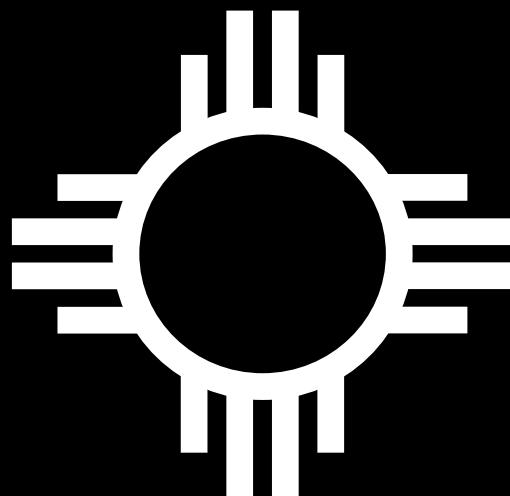


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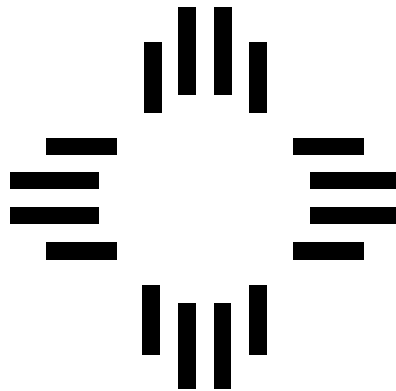


Volume XIV  
Issue Number 12  
June 30, 2003



# **New Mexico Register**

**Volume XIV, Issue Number 12**  
**June 30, 2003**



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  
Santa Fe, New Mexico  
2003

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# New Mexico Register

Volume XIV, Number 12

June 30, 2003

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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." Section 14-4-5 NMSA 1978.

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail [rules@rain.state.nm.us](mailto: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 HEARING AND REGU- LAR MEETING.

On August 13, 2003, at 5:15 PM, the Albuquerque/Bernalillo County Air Quality Control Board (Board) will hold two public hearings in the City Council/County Commission Chambers of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. These hearings were rescheduled from June 11, 2003. The hearings will address:

\* Proposal to amend 20.11.100 NMAC, Motor Vehicle Inspection - Decentralized.

The purpose of the first hearing is to receive testimony on proposed changes to the Motor Vehicle Inspection - Decentralized regulation. The proposed regulation changes include:

\* A requirement that effective January 1, 2004 emission testing be conducted with BAR97 OBDII capable analyzers certified to meet program specifications including the ability to transmit test data electronically.

\* The replacement of the visible tamper check for oxygen sensors with a functional pressurized gas cap check.

\* The extension of the new car exemption from testing to two registration cycles (up to four years).

\* The exemption of dedicated alternative fueled vehicles from testing.

\* A requirement that diesel vehicles be tested at change of ownership.

\* A requirement that vehicles defined as 'gross polluters' be repaired to reduce emissions below that threshold prior to being granted a waiver or time extension.

\* A requirement that vehicles in model years with inspection failure rates exceeding 25% (currently 1975 - 1985) be tested at each registration renewal.

\* A requirement that vehicles commuting into the program area 60 or more days per year comply with the biennial test requirement.

\* The creation of an additional category of Air Care stations known as 'Test

by appointment only' stations.

\* A revision of the Notice of Violation point system to provide a probationary period for new Air Care inspectors and to adjust the maximum points allowed proportionate with the volume of tests conducted.

Immediately after the Part 100 hearing closes, a second hearing will be held during which the Board will be asked to place the newly-adopted regulation into the SIP. Following these two hearings, the Board will hold its regular monthly meeting during which the Board is expected to consider approval of the proposed regulation and incorporating the newly-adopted regulation into the SIP.

The Air Quality Control Board is the federally delegated air quality 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 who wish to testify regarding the subject of the hearing 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 is asked to submit a written notice of intent to: Attn: August Hearing Record, Mr. Glen L. Dennis, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person at VPMD, 1500 Broadway NE, in advance of the hearing. The notice of intent shall identify the name, address, and affiliation of the person.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or the Environmental Health Department office, before 5:00 pm on August 6, 2003. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to [gdennis@cabq.gov](mailto:gdennis@cabq.gov) and shall include the required name and address information.

Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at [nbutt@cabq.gov](mailto:nbutt@cabq.gov) or by phone (505) 768-2660.

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 CHILDREN YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

#### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

#### PROTECTIVE SERVICES DIVISION

#### NOTICE OF PUBLIC HEARING

The Protective Services Division (PSD) will hold a public hearing in Santa Fe on Monday, June 30, 2003 from 3:30 p.m. to 4:30 p.m. in the Public Employees Retirement Association (P.E.R.A.) Building, 1120 Paseo de Peralta, 2nd floor conference room, number 229, to take comments regarding proposed revisions to the following PSD policies: General, Intake, Investigations, Foster Parenting, Permanency Planning and Adoptions.

The PERA building is accessible to people with disabilities. Written comments are provided the same weight as comments received during the public hearings. Documents are available in different formats to accommodate a particular disability. Anyone requesting such assistance must provide two weeks notice to receive any written material in an alternative format by calling 505-827-3991. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation.

The proposed revisions may be reviewed at any Protective Services Division county office. County office locations may be determined by calling 505-827-8400 for location information. The proposed policy

revisions may also be reviewed between 8:00 a.m.-5:00 p.m. (MST) at the PSD Directors office, Room 254, In the P.E.R.A. building in Santa Fe, NM. Copies of proposed policies may be obtained by contacting Linda McNall, Bureau Chief, CYFD-PSD, P.O. Drawer 5160, Santa Fe, NM 87502-5160, or by calling 505-827-3991. Copies can be requested through the use of the New Mexico relay system by calling 505-827-7586.

**NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT**

**OPEN MEETING NOTICE**

Chairwoman, Lena Trujillo-Chavez has announced that the Annual IDTP Retreat and Monthly Board Meeting for the Industrial Training Board will be held as scheduled:

- DATE:** Friday, June 26-27, 2003
- LOCATION:** Workforce Training Center  
Albuquerque  
Technical Vocational Institute  
5600 Eagle Rock Ave. NE  
NW Corner of Interstate 25 and Alameda  
Albuquerque, NM 87113  
Telephone:(505)224-5200
- TIME:** IDTP Annual Retreat  
June 26, 2003  
9:00 a.m. - 4:00 p.m.  
  
IDTP Board Meeting  
June 27, 2003  
9:00 a.m. - 12:00 noon

**PURPOSE:** To review the Industrial Development Training Program's fiscal update and the Board will revise its policies (Title 5, Chapter 5, Part 50).

The Board will address and possibly take action on any other issues related to the Industrial Development Training Program.

For additional information, including a meeting agenda, please contact Therese R. Varela at (505) 827-0323. If you are disabled and require assistance, auxiliary aids and services, (Voice & TDD), and/or alter-

nate formats in order to further your participation, please contact Cynthia Jaramillo, ADA Coordinator at (505) 827-0248. These individuals are employees of New Mexico Economic Development Department, 1100 St. Francis Dr., Santa Fe, NM 87505-4147.

**NEW MEXICO GAME COMMISSION**

**NEW MEXICO STATE GAME COMMISSION**

**NOTICE OF MEETING**

The State Game Commission will meet at the State Capitol Building, 415 Old Santa Fe Trail, Room 307, Santa Fe, New Mexico, 87504 on June 18, 2003, from 9:00a.m. - 5:00p.m.

The proposed agenda may be found by accessing the web site of the New Mexico Department of Game and Fish at [www.gmfsh.state.nm.us](http://www.gmfsh.state.nm.us) or by contacting the office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico or by calling (505) 476-8008.

*\*Notations under each agenda items are for discussion only and commission action will not be limited to said notations.*

*Those who desire to address the Commission and who claim to represent an organization must provide the following information: The number of members in the organization, frequency of the organization's meeting and either a signed statement from that organization's president that states the organization has discussed the topic and approved the position that the representative is presenting, or proof that they are a registered lobbyist for the organization.*

Some of the agenda items may include:

AGENDA ITEM NO. 6. C o n s e n t  
Agenda:

License Revocations  
Disposal of Fixed Assets

**OLD BUSINESS**

AGENDA ITEM NO. 7.  
State Game Commission to Determine Revocation Status of Jeffrey Miller as per Rules on Hunting and Fishing License Revocation (19.31.2 NMAC). Presented by Dan Brooks

**NEW BUSINESS**

AGENDA ITEM NO. 8. The State Game Commission will consider an importation denial appeal for a coatimundi.

Presented by Dan Brooks.  
AGENDA ITEM NO. 9.  
Hearing of Appeal of Denise Importation Privileges for Trophy Fish Ranch. Presented by Mike Sloane.  
AGENDA ITEM NO. 10.  
Proposed Shooting Preserve, Luna County. Presented by Steve Henry.  
AGENDA ITEM NO. 11.  
Changes to the Fishing Rule (19.31.4 NMAC) and Manner and Method Rule (19.31.10 NMAC). Presented by Mike Sloane.  
AGENDA ITEM NO. 13.  
Drawing for incentive oryx and elk authorizations. Presented by Reagan Smetak.

**NOTE:** The meeting will be adjourned upon completion of the agenda or up to those items that time allows. Any items not discussed will be on the following meeting's agenda.

The Agenda is subject to change up to 24 hours prior to the scheduled meeting date and time as deemed necessary by the Chairman. To inquire about agenda changes, please contact the Office of the Director at (505) 476-8008.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Shirley Baker at (505) 476-8030. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the agenda and minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

**NEW MEXICO HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION**

**Legal Notice**

The New Mexico Human Services Department, Child Support Enforcement Division, will hold a Public Hearing on Thursday, July 24, 2003 from 9:00 to 10:00 a.m., at the Law Library, Room 200, Pollon Plaza, 2009 South Pacheco Street, Santa Fe, New Mexico 87505.

The purpose of the meeting is to present revisions to Child Support state rules regarding the National Medical Support

Notice for public comment. The revisions to the rules are based on federal regulations and amendments made to the Mandatory Medical Support Act during the 2003 legislative session (Section 40-4C NMSA 1978, Laws of 2003, Chapter 287).

A copy of the Human Services Register containing the proposed rules can be obtained at the Human Services Department, Child Support Enforcement Division, Director's Office, Room 304, 2009 South Pacheco Street, Santa Fe, New Mexico or by contacting Paula Timmerman at 505-827-6205. Individuals unable to attend the hearing who are interested in submitting comments may mail comments to Paula Timmerman at the address shown above or send them electronically to [Paula.Timmerman@state.nm.us](mailto:Paula.Timmerman@state.nm.us). All comments must reach the Child Support Enforcement Division no later than 5:00 p.m. on the date of the hearing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or services to attend or participate in the Public Hearing, please contact the Human Services Department at 505-827-6205 or through the New Mexico Relay System, Toll Free at 1-800-659-8331. The department requests at least a ten day notice to provide requested alternative formats and/or special accommodations.

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

### NOTICE OF PUBLIC HEARING

A public hearing to receive testimony on the administration of the federal fiscal year (FFY) 04 LIHEAP program will be held on Tuesday August 12, 2003 at 2:00 P.M. The hearing will be held at Pollon Plaza, 2009 S. Pacheco St. Santa Fe, NM 87505 in the Law Library. Room 101, located on the ground level. Any individual wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling toll free 1 800 432-6217.

The LOW-INCOME HOME ENERGY ASSISTANCE ACT OF 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended) Section 2605 (a) (2) directs states to "conduct public hearings with respect to the proposed use and distribution of funds". Each year states are required by the statute to have meaningful public participation in the development of the LIHEAP plan.

The Human Services Department proposes to administer the LIHEAP program for FFY 2004 without changes. The mandatory changes in the income guidelines will be made. The income limits will be amended to reflect the current FFY 03 federal poverty guidelines.

Individuals wishing to request a copy of the current regulations should contact the Income Support Division, P.O. Box 2348, Santa Fe, New Mexico 87504-2348 or by calling 1 800 283-4465. The current regulations can also be viewed on the internet at <http://policymanuals.hsd.state.nm.us/dscgi/ds.py/View/Collection-90>.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the NM Human Services Department toll free at 1 800 432-6217, in Santa Fe at 827-9454, or through New Mexico Relay system, toll free 1 800 659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Interested persons may address written or recorded comments to:

Pamela S. Hyde J.D., Secretary  
Human Services Department  
P.O. Box 2348 Pollon Plaza  
Santa Fe, NM 87504-2348

Interested persons may also address comments via electronic mail to [Loretta.Williams@state.nm.us](mailto:Loretta.Williams@state.nm.us)

## NEW MEXICO ORGANIC COMMODITY COMMISSION

### Notice of Public Hearing

The New Mexico Organic Commodity Commission will hold a public hearing at 9 a.m. on July 31, 2003 at the Office of the New Mexico Organic Commodity Commission in the Summit Office Building, 4001 Indian School NE Suite 310, Albuquerque New Mexico 87110. The public hearing will be held to solicit comments on the following proposed amendments to:

21.15.1 NMAC	Organic
Agriculture Generally	
21.15.1.9 NMAC	Statutory
Requirements Common to All Categories	
21.15.1.10 NMAC	Farm Crop
Production Certification Standards	
21.15.1.11 NMAC	Fees and

### Assessments

21.15.1.12 NMAC	Exempted
and Excluded Categories	

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or another form of auxiliary aid or service to attend or participate in the hearing please contact the New Mexico Organic Commodity Commission at 266-9849 at least one week prior to the meeting or as soon as possible. For a copy of the changes to the NMAC please contact the New Mexico Organic Commodity Commission at 266-9849.

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

### NOTICE OF P.E.R.A. RULEMAKING

The Public Employees Retirement Association ("PERA") will consider amendments to its rules promulgated under the Public Employees Retirement Act, Judicial Retirement Act, Magistrate Retirement Act and Deferred Compensation Act, including implementation of statutory amendments to the Public Employees Retirement Act that become effective July 1, 2003. Changes are proposed for the following Rules:

2.80.100 NMAC	General
Provisions	
2.80.400 NMAC	Employee
Membership	
2.80.500 NMAC	Remittance
of Contributions	
2.80.600 NMAC	Service
Credit and Purchase of Service Credit	
2.80.700 NMAC	Normal
Retirement	
2.80.900 NMAC	Pre-
Retirement Survivor Pensions	
2.80.1000 NMAC	Disability
Retirement Benefits	
2.80.1100 NMAC	Retired
Members	
2.80.1200 NMAC	Legislative
Retirement	
2.80.1400 NMAC	Reciprocity
2.80.1500 NMAC	Appeal of
Denial of Claim of Benefits	
2.80.1600 NMAC	Determination
of Community Interest and Division of	
Retirement Pensions/Contributions at	
Divorce	
2.80.1700 NMAC	Affiliated
Public Employer Election for Coverage	
Plan and Change in Coverage Plan	

2.80.2100 NMAC Contributions	M e m b e r
2.83.100 NMAC Provisions	G e n e r a l
2.83.500 NMAC Credit	S e r v i c e
2.84.100 NMAC Provisions	G e n e r a l
2.84.300 NMAC	M e m b e r s h i p
2.84.400 NMAC Credit	S e r v i c e
2.84.500 NMAC Contributions	M e m b e r
2.84.700 NMAC	R e t i r e m e n t
2.84.800 NMAC Pension	S u r v i v o r
2.84.1100 NMAC Members	R e t i r e d
2.84.1200 NMAC of Contributions	R e m i t t a n c e
2.85.100 NMAC Provisions	G e n e r a l

Copies of the draft rules are available for inspection in PERA's Office of General Counsel. Copies of the draft rules may be purchased for \$3.00. Written comments, inquiries or requests for copies should be directed PERA's Office of General Counsel, P.O. Box 2123, Santa Fe, New Mexico, 87504-2123, (505) 827-4768 or 1-800-342-3422. Written comments or requests for copies may be submitted electronically to: [jaolson@pera.state.nm.us](mailto:jaolson@pera.state.nm.us). To be considered, written comments, arguments, views or relevant data should be submitted by 5:00 p.m. July 25, 2003. The PERA Board will review and consider all written comments addressing the proposed rule changes.

A formal rulemaking hearing will be held on August 12, 2003, at 8:30 a.m. in the PERA Board Room of the PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico. Oral comments will be taken at the public hearing. Final action on the rules will occur at the monthly meeting of the PERA Board on August 28, 2003, which will be held at 8:30 a.m. in Apodaca Hall of the PERA Building. All interested parties are requested to attend. Lobbyists must comply with the Lobbyist Regulation Act, NMSA 1978, Sections 2-11-1 through 9 (1999), which applies to rulemaking proceedings.

Individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing may contact Jane Clifford at 505-827-1232 or toll free at 1-800-342-3422 seven days prior to the hearing or as soon as possible.

**NEW MEXICO PUBLIC  
REGULATION  
COMMISSION  
INSURANCE DIVISION**

**BEFORE THE  
NEW MEXICO  
SUPERINTENDENT OF  
INSURANCE**

**IN THE MATTER OF  
AMENDING 13.10.17 NMAC,  
GRIEVANCE PROCEDURES**

**DOCKET NO. 03-00180-IN**

**NOTICE OF PROPOSED RULEMAK-  
ING, HEARING AND PROCEDURAL  
ORDER**

**NOTICE IS HEREBY GIVEN** that the New Mexico Superintendent of Insurance ("Superintendent") proposes to amend 13.10.17 NMAC, Grievance Procedures. Staff of the Insurance Division ("Staff") recommends that the rule be amended. The Superintendent, having considered Staff's recommendations, the proposed amendments to the rule, and being otherwise fully advised, FINDS and CONCLUDES:

1. The Superintendent, after a hearing thereon, may make reasonable rules and regulations necessary for or as an aid to administration or effectuation of any provision of the Insurance Code administered by the Superintendent, and from time to time withdraw, modify or amend any such rule or regulation. NMSA 1978, Section 59A-2-9 (A).

2. Under the Health Maintenance Organization Law, every health maintenance organization shall establish and maintain a grievance procedure that has been approved by the Superintendent to provide procedures for the resolution of grievances initiated by enrollees. NMSA 1978, Section 59A-46-11(A). The Superintendent may, after notice and hearing, adopt and promulgate reasonable rules and regulations as are necessary or proper to carry out the provisions of the Health Maintenance Organization Law. NMSA 1978, Section 59A-46-23.

3. The Patient Protection Act also requires the Insurance Division to adopt regulations to implement the provisions of the Patient Protection Act and monitor and oversee a managed health care plan to ensure that each covered person enrolled in a plan is treated fairly and in accordance with the requirements of the Patient Protection Act. See NMSA 1978, Section

59A-57-4 (A). Regulations adopted by the Insurance Division to protect patient rights shall provide at a minimum "that a managed health care plan shall adopt and implement a prompt and fair grievance procedures for resolving patient complaints and addressing patient questions and concerns regarding any aspect of the plan, including the quality of and access to health care, the choice of health care provider or treatment and the adequacy of the plan's provider network. . . . [t]he Grievance procedure shall notify patients of their right to obtain review by the plan, their right to obtain review by the Superintendent, their right to expedited review of emergent utilization decisions and their rights under the Patient Protection Act." NMSA 1978, 59A-57-4 (B)(4).

4. For the past five years, Staff has participated in an informal Managed Health Care Task Force composed of representatives of consumer health advocates, the New Mexico Medical Society, the New Mexico Attorney General, and managed health care plans. The Task Force discusses developments and challenges in the New Mexico managed health care market and explores new ways to improve regulation of the market to ensure the delivery of accessible, affordable and quality health care services to New Mexican consumers in accord with applicable state law most notably the Patient Protection Act and managed health care regulations.

5. Based on Task Force meetings over the past several months, Staff proposes amending the Grievance Procedure rule. In general, the substantive changes will clarify the responsibilities of managed health care plans in reviewing adverse determination appeals and providing grievants with necessary information about the appeals process and their rights at each stage of an internal or external review. Staff prepared the proposed amendments to the rule. See attached Exhibit "A".

6. The Superintendent finds that he should consider amending the Grievance Procedure rule as proposed by Staff.

7. The Superintendent will accept written comments concerning the proposed amendments to the rule from any person or entity wishing to comment. All written comments shall be filed no later than July 25, 2003. Comments will be available for public inspection during regular business hours in Room 406 of the New Mexico Public Regulation Commission's Docketing Division, at the address provided below. Any person wishing to respond to filed written comments may do so by submitting a written response no later than July 30, 2003.

Written comments that suggest changes to the proposed amendments to the rule shall state and discuss the particular reasons for the suggested changes, and shall include all specific language necessary and appropriate to effectuate the suggested changes. Please submit proposed changes on paper. The Superintendent also strongly encourages that proposed changes be submitted in electronic format (3.5-inch floppy disk in Microsoft Word 95 or Microsoft Office 97 format). Floppy disks should be labeled by clearly designating the name of the person(s) submitting the proposed changes and the docket number of this proceeding. All written or electronic comments and suggested changes shall bear the caption and docket number contained at the top of this Notice.

8. Comments and suggested changes concerning the proposed amendments to the Grievance Procedure rule shall be sent to:

NM Public Regulation  
Commission – Docketing Division  
ATTN: Bettie K. Cordova  
RE: Proposed Amended Rules in  
Docket No. 03-00180-IN  
PO Box 1269  
Santa Fe, NM 87504-1269  
Telephone (505) 827-4526

9. The Superintendent will review all timely submitted written comments and suggested changes and will hold a public hearing to take oral public comments regarding the proposed amended rules. The public hearing will be held on August 1, 2003 at 9:30 AM in the Fourth Floor Hearing Room of the P.E.R.A. Building, which is located on the corner of Paseo De Peralta and Old Santa Fe Trail in Santa Fe, New Mexico. All interested persons wishing to submit data, views or arguments, orally or in writing will be afforded a reasonable opportunity to do so at this hearing. Additional public hearings may be scheduled and further notice will be issued regarding the time and location of any additional hearings that may be scheduled.

10. Interested person should contact the Insurance Division to confirm the date, time and place of any public hearings as hearings are occasionally rescheduled.

11. Any person with a disability requiring special assistance in order to participate in a hearing should contact Anne Echols at (505) 827-4526 at least one week prior to the commencement of the hearing.

12. Consistent with the New Mexico Insurance Code, this Notice will be pub-

lished once in the New Mexico Register and once in the Albuquerque Journal. You may obtain a copy of this Notice and the proposed rule amendments by sending your address and a \$5.00 fee to cover the cost of copying and postage to the office of the New Mexico Superintendent of Insurance, PO Box 1269, Santa Fe, NM 87504-1269. See NMSA 1978, Section 59A-4-16(C).

**IT IS THEREFORE ORDERED** that this Notice of Proposed Rulemaking, Hearing and Procedural Order be issued and is hereby effective immediately.

**IT IS FURTHER ORDERED** that the proposed amendments to the Grievance Procedure rule, attached to this Notice as Exhibit A, are proposed for adoption as permanent rules as provided by this Notice. Interested persons shall file their written comments on the proposed rules as set forth in this Notice.

**IT IS FURTHER ORDERED** that a public hearing shall be held as provided in this Notice. Insurance Division Staff shall mail a copy of this Notice and proposed amendments to the rule to all persons requesting a copy in the manner described above. Staff shall cause this Notice to be published in New Mexico Register and the Albuquerque Journal.

**DONE AND ORDERED** this 5th day of June, 2003.

ERIC P. SERNA  
Superintendent of Insurance

**NEW MEXICO PUBLIC  
REGULATION  
COMMISSION  
INSURANCE DIVISION**

**BEFORE THE NEW MEXICO  
SUPERINTENDENT OF INSURANCE**

**IN THE MATTER OF  
THE ANNUAL TITLE  
INSURANCE HEARING**

**DOCKET NO.  
03-00200-IN**

**NOTICE OF HEARING TO CONSIDER  
THE PROMULGATION OF PRE-  
MIUM  
RATES AND PROCEDURAL ORDER**

**THIS MATTER** comes before

the New Mexico Superintendent of Insurance (“Superintendent”) upon the Superintendent’s own motion, pursuant to the statutory mandate of NMSA 1978, Section 59A-30-8 (A), requiring the Superintendent to hold an annual hearing during November of each calendar year to consider promulgation of premium rates and any other matters related to the regulation of the business of title insurance deemed necessary by the Superintendent. The Superintendent, being fully advised in the premises, hereby issues the following notice and order:

1. A public hearing shall be held commencing on **Thursday, November 20, 2003, at 9:30 a.m.** and continuing on **Friday, November 21, 2003 at 9:30 a.m.**, if necessary, at Apodaca Hall, Second Floor, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico. The hearing shall be held for the purpose of considering title insurance rates. The proceeding shall be a formal administrative hearing within the meaning of NMSA 1978, Section 59A-4-17. Certain provisions of the Administrative Procedures Act, specifically, NMSA 1978, Sections 12-8-10 through 12-8-13, and Section 12-8-15, shall apply to the proceeding.

2. Pursuant to NMSA 1978, Section 59A-3-6 (C), title insurance rates shall not be excessive, inadequate or unfairly discriminatory, and shall contain an allowance permitting a profit which is not unreasonable in relation to the riskiness of the business of title insurance.

3. Any person intending to file a rate proposal or otherwise participate as a party to this proceeding shall file a motion for leave to intervene on or before **Friday, August 8, 2003**. Objections to motions for leave to intervene shall be filed on or before **Monday, August 18, 2003**.

