Pharm MAP(\$)= (\$) AWP x 1.04 + \$8.06.

D. Qualification of out of state health care providers

(1) A HCP that is not licensed in the State of New Mexico must be approved by the Director to qualify as a HCP under the act.

(2) No party shall have recourse to the billing and payment dispute resolution provisions of these rules with respect to the services of a HCP who is not licensed in New Mexico or approved by the Director.

11.4.7.18 ~~CPT-4 CODE USE DISCLAIMER~~

~~A. The five digit numeric~~

~~codes included in the Schedule of Maximum Allowable Payments for Health Care Service (MAP Schedule) are obtained from the 1999 Physicians' Current Procedural Terminology, Fourth Edition, Copyright 1998 by the American Medical Association (CPT 4). CPT 4 is a listing of descriptive terms and numeric identifying codes and modifiers for reporting medical services and procedures performed by physicians. This schedule includes CPT 4 numeric identifying codes and descriptive terms for reporting medical services and procedures which are copyrighted by the American Medical Association and alpha-numeric codes developed by the New Mexico Workers' Compensation Administration for reporting medical services and procedures.~~

~~B. This schedule includes only CPT 4 numeric identifying codes and modifiers for reporting medical services and procedures that were selected by the New Mexico Workers' Compensation Administration. Any use of CPT 4 outside the MAP Schedule should refer to the 1999 Physicians' Current Procedural Terminology, Fourth Edition, Copyright 1998 by the American Medical Association and any update thereto.~~

~~C. No fee schedules are included in any part of the 1999 Physicians' Current Procedural Terminology, Fourth Edition, Copyright 1998 by the American Medical Association.][RESERVED]~~

End of Adopted Rules and Regulations Section

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SUBMITTAL DEADLINES AND PUBLICATION DATES

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Issue Number 11	June 3	June 14
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Issue Number 19	October 1	October 15
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Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
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