4. Techniques of pre-hearing discovery permitted in civil actions in New Mexico, such as interrogatories, depositions, and requests for production of documents, may be employed by Staff or any party commencing on or after **Friday, September 5, 2003**. The time in which to respond to interrogatories and requests for production of documents shall be shortened to 10 calendar days after service.

5. Staff of the Insurance Division Title Insurance Bureau (“Staff”) and all other persons who have been granted leave to intervene (“parties”) who wish to submit independent written rate proposal(s) and actuarial reports(s) relating to the rate proposals(s) shall file such proposal(s) and report(s) in this docket on or before **Friday, October 17, 2003**.

6. Staff and all parties shall file the following items in this docket on or before **Friday, October 17, 2003**:

a) Notice of Intent to Call Expert Witnesses, which shall include the name, address, and business association of each expert witness;

b) Witness List, which shall include addresses and telephone numbers for each witness named; and

c) Pre-filed Direct Testimony and copies of related exhibits for each lay witness and for each expert witness.

7. All lay witnesses and all expert witnesses shall file pre-filed direct testimony, appear at the hearing and submit to examination under oath.

8. Staff and all parties shall file the following items in this docket on or before **Friday, October 31, 2003**:

a) Pre-filed Rebuttal Testimony and copies of related exhibits; and

b) Objections to Pre-filed Direct Testimony and exhibits.

9. Staff and all parties shall file Objections to Pre-filed Rebuttal Testimony and exhibits in this docket on or before **Friday, November 7, 2003**:

10. Staff and all parties shall meet and confer to discuss the narrowing of issues to be addressed at the hearing, stipulations regarding undisputed material facts and admissibility of all uncontested documents, and any other unresolved issues to be addressed at the hearing. The parties shall prepare and file a joint proposed hearing agenda regarding the promulgation of premium rates and any stipulations reached by the parties on or before **Friday, November 7, 2003**.

11. No discovery requests or notices of taking deposition shall be served after **Monday, November 10, 2003**.

12. A pre-hearing conference shall be held on **Monday, November 10, 2003, at 9:30 a.m.** at the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico. The Superintendent or his designated hearing officer shall preside at the pre-hearing conference. The purpose of the pre-hearing conference is to narrow the issues to be addressed at the hearing, to hear all pending motions and other outstanding matters related to the hearing, and to set the agenda for the hearing.

13. An original and two copies of all proposals, reports, comments, motions, notices and other materials to be filed shall be submitted in person or by mail to the Public Regulation Commission's Docketing Office, citing the above-referenced docket. The Docketing Office is located in Room 406, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico and its mailing address is P.O. Box 1269, Santa Fe, New Mexico

87504-1269. An additional copy of all proposals, reports, comments, motions, notices and other materials filed in this docket shall be delivered or mailed to Charles G. Denton, Supervisor, Title Insurance Bureau, Insurance Division, Room 431, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

14. All submissions shall be deemed filed as of the date and time stamped by the Docketing Office.

15. Staff shall arrange for distribution and publication of this notice pursuant to NMSA 1978, Section 59A-4-16 and other applicable law.

16. Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, should contact Ann Echols at (505) 827-4526 no later than **Monday, November 10, 2003**. Public documents, including the transcript, agenda or minutes, if any, can be provided in various accessible forms. Please contact Ann Echols if a summary or other type of accessible form is needed.

**DONE AND ORDERED** this 10th day of June 2003

ERIC P. SERNA  
SUPERINTENDENT OF INSURANCE

**NEW MEXICO PUBLIC  
REGULATION  
COMMISSION  
INSURANCE DIVISION**

**BEFORE THE NEW MEXICO  
SUPERINTENDENT OF INSURANCE**

**IN THE MATTER OF  
THE 2003 ANNUAL TITLE  
INSURANCE HEARING**

**DOCKET NO.  
03-00200-IN**

**NOTICE OF HEARING TO ADDRESS  
MATTERS RELATED TO THE REGU-  
LATION OF TITLE INSURANCE  
OTHER THAN THE PROMULGA-  
TION OF PREMIUM RATES AND  
PROCEDURAL ORDER**

**THIS MATTER** comes before the New Mexico Superintendent of Insurance ("Superintendent") upon the Superintendent's own motion, pursuant to the statutory mandate of NMSA 1978,

Section 59A-30-8 (A), requiring the Superintendent to hold an annual hearing during November of each calendar year to consider promulgation of premium rates and any other matters related to the regulation of the business of title insurance deemed necessary by the Superintendent. The Superintendent, being fully advised in the premises, hereby issues the following notice and order:

1. A public hearing shall be held on **Wednesday, November 19, 2003, at 9:30 a.m.**, at the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico. The hearing shall be held for the purpose of adopting and/or amending regulations and forms, for determining the Insurance Fraud Fund assessment for title insurers pursuant to NMSA 1978, Section 59A-16C-14 (1999), and for addressing other matters related to the business of title insurance. The proceeding shall be informal within the meaning of NMSA 1978, Section 59A-4-18.

2. Staff of the Insurance Division ("Staff") and all other persons wishing to submit proposals relating to adopting and/or amending regulations and forms, determining the Insurance Fraud Fund assessment for title insurers pursuant to NMSA 1978, Section 59A-16C-14 (1999), and other matters related to the business of title insurance shall file the following items in this docket on or before Friday, October 10, 2003:

a) written proposal(s); and  
b) written comments and exhibits in support of their proposal(s). All written comments shall state and discuss the particular reasons for the proposal and where necessary or appropriate to effectuate the proposal, shall include specific language to implement the proposal.

3. All interested persons may testify at the hearing.

4. Interested persons who have not filed proposals, but who wish to comment on proposals filed by others in this docket, may do so by filing written comments on or before Friday, October 24, 2003.

5. All responsive comments shall be filed no later than Friday, November 7, 2003.

6. All written comments suggesting changes to proposals shall state and discuss the particular reasons for the suggested changes and, where necessary or appropriate to effectuate the changes being suggested, shall include specific language for incorporation into the proposal. Responsive comments shall also include specific language for incorporation into the proposals where necessary or appropriate.

7. The parties shall meet and confer to discuss the narrowing of issues to be addressed at the hearing and any other unresolved issues to be addressed at the hearing. The parties shall prepare and file a joint proposed hearing agenda regarding regulation of title insurance other than promulgation of premium rates on or before Friday, November 7, 2003.

8. A pre-hearing conference shall be held on Monday, November 10, 2003, at 9:30 a.m. at the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico. The Superintendent or his designated hearing officer shall preside at the pre-hearing conference. The purpose of the pre-hearing conference is to narrow the issues to be addressed at the hearing, to hear all pending motions related to the hearing, and to set the agenda for the hearing.

9. Proposals and Comments will be available for public inspection during regular business hours at the Public Regulation Commission's Docketing Office. An original and two copies of all proposals, reports, comments, motions, notices and other materials to be filed shall be submitted in person or by mail to the Docketing Office, citing the above-referenced docket. The Docketing Office is located in Room 406, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico and its mailing address is P.O. Box 1269, Santa Fe, New Mexico 87504-1269. An additional copy of all proposals, reports, comments, motions, notices and other materials filed in this docket shall be delivered or mailed to Charles G. Denton, Supervisor, Title Insurance Bureau, Insurance Division, Room 431, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

10. All submissions shall be deemed filed as of the date and time stamped by the Docketing Office.

11. Staff shall arrange for distribution and publication of this notice pursuant to NMSA 1978, Section 59A-4-16 and other applicable law.

12. Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, should contact Ann Echols at (505) 827-4526 no later than November 10, 2003. Public documents, including the transcript, agenda or minutes, if any, can be provided in various accessible forms. Please contact Ann Echols if a summary or other type of accessible form is needed.

13. Interested persons

should contact the Docketing Office or Staff for confirmation of the hearing date, time and place since hearings are rescheduled on occasion.

**DONE AND ORDERED** this 10th day of June 2003.

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ERIC P. SERNA  
SUPERINTENDENT OF INSURANCE

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules and Regulations

### NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.60.3 NMAC. Sections 3, 7, and 8 are amended. A new section 9 is added, and previous sections 9 and 10 are renumbered accordingly.

**6.60.3.3 STATUTORY AUTHORITY:** 22-2-1, 22-2-2, [~~22-10-3~~], 22-10A-6, and 22-10A-8, NMSA 1978. [07-01-00; 6.60.3.3 NMAC -Rn, 6 NMAC 4.2.2.1.3, 06-14-01; A, 06-30-03]

#### 6.60.3.7 DEFINITIONS:

A. "Particular field" means the license and/or endorsement area being sought.

B. "Appertains and corresponds to the subject area of instruction and level of instruction" means:

(1) that for early childhood licensure, the degree, including the credit hours, shall be related to early childhood education, birth through grade 3;

(2) that for elementary licensure, the degree, including the credit hours, shall include completed course work in any combination of the subject areas of language arts, mathematics, science, social studies, history, fine or performing arts and foreign language;

(3) that for middle level, secondary, and K-12 licensure the degree, including the credit hours, shall be in the license and/or endorsement area being sought; and,

(4) that for special education licensure, the degree, including the credit hours, shall include completed course work in any combination of the subject areas of language arts, mathematics, science, social studies, history, fine or performing arts and foreign language, or shall be related to special education (such as general elementary or secondary education, special education, psychology, child development, reading education).

C. "A program approved by the state board" means that the same program approval standards and procedures used by the state board for approving university preparatory programs shall be applied to alternative programs.

D. "Academic subjects" means English, language arts, reading, mathematics, science, modern and classical languages, except for the modern and classical Native American languages and cultures of New Mexico tribes or pueblos, the arts, including music and visual arts, and social studies, which includes civics, government, economics, history, and geography.

E. "A highly qualified, beginning early childhood, elementary, middle level, secondary, K-12, or special education teacher", under this rule, means a teacher who is fully qualified to teach the core academic subjects or special education, who is new to the profession, who has pursued an alternative route to licensure and who:

(1) meets the requirements for alternative licensure in 6.60.3.8 NMAC, and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and

(3) has passed all applicable teacher testing requirements for the level of licensure under 6.60.5.8 NMAC.

E. "A highly qualified beginning middle or junior high school teacher holding alternative elementary K-8 licensure", under this rule, means a teacher who is fully qualified to teach the core academic subjects in a public middle or junior high school, and who has pursued an alternative route to licensure, and who:

(1) meets the requirements for alternative elementary K-8 licensure in 6.60.3.8 NMAC, and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and

(3) has passed all applicable teacher testing requirements for elementary K-8 licensure in 6.60.5.8 NMAC, and

(4) if the teacher is new to the profession after June 30, 2006, or if the teacher was hired after the first day of school of the 2002-2003 school year and assigned to work in a Title I targeted assistance program or a Title I school-wide program

(a) has passed the content knowledge test(s) of the New Mexico Teacher Assessments or comparable licensure tests from another state in each subject area the teacher teaches and in which the teacher is required to have a licensure endorsement, or

(b) has successfully completed an undergraduate academic major or course-work equivalent to an undergraduate major, or a graduate degree, in each core academic subject the teacher teaches and in which the teacher is required to have a licensure endorsement.

G. "A highly qualified teacher candidate for Level I alternative licensure" means a person participating in an alternative route to licensure, who meets all of the following requirements:

(1) Has fulfilled the degree requirements set forth in Subsection A of 6.60.3.8 NMAC; and

(2) Receives high-quality profes-

sional development that is sustained, intensive, and classroom-focused, and includes classroom management and lesson planning for teaching New Mexico's diverse student population, both before and while teaching; and

(3) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program; and

(4) Assumes duties as a teacher only for a period of time not to exceed three years; and

(5) Demonstrates satisfactory progress toward full alternative licensure by completing at least nine semester hours per year in his/her alternative licensure program or successfully demonstrates competency by way of portfolio assessment.

H. "Internship license" means a one-year renewable alternative certificate or license issued by the state board authorizing a candidate to teach where he/she does not yet meet the requirements for an alternative license but is satisfactorily participating in an alternative route to licensure under 6.60.3 NMAC.

I. "Undergraduate academic major", under this rule, means thirty (30) semester hours in a core academic subject.

[07-01-00; 6.60.3.7 NMAC - Rn, 6 NMAC 4.2.2.1.7, 06-14-01; A, 06-30-03]

#### 6.60.3.8 REQUIREMENTS FOR ALTERNATIVE LICENSURE:

To receive a level 1, three-year alternative license, an applicant must meet the following requirements:

A. Degree requirements - An applicant for alternative licensure must meet the provisions of Subsection A, Paragraphs (1), (2), and (3) of 6.60.3.8 NMAC.

(1) Must possess a bachelor of arts or science degree from a regionally accredited college or university including completion of a minimum of thirty semester hours of graduate or undergraduate credit in a particular field that appertains and corresponds to the subject area of instruction and level of instruction that will enable the applicant to teach in a competent manner as determined by the state board; or

(2) Must possess a master of arts or science degree from a regionally accredited college or university including completion of a minimum of twelve graduate credit hours in a particular field that appertains and corresponds to the subject area of instruction and level of instruction that will enable the applicant to teach in a competent manner as determined by the state board; or

(3) Must possess a [~~doctor of philosophy or doctor of education~~] doctor's degree from a regionally accredited college or university. The degree shall [appertain and] correspond to the subject area of instruction and particular grade level [of instruction] that will enable the applicant to teach in a competent manner as determined by the state board.

B. Professional teacher education requirements - An applicant for alternative licensure must meet the provisions of Subsection B, Paragraphs (1) and (2) of 6.60.3.8 NMAC, and

(1) For those persons seeking either early childhood B-3, elementary K-8, or special education K-12 licensure, must complete various semester hours of credit earned through a regionally accredited college or university that has a state board-approved alternative licensure program containing no less than twelve (12) nor more than twenty-one (21) semester hours of credit.

(a) The credits must include six (6) semester hours of reading courses; and

(b) The credits must include the state board's competencies for entry level teachers that correspond to the license being sought; and

(c) The credits must be in a program approved by the state board; and

(d) The program must include a student teaching or field-based component.

(2) For those persons seeking either middle level 5-9, or secondary 7-12 licensure, must complete various semester hours of credit earned through a regionally accredited college or university that has a state board-approved alternative licensure program containing no less than twelve (12) nor more than eighteen (18) semester hours of credit.

(a) The credits must include three (3) semester hours of reading courses; and

(b) The credits must include the state board's competencies for entry level teachers that correspond to the license being sought; and

(c) The credits must be in a program approved by the state board; and

(d) The program must include a student teaching or field-based component. Or in lieu of complying with [~~B(1) or B(2)~~] Paragraph (1) or (2) of Subsection B above,

(3) Must successfully demonstrate the state board's approved competencies for entry level teachers that correspond to the license being sought by way of a portfolio assessment pursuant to 6.2.4 NMAC. [Other than an individual who is employed under authority of a substandard license issued pursuant to 6.61.9 NMAC, an applicant for alternative licensure who elects to proceed by way of a portfolio assessment pursuant to 6.2.4 NMAC, shall demonstrate

the necessary teaching competencies at that portfolio assessment prior to assuming teaching duties.] Such applicants shall also complete the reading courses set forth at Subsection B of 6.60.3.8 NMAC above prior to being granted a portfolio review. Pursuant to 6.2.4 NMAC, under no circumstance shall an individual be granted a portfolio review unless that person has passed all sections of the current state board-required New Mexico teacher test.

C. Must pass all of the New Mexico Teacher Assessments, including any applicable content knowledge assessment required by 6.60.5 NMAC, prior to receiving alternative licensure, and

D. Must be a highly qualified, beginning early childhood, elementary, middle level, secondary, K-12, or special education teacher, or be a highly qualified beginning middle or junior high school teacher holding alternative elementary K-8 licensure.

[07-01-00; 6.60.3.8 NMAC - Rn, 6 NMAC 4.2.2.1.8, 06-14-01; A, 06-01-02; A, 06-30-03]

### **6.60.3.9 REQUIREMENTS FOR INTERNSHIP LICENSURE**

A. A candidate for alternative licensure teaching the core academic subjects and special education, who is enrolled in an alternative route to licensure by way of taking required coursework, may be permitted to assume the functions of a teacher prior to completion of licensure requirements and be issued a one-year internship license, if he/she is a highly qualified teacher candidate for Level I alternative licensure, as defined in this rule; or

B. A candidate for alternative licensure who is a highly qualified teacher candidate for Level I alternative licensure, is teaching in the core academic subjects or in special education, and who is pursuing an alternative path to licensure by way of portfolio assessment under Subsection A and Paragraph (3) of Subsection B of 6.60.3.8 NMAC, may as described below assume teaching duties prior to successfully demonstrating the state board's approved competencies for entry level teachers.

(1) Such a candidate may be issued a one-year internship license to allow time to complete the teacher competency testing requirements of 6.60.5.8 NMAC, and the reading coursework requirement set forth in Paragraphs (1) or (2) of Subsection B of 6.60.3.8 NMAC, and to present a portfolio.

(2) At the time of licensure application, the candidate must:

(a) present proof of registration for the New Mexico Teacher Assessments at the next available testing date, and

(b) present proof of enrollment in the required coursework for the teaching of reading.

(3) If a candidate for this licensure is not successful in demonstrating competency by way of portfolio assessment, he/she may still proceed by way of the alternative route set forth in Subsection A of 6.60.3.9 above, provided that the one-year internship license previously held under this Subsection shall count toward the total period of time of three years the candidate is permitted to hold internship licenses under Subsection C, below.

C. Renewal of internship licenses

(1) An internship license issued under Subsection A may be renewed two times for a total period not to exceed three school years, if the candidate meets the requirements of Paragraphs (2), (3), and (5) of Subsection E of 6.60.3.7 NMAC.

(2) An internship license issued under Subsection B of 6.60.3.9 NMAC may be renewed one time for a total period not to exceed two school years, if the candidate meets the requirements of Paragraphs (2) and (3) of Subsection E of 6.60.3.7 NMAC, provided that he/she has, within the effective period of the first internship license passed all applicable portions of the New Mexico Teacher Assessments and completed all required reading coursework.

(3) Any renewal of an internship license must include verification by the superintendent of the employing school district that the candidate is making adequate progress toward demonstrating the competencies of Level I licensure.

D. A candidate enrolled in a state board of education approved post-baccalaureate teacher preparation program or advanced degree program with a teacher preparation component may be considered to be participating in an alternative route to licensure and be issued internship licenses under Subsection A and Paragraph (1) of Subsection C of 6.60.3.9 NMAC. Upon the completion of approved teacher preparation program requirements, the candidate may be issued a standard level I license if, in addition, the candidate meets the requirements for standard licensure within the three-year period allowed to complete an alternative route to licensure.

[07-01-00; 6.60.3.9 NMAC - Rn, 6 NMAC 4.2.2.1.9, 06-14-01; 6.60.3.9 NMAC - N, 06-30-03]

### **[6.60.3.9] 6.60.3.10 REQUIREMENTS FOR STANDARD LICENSURE:**

To receive a standard license, an applicant must meet all of the following requirements:

A. Successfully complete requirements set forth in 6.60.3.8 NMAC

for an alternative license.

B. Satisfactorily complete a one to three year mentorship program approved by the state board. Each local board of education shall adopt policies governing a mentorship program. The local mentorship program shall:

- (1) align with and support the district's long range plan for student success;
- (2) align with the state board's teaching competencies;
- (3) be mandatory for all teachers holding alternative licensure;
- (4) establish a definitive separation between mentorship activities and formal staff evaluation processes;
- (5) include training activities and programs for mentors;
- (6) establish the structure and content of the mentorship program;
- (7) describe the process for selection, training, and evaluation of mentors;
- (8) describe incentives for mentors and beginning teachers;
- (9) describe the method for evaluating the effectiveness of the mentorship program; and
- (10) establish a process for addressing disputes or grievances between mentors and beginning teachers.

C. Obtain verification from the superintendent of the local school district or the governing authority of the nonpublic school where the applicant has most recently been employed that the applicant has satisfactorily demonstrated the state board's competencies for the level of license and type sought in accordance with 6.69.3 NMAC, "Specific Performance Evaluation Requirements." [07-01-00; 6.60.3.10 NMAC – Rn, 6 NMAC 4.2.2.1.10, 06-14-01; 6.60.3.10 NMAC – Rn, 6.60.3.9 NMAC, 06-30-03]

**~~6.60.3.10~~ 6.60.3.11 SAVINGS CLAUSE:**

A. All persons already holding alternative licensure who by June 30, 2000 have satisfactorily completed all requirements for that licensure shall be entitled to a standard license at level 2.

B. All persons for whom an alternative licensure program has already been approved by the state board on or prior to June 30, 2000 but have not yet completed all requirements of that program will be permitted to continue toward licensure in accordance with their approved program.

C. All persons holding valid distinguished scholar licensure who by June 30, 2000 have passed all portions of either the Core Battery of the National Teachers Examination or the New Mexico Teacher Assessments shall be entitled to a three-year alternative license. During the three-year alternative licensure period, the

alternative licensee shall complete all provisions set forth in Subsections B and C of 6.60.3.9 NMAC for standard licensure. [6.60.3.11 NMAC – Rn, 6.60.3.10 NMAC, 06-30-03]

**NEW MEXICO BOARD OF EDUCATION**

**This is an amendment to 6.60.5 NMAC. Sections 7, 8, and 9 are amended.**

**6.60.5.7 DEFINITIONS:**

A. "NMCKA" means the New Mexico Content Knowledge Assessments, which are the teacher-tests approved by the state board, portions of which individuals must take and pass in order to receive endorsements in language arts, reading, mathematics, science and social studies, or to receive initial licensure in elementary education from grades K-8.

B. "NMTA" means the New Mexico Teacher Assessments, which are the teacher-tests approved by the state board that all individuals must take and pass in order to receive initial educator licensure; the NMTA consists of the New Mexico Assessment of Teacher Basic Skills, the New Mexico Assessment of Teacher General Knowledge, until August 1, 2003, at which time that test shall be discontinued, the New Mexico Assessment of Teacher Competency (both at the elementary and secondary levels), and the New Mexico Content Knowledge Assessments ("NMCKA"); it shall include any test materials related to a testing applicant's taking of or registration for the NMTA.

C. "test administrator" means the business entity, namely, the National Evaluation Systems, Inc. or NES that developed the NMTA, administers the NMTA at testing centers throughout New Mexico, scores the NMTA, and reports NMTA testing results to the state department of education ("SDE").

D. "testing applicant" means a person who has filed an NMTA registration form with the test administrator, or has yet taken a portion of the NMTA.

E. "testing irregularity" means any circumstance within or beyond the control of a testing applicant that, in the sole opinion of the SDE or NES raises doubts about the propriety of a testing applicant's NMTA registration, NMTA score, or conduct during an NMTA test.

F. "withheld NMTA score(s)" means the suspension of use by and disclosure to a testing applicant of his NMTA score(s) for up to 120 days upon a determination made by the SDE professional licensure unit director that testing irregularity is likely to have occurred.

G. "voided NMTA

score(s)" means the cancellation, invalidation and non-disclosure of a testing applicant of his NMTA score(s) after a final determination of testing irregularity by the SDE professional licensure unit director or by a hearing officer of the state board of education.

H. "rules of test participation" means any written rules in the applicable NMTA Registration Bulletin that a testing applicant has expressly agreed to comply with as a condition of registering for or taking the NMTA.

I. "educator licensure application" means an application for any professional teaching or administrative license, excluding licensure for an athletic coach, educational assistant, substitute teacher, or related service providers.

J. "core academic subjects" English, language arts, reading, mathematics, science, modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes or pueblos, the arts, including music and visual arts, and social studies, which includes civics, government, economics, history, and geography.

K. "highly qualified" under this rule, means a teacher of the core academic subjects who has no certification or licensure requirements waived on a temporary basis.

[6.60.5.7 NMAC – N, 07-01-01; A, 07-15-02; A, 02-14-03; A, 06-30-03]

**6.60.5.8 REQUIREMENTS:**

The NMTA consists of two generic categories of assessments. The first category is the basic knowledge, skills and competency assessments identified at Subsection A of 6.60.5.8 NMAC below. The second category is the content knowledge assessments, sometimes called content tests, identified at Subsection B of 6.60.5.8 NMAC below.

A. Beginning July 30, 1999 and except for those individuals covered by Subsections C, D and E of 6.60.5.8 NMAC below, and commencing on August 1, 2003, when the Assessment of Teacher General Knowledge shall be discontinued, all applicants for initial licensure and all applicants whose prior licensure has expired for more than one year, in addition to meeting all other licensure and background check requirements of the state board, are required to take the basic knowledge, skills and competency assessments of the New Mexico Teacher Assessments, which consist of the following tests and obtaining the following passing scores:

(1) Assessment of Teacher Basic Skills: Passing score = 240; and

(2) ~~[Assessment of Teacher General Knowledge: Passing Score = 240; and either]~~ Either:

[3] (a) Assessment of Teacher Competency, Elementary Level (for those seeking Early Childhood B-3 through the testing date in July, 2004, or Elementary K-8 licensure including Special Education K-12, Middle Level 5-9 and Grade K-12 licensure): Passing score = 240[-]; or

[4] (b) Assessment of Teacher Competency, Secondary Level (for those seeking 7-12 licensure including Special Education K-12, Middle Level 5-9 and Grade K-12 licensure): Passing score = 240[-]; or

(c) Assessment of Teacher Competency, Early Childhood Level (for those seeking Early Childhood B-3 licensure beginning with the testing date in September, 2004): Passing score = 240.

B. Beginning with the September 2002 administration of the state board's content testing and in addition to the testing requirement above, all applicants for initial teacher licensure must take and pass a test in their content area subject according to the following schedule:

(1) if they are seeking licensure in Elementary K-8, they shall take and pass the state board's content knowledge assessment in elementary education prior to issuance of that license;

(2) if they are applying for licensure in Early Childhood Birth – Grade 3 or Elementary K-8 and are also seeking an endorsement in reading, or Secondary 7-12, Middle Level 5-9 and/or Grade K-12 and are also seeking endorsement in language arts, reading, mathematics, science or social studies, or any combination thereof, or if they are applying for licensure in Early Childhood B-3, Elementary K-8, Secondary 7-12, Middle Level 5-9 and/or Grade K-12 after September 1, 2004, and also seeking an endorsement in the arts (music or visual arts) or modern and classical languages (Spanish, French, or German) they must take and pass the state board's content knowledge assessment(s) in the respective content area prior to issuance of the endorsement(s);

(3) if they currently hold a license but seek to add an endorsement in language arts, reading, mathematics, science or social studies, or any combination thereof, or if they currently hold a license but seek to add an endorsement in the arts (music or visual arts) or modern and classical languages (Spanish, French, or German), after September 1, 2004, they must take and pass the state board's content knowledge assessment(s) in the respective content area prior to issuance of the endorsement(s);

(4) regardless of which of the content knowledge assessments they take, they must attain a score of 240 to pass.

C. Except as set forth in Subsection G of 6.60.5.8 NMAC below, a

license that has been expired for more than one year shall be deemed to have lapsed. Anyone holding a license requiring the taking of the state board's teacher test to be valid that has lapsed shall not be required to take the state board's teacher test, provided that on a form acceptable to the professional licensure unit ("PLU") of the SDE, they submit evidence of having satisfactorily taught under their previous state license for at least five (5) complete school years. All licenses issued under this subsection shall be a level I license regardless of the level of the license that lapsed.

D. Applicants for an initial Spanish/English bilingual endorsement to a teaching license must, in addition to meeting all other state board requirements for the endorsement, pass [~~La~~] Prueba de Español para la Certificación Bilingüe by obtaining a score of 2 or higher on any 12 of the 15 subsections. Applicants seeking this endorsement through licensure reciprocity should consult 6.60.4 NMAC for guidance.

E. Commencing on August 1, 2003, the Assessment of Teacher General Knowledge will be discontinued and eliminated as a requirement to obtain educator licensure in New Mexico.

F. A person who has failed any portion of the NMTA, excluding any New Mexico Content Knowledge Assessment, may nevertheless qualify for issuance of a Level I license provided that he or she:

(1) must at the time of issuance of such a license, have attempted but failed at least twice any portion of the NMTA, excluding any New Mexico Content Knowledge Assessment;

(2) must at the time of issuance of such a license, have attained a score of at least 170 on each of the basic skills, general knowledge and teacher competency tests;

(3) must at the time of issuance of such a license, have been employed and observed teaching in the same school district on either a substandard, temporary or combination of such licenses for at least two full school years;

(4) must at least once annually retake any failed test; and,

(5) must, pursuant to 6.60.10 NMAC ("Mentorship Programs for Beginning Teachers"), be assigned a mentor by a school district and must successfully complete at least one year of an approved mentorship program.

G. No such Level I license authorized by Subsection F of 6.60.5.8 NMAC, shall be issued unless:

(1) the superintendent of the employing school district certifies in writing to the state board [~~of Education~~] through the professional licensure unit of the SDE, that the individual failing a portion of the

NMTA as described above, should be relieved from passing one or more portions of the NMTA because he/she has successfully performed at a high degree in the same school district during at least two consecutive school years;

(2) the required high degree of performance in the case of an elementary K-8 teacher, must be documented on at least two annual evaluations and address the individual's subject knowledge and teaching skills in reading, mathematics, and other areas of the basic elementary school curriculum;

(3) the required high degree of performance in the case of a secondary 7-12 teacher, must be documented on at least two annual evaluations and address the individual's subject knowledge and teaching skills in the endorsement area in which licensure is sought.

H. Limitations on Level I licenses issued pursuant to Subsections F and G of 6.60.5.8 NMAC:

(1) There shall be no exception to the requirement that a person must take and pass a state content knowledge assessment required under this rule;

(2) Although a person issued such a license may receive an unrestricted Level II license once he/she receives a certification of competencies at the time of licensure renewal, until this occurs he/she must, as a condition of holding this licensure, remain employed in the school district that certified that he/she should be relieved from passing one or more portions of the NMTA;

(3) During the time that a person holds such a license, if he/she was hired by a district after the first day of school of the 2002-2003 school year, he/she may not be assigned by the district to work in a targeted assistance program or school-wide program that is funded by Title I of the Elementary and Secondary Education Act;

(4) Under no circumstances shall any Level I license be issued under these subsections after June 30, 2005;

(5) A person issued a Level I license under these subsections, shall not acquire a property interest in that license. Nor shall a person issued such a license acquire professional status by reason of being issued that license and holding it from year to year. Accordingly, such a license may be suspended, revoked, or its issuance denied for any reason without a hearing at any time by a vote of the state board upon a written recommendation by the state superintendent of public instruction or his designee that states the reason for the recommendation. The individual whose license is considered for suspension, revocation, or denial of issuance, shall be given notice from the state superintendent of the reason for the proposed suspension, revoca-

tion or denial of issuance of his license, the date and time when the state board will consider taking final action against his license, and an opportunity to address the state board. Besides acts of immorality, incompetence or misconduct, such a license may be suspended, revoked or its issuance denied, for any condition not satisfied in Subsection F or G of 6.60.5.8 NMAC.

[12-31-98, 07-30-99, 02-14-00; 6.60.5.8 NMAC – Rn, 6 NMAC 4.2.2.2.8 & A, 10-13-00; A, 07-15-02; A, 02-14-03; A, 06-30-03]

**6.60.5.9 IMPLEMENTATION:** Except as provided in Subsection B of this section, applicants described in Section 6.60.5.8 NMAC who have not completed ~~[the New Mexico Teacher Assessments]~~ all testing requirements but have met all other licensure and background check requirements of the state board will be granted a nonrenewable one-year license, effective on July 1 of the year of application and expiring on June 30 of the following year.

A. Consistent with Title I, Section 1119 (a) (1) and Title IX, Section 9101 (23) (A) (ii) of the No Child Left Behind Act, if a teacher is not highly qualified and has been issued a one-year license by the state board in the core academic subjects under this section, local education agencies receiving funds under Title I of the Act shall not assign that teacher to teach the core academic subjects in a Title I targeted assistance program or schoolwide program, if he/she was initially employed after the first day of school of the 2002-2003 school year.

B. Consistent with Title I, Section 1119 (a)(2) and Title IX, Section 9101 (23) (A) (ii) of the No Child Left Behind Act, which requires that all teachers of the core academic subjects be highly qualified by the end of the 2005-2006 school year, the state board will not issue one year licenses in the core academic subjects under this section after June 30, 2006. [07-30-99; 6.60.5.9 NMAC – Rn, 6 NMAC 4.2.2.2.9, 10-13-00; A, 06-30-03]

## NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.61.2 NMAC. Sections 7 and 8 are amended. Section 9 is repealed.

### 6.61.2.7 DEFINITIONS:

A. "A highly qualified beginning elementary teacher", under this rule, means a teacher who is fully qualified for teaching in grades K-8, who is new to the profession, who has pursued a standard

route to licensure, and who:

(1) meets the requirements for elementary K-8 licensure in Subsections A or B in 6.61.2.8 NMAC, and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and

(3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.

B. "A highly qualified beginning middle or junior high school teacher holding elementary K-8 licensure", under this rule, means a teacher who is fully qualified to teach the core academic subjects in a public middle or junior high school, who is new to the profession, who has pursued a standard route to licensure, and who:

(1) meets the requirements for elementary K-8 licensure in Subsections A or B in 6.61.2.8 NMAC, and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and

(3) has passed all applicable teacher testing requirements for elementary K-8 licensure in 6.60.5.8 NMAC, and

(4) has passed the content knowledge test(s) of the New Mexico Teacher Assessments or comparable licensure tests from another state in each core academic subject the teacher teaches and in which the teacher is required to have a licensure endorsement, or

(5) has successfully completed an undergraduate academic major or coursework equivalent to an undergraduate major, or a graduate degree in each core academic subject the teacher teaches and in which the teacher is required to have a licensure endorsement.

C. "Core academic subjects" means English, language arts, reading, mathematics, science, modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes and pueblos, the arts, including music and visual arts, and social studies, which includes civics, government, economics, history, and geography.

D. "Undergraduate academic major", under this rule, means twenty-four (24) to thirty-six (36) semester hours in a core academic subject area. [6.61.2.7 NMAC – N, 06-30-03]

### 6.61.2.8 REQUIREMENTS:

A. Persons seeking licensure in elementary education pursuant to the provisions of this regulation shall meet the requirements of ~~[Subsections A and B of 6.61.2.8 NMAC]~~ Subsection A of 6.61.5.8 NMAC or Subsection B of 6.61.2.8 NMAC.

(1) Bachelor's degree from a

regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

(a) twelve (12) semester hours in English;

(b) twelve (12) semester hours in history including American history and western civilization;

(c) six (6) semester hours in mathematics;

(d) six (6) semester hours in government, economics or sociology;

(e) twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six (6) semester hours in fine arts; and

(2) Credits from a regionally accredited college or university which include thirty to thirty-six (30-36) semester hours of professional education in an elementary education program approved by the state board of education ("state board"), including completion of the state board's ~~[of Education's]~~ approved functional areas and related competencies in professional education; and

(3) a mandatory student teaching component; and

(4) twenty-four to thirty-six (24-36) semester hours in one teaching field such as mathematics, science(s), language arts, reading, and social studies (or other content related areas). Individuals must also complete the state board's ~~[of Education's]~~ approved functional areas and related competencies in the teaching field; and

(5) In addition to the requirements specified in Subsection A, Paragraphs (1), (3), (4) ~~[and]~~, (6) and (7) of 6.61.2.8 NMAC, six (6) hours in the teaching of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(6) Pass all required portions of the New Mexico Teacher Assessments or any successor teacher examination adopted by the SBE; ~~[or]~~ and

(7) If new to the profession after June 30, 2006, or hired after the first day of school of the 2002-2003 school year and assigned to work in a Title I targeted assistance program or a Title I school-wide, and teaching in an elementary school, satisfy the requirements of a highly qualified beginning elementary teacher, and

(8) If new to the profession after June 30, 2006, or hired after the first day of school of the 2002-2003 school year and assigned to work in a Title I targeted assistance program or a Title I school-wide teaching the core academic subjects in a middle or junior high school, satisfy the

requirements of a highly qualified beginning middle or junior high school teacher holding elementary K-8 licensure, or

B. Possess a valid certificate issued by the National Board for Professional Teaching Standards for the appropriate grade level and type. [11-14-98; 6.61.2.8 NMAC – Rn, 6 NMAC 4.2.3.2.8 & A, 10-31-00; A, 06-01-02; A, 06-30-03]

**6.61.2.9** **[IMPLEMENTATION: All persons holding a valid New Mexico license in elementary education on June 30, 1989, shall be entitled to licensure in elementary education. Such licensure may be further continued pursuant to regulation(s) as established by the State Board of Education.] [Reserved]**  
[11-14-98; 6.61.2.9 NMAC – Rn, 6 NMAC 4.2.3.2.9, 10-31-00; Repealed, 06-30-03]

## NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.61.3 NMAC. Sections 7 and 8 are amended.

### 6.61.3.7 DEFINITIONS:

A. "Advisory" - means a middle level arrangement intended to insure that each student is part of a small peer group with an adult advisor or mentor where communication within the group is open and non-threatening.

B. "Early adolescence" - means the developmental period that encompasses ages 10 through 15, or grades five through nine.

C. "Integrative curriculum" - means a curriculum model which coordinates or blends the interests of the learner into a unified whole, utilizing a variety of disciplines for investigating a central question.

D. "Interdisciplinary curriculum" - means a curriculum model designed to incorporate knowledge from two or more academic, scientific, or artistic disciplines.

E. "License" - means the professional certificate or credential which is issued upon completion of specified requirements and which designates the grade level(s) at which the holder is authorized to teach and/or administer.

F. "Middle level" - means grades five through nine.

G. "National board for professional teaching standards" - means a nonprofit, nongovernmental organization which operates a voluntary assessment system to grant national teacher certification to persons who meet an established set of national standards.

H. "National teachers examination" - means a standardized test of basic skills.

I. "Preparation program" - means a program for the preparation of educational personnel which is offered through a regionally accredited institution and

(1) has been approved by the state agency responsible for licensure/certification of educational personnel in the state in which the program is provided; and

(2) consists of a series or combination of courses or educational experiences which satisfy the educational requirements for licensure/certification in the state in which the program was provided.

J. "Regionally accredited college or university" - means an institution of higher education which awards a baccalaureate or higher degree and which is fully accredited by one of the following regional accrediting bodies:

(1) middle states association of colleges and schools;

(2) New England association of colleges and schools;

(3) north central association of colleges and schools;

(4) northwest association of schools and colleges;

(5) southern association of colleges and schools; and

(6) western association of schools and colleges.

K. "Standard and valid license/certificate/credential" - means a license which is not expired at the time of application for a New Mexico license and is not considered an "emergency," "substandard" or "temporary" license issued to a person who has not met certain educational requirements.

L. "Young adolescent" - means a student in grades five through nine.

M. "Core academic subjects" English, language arts, reading, mathematics, science, modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes or pueblos, the arts, including music and visual arts, and social studies, which includes civics, government, economics, history, and geography.

N. "A highly qualified beginning middle level teacher", under this rule, means a teacher who is fully qualified to teach the core academic subjects in grades 5-9, who is new to the profession, who has pursued a standard path to licensure, and who:

(1) meets the requirements for middle level licensure in Subsections A, B, or C in 6.61.3.8 NMAC, and

(2) has no licensure requirements waived on an emergency or temporary

basis, or for any other reason, and

(3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.

[09-30-96; 6.61.3.7 NMAC - Rn, 6 NMAC 4.2.3.3.7, 10-31-01; A, 06-30-03]

### 6.61.3.8 REQUIREMENTS:

A. Persons seeking a teaching license pursuant to the provisions of this regulation shall meet the following requirements of Subsection A, Paragraph (1) of 6.61.3.8 NMAC, or Subsection B of 6.61.3.8 NMAC, or Subsection C of 6.61.3.8 NMAC.

(1) Bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

(a) twelve (12) semester hours in English;

(b) twelve (12) semester hours in history including American history and western civilization;

(c) six (6) semester hours in mathematics;

(d) six (6) semester hours in government, economics, or sociology;

(e) twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six (6) semester hours in fine arts; and

(2) Thirty - thirty-six (30-36) semester hours of professional education in a middle level education program approved by the SBE, including completion of the SBE's New Mexico Middle Level Teacher Competencies and a mandatory student teaching experience; and

(3) Twenty-four (24) semester hours in at least one (1) teaching field such as mathematics, science(s), language arts, reading, and social studies (or other content related areas), twelve (12) semester hours of which must be in upper division courses as defined by the college or university. Individuals must also complete the SBE's approved competencies in the teaching field; and

(4) In addition to the requirements specified in Subsection A, Paragraphs (1), (3) and (5) of 6.61.3.8 NMAC, three (3) hours in the teaching of reading in subject matter content for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(5) Passage of all applicable portions of the current SBE-approved teacher test; ~~or~~ and

(6) if new to the profession after June 30, 2006, or hired after the first day of school of the 2002-2003 school year and

assigned to work in a Title I targeted assistance program or a Title I school-wide, shall satisfy the requirements of a highly qualified beginning middle level teacher, or

B. ~~[A valid and]~~ Persons holding a standard New Mexico license in early childhood education, elementary education, secondary education, or K-12 education, ~~[or special education];~~ and three (3) years of documented, successful teaching or administrative experience during the five-year period immediately preceding the date of application for middle level education licensure; and twelve (12) semester hours of course work in middle level education to include representation in any combination of the New Mexico Middle Level Teacher Competencies Subsection A, Paragraphs (1) to (3) of 6.61.3.10 NMAC and Subsection B, Paragraphs (1) to (3) of 6.61.3.10 NMAC and Paragraph (6) of Subsection A of 6.61.3.8 NMAC; or

C. A valid certificate issued by the National Board for Professional Teaching Standards for the appropriate grade level and type. [09-30-96; 6.61.3.8 NMAC - Rn, 6 NMAC 4.2.3.3.8, 10-31-01; A, 06-01-02; A, 06-30-03]

## NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.63.9 NMAC. Sections 7 and 8 are amended. New sections 9, 10, 11 and 12 are added. Previous sections 9 and 10 are amended and renumbered as sections 13 and 14 respectively. Previous section 11 is renumbered as section 15.

### 6.63.9.7 DEFINITIONS:

A. "Paraprofessionals" means education assistants who assist a teacher in instruction and hold Level III education assistant licensure.

B. [Reserved]  
[6.63.9.7 NMAC - N, 06-30-03]

### 6.63.9.8 LEVEL I AND LEVEL II REQUIREMENTS:

All persons who perform services as educational assistants ("EAs") in public schools or in those special state-supported schools within state agencies must hold valid, educational assistants licensure issued by the state board of education ("state board"). EAs shall be assigned, and serve as assistants, to school staff duly licensed by the SDE. While there may be brief periods when EAs are alone with and in control of a classroom of students, their primary use shall be to work alongside or under the direct supervision of duly licensed staff.

A. Persons seeking licensure in

[~~level 1~~] Level I educational assistance pursuant to the provisions of this regulation shall meet the following requirements:

(1) high school diploma or equivalency; and

(2) eighteen years of age; and

(3) certification by the public school superintendent or private school official that the educational assistant has satisfactorily completed an orientation session pertinent to his or her assignment.

B. Persons seeking licensure in [~~level 2~~] Level II educational assistance pursuant to the provisions of this regulation shall meet the following requirements:

(1) high school diploma or equivalency; and

(2) eighteen years of age; and

(3) certification by the public school superintendent, state-supported school superintendent, or private school official that the educational assistant has satisfactorily completed an orientation session pertinent to his or her assignment; and

(4) certification by the public school superintendent, state-supported school superintendent, or private school official that the educational assistant has satisfactorily demonstrated the state board's [~~of Education's~~] educational assistant competencies.

~~[C. Persons seeking licensure in level 3 educational assistance pursuant to the provisions of this regulation shall meet the following requirements:~~

~~(1) High School diploma or equivalency; and~~

~~(2) Eighteen years of age; and~~

~~(3) Certification by the public school superintendent or private school official that the educational assistant has satisfactorily completed an orientation session pertinent to his or her assignment; and~~

~~(4) Certification by the public school superintendent or private school official that the educational assistant has satisfactorily demonstrated the State Board of Education's educational assistant competencies; and~~

~~(5) Academic credit. The academic credit requirement shall be satisfied by meeting the requirements of Subsection C, Paragraph (5), subparagraphs (a) or (b) of 6.63.9.8 NMAC.~~

~~(a) Associate degree from a nationally or regionally accredited college or university; or~~

~~(b) Completion of sixty (60) semester hours of academic credit awarded by a nationally or regionally accredited college or university. A maximum of fifteen (15) of the sixty (60) semester hours may be earned through district approved in-service workshops at the rate of one (1) semester~~

~~hour of credit per each sixteen (16) contact hours.]~~

[11-14-98; 6.63.9.8 NMAC - Rn, 6 NMAC 4.2.3.15.8, 03-31-01; A, 06-30-03]

### 6.63.9.9 PRE-JANUARY 8, 2002 LEVEL III/PARAPROFESSIONAL REQUIREMENTS:

EAs hired prior to January 8, 2002 who are assigned to work in a Title I targeted assistance program or in a Title I school-wide program under the federal Elementary and Secondary Education Act of 1965 ["Act"] (20 U.S.C. 6301 et seq., PL 107-110), must hold a Level III license no later than January 8, 2006. Level III EAs shall be assigned and serve as assistants to school staff duly licensed by the state board. While there may be brief periods when EAs are alone with and in control of a classroom of students, their primary use shall be to work alongside or under the direct supervision of duly licensed staff.

A. A person hired prior to January 8, 2002 who seeks a Level III educational assistant license shall meet the following requirements:

(1) hold a high school diploma or equivalency; and

(2) be eighteen years of age; and

(3) provide certification from the public school superintendent, state-supported school superintendent, or private school official that the educational assistant has satisfactorily completed an orientation session pertinent to his or her assignment; and

(4) if the EA holds a Level II EA license, provide certification from the public school superintendent, state-supported school superintendent, or private school official that the educational assistant has satisfactorily demonstrated the state board's educational assistant competencies.

B. In addition to satisfying the requirements of Subsection A of 6.63.9 NMAC, a person hired prior to January 8, 2002 who seeks a Level III educational assistant license, shall meet the requirements of Paragraph (1) or Paragraph (2) or Paragraph (3) or Paragraph (4) of Subsection B prior to January 8, 2006:

(1) earn an associate degree from a nationally or regionally accredited college or university that includes at least 15 semester hours in non-remedial degree coursework, broken down as follows:

(a) 3 hours of language arts/reading or language arts/reading pedagogy;

(b) 3 hours of writing or writing pedagogy;

(c) 3 hours of mathematics or mathematics pedagogy;

(d) 6 hours of reading, writing, and math readiness, or professional education, or classroom management, or teaching assistance, or special education; or

(2) complete forty-eight (48) semester hours of academic credit awarded by a nationally or regionally accredited college or university that includes at least 12 semester hours in non-remedial coursework, broken down as follows:

(a) 3 hours of language arts/reading or language arts/reading pedagogy;

(b) 3 hours of writing or writing pedagogy;

(c) 3 hours of mathematics or mathematics pedagogy;

(d) 6 hours of reading, writing, and math readiness, or professional education, or classroom management, or teaching assistance, or special education; or

(3) obtain a passing score of at least seventy (70) percent on a test administered pursuant to Section 11 of 6.63.9 NMAC; or

(4) successfully demonstrate competency through a portfolio assessment administered pursuant to Section 12 of 6.63.9 NMAC.

[11-14-98; 6.63.9.9 NMAC – Rn, 6 NMAC 4.2.3.15.9, 03-31-01; N, 06-30-03]

**6.63.9.10 POST-JANUARY 8, 2002 LEVEL III/PARAPROFESSIONAL REQUIREMENTS:** EAs hired on or after January 8, 2002 who are assigned to work in a Title I targeted assistance program or in a Title I school-wide program under the Act, must hold a Level III license. Level III EAs shall be assigned and serve as assistants to school staff duly licensed by the State Board. While there may be brief periods when EAs are alone with and in control of a classroom of students, their primary use shall be to work alongside or under the direct supervision of duly licensed staff.

A. A person hired on or after January 8, 2002 who seeks a Level III educational assistant license, shall meet the following requirements:

(1) hold a high school diploma or equivalency; and

(2) be eighteen years of age; and

(3) provide certification from the public school superintendent or private school official that the educational assistant has satisfactorily completed an orientation session pertinent to his or her assignment; and

(4) If the EA holds a Level II EA license, provide certification from the public school superintendent or private school official that the educational assistant has satisfactorily demonstrated the state board's educational assistant competencies.

B. In addition to satisfying the requirements of Subsection A, 6.63.9 NMAC, a person hired on or after January 8, 2002 who seeks a Level III educational assistant license, shall meet the requirements of Paragraph (1) or Paragraph (2) or

Paragraph (3) of Subsection B before being hired to work in a Title I program:

(1) earn an associate degree from a nationally or regionally accredited college or university that includes at least 15 semester hours in non-remedial degree coursework, broken down as follows:

(a) 3 hours of language arts/reading or language arts/reading pedagogy;

(b) 3 hours of writing or writing pedagogy;

(c) 3 hours of mathematics or mathematics pedagogy;

(d) 6 hours of reading, writing, and math readiness, or professional education, or classroom management, or teaching assistance, or special education; or

(2) complete forty-eight (48) semester hours of academic credit awarded by a nationally or regionally accredited college or university that includes at least 12 semester hours in non-remedial coursework, broken down as follows:

(a) 3 hours of language arts/reading, or language arts/reading pedagogy;

(b) 3 hours of writing or writing pedagogy;

(c) 3 hours of mathematics or mathematics pedagogy;

(d) 6 hours of reading, writing, and math readiness, or professional education, or classroom management, or teaching assistance, or special education; or

(3) Obtain a passing score of at least seventy (70) percent on a test administered pursuant to Section 11 of 6.63.9 NMAC.

[11-14-98; 6.63.9.10 NMAC – Rn, 6 NMAC 4.2.3.15.10, 03-31-01; N, 06-30-03]

**6.63.9.11 LOCAL DISTRICT TESTING TO OBTAIN LEVEL III LICENSURE:**

A. A local district shall develop or obtain a test for the purpose of determining if an EA/paraprofessional has demonstrated a knowledge of and ability to assist in instructing in reading/language arts, writing, and mathematics; or reading readiness, writing readiness, and mathematics readiness, provided that any such test contains at a minimum:

(1) an assessment of basic skill in reading, writing, and mathematics at an 8th grade level as established in the New Mexico Content Standards and Benchmarks for Language Arts and Mathematics set forth in 6.30.2 NMAC; and

(2) an assessment of the ability to assist in instruction in reading, writing, and mathematics, which may include knowledge of professional education practices, or classroom management, or teaching assistance techniques, or special education, and

(3) a sufficient number of high quality, reliable test items that demonstrate

that the test is a valid measure of competence and knowledge.

B. The state department of education is hereby authorized to approve a local district's EA test and shall approve such test provided that it contains at least each of the factors set forth in Subsection A of 6.63.9.11 NMAC.

C. Once approved as described in this section, a local district shall administer its EA test as frequently as it determines is necessary, under conditions ensuring test security.

D. The local district shall file a record of the candidate's test results with the state board along with the application for Level III EA licensure and shall maintain a documented record of the test results on file in the local district.

[11-14-98; 6.63.9.11 NMAC – Rn, 6 NMAC 4.2.3.15.11 & A, 03-31-01; N, 06-30-03]

**6.63.9.12 PORTFOLIO ASSESSMENT TO OBTAIN LEVEL III LICENSURE PURSUANT TO PARAGRAPH (4) OF SUBSECTION B OF 6.63.9.9 NMAC:**

A local district may administer portfolio assessment for the purpose of determining if an EA/paraprofessional has sufficient knowledge of, and the ability to assist in, instructing in reading/language arts, writing, and mathematics; or reading readiness, writing readiness, and mathematics readiness, or special education, provided that any such portfolio assessment shall at least require the use or demonstration of items from among the following:

A. lesson/unit plans, projects, samples of student work/portfolios, teaching aids, multi-media materials, and visuals;

B. evidence, which could include use of videotaped lessons, that the EA/paraprofessional understands the reading, writing, and mathematics concepts identified in New Mexico Standards and Benchmarks for the grade level at which he/she assists or intends to assist in instruction;

C. a copy of classroom management plans, discipline referral forms, rules, photos, charts, posters, letters of appreciation from parents, certificates of achievement, completion of training certificates, case studies, observation reports;

D. evidence of ability to help students use instructional resources, hands-on materials, and technology;

E. a portfolio assessment under this section may be conducted by either:

(1) the principal of the school where the EA/paraprofessional is employed forming a portfolio assessment team of at



least three (3) members, two of which must be licensed teachers, one chosen by the education assistant and the other named by the principal, and a licensed administrator agreed upon by the principal and EA/paraprofessional; or

(2) the EA/paraprofessional completing a class in EA portfolio preparation and assessment with a grade of "C" or better at a regionally or nationally accredited college or university.

F. The local district shall file a record of the candidate's portfolio assessment results with the state board along with the application for Level III EA licensure and shall maintain a documented record of the assessment results on file in the local district.

[6.63.9.12 NMAC – N, 06-30-03]

~~[6.63.9.9]~~ **6.63.9.13 IMPLEMENTATION:**

A. Level [4] I licenses shall be issued for a maximum of three (3) years and may not be continued or renewed. Level [2 and 3] II and III licenses shall be issued for nine (9) years.

B. ~~[All persons approved by the State Department of Education as Aides 1 or Aides 2 during the 1990-91 school year shall be entitled to licensure for educational assistants. All persons who have verification of three (3) years' experience as an Aide 1, Aide 2, or instructional assistant prior to July 1, 1991, in a school accredited by the New Mexico State Board of Education shall be entitled to licensure for educational assistants.] No EA assigned to work in a Title I targeted assistance program or in a Title I school-wide program under the Act may continue to perform EA services in those programs without obtaining a Level III license. Failure to obtain a Level III license while continuing to perform EA services in those programs shall constitute good and just cause to revoke or suspend that person's licensure.~~

C. An applicant who meets all of the requirements of Level III educational assistant licensure may be granted a Level III license without previously holding Level I or Level II licensure. [6.63.9.13 NMAC – Rn & A, 6.63.9.9 NMAC, 06-30-03]

~~[6.63.9.10]~~ **6.63.9.14 CONTINUING LICENSURE:**

A. Persons holding a Level [4] I license may apply for a higher level of licensure any time during the maximum three (3) year Level [4] I licensure period provided all requirements for the higher level of licensure are satisfied.

B. Persons holding Level [2] II or Level [3] III licenses and seeking to continue such licensure may do so based

upon verification by the public school superintendent or private school official that the holder has demonstrated the state board's ~~[of Education's]~~ educational assistant competencies.

C. Persons holding Level [2] II licenses may apply for Level [3] III licensure provided all requirements for Level [3] III licensure have been satisfied. [6.63.9.14 NMAC – Rn & A, 6.63.9.10 NMAC, 06-30-03]

~~[6.63.9.11]~~ **6.63.9.15 R E F E R - ENCED MATERIAL:** Competencies for educational assistants. The educational assistant shall understand and be able to:

A. assist licensed personnel in school environment.

B. provide assistance with individualized program materials.

C. assist licensed personnel with student discipline.

D. assist in maintaining students' involvement in appropriate tasks.

E. assist with supplementary work for students and supervise independent study in the school environment.

F. respond to students as individuals.

G. help maintain cohesiveness in school environment.

H. display a desire to work with students.

I. serve as a role model.

J. work as a member of a team.

K. communicate effectively both verbally and in writing.

L. use current technology for instructional and management needs.

[6.63.9.15 NMAC – Rn, 6.63.9.11 NMAC, 06-30-03]

## NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

This is an amendment to 2.42.2 NMAC, Sections 4, 6 and 11. This rule was also reformatted and renumbered from DFA Rule 95-1, to comply with current NMAC requirements

**2.42.2.4 D U R A T I O N :**  
Permanent

[2.42.2.4 NMAC - N, 07/01/03]

**2.42.2.6 OBJECTIVE:** To govern the payment of per diem rates and mileage and the reimbursement of expenses for all salaried and non-salaried public officers and employees of all state agencies and local public bodies except those set forth in Subsections A and B of 2.42.2.2 NMAC.

[2.42.2.6 NMAC - N, 07/01/03]

**2.42.2.11 MILEAGE-PRIVATE CONVEYANCE:**

A. **Applicability:** Mileage accrued in the use of a private conveyance shall be paid only in accordance with the provisions of this Section.

B. **Rate:** Public officers and employees of state agencies shall be reimbursed for mileage accrued in the use of a private automobile or aircraft in the discharge of official duties as follows:

(1) privately owned automobile, ~~[25 cents per mile]~~ thirty two cents (\$0.32) per mile;

(2) privately owned airplane, ~~[40 cents per nautical mile]~~ eighty-eight (\$0.88) per nautical mile.

C. **Local public bodies:** Public officers and employees of local public bodies may be reimbursed for mileage accrued in the use of a private conveyance in the discharge of official duties at the statutory rates unless such rates have been reduced by the governing bodies of the local public body pursuant to Section 10-8-5(D) NMSA 1978.

D. **Privately owned automobile:** For conveyance in the discharge of official duties by privately owned automobile, mileage accrued shall be reimbursed at the rate set forth in this section as follows:

(1) pursuant to the mileage chart of the official state map published by the state highway and transportation department for distances in New Mexico and the most recent edition of the Rand-McNally road atlas for distances outside of New Mexico; or

(2) pursuant to actual mileage if the beginning and ending odometer reading is certified as true and correct by the traveler; and

(a) the destination is not included on the official state map or on the Rand McNally road atlas, or,

(b) at the destination(s) of the public officer or employee, the public officer or employee was required to use the private conveyance in performance of official duties.

E. **Privately owned airplane:** Mileage accrued in the use of a privately owned airplane shall be reimbursed at the rate set forth in this Section as follows:

(1) pursuant to the New Mexico aeronautical chart published by the state highway and transportation department, aviation division, for distances in New Mexico and other states' air maps for distances outside of New Mexico; or

(2) pursuant to actual air mileage if certification is provided by the pilot, or a beginning and ending reading of actual

mileage if the reading is certified as true and correct by the traveler, and the destination is not included on an air map.

**F. Reimbursement limit for out of state travel:** Total mileage reimbursement for out of state travel by privately owned automobile or privately owned airplane shall not exceed the total coach class commercial airfare that would have been reimbursed those traveling had they traveled by common carrier. This subsection shall not apply to a public school when transporting students.

**G. Additional mileage provision:** Mileage accrued while on official business shall be reimbursed for travel on official business. An agency head or designee may authorize by memorandum reimbursement for mileage from a point of origin farther from the destination than the designated post of duty in appropriate circumstances. The memorandum must accompany the payment voucher. If official business is transacted while commuting from home to post of duty or from post of duty to home, mileage shall not be paid for the number of miles between post of duty and home. Odometer readings showing additional miles accrued for official business must be provided to the agency for payment.  
[2.42.2.11 NMAC - Rn, DFA Rule 95-1, Section 6 & A, 07/01/03]

## NEW MEXICO COMMISSION ON HIGHER EDUCATION

### TITLE 5 POST-SECONDARY EDUCATION CHAPTER 3 POST-SECONDARY EDUCATION INSTITUTION FINANCES PART 13 ALLOCATION AND DISTRIBUTION OF THE ADULT BASIC EDUCATION FUND

**5.3.13.1 ISSUING AGENCY:** New Mexico Commission on Higher Education 1068 Cerrillos Road, Santa Fe, New Mexico 87505  
[5.3.13.1 NMAC - Rp, 6 NMAC 8.2.1.1, 6/30/2003]

**5.3.13.2 SCOPE:** 5.3.13 NMAC applies to the allocation and distribution of money appropriated to the adult basic education fund by the legislature for use in a given fiscal year and further applies to the allocation and distribution of those monies made available to the state of New Mexico for basic education of adults and available for formula allocation and distribution to pay the federal share of the cost of the establishment or expansion of adult edu-

cation programs to be carried out by local educational agencies, community colleges as defined by Section 21-13-2 NMSA 1978, branch community colleges as defined by Section 21-14-1 NMSA 1978, technical and vocational institutes as defined by Section 21-16-2 NMSA 1978, learning centers established pursuant to Section 21-16A NMSA 1978, postsecondary educational institutions operated by tribal entities, and bureau of indian affairs controlled postsecondary schools.

[5.3.13.2 NMAC - Rp, 6 NMAC 8.2.1.2, 6/30/2003]

**5.3.13.3 STATUTORY AUTHORITY:** Section 22-8-30.1 NMSA 1978 and the Workforce Investment Act, 20 U.S.C. 9201 et seq.

[5.3.13.3 NMAC - Rp, 6 NMAC 8.2.1.3, 6/30/03]

**5.3.13.4 DURATION:** Permanent

[5.3.13.4 NMAC - Rp, 6 NMAC 8.2.1.4, 6/30/03]

**5.3.13.5 EFFECTIVE DATE:** June 30, 2003 unless a different date is cited at the end of a section.

[5.3.13.5 NMAC - Rp, 6 NMAC 8.2.1.5, 6/30/03]

**5.3.13.6 OBJECTIVE:** This regulation establishes a formula whereby monies appropriated by the New Mexico legislature to the adult basic education fund and monies made available to the state of New Mexico for basic education of adults and available for formula allocation and distribution to pay the federal share of the cost of the establishment or expansion of adult education programs to be carried out by local educational agencies, community colleges as defined by Section 21-13-2 NMSA 1978, branch community colleges as defined by Section 21-14-1 NMSA 1978, technical and vocational institutes as defined by Section 21-16-2 NMSA 1978, learning centers established pursuant to Section 21-16A NMSA 1978, postsecondary educational institutions operated by tribal entities, and bureau of indian affairs controlled postsecondary schools are allocated and distributed.

[5.3.13.6 NMAC - Rp, 6 NMAC 8.2.1.6, 6/30/03]

**5.3.13.7 DEFINITIONS:**

A. "Adult basic education" (ABE) means adult education as defined by 20 U.S.C. Section 9202(1).

B. "Adult basic education fund" means that fund established pursuant to Section 22-8-30.1 NMSA 1978 for the purpose of funding- adult basic education

programs for educationally disadvantaged adults.

C. "Adult education" means adult education as defined by 20 U.S.C. Section 9202(1).

D. [Reserved]

E. "Advanced ESL and adult secondary education (GED preparation)" means that service level for individuals who can read materials on abstract topics, descriptions, and narrations of factual material. The individuals can write descriptions and short essays and can complete complex forms and applications, can converse with minimal or no difficulty, can communicate by telephone on familiar subjects, and have basic control of grammar, understand descriptive and spoken narrative, and can comprehend abstract concepts in familiar contexts.

F. "Appropriation" means the total of that amount appropriated to the adult basic education fund by the New Mexico legislature for a given fiscal year.

G. "Beginning ESL and Beginning ABE" means that service level for individuals who have limited understanding of print and whose speaking and listening skills are limited to simple communication of survival needs through repetitive phrases and responding to simple questions.

H. "Contact hour" means one hour of classroom instructional time or one hour of evaluation or diagnostic service.

I. "ESL" means instruction in the use of English as a second language.

J. "Fiscal year" means July 1 of a given year through June 30 of the following calendar year.

K. "GED" means standardized tests of General Educational Development and the credential awarded for passing these exams.

L. "Headcount" means

(1) an individual who was enrolled in and received instructional offerings for twelve or more contact hours during the second preceding fiscal year; and

(2) the full-time equivalent derived by obtaining the ratio of the actual number of contact hours for individuals enrolled and receiving instructional offerings during the second preceding fiscal year for fewer than twelve contact hours to twelve hours; and

(3) an individual enrolled in and receiving instructional offerings during the second preceding fiscal year who obtained the GED during the second preceding fiscal year in fewer than twelve contact hours.

M. "Intermediate ESL and Intermediate ABE" means that service level for individuals who can read simple materi-

al on familiar subjects and can write simple paragraphs on survival topics and personal issues with some errors, who can understand simple learned phrases and new phrases containing familiar vocabulary, can converse on familiar topics beyond survival needs, and who can clarify speech through rewording and asking questions.

N. [Reserved]

O. "Preceding fiscal year" means that fiscal year immediately preceding the fiscal year for which the allocation is being calculated.

P. "Restricted funding source" means categorical funding for adult basic education.

Q. "Second preceding fiscal year" means that fiscal year two years before the fiscal year for which the allocation is being calculated.

R. "Service delivery category" means service delivery based on the federal definitions of the adult basic education functioning levels of beginning ESL and beginning ABE, intermediate ESL and intermediate ABE, and advanced ESL and adult secondary education.

S. "State administrative site" means an entity submitting a proposal meeting the criteria established by the commission on higher education and approved for formula funding through the adult basic education fund for a given fiscal year, including public schools and school districts, community colleges as defined by Section 21-13-2 NMSA 1978, branch community colleges as defined by Section 21-14-1 NMSA 1978, technical and vocational institutes as defined by Section 21-16-2 NMSA 1978, learning centers established pursuant to Section 21-16A NMSA 1978, state-supported educational programs, and postsecondary educational institutions operated by tribal entities and located in New Mexico.

T. "Unrestricted funding source" means any other funding source used for direct support of adult basic education.

[5.3.13.7 NMAC – Rp, 6 NMAC 8.2.1.7, 6/30/03]

**5.3.13.8 CALCULATION OF APPROPRIATION TO STATE ADMINISTRATIVE SITES:**

**A. WEIGHTED HEADCOUNT**

(1) The weighting factor for each service delivery category is established as follows:

(a) The average contact hours per headcount for each service delivery category is calculated by dividing the sum of the statewide total of contact hours for the same service delivery category for the second preceding fiscal year for all state adminis-

trative sites by the statewide total headcount for the same service delivery category for the second preceding year for all state administrative sites.

(b) The service delivery category having the lowest rate as determined in Subparagraph (a) of Paragraph (1) of Subsection A of 5.3.13.8 NMAC is assigned the weighting factor of 1.0.

(c) The weighting for each remaining service delivery category is established by determining the ratio that the service delivery category rate bears to the lowest service delivery category rate.

(2) A weighted headcount for each service delivery category for each state administrative site is established by multiplying the final headcount reported for the second preceding fiscal year for the service delivery category by the factor as determined in Paragraph (1) of Subsection A of 5.3.13.8 NMAC.

(3) The total weighted headcount for a state administrative site is the sum of the weighted headcounts for each service delivery category.

**B. INSTRUCTIONAL PROGRAM COST**

(1) The total statewide cost for instruction is determined by adding all reported expenditures from restricted and unrestricted sources for all state administrative sites for the second preceding fiscal year and dividing the sum by 1.35.

(2) The rate per weighted headcount cost for instruction is obtained by dividing the quotient obtained in Paragraph (1) of Subsection B of 5.3.13.8 NMAC by the statewide total of total weighted headcounts obtained in Paragraph (3) of Subsection A of 5.3.13.8 NMAC.

(3) The instructional program cost for a state administrative site is that product derived by multiplying the rate per weighted headcount cost by the total weighted student headcount as calculated in Paragraph (3) of Subsection A of 5.3.13.8 NMAC.

**C. SUPPORT SERVICE COST**

(1) Instructional program cost for each state administrative site is multiplied by .35 to obtain the support service cost.

(2) If the product derived in Paragraph (1) of Subsection C of 5.3.13.8 NMAC is less than the two-year postsecondary student services staffing unit established annually by the commission on higher education, the support service cost will equal the student services staffing unit.

**D. TOTAL PROGRAM COST** The total program cost for a state administrative site is the sum of the instructional program cost and the support service cost.

**E. PROGRAM ALLOCATION**

(1) The Commission on higher education will calculate an adjustment factor as follows:

(a) The sum of the total program costs for all state administrative sites will be calculated.

(b) The sum calculated in Subparagraph (a) of Paragraph (1) of Subsection E of 5.3.13.8 NMAC will be subtracted from the appropriation for the fiscal year for which the allocations are being calculated; the result will be divided by the sum of the total program costs for all state administrative sites and 1 will be added in the following manner: "((appropriation minus total program cost for all state administrative sites) divided by total program costs for all state administrative sites) plus 1". The result is the adjustment factor.

(2) The adjustment factor will be applied to the total program cost for each state administrative site. The product derived is the program allocation for the state administrative site.

(3) The commission on higher education will notify each state administrative site of its program allocation no later than June 15 of the fiscal year immediately preceding the fiscal year for which the allocation is being made.

(4) If the appropriation is adjusted prior to the end of the fiscal year for which the allocations are being calculated, the commission on higher education will recalculate the adjustment factor and notify state administrative sites.

**F. REPORTING REQUIREMENTS:** State administrative sites will comply with reporting dates and reporting requirements established by the commission on higher education.

**G. [Reserved]**  
[5.3.13.8 NMAC – Rp, 6 NMAC 8.2.1.8, 6/30/03]

**5.3.13.9 BUDGETS:**

**A.** State administrative sites will submit to the commission on higher education budgets based upon program allocations, together with executed written agreements as required by the commission on higher education, no later than June 30 of the fiscal year immediately preceding the fiscal year for which the allocations are made.

**B.** If the adjustment factor is recalculated in accordance with Paragraph (4) of Subsection E of 5.3.13.8 NMAC, state administrative sites will submit budget adjustments to the commission on higher education.

[5.3.13.9 NMAC – Rp, 6 NMAC 8.2.1.9, 6/30/03]

**5.3.13.10 DISTRIBUTIONS:**  
**A.** Distributions will be

made to state administrative sites upon timely submission of expenditure and program reports in accordance with procedures established by the commission on higher education. Distributions may be requested on a monthly basis.

B. Distributions will be made solely on a reimbursement basis.

C. Unless otherwise provided by law, reimbursement will not be made for expenditures not obligated on or before June 30 of the fiscal year for which the allocation is being made.

[5.3.13.10 NMAC – Rp, 6 NMAC 8.2.1.10, 6/30/03]

#### **HISTORY OF 5.3.13 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: SBE Regulation No. 95-8, Interim Regulation: Distribution of Money in the Adult Basic Education Fund, 7/18/95.

#### **History of Repealed Material:**

6 NMAC 8.2.1, Allocation and Distribution of the Adult Basic Education Fund and Monies Made Available Through the Adult Education Act, filed 1/4/99 - Repealed.

## **NEW MEXICO COMMISSION ON HIGHER EDUCATION**

This is an amendment to 5.7.16 NMAC, Sections 7 and 8.

#### **5.7.16.7 DEFINITIONS:**

A. **"Award letter"** means official notification to a Vietnam veteran of eligibility to attend an educational institution and participate in the Vietnam veterans' scholarship program.

B. **"Books"** is the actual expenditure for course required books for classes in which the student is enrolled, not to exceed the amount used by the financial aid office for books in the calculation of cost of attendance for campus-based programs.

C. **"Commission"** means the New Mexico commission on higher education.

D. **"Educational institution"** for undergraduate instruction means any New Mexico state-supported post-secondary institution; for graduate instruction means the university of New Mexico, New Mexico state university, western New Mexico university, eastern New Mexico university, New Mexico institute of mining and technology and New Mexico highlands university.

E. **"Eligible class for reimbursement"** means a course for credit

included in a student's official transcript and creditable toward a certificate or degree-granting program.

F. **"Master's degree course"** means a class for students who hold a bachelor's degree who have been admitted to a graduate school for the purpose of pursuing a master's degree and has not yet completed a master's degree.

G. **"Non-state college"** means a financially independent nonprofit nonsectarian four-year college or university located in New Mexico and accredited by the north central association of colleges and secondary schools.

H. **"Required fees"** are the special fee charges students are required to pay for additional services as a condition of admission to the institution. Excluded are "specific service fees" charged only to students who enroll in certain programs or courses (i.e., course specific fees), or receive specific services (transcript copy fees, graduation fees, etc.).

I. **"Recipient"** means a New Mexico resident for tuition purposes and Vietnam veteran as reviewed and certified by the New Mexico veterans' service commission. Any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at original time of entry into the armed forces **or who has lived in New Mexico for ten years or more** and who has been awarded a Vietnam campaign medal for services in the armed forces of this country in Vietnam during the period of August 5, 1964 to the official termination of the Vietnam conflict as designated by executive order of the president of the United States is eligible for certification.

J. **"Scholarship fund"** means the Vietnam veterans' scholarship fund created in the state treasury to receive any appropriated money, grants, gifts or bequests.

K. **"Tuition"** is the basic educational charge that all students are required to pay as a condition of admission and attendance for academic services or the course fee charged for certificate programs. The actual rate per semester or year is set by each institution.

L. **"Undergraduate post-secondary student"** means a matriculated student who has been admitted to the college and has not yet completed a bachelor's degree.

[7/15/98; 5.7.16.7 NMAC - Rn & A, 5 NMAC 7.16.7, 7/15/02; A, 6/30/03]

**5.7.16.8 STUDENT ELIGIBILITY:** A New Mexico resident for tuition purposes and Vietnam veteran as reviewed and certified by the New Mexico

veterans' service commission. Any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at original time of entry into the armed forces **or who has lived in New Mexico for ten years or more** and who has been awarded a Vietnam campaign medal for services in the armed forces of this country in Vietnam during the period of August 5, 1964 to the official termination of the Vietnam conflict as designated by executive order of the president of the United States, is eligible for certification.

[7/15/98; 5.7.16.8 NMAC - Rn, 5 NMAC 7.16.8, 7/15/02; A, 6/30/03]

## **NEW MEXICO COMMISSION ON HIGHER EDUCATION**

This is an amendment to 5.7.20 NMAC, Sections 7 and 11.

#### **5.7.20.7 DEFINITIONS:**

A. **"Commission"** means the New Mexico commission on higher education.

B. **"Success Scholarship"** means a scholarship awarded from proceeds of the New Mexico Lottery Tuition Fund, to defray all or part of the cost of tuition;

C. **"Academic year"** means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year;

D. **"Award recipient"** means a student awarded a Success Scholarship;

E. **"Eligible institution"** means any New Mexico public postsecondary institution; and

F. **"Satisfactory academic progress"** means, for continuing eligibility following establishment of first year eligibility, maintenance of a cumulative grade point average of a minimum of 2.50 or higher on a scale of 4.0, to be determined at the end of each semester (to include summer session).

G. **"Graduate equivalent diploma"** means:

(1) a diploma earned from a New Mexico public high school no earlier than May 1996;

(2) a diploma earned from an accredited New Mexico private high school no earlier than May 1996;

(3) a diploma earned no earlier than May 1996, from an accredited home school program operating in New Mexico. Students are still subject to New Mexico residency requirements as provided for in

5.7.18 NMAC; or,

(4) a diploma earned from an out-of-state high school in which the state superintendent made supplemental distributions to pay the secondary out-of-state tuition of the student because school facilities were not reasonably available in the New Mexico school district of their residence, pursuant to Section 22-8-30, NMSA 1978.

(5) in the event that the student has not received a diploma as described in Paragraph 1 through 4 of Subsection G in 5.7.20.7 NMAC, a New Mexico General Educational Development (GED) diploma earned no earlier than May 1996. For GED students, the GED certification date shall be considered the graduation date.

H. "Full-time" means:

(1) in the case of first year eligibility, satisfactory completion of at least twelve (12) student credit hours during the student's first regular session/semester of enrollment. "Regular session/semester" excludes summer session.

(2) in the case of continuing eligibility, satisfactory completion of at least twelve (12) student credit hours during semester enrollment.

(3) due to the limited duration of this scholarship, it is the intention of this program that the student earn sufficient credit to obtain a certificate/degree within the time prescribed by law therefore:

(a) the student credit hour calculation shall include:

(i) earned student credit hours which count towards certificate/degree (for example, grades of "A", "B", "C", "D", or "CR" for credit).

(ii) a passing grade for developmental/remedial/skills courses (for example, a passing grade noted as a "P" for pass, "S" for satisfactory, or "CR" for credit) needed for admission to college credit courses contributing to a degree program.

(b) the student credit hour calculation shall exclude: grades of "F" for failure, "N/C" for no credit, "I" for incomplete, "R/R" for re-register, "PR" for progress, "U/S" for unsatisfactory, "W" for withdrawal, "WP" for withdrawal pass, "WF" for withdrawal fail. Even if an institution provides credit for courses in which a student earns these, or comparable grades, the credit hour calculation for the purpose of the Success Scholarship Program shall exclude them.

I. "Probation" means:

(1) any period of time of enrollment that students, which fail to meet the continuing eligibility requirements, can re-establish eligibility for the program;

(2) the cumulative GPA and/or full-time requirements shall be determined upon completion of each semester;

(3) the student is not eligible to receive the scholarship during the probationary period;

(4) if the student is unsuccessful in re-establishing eligibility during the probationary period, their scholarship will not be reinstated; and,

(5) under no circumstances shall the student receive program awards in excess of those prescribed in Subsections A and B in 5.7.20.9 NMAC less the regular semester(s) of probation.

~~J. "institutional scholarships" means, for independent community colleges and area vocational institutions, those scholarships funded by institutional resources in which the institutions, selects the recipients. This definition excludes need-based grant aid and work-study assistance.~~

[5/31/97, 9/30/98, 12/31/99; 5.7.20.7 NMAC - Rn & A, 5 NMAC 7.20.7, 8/14/2000; A, 6/30/03]

#### 5.7.20.11 ADMINISTRATION OF SUCCESS SCHOLARSHIP:

A. Eligible institutions of higher education shall:

(1) develop a method to notify students of their possible eligibility, during their first regular semester of enrollment;

(2) designate an officer responsible for the scholarship program. The officer designated by the institution shall be responsible for determining initial and continuing student eligibility for the Success Scholarship program under the terms of these rules and regulations. The responsible officer shall maintain a listing of each participating student to include but not be limited to:

- (a) social security number;
- (b) semester and cumulative

GPA;

(c) proof of initial and continuing enrollment;

(d) proof of receipt of a graduate equivalent diploma.

(3) draw-down funds from the commission on a per semester basis on behalf of eligible students. All fiscal year draw-downs shall be for eligible students enrolled during the same fiscal year;

(4) for students that satisfied the first year eligibility requirements and seek continuing eligibility consideration, use professional judgment to determine that circumstances beyond the students control, for which documentation exists in the student's file, warrant flexibility to make the program responsive to the students needs within the guidelines of the program. The institutions shall defer to their institutional Satisfactory Academic Progress policy when considering circumstances which include, but are not limited to, consideration for falling

below the cumulative GPA requirement or being enrolled in less than full-time status;

(5) provide an annual report to the commission to include the number of awards granted, amount of funds awarded, number of awards renewed, and ethnicity and gender of students receiving the Success Scholarship.

(6) publish the probation policy as defined in Subsection I in 5.7.20.7 NMAC.

(7) may enter into consortium agreements in order to greater facilitate the enrollment of students and to facilitate the student's participation in this program.

(8) Eligible four-year institutions and their branch institutions, **independent community colleges, and area vocational institutions** shall ensure that all available Three Percent Scholarships are awarded before granting Success Scholarships. The intent of this provision is that tuition costs shall be paid first for those students eligible for merit-based aid packages funded by Three Percent Scholarships. In those instances when tuition is not fully covered by the merit-based aid package, said student is eligible for the tuition cost differential to be funded by the Success Scholarship Program. Nothing in this Section requires as institution to award a scholarship inconsistent with the criteria established or such scholarship. Refer to Subsection E in 5.7.20.9 NMAC for additional provisions.

~~(9) Eligible independent community colleges and area vocational institutes shall ensure that all available institutional scholarship funds, including Three Percent Scholarships, are awarded before granting Success Scholarships. The intent of this provision is that tuition costs shall be paid first for those students eligible for merit-based aid packages funded by institutional resources and/or Three Percent Scholarships. In those instances when tuition is not fully covered by the merit-based aid package, said student is eligible for the tuition cost differential to be funded by the Success Scholarship Program. Nothing in this Section requires as institution to award a scholarship inconsistent with the criteria established for such scholarship. Refer to Subsection E in 5.7.20.9 NMAC for additional provisions.]~~

B. Commission on higher education shall:

(1) invest, through the state treasurers office, the proceeds deposited into the lottery tuition fund. Earnings from investment of the fund shall accrue to the credit of the fund. Any balance in the fund at the end of any fiscal year shall remain in the fund for appropriation;

(2) in May annually, notify all eligible institutions of the percentage of tuition

each scholarship shall provide for the following academic year.

(3) convene an annual meeting with the financial aid directors of eligible institutions to review the program; and,

(4) conduct audits to ascertain compliance with rules and regulations. At least a random audit of each participating institution's records shall take place on at least an annual basis by members of the commission staff. If, during the audit process, evidence indicates that a student should not have received a Success Scholarship, the institution will be held harmless for a semester payment, if the students file is appropriately documented. The institution must notify the student of termination of their award, subject to continuing eligibility requirements.

[5/31/97, 9/30/98; 5.7.20.11 NMAC - Rn & A, 5 NMAC 7.20.11, 8/14/2000; A, 6/30/03]

## NEW MEXICO COMMISSION ON HIGHER EDUCATION

This is an amendment to 5.100.2 NMAC, Section 10.

### 5.100.2.10 GENERAL STANDARDS FOR LICENSURE:

A. New degree-granting institutions making application on or after September 30, 1996 will be required to obtain within three years, accreditation with the distance education and training council (DETC) or another accrediting agency recognized by the United States department of education and the commission as an authority on the quality of institutions awarding such degrees. Institutions operating prior to September 30, 1996 shall be exempt from this requirement.

B. In addition to the information requirements specified in Section 5.100.2.9 NMAC, above, each institution licensed by the commission shall maintain and be able to produce within a time period specified by the commission any or all of the following lists for inspection by the commission or use by the commission in selecting samples to verify accuracy of the institution's files and reports:

(1) all students currently enrolled, by program of study, including separate counts for continuing education;

(2) all students admitted during each of the past two years; students on this list shall be classified as no longer enrolled, currently enrolled, and program completed as of the date that the list is prepared;

(3) all students who have been awarded government financial aid during each of the past two years, displaying the

total amounts awarded to each student from grants and from loans;

(4) all students who have completed a program and received a certificate, diploma, or degree from the institution during each of the past two years, by program of study; and

(5) in the case of vocational/technical/occupational programs, a list of employers who have been active in hiring graduates of the institution during the past two years.

C. Upon approval of the commission, a licensed school may operate a branch facility in New Mexico under its current license without applying for a new license.

(1) Prior to the approval to operate a branch facility, the licensee shall provide to the commission the following information:

(a) documentation of the scope, purpose and mission of the branch facility;

(b) documentation of the geographical site of the branch facility;

(c) documentation demonstrating adequate financial support by the parent campus;

(d) evidence that all building fire and safety standards have been met;

(e) documentation of the branch manager's qualifications; and

(f) any other documentation requested in writing by the commission.

(2) The commission may deny the approval of a branch facility for any of the following reasons:

(a) failure to provide the above information;

(b) parent campus does not have adequate financial means to support a branch facility;

(c) building safety is in question; and

(d) curriculum is substantially different from the curriculum offered at the parent campus.

(3) All branch facilities shall provide annual demographic information separate from the parent campus. [See Subsection C of 5.100.2.9 NMAC]

**D. The commission is statutorily charged with evaluating each individual institution in order to determine the school's compliance with the standards outlined in this regulation. This evaluation may take the form of a physical visit to the school or school offices or may be a desk audit if a physical visit is not feasible. It is the responsibility of the institution to maintain full compliance with the Post-Secondary Educational Institution Act (Section 21-23-1 through 21-23-15 NMSA 1978) and this rule (5 NMAC 100.2) at all times.**

**(1) Typically, materials to be**

**evaluated when applicable may include:**

**(a) verification of insurances**

**(b) past 12 month's NM Gross**

**Receipts Tax reports**

**(c) list of current students**

**(d) list of dropped or withdrawn students within the past year or period since last visit**

**(e) list of students that have graduated in the last year or period since last visit**

**(f) samples of all advertising, including online advertising, if applicable**

**(g) student/faculty complaint**

**file**

**(h) student/faculty evaluations**

**(i) advisory committee meeting minutes for last 24 months**

**(k) advisory committee membership**

**(l) program curriculum and requirements**

**(m) access to all student files**

**(n) access to all faculty files**

**(o) bank statements or monthly financials for the last year**

**(2) The four types of site visits**

**include:**

**(a) Initial site visit: In making a determination regarding issuance of a new license, a site review may be conducted during the initial start-up phase to determine the adequacy of items included on the application for licensure. This visit is for information gathering purposes only.**

**(b) Regular site visit: The commission shall determine an appropriate schedule (typically on a bi-annual basis) on which to re-evaluate each individual licensed institution and the specific programs offered by that institution in order to determine continued compliance with this rule. Commission staff will give prior notification of at least two weeks of the date and time of the visit. A short exit interview will be held at the conclusion of the visit. This exit interview will include a discussion of findings and a final written site visit report will be sent to the school for review and comment. The outcome of the regular site visit may be continued licensure.**

**(c) Triggered site visit: any occurrence listed in Section 28(E) of this rule may trigger a site visit to the institution in order to evaluate compliance with these standards. The exit interview will include a discussion of any findings. The outcome of a triggered site visit may be a recommendation for a probationary license or revocation of a license.**

**(d) Required special site visit: The commission may request a required special site visit as a requirement for initial licensure, probation, or for licensure**

**renewal. At the conclusion of a required special site visit, the exit interview will include a discussion of any findings**  
[2-27-85, 6-30-92, 7-1-94, 9-30-96, 2-15-00, 5.100.2.1 NMAC - Rn & A, 5 NMAC 100.2.9, 5-15-01; A, 5/15/02; A, 6/30/03]

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

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 300 MEDICAID GENERAL INFORMATION**

**PART 2 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) POLICIES**

**8.300.2.1 ISSUING AGENCY:** New Mexico human services department.  
[8.300.2.1 NMAC – N, 7-1-03]

**8.300.2.2 SCOPE:** The rule applies to the general public.  
[8.300.2.2 NMAC – N, 7-1-03]

**8.300.2.3 STATUTORY AUTHORITY:** The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended, and by the state human services department (HSD) pursuant to state statute. See NMSA 1978 27-2-12 et seq.  
[8.300.2.3 NMAC – N, 7-1-03]

**8.300.2.4 DURATION:** Permanent.  
[8.300.2.4 NMAC – N, 7-1-03]

**8.300.2.5 EFFECTIVE DATE:** July 1, 2003 unless a later date is cited at the end of a section.  
[8.300.2.5 NMAC – N, 7-1-03]

**8.300.2.6 OBJECTIVE:** The objective of this regulation is to provide health insurance portability and accountability Act (HIPAA) policies for the New Mexico medicaid program. These policies describe eligible divisions, covered services, and noncovered services.  
[8.300.2.6 NMAC – N, 7-1-03]

**8.300.2.7 DEFINITIONS:** This section contains the glossary for the New Mexico medicaid HIPAA policy. The following definitions apply to terms used in this chapter.

A. **Alternate address:** A location other than the primary address on file with HSD for the recipient or the recipient's personal representative.

B. **Alternate means of**

**communication:** A communication made other than in writing on paper, or made orally to the individual.

C. **Amend or amendment:** To make a correction to information that relates to the past, present, or future physical or mental health or condition of a recipient.

D. **Authorized HCC employee:** A person employed within the HCC workforce who is authorized by the immediate supervisor or by HCC policies to perform the task.

E. **Business associate:** A person or entity that performs certain functions or services on behalf of the HCC involving the use or disclosure of individually identifiable health information. These include claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, and practice management. They also include, other than in the capacity of a member of the HCC workforce, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for the HCC.

F. **Covered entity:** A health plan, a health care clearinghouse, and/or a health care provider that transmits any health information in electronic form in connection with a recipient's health care transaction.

G. **Disclose or disclosure:** To release, transfer, provide access to, or divulge in any other manner (verbally, written, or electronic) protected health information outside the HCC workforce or to an HCC business associate.

H. **Health care component (HCC):** Those parts of the human services department, which is a "hybrid entity" under HIPAA [45 CFR 164.105], that engage in covered health plan functions and business associate functions involving protected health information. HSD's health care component consists of the medical assistance division, supported by the income support division, the office of inspector general, the office of general counsel, and the office of the secretary.

I. **Health care operations:** Any of the following activities: quality assessment and improvement activities, credentialing activities, training, outcome evaluations, audits and compliance activities, planning, fraud and abuse detection and compliance activities, managing, and general administrative activities of the HCC, to the extent that these are related to covered health plan functions.

J. **Health oversight agency:** An agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an

Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.

K. **Health Insurance Portability and Accountability Act (HIPAA) privacy rule:** The federal regulation Section 45 CFR part 160 and Subparts A and E of Part 164.

L. **Health plan:** The medicaid program under Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., and the state children's health insurance program (SCHIP) under Title XXI of the Social Security Act, 42 U.S.C. 1397 et seq.

M. **HCC workforce:** Permanent, term, temporary and part-time employees (classified or exempt), university/federal government placements, volunteers, contractors and others conducting data entry tasks, and contractors and other persons whose conduct and work activities are under the direct control of HCC.

N. **Medical record or designated record set:** Any HCC item, collection, or grouping of information that includes PHI that is written or electronic and is used in whole or in part, by or for HCC to make decisions about the recipient. This applies to:

(1) the medical records and billing records about the recipient maintained by or for the HCC; and

(2) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for HCC.

(3) this definition *excludes* HCC documents such as those related to accreditation compliance activities (e.g., JCAHO), quality assurance, continuous quality improvement, performance improvement, peer reviews, credentialing and incident reports, and investigations.

O. **Minimum necessary:** The least amount of information needed to accomplish a given task.

P. **Notice of privacy practices, notice or NPP:** The official HSD notice of privacy practices that documents for recipients the uses and disclosures of PHI that may be made by HCC and the recipient's rights and HCC's legal duties with respect to PHI.

Q. **Payment:** All HCC activities undertaken in its role as a health plan to obtain premiums or to determine or fulfill its responsibility for coverage and

provision of benefits under the health plan; and HCC activities undertaken in its role as a health care provider to obtain or provide reimbursement for the provision of health care. Such activities include but are not limited to determination of eligibility or coverage; risk adjusting amounts due based upon health status or demographic characteristics; billing, claims management, collection activities, and related health care data processing; review of health care services with respect to medical necessity, coverage, appropriateness of care, or justification of charges; utilization review activities; and disclosure to consumer reporting agencies of lawful elements of PHI relating to collection of premiums or reimbursement.

**R. Personal representative:** A person who has the legal right to make decisions regarding a recipient's PHI, and includes surrogate decision makers, parents of unemancipated minors, guardians and treatment guardians, and agents designated pursuant to a power of attorney for health care.

**S. Privacy and security officer (PSO):** The individual appointed by HSD pursuant to HIPAA [45 CFR 164.530(a)] who is responsible for development, implementation, and enforcement of the privacy policies and procedures required by HIPAA.

**T. Protected health information (PHI):** Health information that exists in any form (verbal, written or electronic) that identifies or could be used to identify a recipient (including demographics) and relates to the past, present, or future physical or mental health or condition of that recipient. It also includes health information related to the provision of health care or the past, present, or future payment for the provision of health care to a recipient.

**U. Psychotherapy notes:** Notes recorded (in any medium) documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

**V. Public health agency:** An agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents

of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

**W. Requestor:** A recipient, personal representative of a recipient, or any other person making a request.

**X. Restrict or restriction:** To limit the use or disclosure of PHI for purposes of TPO, or for purposes of disclosing information to a spouse, personal representative, close family member or person involved with the recipient's care.

**Y. Standard protocols:** A process that details what PHI is to be disclosed or requested, to whom, for what purpose, and that limits the PHI to be disclosed or requested to the amount reasonably necessary to achieve the purpose of the disclosure or request.

**Z. TPO:** Treatment, payment or health care operations.

**AA. Treatment:** The provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

**BB. Valid authorization:** An authorization with all required elements, as specified in HIPAA privacy policy in Section 13 of 8.300.2 NMAC. [8.300.2.7 NMAC – N, 7-1-03]

**8.300.2.8 MISSION STATEMENT:** The mission of the HSD medical assistance division (MAD) is to maximize the health status of medicaid-eligible individuals by furnishing payment for quality health services at levels comparable to private health plans. [8.300.2.8 NMAC – N, 7-1-03]

**8.300.2.9 GENERAL HIPAA POLICIES:** This part describes HIPAA policies including health plan responsibilities, disclosure requirements, minimum necessary, business associates, sanctions, reporting, and documentation requirements. The HCC shall meet all requirements in this chapter. Specific information on the regulation requirement is contained in subsequent sections of this part.

**A. Medicaid is a health plan and a covered entity under HIPAA:** The New Mexico medicaid program under title XIX of the Social Security Act qualifies as a health plan under HIPAA regulations at 45 CFR 160.103 and is considered a covered entity.

**B. Inconsistency between state and federal law:** In the event of any

inconsistency between the federal HIPAA privacy rule and New Mexico statutes or regulations, the HIPAA privacy rule shall preempt state law, except where [45 CFR 160.203];

(1) a determination is made by the secretary of the United States department of health and human services pursuant to 45 CFR 160.204;

(2) the provision of state law relates to the privacy of individually identifiable health information and is more stringent than a standard, requirement, or implementation specification under the HIPAA privacy rule;

(3) the provision of state law and procedures established thereunder provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation or intervention; or

(4) the provision of state law requires the HCC to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities or individuals.

[8.300.2.9 NMAC – N, 7-1-03]

**8.300.2.10 NOTICE OF PRIVACY PRACTICES:** HSD shall establish policies protecting a medicaid recipient's rights regarding HIPAA privacy practices [45 CFR 164.520].

**A. Notice of privacy practices requirements:**

(1) HSD shall provide the HSD notice of privacy practices, update the notice as necessary, and distribute the notice and any revised notices to all medicaid recipients.

(2) All notice of privacy practices required elements listed in the HIPAA privacy rule shall be contained in the HSD notice of privacy practices [45 CFR 164.520].

(3) The name of every recipient to whom the HSD notice of privacy practices is sent shall be recorded.

**B. Notice schedule:**

(1) For recipients enrolled in medicaid prior to July 1, 2003, a copy of the notice of privacy practices shall be sent to each medicaid recipient's last known address no later than July 1, 2003.

(2) For revisions made to the notice of privacy practices, a copy of the revised notice of privacy practices shall be mailed to each recipient enrolled in New Mexico medicaid within sixty (60) days of the effective date of the revision.

(3) For new medicaid recipients approved after July 1, 2003, a copy of the notice of privacy practices shall be mailed with the recipient's new medicaid card.



(4) At least once every three years, HSD shall notify medicaid recipients by mail of the availability of the notice of privacy practices and how to obtain the notice of privacy practices.

[8.300.2.10 NMAC – N, 7-1-03]

**8.300.2.11 RECIPIENT'S RIGHTS:** HSD shall establish policies protecting a recipient's rights regarding HIPAA privacy practices.

**A. Alternate means of communication:** Medicaid recipients or their personal representative shall have the right to request an alternate means of communication and an alternative address to receive communications of protected health information (PHI) from the HCC. The HCC shall accommodate such requests when reasonable [45 CFR 164.522(b)].

(1) If the recipient is unable to write the request, the recipient may request assistance from the HCC. If assistance is provided, the HCC shall document that the assistance was given, have the recipient sign and date the document, co-sign and retain the document in the medical record.

(2) The HCC staff may determine the reasonableness of a request. If an HCC staff member is unable to determine if the request is reasonable, the staff member may request a supervisor's assistance.

(3) If the recipient or the recipient's personal representative is present when the request is approved or denied, HCC staff shall notify the recipient or the recipient's personal representative verbally of the decision, and shall document the notification in the recipient's file.

(4) If the recipient is not present when the request is approved or denied, HCC shall notify the recipient or the recipient's personal representative of the decision in writing and retain the copy of the decision in the recipient's file.

(5) If the request is approved, an HCC staff member shall record the alternative method and/or address in the medical record and in the PSO's database.

**B. Inspect and copy:** Medicaid recipients may inspect their own PHI in a medical file (designated record set) as maintained by the HCC. This does not include psychotherapy notes.

(1) For all requests received in writing, the HCC shall respond in writing to the request to inspect or to obtain a copy of HCC PHI no later than sixty (60) days after receipt of the request. The HCC shall then determine, using the criteria in HIPAA privacy rule, if the request will be granted in part, in full, or denied.

(a) If the request will be granted in full, the PSO shall provide a written response arranging with the recipient or the recipient's personal representative a con-

venient time and place to inspect or obtain a copy of the PHI, or may mail the copy of the PHI at the recipient's request; and shall discuss the scope, format, and other aspects of the recipient's request with the recipient or the recipient's personal representative as necessary to facilitate timely provision.

(b) If the PSO is unable to gather the required data within the time period required, the PSO may extend the time for the action by no more than thirty (30) days so long as the recipient is provided with a written statement of the reason(s) for the delay and the date by which the PSO shall complete the action on the request. However, only one such extension of time shall be allowed.

(c) The PSO shall provide a copy of the recipient's PHI to the recipient or the recipient's personal representative in the format requested, if possible. If not, the PSO shall provide the PHI in a readable hard copy form or in another format mutually agreed upon by the PSO and the recipient or the recipient's personal representative.

(2) If the request is denied, in part or in full, the PSO shall either:

(a) give the recipient or the recipient's personal representative access to any permitted PHI requested to the extent possible; or

(b) provide a written denial to the recipient or the recipient's personal representative. The denial shall be written in plain language and contain:

(i) the basis for the denial,

(ii) if applicable, a statement of the recipient's review rights, and

(iii) a description of how the recipient may complain to the PSO or to the secretary of HSD. This description shall include the title and telephone number of the PSO and the secretary of HSD.

(3) If the HCC does not maintain the PHI that is the subject of the request for inspection or copying, the PSO shall inform the recipient or the recipient's personal representative where to direct the request, if known.

(4) **Exceptions:** A recipient may not inspect the recipient's own protected health information (PHI) in a medical record in connection with:

(a) psychotherapy notes;

(b) information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative proceeding;

(c) PHI maintained by the HCC that is subject to the clinical laboratory improvements amendments (CLIA) to the extent that access to the recipient is prohibited by CLIA;

(d) when the access to the PHI

requested is reasonably likely to endanger the life or physical safety of the individual or another person as determined by a licensed health care professional by using his/her professional judgment;

(e) when the PHI makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that granting the access requested is reasonably likely to cause substantial harm to such other person; or

(f) when the request for access is made by recipient's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person [45 CFR 164.524].

(5) The PSO shall record all actions pertaining to access to inspect and copy in the PSO's database.

**C. Accounting of disclosures:** Accounting of all disclosures of a recipient's PHI shall be produced via written report by the PSO when the request is made in writing by the recipient and sent to the PSO.

(1) All disclosures shall be reported except for those:

(a) made to carry out TPO [45 CFR 164.506];

(b) for a facility directory;

(c) for notification purposes that include disaster relief, emergencies, or in the case of recipient death;

(d) for national security purposes;

(e) to correctional institutions or law enforcement officials having custody of an inmate;

(f) made prior to July 1, 2003;

(g) made more than six years prior to the date the accounting is requested;

(h) made to the recipient of the recipient's own PHI; or

(i) made to individuals involved in the recipient's care [45 CFR 164.528].

(2) If the HCC does not maintain the PHI that is the subject of the request for accounting, the PSO shall inform the recipient or the recipient's personal representative where to direct the request, if known.

(3) When a recipient requests in writing to the PSO an accounting of disclosures of PHI:

(a) within sixty (60) days of receiving a recipient's or the recipient's personal representative's request, HCC prepares a report from the PSO's database that includes all required PHI disclosures that occurred during the six (6) years prior to the date of the request for an accounting, unless the recipient or the recipient's personal representative requested an accounting for a

shorter period of time than six (6) years.

(b) the deadline for producing the disclosure report may be extended for up to thirty (30) days, provided that a written statement is sent to the recipient citing the reasons for the delay and the date by which the accounting shall be received.

(c) the HCC must provide free of charge the first accounting report within any twelve-month period. If additional requests for an accounting are made within the same twelve-month period, the HCC shall notify the recipient if a fee will be charged for the additional copies.

(d) the accounting disclosure information is entered into the PSO's database.

#### D. Setting restrictions:

Recipients or their personal representative may request restrictions on the uses and disclosures of their own protected health information (PHI) by submitting a request in writing to the HIPAA privacy and security officer (PSO).

(1) The PSO shall approve or deny requests for restriction(s) in writing within fifteen (15) days.

(2) If the HCC does not maintain the PHI that is the subject of the request for setting restrictions, the PSO shall inform the recipient or the recipient's personal representative where to direct the request, if known.

(3) If a restriction is approved by the PSO, the information shall be entered into the PSO's database and the HCC shall not use or disclose the restricted PHI [45 CFR 164.522(a)].

(4) If the recipient is unable to write the request, the recipient may request assistance from the HCC. If assistance is provided, the HCC shall document that the assistance was given, have the recipient sign and date the document, co-sign and retain the document in the recipient's file.

(5) Limited use and disclosure of PHI is allowable when the recipient is not present for an emergency or because of the incapacity of the recipient.

(6) The HCC shall approve or deny the request as appropriate and ensure that the approval or denial of the restriction is entered into the medical record.

(7) If the restriction would involve more than a single location, the HCC staff worker shall send the request to the HIPAA privacy and security officer.

(8) The PSO shall inform the recipient or the recipient's personal representative in writing of the approval or denial of the request to restrict use and disclosure.

(9) The PSO shall document the restriction(s) in the PSO's database.

#### E. Amendments:

It is the policy of the HCC that the HCC shall allow recipients to request that an amendment be

made to the recipient's own protected health information (PHI) contained in a designated record set as long as the PHI was originated by the HCC.

(1) A request for an amendment shall be submitted in writing to the PSO [45 CFR 164.526].

(2) If the HCC does not maintain the PHI that is the subject of the request for amending, the PSO shall inform the recipient or the recipient's personal representative where to direct the request, if known.

(3) Within five (5) days of receiving the recipient's or the recipient's personal representative's written request for an amendment, the PSO shall forward the request to the possessor of the PHI requested to be amended for a determination on whether to grant or deny, in whole or in part, the recipient's request.

(4) The possessor of the PHI shall:

(a) review the recipient's request for an amendment;

(b) determine whether to grant or deny, in whole or in part, the recipient's request;

(c) within 45 days of receiving the recipient's written request for an amendment from the PSO, inform the PSO of the decision to grant or deny, in whole or in part, the recipient's request and the reason(s) for reaching the decision;

(d) within 60 days of the original receipt of the recipient's request for an amendment, the PSO shall inform the recipient or the recipient's personal representative of the decision to grant or deny the requested amendment in whole or in part; and

(e) if the PSO is unable to act on the amendment within the required 60-day period, the time may be extended by no more than 30 days, provided that the PSO provides the recipient with a written statement of the reasons for the delay and the date the action on the request will be completed.

(5) If the recipient's request is granted in whole or in part:

(a) the possessor shall make the appropriate amendment to the recipient's PHI in the designated record set;

(b) the PSO shall inform the recipient that the amendment is accepted;

(c) the PSO shall obtain the recipient's agreement and identification of persons that the HCC is to notify of the amendment; and

(d) the PSO shall provide the amendment to those persons identified by the recipient, and to persons, including business associates, that the PSO knows have received the PHI that is the subject of the amendment, and who may have relied, or could predictably rely on such information

to the detriment of the recipient.

#### F. Complaints and

**appeals:** It is the policy of the HCC to receive, investigate and resolve complaints made by recipients or their personal representative of alleged violations of the HIPAA privacy rule. Complaints shall be made in writing, specifying how the recipient's privacy rights have been violated, and submitted to the PSO or to the secretary of HSD [45 CFR 164.530(d)(1), (e), and (f)].

(1) Within five (5) days of receipt of the complaint, the PSO shall initiate a HIPAA privacy investigation.

(2) The PSO shall enter the complaint into the PSO's database.

(3) Within thirty (30) days of contact by the PSO, the appropriate HCC staff shall conduct the HIPAA privacy investigation and prepares a written report to the PSO documenting the details of the HIPAA privacy investigation and the findings.

(4) Within thirty (30) days after receiving the written report from the appropriate HCC staff, the PSO shall determine the validity of the complaint and notify the recipient, the HCC supervisor and the HCC staff of the action taken. In consultation with the HCC supervisor, the PSO shall take appropriate action to mitigate the adverse effects of any unauthorized disclosure.

(5) For valid complaints, the PSO shall ensure that the appropriate disciplinary action and training are applied as per 8.300.2.24 NMAC.

(6) The PSO shall enter the HIPAA privacy investigation results into the PSO's database.

(7) If the recipient's request pursuant to this section is denied in whole or in part, the PSO shall:

(a) provide recipient with a timely, written denial, which includes the reason for the denial.

(b) inform the recipient of his/her right to submit, and the procedure for submission of a written statement disagreeing with the denial and also inform the recipient that if no statement of disagreement is submitted, the recipient may request that the HCC provide the recipient's request for amendment and the denial with any future disclosures of the PHI that is the subject of the amendment request.

(c) if necessary, prepare a written rebuttal to the recipient's statement of disagreement and provide a copy to the recipient.

(d) identify the record or PHI and append to the designated record set the:

(i) recipient's request for an amendment;

(ii) the HCC's denial of the request;

(iii) the recipient's

statement of disagreement, if any; and  
 (iv) the HCC's rebuttal,  
 if any.  
 [8.300.2.11 NMAC – N, 7-1-03]

**8.300.2.12 USE AND GENERAL DISCLOSURES OF PROTECTED HEALTH INFORMATION:** PHI shall be used or disclosed only by authorized HCC staff or contractors and only in accordance with HCC policies and procedures [45 CFR 164.502(a) and 45 CFR 164.530(i)].

A. **Making a disclosure when an authorization is required:** When PHI is requested, an authorized HCC employee shall:

- (1) determine if a valid authorization is presented. See 8.300.2.13 NMAC;
- (2) determine the identity and authority of the requestor as per 8.300.2.21 NMAC;
- (3) if a valid authorization is presented and the identity and authority of the requestor is verified, the HCC is authorized to disclose the PHI in accordance with the valid authorization's instructions;
- (4) HCC shall retain the valid authorization in the recipient's file;
- (5) the valid authorization and the disclosure shall be documented in the PSO's database;
- (6) if the request is not accompanied by a valid authorization, the HCC shall determine if an exception to the authorization requirement applies; and
- (7) if no exception applies, the HCC shall deny the request for disclosure of PHI, document the denial and instruct the requestor that a valid authorization shall be obtained from the recipient before MAD will disclose PHI.

B. **Exceptions:** A valid written authorization shall be required from recipients or their personal representatives before any use or disclosure of PHI, with the following exceptions:

- (1) disclosures to the recipient or personal representative pursuant to his/her request [45 CFR 164.502(a)(1)(i)];
- (2) for purposes of TPO [45 CFR 164.502 and 506];
- (3) when a consent, authorization, or other express legal permission in writing was obtained from the recipient prior to July 1, 2003, and is on file in an HCC location that permits the use or disclosure of PHI [45 CFR 164.532]; and
- (4) when the use or disclosure of PHI is limited to the minimum necessary to or for the following:
  - (a) assisting disaster relief agencies [45 CFR 164.510(b)(4)];
  - (b) coroners, medical investigators, funeral directors, and organ procurement organizations as authorized by law [45 CFR 164.512(g) and (h)];

(c) averting a serious and imminent threat to the health or safety of a person or the public [45 CFR 164.512(j)];

(d) health oversight activities [45 CFR 164.512(d)];

(e) disclosures required by law pursuant to a legal duty to disclose or report, such as for law enforcement purposes, child abuse or neglect, judicial or administrative proceedings, or workers compensation proceedings pursuant to a subpoena [45 CFR 164.512(a), (c), (e) and (f)];

(f) public health activities [45 CFR 164.512(b)];

(g) correctional institutions or law enforcement officials who have custody of an inmate [45 CFR 164.512(k)(5)];

(h) government agencies which administer a government program that provides public benefits, where the disclosure is necessary to coordinate, improve, investigate, or manage the program [45 CFR 164.512(d)(1) and (3)]; or

(i) research purposes that have been granted a waiver of authorization by an appropriately constituted institutional review board (IRB), a privacy board or representation that the PHI is necessary for research purposes [45 CFR 164.512(i)].  
 [8.300.2.12 NMAC – N, 7-1-03]

**8.300.2.13 AUTHORIZATIONS:** When a disclosure is made as a result of an exception to an authorization being required, the authorized HCC employee shall follow the specific procedure established for that exception [45 CFR 164.502(b), 45 CFR 164.508, 45 CFR 164.512, 45 CFR 164.532].

A. **Treatment, payment, or health care operations (TPO):**

(1) When conducting daily business that involves the use or disclosure of PHI, the HCC shall determine whether the use or disclosure is for TPO.

(2) If the person who requested the PHI is unknown, the HCC shall verify the identity and authority in accordance with 8.300.2.21 NMAC.

(3) The HCC shall apply the minimum necessary criteria to disclosures of PHI for payment or health care operations.

(4) The HCC shall ensure that there are no restrictions to the requested disclosure for PHI.

(5) The HCC shall use or disclose the minimum necessary PHI. The minimum necessary criteria do not apply to disclosures or requests by a health care provider for treatment purposes.

(6) Disclosures made for the purpose of providing TPO are not required to be documented.

B. **Averting a serious threat:**

(1) If in good faith and using pro-

fessional judgment, the HCC determines that the use or disclosure of PHI is necessary to avert a serious and imminent threat to the health or safety of a person or the public.

(a) If the identity of the requestor is unknown, the HCC shall verify the identity and authority of the requestor in accordance with 8.300.2.21 NMAC.

(b) The HCC shall apply the minimum necessary criteria per 8.300.2.16 NMAC for disclosing PHI to prevent or lessen the threat.

(c) The HCC shall disclose the PHI only to person(s) reasonably able to prevent or lessen the threat, including the target of the threat.

(2) The disclosure of PHI shall be documented in the PSO's database.

C. **Workers compensation:**

(1) If the identity and authority of the requestor is unknown, the HCC shall verify the information as required per 8.300.2.21 NMAC.

(2) The HCC shall disclose the required PHI to the workers' compensation administration in accordance with the minimum necessary criteria.

(3) The disclosure of PHI shall be documented in the PSO's database.

D. **Coroners, medical investigators, funeral directors, and organ procurement organizations:** When the PHI request is from coroners, medical investigators, funeral directors, or organ procurement organizations, the HCC shall:

(1) if unknown, verify the identity and authority of the requestor as per 8.300.2.21 NMAC;

(2) apply the minimum necessary criteria per 8.300.2.16 NMAC;

(3) disclose the minimum necessary PHI. Disclosures to the coroner or medical investigator require a valid subpoena; and

(4) record the disclosure in the PSO's database.

E. **Disaster relief efforts:**

When an entity in disaster relief efforts requests PHI to assist in notifying, identifying, or locating a family member, personal representative or other person responsible for the care of the recipient regarding the recipient's location, general condition or death, the HCC shall:

(1) if unknown, verify the identity and authority of the requestor as per 8.300.2.21 NMAC;

(2) apply the minimum necessary criteria per 8.300.2.16 NMAC;

(3) provide recipients or their personal representatives the opportunity to agree to, restrict, or prohibit the use or disclosure of PHI to the disaster relief entity, unless the recipient is not present or is

unable to agree to, restrict, or prohibit the disclosure; and

(4) record the disclosure in the PSO's database.

**F. Health oversight activities:** The health oversight agency may request documents related to a recipient's PHI and record the identity of recipients for whom PHI was accessed. The HCC shall then:

(1) if unknown, verify the identity and authority of the requestor as per 8.300.2.21 NMAC;

(2) apply the minimum necessary criteria per 8.300.2.16 NMAC;

(3) disclose the minimum necessary PHI;

(4) obtain the identity of recipients for whom PHI was accessed; and

(5) record the disclosure in the PSO's database.

**G. Public health activities:** A public health agency may request documents related to a recipient's PHI. The HCC shall then:

(1) if unknown, verify the identity and authority of the requestor as per 8.300.2.21 NMAC;

(2) apply the minimum necessary criteria per 8.300.2.16 NMAC;

(3) disclose the minimum necessary PHI if the purpose of requesting the information is for:

(a) the prevention or control of disease, injury, or disability including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;

(b) another public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;

(c) a person subject to the jurisdiction of the food and drug administration:

(i) to report adverse events (or similar reports with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations if the disclosure is made to the person required or directed to report such information to the food and drug administration;

(ii) to track products if the disclosure is made to a person required or directed by the food and drug administration to track the product;

(iii) to enable product recalls, repairs, or replacement (including locating and notifying individuals who have received products subject to recalls, with-

drawals, or other problems); or

(iv) to conduct post-marketing surveillance to comply with requirements or at the direction of the food and drug administration, or

(d) a person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition.

(4) record the disclosure in the PSO's database.

**H. Required by law:**

(1) If the request for the disclosure of PHI appears to be required by law, the HCC shall verify the identity of the requestor and forward the request to the HSD office of general counsel (OGC) for a determination of the validity of the request.

(2) If advised by OGC that the request is valid, the HCC shall disclose the PHI in accordance with the minimum necessary criteria.

(3) The HCC shall record the disclosure in the PSO's database.

**I. Law enforcement requests:** When the disclosure of PHI is for law enforcement purposes, the HCC shall:

(1) verify identity and authority of the requestor;

(2) forward the request to OGC for a determination of the validity of the request;

(3) if advised by OGC that the request is valid, disclose the PHI in accordance with the minimum necessary criteria; and

(4) record the disclosure in the PSO's database.

**J. Legal requests:**

(1) If the request for PHI arises from legal proceedings and requests such as judicial or administrative proceedings or subpoenas, the HCC shall verify the identity of the requestor if practicable, and forward the request to OGC, unless documented exceptions from OGC have been received.

(2) If the identity of the requestor has not been previously verified to OGC, the HCC shall verify the identity of the requestor and determine the validity of the legal or law enforcement request.

(3) The HCC shall then disclose the PHI or direct the disclosure to be made.

(4) The HCC shall record the disclosure in the PSO's database.

**K. When consent or authorization for the use or disclosure of PHI was made prior to July 1, 2003:**

(1) The HCC shall determine if a valid authorization exists for the specific use or disclosure of PHI request.

(2) If a valid authorization does not exist, the HCC shall determine if a consent, an authorization, or other legal permission exists that was obtained before July 1,

2003.

(3) If a consent, an authorization, or other legal permission exists, the HCC shall verify that it is still in effect and that it is for the use or disclosure of the specific PHI requested.

(a) If yes, the HCC shall disclose the PHI and record the disclosure in the PSO's database.

(b) If no, the HCC shall deny the PHI request and instruct the requestor that a valid authorization must be obtained from the recipient. The requestor shall be provided a blank authorization form to be completed by recipient.

[8.300.2.13 NMAC – N, 7-1-03]

**8.300.2.14 DISCLOSURES FOR RESEARCH PURPOSES:**

**A.** Before a disclosure is made for research purposes, a valid authorization must be signed by the recipient or a waiver of authorization must have been obtained from a properly constituted institutional review board (IRB), a privacy board or representation that the PHI is necessary for research purposes [45 CFR 164.512(i)(1); 45 CFR 164.514(b) and (e)].

**B. Disclosure requirements:** The HCC shall:

(1) accept requests for PHI for research purposes with an authorization; or without a recipient authorization where the research entity provides documentation reflecting alteration or waiver of the authorization requirement [45 CFR 164.512(i)(1) and (2)];

(2) forward all requests to the PSO;

(3) if the requestor is unknown, verify the identity and authority of the requestor in accordance with 8.300.2.21 NMAC;

(4) grant or deny requests in accordance with the HIPAA privacy rule [45 CFR 164.512(i)]; and

(5) enter the disclosure information into the PSO's database.

[8.300.2.14 NMAC – N, 7-1-03]

**8.300.2.15 RECORDING AUTHORIZATIONS AND DISCLOSURES:** The HCC shall record all valid authorizations and record all disclosures of PHI.

**A. Recording of authorizations:** All valid authorizations shall be recorded when received in the PSO's database [45 CFR 164.508(b)(6)]. Any disclosures of PHI shall be made and recorded only by authorized members of the HCC workforce in the PSO's database.

**B. Exceptions:** The only exceptions that shall be allowed to the recording of disclosures of PHI are those:

(1) made to carry out TPO;

(2) for notification purposes that include disaster relief, emergencies, or in the case of recipient death;

(3) for national security purposes;

(4) to correctional institutions or law enforcement officials having custody of an inmate;

(5) made prior to July 1, 2003 [45 CFR 164.528a];

(6) made six years prior to the date the accounting is requested;

(7) made to the recipient of the recipient's own PHI; or

(8) made to individuals involved in the recipient's care.

[8.300.2.15 NMAC – N, 7-1-03]

#### **8.300.2.16 MINIMUM NECES-**

**SARY:** The HCC shall apply minimum necessary criteria to limit PHI for the use, disclosure, or request for PHI to the amount necessary to accomplish the task, except for disclosures to or requests by a health care provider for treatment purposes. The minimum necessary criteria do not apply with respect to disclosures to or requests by a health care provider for treatment. [45 CFR 164.514(d)(2)-(5), 45 CFR 164.502(b)(2)]

##### **A. HCC's use of protected health information:**

(1) An HCC supervisor shall determine the minimum necessary PHI needed by each HCC employee to perform his or her job duties and shall:

(a) grant appropriate medical record access;

(b) grant appropriate access to billing and payment information;

(c) grant appropriate access to other files containing PHI; or

(d) grant appropriate electronic access to PHI and set security levels.

(2) Members of the HCC authorized workforce shall use PHI as authorized. Requests for additional access to PHI shall be forwarded to the supervisor if needed to perform job duties.

##### **B. HCC disclosures of protected health information:**

(1) Prior to making any disclosures of PHI, an authorized HCC employee shall determine the minimum necessary PHI to disclose by applying the following:

(a) if the disclosure request is made for a medical record maintained within the supervisor's organizational unit, the request must specifically justify in writing why the entire medical record is needed. The HCC employee shall apply professional judgment in determining whether all PHI requested is necessary to be disclosed. Absent such justification, the request shall be denied. The written request and disposition shall be maintained within the medical record.

(b) if a request for PHI to be dis-

closed is pursuant to a state or federal statute, administrative rule, court order, contract or grant and the disclosure is routine or recurring, the HCC employee shall determine if a MAD protocol for that disclosure exists.

(c) if it does, the HCC employee shall follow the protocol established for that routine and recurring disclosure.

(d) for any other routine or recurring disclosures, the HCC employee shall contact the PSO with a proposed standard protocol that details the minimum necessary PHI to be disclosed, to whom and for what purpose. Once developed and approved, the HCC employee shall follow the protocol established for such routine and recurring disclosures. By following such protocol, the minimum necessary requirement will be met.

(e) if the disclosure is not routine or recurring, the minimum necessary PHI to disclose is the PHI that has been requested by any of the following:

(i) a health care provider or health plan;

(ii) a business associate of the HCC, if the business associate represents that the PHI is the minimum necessary needed; or

(iii) a researcher whose request for PHI is consistent with the documentation of approval of such research by an IRB or privacy board, and which documentation was provided to, and approved by the PSO, in accordance with 8.300.2 NMAC [45 CFR 164.512(h)].

(2) When determining the minimum necessary PHI for all other disclosures, the HCC shall:

(a) review each request and if necessary make appropriate inquiries of the requestor to determine why the PHI is needed;

(b) apply professional judgment in determining whether all of the PHI requested is necessary to be disclosed to accomplish the identified purpose of the requested disclosure;

(c) limit the disclosure to the appropriate PHI to accomplish the identified purpose;

(d) if the disclosure is less than requested, provide an explanation of the limitation when the disclosure is made;

(e) refer questions concerning the minimum necessary disclosure of PHI to the PSO;

(f) if proposed standard protocols are received, the PSO reviews and approves or disapproves the standard protocol, keeps a copy of all approved standard protocols and notifies the supervisor of the decision; and

(g) authorized HCC employees shall:

(i) follow the standard protocols that have been approved by the PSO;

(ii) forward the request to their immediate supervisor, if disclosure requests are received other than from the recipient;

(iii) provide the minimum necessary PHI that the recipient requested, if the disclosure request is from the recipient; and

(iv) record the disclosure in the PSO's database.

**C. HCC requests for protected health information:** HCC employees shall determine the minimum necessary PHI to request by applying the following guidelines.

(1) If the request is made for a medical record, the request shall specifically justify why the entire medical record is needed. If the medical record is disclosed to or requested by a health care provider for treatment purposes, minimum necessary does not apply and justification is not required.

(2) If the request for PHI is not routine or recurring, the request shall be limited to the minimum necessary PHI to accomplish the task.

(3) All requests for PHI shall be in writing and a copy given to the PSO for audit purposes.

(4) For any PHI requests that are routine or recurring, employees shall send the proposed standard protocol to the PSO that details the minimum necessary PHI needed to accomplish the task.

(5) The PSO shall maintain written PHI requests and perform audits as necessary.

(6) If proposed standard protocols are received, the PSO shall review and approve or disapprove the standard protocol, keep a copy of all approved standard protocols, and notify the supervisor of the decision.

[8.300.2.16 NMAC – N, 7-1-03]

#### **8.300.2.17 DE-IDENTIFICATION OF PROTECTED HEALTH INFORMATION:**

The HCC may de-identify PHI on recipients by removing all recipient identifiable information [45 CFR 164.514(a)(b)]. Authorized HCC employees shall forward the PHI to be de-identified to a person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable; or they shall remove all the following recipient identifiable information.

A. **Names.**

B. **Location:** All geographic subdivisions smaller than a state, including street address, city, county,

precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the bureau of the census:

(1) the geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and

(2) the initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.

C. **Dates:** All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older;

D. **Numbers:** All elements of numbers, or combination of alphanumeric and special characters, for identification directly related to an individual, including:

- (1) telephone numbers;
- (2) fax numbers;
- (3) e-mail addresses;
- (4) social security numbers;
- (5) medical record numbers;
- (6) health plan beneficiary numbers;
- (7) account numbers;
- (8) certificate/license numbers;
- (9) vehicle identifiers and serial numbers, including license plate numbers;
- (10) device identifiers and serial numbers;
- (11) web universal resource locators; (URLs);
- (12) internet protocol (IP) address numbers;
- (13) any other unique identifying number, characteristic, or code, except as otherwise permitted.

E. **Imagery:** All elements of physical characteristics captured in any format, or combination of formats, for identification directly related to an individual, including:

- (1) biometric identifiers, including finger and voiceprints; and
  - (2) full face photographic images and any comparable images.
- [8.300.2.17 NMAC – N, 7-1-03]

### 8.300.2.18 TERMINATION OF RESTRICTIONS:

A. **Termination requirements:** Restrictions on the uses and disclosures of PHI shall be terminated if:

(1) the recipient or the recipient's personal representative requests the termination in writing;

(2) the PSO informs the recipient or the recipient's personal representative in writing that the HCC agreement to a restriction has ended and that the termination of the restriction is effective with any PHI created or received after the recipient or the recipient's personal representative is notified of the termination [45 CFR 164.522(a)(2)]; or

(3) if the recipient is unable to write the request, the recipient may request assistance from HCC. If assistance is provided, HCC shall document that the assistance was given, have the recipient sign and date the document, co-sign and retain the document in the medical record.

#### B. If a termination of restriction is granted:

(1) the PSO shall approve or deny the request within five (5) days. If approved, the PSO shall notify the recipient or the recipient's personal representative in writing of the termination request and give the recipient or the recipient's personal representative ten (10) days to disagree in writing. If denied, the PSO shall notify the requestor in writing.

(2) if the recipient or the recipient's personal representative disagrees, the PSO shall inform the requestor of the disagreement and require a response in three (3) days to review the communication from the recipient or the recipient's personal representative to ascertain if the disagreement by the recipient has bearing on the PSO final decision to terminate the restriction.

(3) the PSO shall issue a final decision within five (5) days and notify the recipient or personal representative and the MAD requestor.

(4) the PSO shall record the termination of restriction in the PSO's database.

[8.300.2.18 NMAC – N, 7-1-03]

### 8.300.2.19 BUSINESS ASSOCIATES:

The HCC shall have privacy protections in all contracts if the contract anticipates that HCC will make disclosures of PHI to the contractor so that the contractor may use the PHI to perform a business associate function on behalf of MAD relating to TPO. The written protections shall satisfy HIPAA privacy rule 45 CFR 164.504(e).

[8.300.2.19 NMAC – N, 7-1-03]

### 8.300.2.20 MITIGATION:

A. **HCC workforce:** To the extent practicable, the HCC shall mitigate any harmful effect that is known to the HCC from an improper use or disclosure of a recipient's PHI by an HCC employee by applying the requirements set forth in the HSD HIPAA privacy policies and procedures applicable to an HCC workforce disciplinary action and training [45 CFR

164.530(f)]. See Sections 23 and 24 of 8.300.2 NMAC.

#### B. Business associates:

To the extent practicable, the HCC will mitigate any harmful effect that is known to it from an improper use or disclosure of a recipient's PHI by any of its business associates by including language in its contracts with business associates that may impose fines and/or penalties to the business associate, up to and including immediate termination of a business associate's relationship with the HCC [45 CFR 164.530(f)].

[8.300.2.20 NMAC – N, 7-1-03]

### 8.300.2.21 VERIFYING IDENTITY AND AUTHORITY:

If the identity or authority of a requestor of PHI is unknown, the identity and authority of that requestor shall be verified prior to any disclosure [45 CFR 164.514(h)].

A. **Identification:** Upon receipt of a request for PHI, an authorized HCC employee must determine whether the requestor is a recipient or personal representative of a recipient.

(1) If the requestor is unknown to the authorized HCC employee, the employee shall request proof of identity, such as a photograph ID, credit card issued to the requestor, or medicaid card issued to the requestor.

(2) If the request is made over the phone, the HCC employee shall require proof of identity by asking for a social security number or omnicaid system ID.

(3) If the requestor is the recipient, a valid signed authorization satisfies the authority requirement.

(4) If the requestor is the recipient's personal representative, the HCC employee shall require proof of authority to act on the recipient's behalf.

(5) If the request for PHI disclosure is by a government official, and the government official's identity is unknown, the HCC employee shall verify the identity of the government official by viewing an agency identification badge or other official credentials.

(6) The HCC employee shall forward all requests for PHI for research purposes to the PSO. See 8.300.2.14 NMAC.

B. **Authority:** Once the identity of the government official is verified (or if already known), the HCC employee shall verify the authority of the request. If the disclosure of PHI is required by law, the employee shall disclose the PHI and record the disclosure in the PSO's database. If there are questions as to whether PHI disclosure is required by law, the employee shall seek assistance from OGC prior to any PHI disclosure.

(1) HCC shall forward all requests for PHI from subpoenas, legal

requests, or for law enforcement purposes to OGC within two (2) days.

(2) For any requests for PHI received, OGC shall determine the identity of the requestor and the authority of the requestor. OGC then shall approve or deny the request and take the appropriate legal action.

**C. Restrictions or amendments:** If a valid authorization from an ISD location is received because a restriction or amendment is recorded in the PSO's database, the HCC shall take the following action.

(1) If a restriction is already documented, and the valid authorization from the recipient is asking for the restricted PHI to be disclosed, the HCC shall notify the recipient in writing within three (3) days that a previously set restriction must be revoked in writing by the recipient before the disclosure can be made.

(2) If an amendment is requested, within three (3) days the HCC shall determine if the PHI to be disclosed has been amended. If yes, the HCC shall disclose the amended PHI.

(3) The HCC shall record the disclosure in the PSO's database.  
[8.300.2.21 NMAC – N, 7-1-03]

**8.300.2.22 SAFEGUARDING PROTECTED HEALTH INFORMATION:** PHI shall be confidential and shall be subject to safeguarding procedures. PHI shall be restricted from the public [45 CFR 164.530(c)].

**A. Restricting access to PHI:** When meeting with recipients or their personal representative, HCC employees shall ensure that any PHI that does not belong to that recipient is not visible. If meeting with the general public, HCC employees shall ensure that no PHI is accessible or visible.

**B. Computer monitors:** The HCC workforce shall:

(1) ensure that all computer monitors that provide access to PHI that are located in an area accessible to or visible by the general public are not facing the public; and

(2) ensure that each computer monitor that provides access to PHI is locked with a password-protected screen saver or otherwise secure the computer monitor by a method approved by the PSO before leaving the computer monitor for any reason.

**C. Facsimile machines:** The HCC workforce shall:

(1) when a fax machine is located in an area accessible by the general public, remove incoming and outgoing faxes immediately; and

(2) prior to sending any fax docu-

ment containing PHI, verify the disclosure is in accordance with 8.300.2.12 NMAC;

(a) apply the minimum necessary criteria in accordance with 8.300.2.16 NMAC;

(b) verify that the number to which the PHI is being sent is the correct number;

(c) determine if the disclosure is required to be recorded, in accordance with 8.300.2.15 NMAC; and

(d) record any required disclosure of PHI in the PSO's database in accordance with 8.300.2.15 NMAC.

**D. Electronic mail:** Prior to sending an e-mail that contains PHI, the HCC workforce shall:

(1) verify the disclosure is in accordance with 8.300.2.15 NMAC;

(2) apply the minimum necessary criteria in accordance with 8.300.2.16 NMAC;

(3) enter a notation referring to the confidential or sensitive nature of the information in the subject line to further safeguard the confidentiality of electronically submitted data;

(4) verify the recipient's e-mail address; and

(5) determine if the disclosure is required to be recorded in the PSO's database in accordance with 8.300.2.15 NMAC, and if so, record it.

**E. Document disposal:** When documents that contain PHI that are no longer needed and are not required to be retained under state of New Mexico records and archives requirements, authorized members of the HCC workforce shall request such records be destroyed in accordance with 1.13.30.9 NMAC.

(1) HCC workforce members shall destroy any form of paper that contains PHI by shredding or equivalent means as approved by the PSO. If a shredder is not available at the time the paper containing PHI needs to be destroyed, the papers shall be placed in a secure, locked environment until a shredder is available.

(2) Under no circumstances shall un-shredded paper containing PHI be placed in a trashcan, recycle bin or otherwise disposed of.

**F. Physical security:** The HCC shall have in place appropriate physical safeguards to protect the privacy of protected health information [45 CFR 164.530(c)].

**G. Violations:**

(1) The PSO shall perform random audits to assure compliance with this procedure and shall report any confirmed violation to the HCC workforce member's supervisor/coordinator.

(2) The PSO shall implement the appropriate disciplinary action and training

(if applicable) described in 8.300.2.24 NMAC and record the confirmed violation and disciplinary action into the employee's file in the HSD office of human resources.  
[8.300.2.22 NMAC – N, 7-1-03]

**8.300.2.23 STAFF TRAINING:**

All members of the HCC workforce shall be trained within appropriate timeframes on HIPAA privacy policies and procedures regarding the proper use and disclosure of PHI [45 CFR 164.530(b)].

**A. Initial training:** The HCC shall:

(1) develop a training plan with HCC supervisory staff involvement to determine the timing of and level of training appropriate to members of the HCC workforce;

(2) develop bureau-specific training curricula and materials. The training material shall be maintained for six years;

(3) provide bureau-specific training for the current HCC workforce no later than July 1, 2003; and

(4) ensure documentation of initial training completion and forward documentation to the HSD office of human resources.

**B. Continuous training:** For HCC workforce members who begin employment or whose job functions change subsequent to July 1, 2003, HCC shall:

(1) within one day of start date, notify the PSO of the new HCC workforce member and schedule training for the new workforce member to be completed within ten (10) working days of the start date;

(2) for HCC workforce members whose job functions change, and who thus require a new level of training, notify the PSO and schedule the training prior to having the workforce member assume the new job duties. Employees must successfully complete training within ten (10) working days of their start date, and evidence of training must be provided to the HSD office of human resources; and

(3) the HSD office of human resources shall retain the original signed training documentation for six (6) years.

**C. Privacy policy changes:** When changes are made to HCC policies or procedures or when HCC changes its privacy practices [45 CFR 164.530(b)], HCC shall:

(1) prepare relevant changes to the bureau-specific curricula;

(2) prepare changes to training materials;

(3) retain the training material for six (6) years;

(4) after determining affected staff with supervisor involvement, develop a training plan;

(5) ensure that the HCC work-

force successfully completes training and provide individual signed documentation of training to the PSO;

(6) the PSO shall forward the individual documentation of training to the HSD office of human resources; and

(7) the HSD office of human resources shall retain the original signed training documentation for six (6) years. [8.300.2.23 NMAC – N, 7-1-03]

**8.300.2.24 WORKFORCE DISCIPLINARY ACTION:** Any HCC employee who discloses protected health information (PHI) not allowed by HIPAA privacy policies and procedures shall be subject to appropriate disciplinary action.

**A. Knowingly inappropriate disclosure of protected health information:** Appropriate disciplinary action may be informal discipline, such as counseling, oral reprimands, written reprimands, and mandatory training or retraining; or formal discipline, such as suspension, demotion or dismissal from employment.

(1) A HCC supervisor shall notify the PSO immediately upon becoming aware of an alleged or suspected inappropriate disclosure(s) of PHI by a HCC employee.

(2) The PSO shall enter the date and name of the HCC employee into the PSO database.

(3) The PSO shall direct the supervisor to conduct a privacy investigation of the alleged inappropriate disclosure(s) within five (5) days of being notified.

(4) The supervisor shall complete the privacy investigation of the alleged inappropriate disclosure(s) within ten (10) days of notification and shall prepare a written report of the privacy investigation findings.

(5) The supervisor shall send the written report to the PSO and shall retain a copy.

(6) If the findings of the privacy investigation show that the HCC employee did not disclose PHI inappropriately, the PSO shall enter "claim not substantiated" into the PSO database by the HCC employee's name.

(7) If the findings of the privacy investigation show that the HCC employee did knowingly disclose PHI inappropriately, the PSO shall share the findings of the privacy investigation with OGC and the HSD office of human resources.

(8) The employee's supervisor, with the advice of OGC, the PSO, and the office of human resources, as appropriate, shall determine appropriate disciplinary action to be applied in accordance with principles of progressive discipline, and shall notify the PSO of the determination.

Such discipline may be either informal or formal.

(a) **Informal discipline:** Within three (3) days of notifying the PSO of the determination of the level of disciplinary action to be applied, the supervisor shall meet with the HCC employee who knowingly disclosed PHI inappropriately to discuss the outcome of the investigation and to provide the employee with the informal disciplinary action. Any written documentation of the informal discipline that is placed in the employee's HSD personnel file shall be provided to the employee, and the employee may submit a written rebuttal for placement in the employee's HSD personnel file in accordance with Subsection A of 1.7.1.12 NMAC.

(b) **Formal discipline:** For an employee in career status (i.e., has completed the probationary period), within ten (10) days of notifying the PSO of the determination of the level of disciplinary action to be applied, the supervisor shall initiate the discipline in accordance with the procedures required by the state personnel board as set out in 1.7.11 NMAC, or subsequent amendment, by preparing an appropriate notice of contemplated action in accordance with 1.7.11.13 NMAC, or subsequent amendment. For an employee not in career status, such as a probationary, emergency, or temporary employee, written notice of the discipline shall be provided at least twenty-four hours prior to the imposition of the discipline in accordance with 1.7.11.11 NMAC.

(9) The supervisor shall notify the PSO when the HCC employee that knowingly disclosed the PHI inappropriately has received the disciplinary action.

(10) The PSO shall enter the privacy investigation findings of "claim substantiated" along with the disciplinary action taken by the name of the HCC employee that knowingly disclosed PHI inappropriately into the PSO database.

**B. Inadvertent inappropriate disclosure of protected health information:** Appropriate disciplinary action for inadvertent inappropriate disclosure of PHI is generally informal discipline, such as counseling, oral reprimands, written reprimands, and mandatory training or retraining.

(1) An HCC supervisor shall notify the PSO immediately upon becoming aware of an alleged or suspected inappropriate disclosure(s) of PHI by an HCC employee.

(2) The PSO shall enter the date and name of the HCC employee into the PSO database.

(3) The PSO shall direct the supervisor to conduct a privacy investigation of the alleged inappropriate disclo-

sure(s) of PHI by an HCC employee within five (5) days of being notified.

(4) The supervisor shall complete the privacy investigation of the alleged inappropriate disclosure(s) of PHI within ten (10) days of notification and prepares a written report of the privacy investigation findings.

(5) The supervisor shall send the written report to the PSO and retain a copy.

(6) If the findings of the privacy investigation show that the HCC employee did not disclose PHI inappropriately, the PSO shall enter "claim not substantiated" into the PSO database by the HCC employee's name.

(7) If the findings of the privacy investigation show that the HCC employee did inadvertently disclose PHI inappropriately, the PSO shall share the findings of the privacy investigation with OGC.

(8) The PSO and the supervisor shall meet jointly with the HCC employee who inadvertently disclosed PHI within three (3) days of receipt of the written notification from the PSO to discuss the outcome of the investigation and to provide the employee with the informal disciplinary action.

(9) At a minimum, the supervisor shall take the following informal disciplinary action:

(a) give the HCC employee who inadvertently disclosed PHI inappropriately copies of the HSD HIPAA privacy policies and procedures with which the employee did not comply;

(b) require the HCC employee to read the applicable HSD HIPAA privacy policies and procedures in the presence of the supervisor;

(c) explain to the HCC employee the potential implications to HCC when PHI is disclosed inappropriately and is in conflict with HSD HIPAA privacy policies and procedures;

(d) answer any questions the HCC employee has regarding the HSD HIPAA privacy policies and procedures; and

(e) require the HCC employee to sign and date a document stating that counseling was provided regarding the failure to comply with HSD HIPAA privacy policies and procedures.

(10) The supervisor shall give the original of the document signed and dated by the HCC employee to the HSD office of human resources, and shall also maintain a copy and immediately forward a copy to the PSO. Any written documentation of the informal discipline that is placed in the employee's personnel file shall be copied and provided to the employee, and the employee may submit a written rebuttal for placement in the employee's personnel file



in accordance with Subsection A of 1.7.1.12 NMAC.

(11) Upon receiving a copy of the document, the PSO shall enter "claim substantiated" along with the disciplinary action taken by the name of the HCC employee into the PSO database.

**C. Repeated inadvertent inappropriate disclosure of protected health information:** If the findings of the privacy investigation show that a repeat inappropriate, inadvertent disclosure of PHI was made by an HCC employee, and the employee has received informal or formal discipline as provided in these HIPAA privacy procedures, the PSO in consultation with the employee's supervisor shall recommend an appropriate disciplinary action to be applied. Such discipline may be either informal or formal. Informal discipline includes counseling, oral reprimands, written reprimands, and mandatory training or retraining. Formal discipline is suspension, demotion, or dismissal.

(1) An HCC supervisor shall notify the PSO immediately upon becoming aware of an alleged or suspected inappropriate disclosure(s) of PHI by an HCC employee.

(2) The PSO shall enter the date and name of the HCC employee into the PSO database.

(3) The PSO shall direct the supervisor to conduct a privacy investigation of the alleged inappropriate disclosure(s) of PHI within five (5) days of being notified.

(4) The supervisor shall complete the privacy investigation of the alleged inappropriate disclosure(s) of PHI within ten (10) days of notification and shall prepare a written report of the privacy investigation findings.

(5) The supervisor shall send the written report to the PSO and retain a copy.

(6) If the findings of the privacy investigation show that the HCC employee did not disclose PHI inappropriately, the PSO shall enter "claim not substantiated" into the PSO database by the employee's name.

(7) If the findings of the privacy investigation show that a repeat inappropriate, inadvertent disclosure of PHI was made by a HCC employee, and the employee has received informal or formal discipline as provided in these HIPAA privacy procedures, the PSO in consultation with the employee's supervisor shall recommend an appropriate disciplinary action to be applied. Such discipline may be either informal or formal. Informal discipline includes counseling, oral reprimands, written reprimands, and mandatory training or retraining. Formal discipline is suspension, demotion, or dismissal.

(8) The PSO and the supervisor shall meet jointly with the HCC employee who inadvertently disclosed PHI within three (3) days of receipt of the written notification from the PSO to discuss the outcome of the investigation and to provide the employee with the informal disciplinary action.

(9) At a minimum, the supervisor shall take the following informal disciplinary action:

(a) give the HCC employee who inadvertently disclosed PHI inappropriately copies of the HSD HIPAA privacy policies and procedures with which the employee did not comply;

(b) require the employee to read the applicable HSD HIPAA privacy policies and procedures in the presence of the supervisor;

(c) explain to the employee the potential implications to HSD when PHI is disclosed inappropriately and is in conflict with HSD HIPAA privacy policies and procedures;

(d) answer any questions the employee has regarding the HSD HIPAA privacy policies and procedures; and

(e) require the employee to sign and date a document stating that counseling was provided regarding the failure to comply with HSD HIPAA privacy policies and procedures.

(10) The supervisor shall give the original document, signed and dated by the HCC employee, to the office of human resources, maintain a copy and immediately forward a copy to the PSO. Any written documentation of the informal discipline that is placed in the employee's HSD personnel file shall be copied and provided to the employee, and the employee may submit a written rebuttal for placement in the employee's personnel file in accordance with Subsection A of 1.7.1.12 NMAC.

(11) Upon receiving a copy of the document, the PSO shall enter "claim substantiated" along with the disciplinary action taken by the name of the HCC employee into the PSO database.

**D. Non-employee inappropriate disclosure of protected health information:** Appropriate disciplinary action may include requiring a corrective action plan with mandatory retraining, or severance of the working relationship with the HCC.

(1) The supervisor shall notify the PSO immediately upon becoming aware of an alleged or suspected inappropriate disclosure(s) of PHI by a non-employee member of the HCC workforce and shall conduct a privacy investigation within five (5) days of becoming aware of the situation.

(2) The supervisor shall notify the PSO of the results of the investigation (sub-

stantiated or not substantiated) and of the discipline that occurred (a corrective action plan with retraining or severed working relationship).

(3) The PSO shall enter into the PSO database the date and name of the non-employee member of the HCC workforce with the findings and action taken. [8.300.2.24 NMAC – N, 7-1-03]

**8.300.2.25 RETALIATION PROHIBITED:** HSD shall not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against recipients for exercising their rights documented in the HSD notice of privacy practices or against whistleblowers [45 CFR 164.530(g)]. [8.300.2.25 NMAC – N, 7-1-03]

**8.300.2.26 REQUIREMENT TO MAINTAIN DOCUMENTS:**

A. The PSO shall maintain originals of the following for six (6) years from the date of creation or from the date they were last in effect (whichever is later) [45 CFR 164.530(j)]:

(1) all HSD HIPAA privacy policies and procedures and attached forms;

(2) the HSD notice of privacy practices, including all revisions made to such notice;

(3) other HCC-wide privacy forms;

(4) HCC employee disciplinary actions maintained in the PSO database as a result of improper disclosure of PHI;

(5) any PSO-approved standard protocols; and

(6) valid authorizations.

B. The HCC shall maintain originals of the following for six (6) years from the date of creation:

(1) written recipient complaints regarding HSD HIPAA privacy practices and resolutions;

(2) written recipient requests to amend a medical record maintained in multiple locations and the written response to the requests;

(3) written recipient requests for restrictions on the disclosure of PHI and the written response to the requests;

(4) written requests to revoke a previously granted restriction on the disclosure of PHI, and the written response to the requests;

(5) written requests to revoke a previously granted authorization, and the written response to the requests; and

(6) written requests for access to view or to copy the HCC recipient medical record maintained in multiple locations.

C. The HSD personnel office shall maintain originals of the following for six (6) years from the date of cre-

ation:

- (1) privacy training records; and
- (2) HSD employee disciplinary actions maintained in the employee's file as a result of improper disclosure of PHI.

[8.300.2.26 NMAC – N, 7-1-03]

#### **8.300.2.27 PRIVACY OFFICER:**

Human services department (HSD) shall have a HIPAA privacy and security officer (PSO) to administer and enforce the privacy policies and procedures as promulgated under the Health Insurance Portability and Accountability Act of 1996 [45 CFR 164.530(a)].

[8.300.2.27 NMAC – N, 7-1-03]

#### **8.300.2.28 POLICIES AND PROCEDURES:**

HSD shall develop and promulgate policies and procedures relating to PHI that are designed to comply with the standards, implementation specifications, or other requirements of the HIPAA privacy rule. These policies and procedures shall be updated when the HIPAA privacy rule changes or significant HSD privacy practices change [45 CFR 164.530(i)].

[8.300.2.28 NMAC – N, 7-1-03]

#### **HISTORY OF 8.300.2 NMAC: [RESERVED]**

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

This is an amendment to 8.200.420 NMAC, Section 12 which will be effective on July 1, 2003. The Medical Assistance Division clarified language regarding assignment of medical support.

#### **8.200.420.12 THIRD PARTY LIABILITY:**

The New Mexico medicaid program (medicaid) is the payor of last resort. If resources are available from a third party, these health care resources must be used first. To ensure that these resource alternatives are used, an applicant/recipient assigns his/her right to medical support and payments to the human services department (HSD) and cooperates with the medical assistance division (MAD) in identifying, obtaining, and collecting medical support and medical care payments as a condition of eligibility. This section describes third party liability, HSD's responsibilities in identifying and collecting medical support and payments, and a recipient's responsibility to cooperate with HSD in obtaining medical support and medical payments.

**A. Required third party liability information:** During the initial determination or redetermination of eligibility for medical assistance, the income support specialist (ISS) must obtain the nec-

essary information from applicants/recipients to complete the third party liability (TPL) inquiry form.

(1) HSD is required to take all reasonable measures to ascertain the legal liability of third parties, including health insurers in paying for the medical services furnished to medicaid recipients [42 CFR 433.138(a)].

(2) HSD uses the information collected at the time of any determination/redetermination of eligibility for medical assistance to pursue claims against third parties.

**B. Availability of health insurance:** If an applicant/recipient has health insurance, the ISS must collect all relevant information, including name and address of the insurance company; individuals covered by the policy; effective dates; covered services; and appropriate policy numbers.

(1) Applicants/recipients with health insurance coverage or coverage by a health maintenance organization (HMO) or other managed care plan (plan) must be given a copy of the TPL recipient information letter.

(2) ~~If an absent parent exists, the ISS must obtain~~ If there is an absent parent, the ISS may request the absent parent's social security number.

(3) The ISS must determine if absent parents, relatives, applicants or any members of the household are employed and have health insurance coverage.

**C. Recipients with health insurance coverage:** An applicant/recipient is expected to be aware of his/her available health insurance coverage. An applicant/recipient must inform health care providers of this coverage and provide special billing forms for providers, if required. An applicant/recipient must also report change to or termination of insurance coverage to the local county income support division (ISD) office. If an applicant/recipient has health coverage through an HMO or plan, payment from medicaid is limited to applicable copayments required under the HMO or plan and to medicaid-covered services documented in writing as exclusions by the HMO or plan.

(1) If the HMO or plan uses a drug formulary, the medical director of the HMO or plan must sign and attach a written certification for each drug claim to document that a pharmaceutical product is not covered by the HMO or plan. The signature is a certification that the HMO or plan drug formulary does not contain a therapeutic equivalent that adequately treats the medical condition of the HMO or plan subscriber.

(2) Medical services not included in the HMO or plan are covered by medicaid only after review of the documentation

and on approval by MAD-TPLU.

(3) An applicant/recipient covered by an HMO or plan is responsible for payment for medical services obtained outside the HMO or plan and for medical services obtained without complying with the rules or policies of the HMO or plan.

(4) An applicant/recipient living outside an HMO or plan coverage area may request a waiver of the requirement to use HMO or plan providers and services. An applicant/recipient for whom a coverage waiver is approved by the MAD-TPLU may receive reimbursement for expenses which allow him/her to travel to an HMO or plan participating provider, even if the provider is not located near the applicant/recipient's residence.

**D. Potential health care resources:** The ISS must determine the presence of a source of health care if certain factors are identified during the application/reapplication interview.

(1) **Age of applicant/recipient:** Medicare must be explored if an applicant is over sixty-five (65) years old. Students, especially college students, may have health or accident insurance through the school.

(2) **Death of applicant:** Applications on behalf of deceased individuals must be examined for "last illness" coverage through a life insurance policy.

(3) **Presence of income sources:** Certain specific income sources are indicators of possible third party health coverage, which include:

(a) Railroad retirement benefits and social security retirement/disability benefits indicating eligibility for Title XVIII (medicare) benefits;

(b) Workers' compensation (WC) benefits paid to employees who suffer an injury or accident caused by conditions arising from employment. These benefits may compensate employees for medical expenses and lost income. Payments for medical expenses may be made as medical bills are incurred or as a lump sum award;

(c) Black lung benefits payable under the coal mine workers' compensation program, administered by the department of labor (DOL), can produce benefits similar to railroad retirement benefits if the treatment for illness is related to the diagnosis of pneumoconiosis. Beneficiaries are reimbursed only if services are rendered by specific providers, authorized by the DOL. Black lung payments are made monthly and medical expenses are paid as they are incurred; and

(d) Title IV-D payments or financial support payments from absent parents may indicate the potential for medical support. If a custodial parent does not have health insurance that meets a minimum standard, the court, in a divorce, separation

or custody and support proceeding, may order the parent with the obligation of support, to purchase insurance for a child [45 CFR 303.31(b)(1); NMSA 40-4C-4(A)(1)(Cum. Supp. 1992)]. Insurance can be obtained through the parent's employer or union [NMSA 40-4C-4(A)(2)(Cum. Supp. 1992)]. A parent who is unemployed may be ordered to pay all or a portion of the medical or dental expenses. For purposes of medical support, the minimum standards of acceptable coverage, deductibles, coinsurance, lifetime benefits, out-of-pocket expenses, co-payments, and plan requirements are the minimum standards of health insurance policies and managed care plans established for small businesses in New Mexico. See New Mexico Insurance Code.

(4) **Applicant/recipient has earned income:** Earned income usually indicates medical and health insurance made available by an employer.

(5) **Work history or military services:** Work history may indicate eligibility for other cash and medical benefits. Previous military service suggests the potential for veterans administration (VA) or department of defense (DOD) provided health care, including the civilian health and medical program of the United States (CHAMPUS). Within a forty (40) mile radius of a military health care facility, DOD eligibles must obtain certification of non-availability of medical services from the base health benefits advisor in order to be eligible for CHAMPUS.

(6) **Applicant/recipient's expenses show insurance premium payments:** Monthly expense information may show that recipients pay private insurance premiums or are enrolled in an HMO or plan.

(7) **Applicant/recipient has a disability:** Disability information contained in applications or brought up during interviews may indicate casualties or accidents involving legally responsible third parties.

(8) **Applicant/recipient has a chronic disease:** Individuals with chronic renal disease are probably entitled to medicare. Applications for social security disability may be indicative of medicare coverage.

E. **Communicating third party liability information:** Information concerning health insurance or health plans is collected, entered into the computerized eligibility system and transmitted to the medical assistance division third party liability unit (MAD-TPLU) by the ISS. Information about policy terminations are forwarded to MAD-TPLU via memorandum. In all cases where TPL is verified to exist, a case file is created by the MAD-TPLU. TPL information, including names

and addresses of insurance companies, is stated when possible at the time the provider verifies the client's eligibility for the date the services are provided.

(1) **Information exchange with county offices:** Information relating to accidents or incomplete information is transmitted to the MAD-TPLU directly.

(a) Information relating to potential or on-going malpractice suits is forwarded to MAD-TPLU via memorandum.

(b) If recipients receive a cash settlement, MAD-TPLU advises the appropriate county office or supplemental security income (SSI) office of the amount of cash received and the approximate date of receipt.

(2) **Information exchange with social security administration:** The MAD-TPLU receives TPL information from the social security office. This information is obtained on SSI applicants during initial eligibility application or eligibility redetermination. The social security office finds out if applicants have medical coverage through a third party and informs applicants of their obligation to cooperate with HSD in the pursuit of third party resources, and of their statutory assignment of medical support rights and payments for medical care to HSD.

(3) **Information exchange with the child support enforcement division:** The child support enforcement division (CSED) provides information to MAD-TPLU on cases identified by CSED as having health insurance [45 CFR 303.30(C)].

(a) MAD-TPLU refers cases to CSED when it learns that absent parents are not providing health coverage as required by court order or have health insurance available through employers but have not obtained it for their dependents as specified in the Child Support Enforcement Act of 1984, as amended.

(b) The New Mexico IV-D agency establishes paternity and obtains orders of support for medical payments. MAD-TPLU gives this agency information about lapses and changes of coverage as received by the MAD-TPLU. Notification takes place when the MAD-TPLU learns that claims for dependent children are rejected by absent parents' health insurance companies because the policies have been terminated, revised or no longer cover the children receiving IV-D agency services.

(4) **Information exchange with other departments or agencies:**

(a) The children, youth and families department (CYFD) provides information to MAD-TPLU to ensure the assignment of rights to medical support and payment is obtained on CYFD cases, such as subsidized adoptions and foster children cases.

(i) CYFD determines whether these individuals are covered by a health insurance policy or health plan and transmits this information to MAD-TPLU.

(ii) CYFD obtains the social security number of absent and custodial parents of medicaid eligible children or adolescents.

(b) MAD-TPLU performs data matches with CHAMPUS, worker's compensation, the highway department, wage data exchange (WPX) and private insurance companies to identify individuals who are covered by private health insurance or other liable third parties.

F. **Assignment of medical support:** As a condition of eligibility, HSD must require legally able applicants/recipients of benefits [must] [42 CFR 433.146; NMSA 1978 27-2-28 (G)(Repl. Pamp. 1991):

(1) to assign his/her individual rights to medical support and payments [to HSD]. The assignment authorizes HSD to pursue and make recoveries from liable third parties on the [recipients'] recipient's behalf; and

(2) to assign the rights to medical support and payments of other individuals eligible for medicaid, for whom the applicant/recipient can legally make an assignment. [-and

~~(3) assign their individual rights to any medical care support available under an order of a court or an administrative agency.~~

~~(4) for purposes of medical support, the minimum standards of acceptable coverage, deductibles, coinsurance, lifetime benefits, out of pocket expenses, co payments, and plan requirements are the minimum standards of health insurance policies and managed care plans established for small businesses in New Mexico. See New Mexico Insurance Code.]~~

(3) The assignment of an individual's rights to medical support and payments to HSD occurs automatically under state law with the receipt of benefits. The actual signing of the application in and of itself does not constitute an assignment of the individual's rights to HSD.

G. **Refusal to assign medical support:** If a parent or legal guardian does not agree to assign his/her rights to receive third party medical support or payments, or refuses to cooperate with HSD in establishing paternity or providing information about responsible third parties, the child for whom that application is being made is still entitled to receive medicaid benefits, provided all other eligibility criteria are met.

[G.] H. **Cooperation with HSD:**

(1) As a condition of eligibility,

recipient/applicant must cooperate with HSD in obtaining medical support and payments and in identifying and providing information about any health care coverage that he/she may have available to them [42 CFR 433.147; 45 CFR 232.42, 232.43; NMSA 1978 27-2-28(G)(3)(Repl. Pamp. 1991)]. Cooperation requirements include the following:

(a) help establish paternity for children born out of wedlock for whom individuals can legally assign rights;

(b) help obtain medical support and medical payments for themselves and other individuals for whom they can legally assign rights;

(c) help pursue liable third parties by identifying individuals and providing information to HSD;

(d) appear at a state or local office designated by HSD to give information or evidence relevant to the case, appear as a witness at a court or other proceeding or give information or attest to lack of information, under penalty of perjury; and

(e) refund HSD any money received for medical care that has already been paid. This includes payments received from insurance companies, personal injury settlements, and any other liable third party.

(2) **Waiver of cooperation:** The requirements for cooperation may be waived by HSD if it decides that applicants/recipients have good cause for refusing to cooperate. Waivers can be obtained for the following:

(a) establishing paternity for children born out of wedlock; or

(b) obtaining medical support and payments for an applicant/recipient or other individual for whom he/she can legally assign rights.

(c) to waive the requirement and make a finding of "good cause", HSD must be presented with corroborating evidence that cooperation is against the best interest of the individual, child(ren), or others.

(d) specific factors considered in making this determination include physical or emotional harm to child(ren), parent or caregiver relative, adoption proceedings, and potential for emotional impairment.

(3) **Penalties for failure to assign or cooperate:** An applicant/recipient who refuses to assign his/her individual right to benefits or ~~to assign~~ the rights of any other individual for whom he/she can legally make assignment, or ~~refuse~~ who ~~refuses~~ to cooperate with HSD ~~are~~ is not eligible for medicaid or may have his/her eligibility terminated. ~~[The benefits of another individual who cannot legally assign his/her own rights and who would be eligible for benefits are not affected. For example, if a mother refuses to assign benefits for herself and her children for whom~~

~~she can legally make an assignment, only the mother becomes ineligible for benefits. The children's rights are not affected; they remain eligible for Medicaid benefits.]~~ In denying or terminating eligibility, HSD complies with federal notice and hearing requirements. See 42 CFR 431.200.

(4) **Sanctions for failure to refund payments:** An applicant/recipient will be immediately ineligible for benefits if HSD determines that he/she received funds in the form of insurance payments or settlement amounts from personal injury case awards and failed to refund the amounts paid for those services to HSD. Recipients whose eligibility has been revoked due to failure to refund a medicaid payment for medical care are deemed ineligible for future services for a period of not less than one (1) year and until full restitution has been made to HSD.

~~[H-]~~ **Trauma diagnosis claims processing:** To help identify liable third parties who may have caused a injury to a medicaid recipient, MAD-TPLU has implemented an editing process in its claims processing system which permits the recognition of all claims with a trauma diagnosis [42 CFR 433.138(4)]. Trauma inquiry letters are mailed to recipients identified in the edit. The letters ask recipients to provide more information about possible accidents, causes of accidents, and whether legal counsel has been obtained. Failure to respond to these inquiries is considered a failure to cooperate and results in termination of medicaid benefits.

~~[H-]~~ **Medicaid estate recovery:** The New Mexico human services department (department) is mandated to seek recovery from the estates of certain individuals up to the amount of medical assistance payment made by the department on behalf of the individual. See Social Security Act Section 1917, as amended by the Omnibus Budget Reconciliation Act of 1993, Section 13612; NMSA 1978 Section 27-2A-1 et. seq. (Cum. Supp. 1994) the "Estate Recovery Act". This section provides a definition of estate and medical assistance, estates subject to recovery under this provision, recovery process, and waiver provisions.

(1) **Definitions used in medicaid estate recovery:** The following terms are used throughout this Section:

(a) "estate" means real and personal property and other assets of an individual subject to probate or administration pursuant to the uniform probate code; and

(b) "medical assistance" means amounts paid by the department as medical assistance pursuant to Title XIX (Medicaid) of the Social Security Act, or any successor act.

(2) **Estates subject to recovery:**

The estates of medicaid recipients who meet the following criteria are subject to the provisions of the Medicaid Estate Recovery Act.

(a) Recipients who were fifty-five (55) years of age or older when medical assistance payments were made on their behalf for nursing facilities services, home and community based services, and/or related hospital and prescription drug services.

(i) For purposes of this section, "related hospital and prescription drug services" are defined as such hospital and prescription drug services received by the medicaid recipient fifty-five (55) years of age or older while he/she was receiving nursing facility or home and community-based services.

(ii) "Related hospital and prescription drug services" for qualified medicare beneficiaries include the medicare cost sharing amount paid to the extent that such amounts are for nursing facility services, home and community-based services, and related hospital and prescription drug services described above.

(b) Recovery from a recipient's estate will be made only after the death of the recipient's surviving spouse, if any, and only at a time that the recipient does not have surviving child(ren) who are less than twenty-one years of age or blind or disabled, as defined at 42 U.S.C. 1383c.

(c) Recovery under the provisions of the estate recovery regulations is limited to payments for applicable services received on or after October 1, 1993 except that recovery also is permitted for pre-October 1993 payments for nursing facility services received by medicaid recipients who were sixty-five (65) years of age or older when such nursing facility services were received.

(3) **Administrative process:**

(a) During the application or redetermination process for medicaid eligibility, the local county income support division (ISD) office will identify the assets of an applicant/recipient which may be considered as part of the applicant/recipient's estate. Information explaining estate recovery will be furnished to the applicant/recipient during the application or redetermination process.

(b) At the death of the medicaid recipient, the medical assistance division (MAD) or its designee will determine if recoverable assets exist and file a claim against the estate in the manner prescribed for creditors by the New Mexico probate code.

(c) MAD or its designee will send notice to the applicable probate court with jurisdiction over the matter and to the recipient's personal representative or successor in interest if it chooses to seek recovery. Such notice will contain the following

information:

(i) statement describing the action MAD or its designee intends to take;

(ii) reasons for the intended action;

(iii) statutory authority for the action;

(iv) amount to be recovered;

(v) opportunity to apply for the undue hardship waiver, procedures for applying for a hardship waiver and the relevant timeframes involved;

(vi) explanation of the representative's right to request an administrative hearing and his/her right to be represented at the hearing by legal counsel, family member, friend, or other spokesperson; and

(vii) the method by which an affected person may obtain a hearing and the applicable timeframes involved.

(d) Once notified by MAD or its designee of the decision to seek recovery, it will be the responsibility of the recipient's personal representative or successor in interest to notify other individuals who would be affected by the proposed recovery.

(e) In situations where there is no personal representative or successor in interest, MAD or its designee will notify known family members or heir(s) of the proposed recovery.

(f) **Date of death reporting:** Income support specialists are required to enter appropriate termination codes in the event of the death of an eligible recipient. These codes are identified as follows:

(i) 244 - the member(s) listed below have died (system generated when date of death field is completed).

(ii) 544 - the member(s) listed below have died (worker generated when date of death is not known).

(iii) 557 - the head of the assistance group has died.

(iv) 572 - death of all members

(v) 50 (198 C system)

(vi) social security administration will report death information for individuals under the supplemental security income program via the SDX system (Code T01).

(4) **Waiver of recovery by the department:** The department may compromise, settle, or waive recovery pursuant to the Medicaid Estate Recovery Act if it deems that such action is in the best interest of the state and/or federal government.

(a) The department may waive recovery because recovery would work an undue hardship if the:

(i) deceased recipient's heir(s) would become eligible for assistance

programs (such as AFDC or general assistance) and/or medical assistance programs (such as medicaid) or be put at risk of serious deprivation without the receipt of the proceeds of the estate;

(ii) deceased recipient's heir(s) would be able to discontinue reliance on cash assistance programs and/or medical assistance programs if he/she received the inheritance from the estate;

(iii) assets subject to recovery are the sole income source for the heir(s) or are homesteads of modest value as defined herein; or

(iv) other compelling circumstances.

(b) Within ninety (90) days of the receipt of notice of the action MAD or its designee intends to take, the recipient's representative or successor in interest must apply for an undue hardship waiver of recovery.

(c) For purposes of this provision, "deprivation" is defined as the inability to pay for the basic provision of food, clothing, or shelter. Deprivation does not exist simply because the application of the Medicaid Estate Recovery Act may cause an inconvenience or restriction to the heir(s) current lifestyle.

(d) For purposes of this provision, a homestead of "modest value" is defined as fifty percent (50%) or less of the average price of homes in the county where the homestead is located, as of the date of the recipient's death.

(e) For purposes of this provision, undue hardship does not exist if the individual created the hardship by resorting to estate planning methods by which the individual divested assets to avoid estate recovery. If the deceased recipient undertook estate planning within one year of the date of death, such as changing the form of title or encumbering the property, the department presumes that the resulting financial condition does not qualify for an undue hardship waiver. The provisions included in this paragraph may be waived if the recipient's representative or heir(s) can prove to the department's satisfaction that estate planning was undertaken for a purpose other than to avoid estate recovery.

[2-1-95, 11-15-95; 8.200.420.12 NMAC - Rn, 8 NMAC 4.MAD.425 & A, 7-1-01; A, 7-1-03]

changing the deduction amounts.

**8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT):** Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

*Please see table on page 326.*

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

This is an amendment to 8.200.510 NMAC, Section 12, which will be effective on July 1, 2003. The Medical Assistance Division amended subsections A, B, C and G by

**DEDUCTION** **AMOUNT**

A. Personal Needs Allowance for Institutionalized Spouse	[ <del>\$49.00</del> ] <u>\$50</u>
B. Basic Community Spouse Monthly Income Allowance Standard (CSMIA)	[ <del>\$1,493.00</del> ] <u>\$1,515</u>
(CSMIA standard minus income of community spouse = deduction)	
C. * Excess Shelter Allowance for Allowable Expenses for Community Spouse	[ <del>\$774.00</del> ] <u>\$752</u>
D. ** Extra Maintenance Allowance	
E. Dependent Family Member 1/3 X (CSMIA - dependent member's income)	
F. Non-Covered Medical Expenses	
G. * The allowable shelter expenses of the community spouse must exceed	[ <del>\$448</del> ] <u>\$455</u> per month for any deduction to apply.
H. ** To be deducted, the extra maintenance allowance for the community spouse must be ordered by a court of jurisdiction or a state administrative hearing officer.	

I. **MAXIMUM TOTAL:** The maximum total of the Community Spouse Monthly Income Allowance and excess shelter deduction is \$2,267.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03]

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

This is an amendment to 8.202.400 NMAC, Sections 15 and 22 which will be effective on July 1, 2003. The Medical Assistance Division amended section 15 on Citizenship by removing language regarding aliens who entered the United States prior to August 22, 1996. Section 22 language regarding child support has been deleted and the section will be reserved. Sections 25 thru 27 are new.

**8.202.400.15 CITIZENSHIP:** To be eligible for medicaid, an individual must be: a citizen of the United States; or an alien who entered the United States prior to August 22, 1996, as one of the classes of aliens described in Subsection A of 8.200.410.11 NMAC, or an alien who entered the United States as a qualified alien on or after August 22, 1996, and who has met the five-year bar listed in Subsection B of 8.200.410.11 NMAC.

**[A- Aliens Who Entered the United States Prior to August 22, 1996:** Aliens who entered the United States prior to August 22, 1996, will not be subject to the five year bar on eligibility for purposes of Medicaid eligibility, and will continue to be eligible for Medicaid on the basis of alien regulations in effect prior to August 22, 1996. These classes of aliens are as follows:

(1) Aliens lawfully admitted for permanent residence or permanently residing in the United States under color of law as follows:

(a) The individual may be eligible for Medicaid if the individual is an alien residing in the United States with the knowledge and permission of the Immigration and Naturalization Service (INS) and the INS does not contemplate

~~enforcing the alien's departure. The INS does not contemplate enforcing an alien's departure if it is the policy or practice of INS not to enforce the departure of aliens in the same category, or if from all the facts and circumstances in a particular case it appears that INS is otherwise permitting the alien to reside in the United States indefinitely, as determined by verifying the alien's status with INS.~~

~~(b) Aliens who are permanently residing in the United States under color of law are listed below. None of the categories include applicants for an Immigration and Naturalization Service status other than those applicants listed in paragraph (b)(vi) of this section or those covered under paragraph (b) (xvi) of this section. None of the categories allows Medicaid eligibility for nonimmigrants; for example, students or visitors. Also listed are the most commonly used documents that the INS provides to aliens in these categories-~~

~~(i) Aliens admitted to the United States pursuant to 8 U.S.C. 1153(a)(7)(section 203(a)(7) of the Immigration and Nationality Act). Ask for a copy of INS Form I 94 endorsed refugee-Conditional entry;~~

~~(ii) Aliens, including Cuban/Haitian entrants, paroled in the United States pursuant to 8 U.S.C. 1182(d)(5)(section 212(d)(5) of the Immigration and Nationality Act. For Cuban/Haitian entrant (Status Pending) reviewable January 15, 1981. (Although the forms bear this notation, Cuban/Haitian entrants are admitted under section 212(d)(5) of the Immigration and Nationality Act);-~~

~~(iii) Aliens residing in the United States pursuant to an indefinite stay of deportation. Ask for an Immigration and Naturalization Services letter with this information or INS Form I 94 clearly stated that voluntary departure has been granted for an indefinite period of time;-~~

~~(iv) Aliens residing in the United States pursuant to an indefinite voluntary departure. Ask for an Immigration and Naturalization Services letter or INS Form I 94 showing that voluntary departure has been granted for an indefinite time period;~~

~~(v) Aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi) and whose departure the Immigration and Naturalization Service does not contemplate enforcing. Ask for a copy of INS Form I 94 or Form I 210 or a letter clearly stating that status;-~~

~~(vi) Aliens who have filed applications for adjustment of status pursuant to section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that the Immigration and Naturalization Services has accepted as properly filed (within the meaning of 8 CFR 245.2(a)(1) or (2) and whose departure the Immigration and Naturalization service does not contemplate enforcing. Ask for a copy of INS Form I 94 or I 181 or a passport appropriately stamped;-~~

~~(vii) Aliens granted stays of deportation by court order, statute, or regulation, or by individual determination of the Immigration and Naturalization Services pursuant to section 106 of the Immigration and Nationality Act (8 U.S.C. 1105 a) or relevant Immigration and Naturalization services instructions, whose departure that agency does not contemplate enforcing. Ask for a copy of INS Form I 94 or a letter from the Immigration and Naturalization Service, or a copy of a court order establishing the aliens status;-~~

~~(viii) Aliens granted asylum pursuant to section 208 of the Immigration and Nationality Act (8 U.S.C. 1158). Ask for a copy of INS Form I 94 and a letter establishing this status;-~~

(ix) Aliens admitted as refugees pursuant to section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)). Ask for a copy of INS form I-94 properly endorsed;

(x) Aliens granted voluntary departure pursuant to section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) or 8 CFR 242.5 whose departure the Immigration and Naturalization Service does not contemplate enforcing. Ask for a Form I-94 or Form I-210 bearing a departure date;

(xi) Aliens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1(a)(ii) prior to June 15, 1984 or 242.1(a)(22) issued June 15, 1984 and later. Ask for a copy for INS Form I-210 or a letter showing that departure has been deferred;

(xii) Aliens residing in the United States under orders of supervision pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252(d)). Ask for a copy of Form I-220 B;

(xiii) Aliens who have entered and continuously resided in the United States since before January 1, 1972, (or any date established by section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259). Ask for any proof establishing this entry and continuous residence;

(xiv) Aliens granted suspension for deportation pursuant to Section 244 of the Immigration and Naturalization Act (8 U.S.C. 1254) and whose departure the Immigration and Naturalization Service does not contemplate enforcing. Ask for an order from an immigration judge showing that deportation has been withheld;

(xv) Aliens whose deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)). Ask for an order from an immigration judge showing that deportation has been withheld;

(xvi) Any other aliens living in the United States with the knowledge and permission of the Immigration and Naturalization Service and whose departure the agency does not contemplate enforcing (including permanent non-immigrants as established by Public Law 99-239, and persons granted Extended Voluntary Departure due to conditions in the alien's home country based on a determination by the Secretary of State).

(2) Aliens granted lawful temporary resident status under section 245A and 210A of the Immigration and Nationality Act if the individual is aged, blind, or disabled as defined in section 1614(a)(1) of the

Act, under 18 years of age, or a Cuban/Haitian entrant as defined in section 510(e)(1) and (2)(A) of the Public Law 96-422; or

(3) Aliens granted lawful temporary resident status under section 210 of the Immigration and Nationality Act unless the alien would, but for the 5-year bar to receipt of AFDC contained in such section, be eligible for AFDC.

**B. Aliens Who Entered the United States on or After August 22, 1996:** Aliens who entered the United States on or after August 22, 1996, are barred from Medicaid eligibility for a period of five years, other than emergency services (under Category 85). The five-year bar begins on the date of the alien's entry into the United States with a status of qualified alien. The following classes of aliens are exempted from the five-year bar:

(1) An alien admitted to the United States as a refugee under Section 207 of the Immigration Nationality Act; or

(2) An alien granted asylum under section 208 of the Immigration and Nationality Act;

(3) An alien whose deportation is withheld under Section 243(h) of the Immigration and Nationality Act;

(4) An alien who is lawfully residing in the state and who is a veteran with an honorable discharge not on account of alien status; who is on active duty other than on active duty for training, in the armed forces of the United States; or who is the spouse or unmarried dependent child under the age of 18 of such veteran or active duty alien.

(5) An alien is granted status as a Cuban and Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(6) Qualified Alien: A qualified alien, for purposes of this regulation, is an alien, who at the time the alien applies for, receives, or attempts to receive a federal public benefit, is:

(a) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act; or

(b) an alien who is granted asylum under section 208 of such Act; or

(c) a refugee who is admitted to the United States under section 207 of the Act (including certain Amerasian immigrants as refugees); or

(d) an alien who is paroled into the United States under Section 212(d)(5) of such Act for a period of at least 1 (one) year; or

(e) an alien whose deportation is being withheld under Section 243(h) of such Act; or

(f) an alien who is granted conditional entry pursuant to 203(a)(7) or such Act as in effect prior to April 1, 1980; or

(g) an alien who is a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or

(h) certain battered women and alien children of battered parents (only those who have begun the process of becoming a lawful permanent resident under the Violence Against Women Act);]

(7) Alien Sponsors (where an affidavit of sponsorship was executed pursuant to section 213 of the Immigration and Nationality Act subsequent to August 22, 1996). The income and resources of an alien sponsor, and the spouse of the sponsor, of any individual applying for Medicaid, is deemed available to the applicant, when an affidavit of support is executed pursuant to section 213 of the Immigration and Nationality Act, on or after August 22, 1996. This counting of alien sponsor income and resources is effective until the sponsored alien achieves citizenship, or can be credited with 40 qualifying quarters.

(8) Quarters of Coverage: For purposes of determining the number of quarters of coverage under Title II of the Social Security Act, an alien will be credited with all of the quarters that were worked by him/her, as well as all of the qualifying quarters of coverage worked by such parent of an alien, while the alien was under 18; and all of the quarters credited to a spouse, if the alien remains married to the spouse or such spouse is deceased. Beginning January 1, 1997, any quarter in which the alien received a means tested federal benefit is not counted as a qualifying quarter.

(9) Federal Means Tested Benefit: For purposes of determining whether an alien has or has not received any federal means tested benefits during a quarter, starting with January 1, 1997, the definition of federal means tested benefits will not include:

(a) Medical assistance under Title XIX of the Social Security Act (Medicaid) for emergency treatment of an alien, not related to an organ transplant procedure, if the alien otherwise meets eligibility for Medical Assistance under the state plan.

(b) Short term, noncash, in-kind emergency disaster relief.

(c) Assistance or benefits under the National School Lunch Act.

(d) Assistance or benefits under the Child Nutrition Act of 1966.

(e) Public health assistance (not including any assistance under title XIX Medicaid) for immunizations, and testing or treatment of symptoms of communicable diseases, whether or not such symptoms are caused by communicable diseases.

(f) Payments for foster care and adoption assistance under part B and E of Title IV of the Social Security Act for a par-

ent or child who would, in the absence of the restriction of eligibility for aliens contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, be eligible for such payments made on the child's behalf, but only if the foster or adoptive parent (or parents) of such child, is a qualified alien.

(g) Programs, services, or assistance, delivering in-kind services at the community level and necessary for the provision of life or safety, that do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided, on the individual recipient's income or resources.

(h) Programs of student assistance under Titles IV, V, IX, and X of the Higher Education Act of 1965, and Titles III, VII, and VIII of the Public Health Services Act.

(i) Means tested programs under the Elementary and Secondary Education Act of 1965.

(j) Benefits under the Head Start Act.

(k) Benefits under the Job Training Partnership Act.] [4-1-98; 8.202.400.15 NMAC – Rn, 8 NMAC 4.JUL.412, 7-1-01; A, 7-1-03]

**8.202.400.22** ~~[CHILD SUPPORT:—Assignment: By state statute [Section 27-2-28 F NMSA, 1978], anyone who signs a Medicaid application automatically assigns his/her child support rights to HSD. The assignment is made with respect to the child(ren) for whom Medicaid is provided and is valid as long as the individual receives Medicaid on the child(ren)'s behalf.] [RESERVED]~~ [4-1-98; 8.202.400.22 NMAC – Rn, 8 NMAC 4.JUL.425, 7-1-01; A, 10-1-01; Repealed, 7-1-03]

**8.202.400.25** **RECIPIENT RIGHTS AND RESPONSIBILITIES:**

A. An applicant/recipient is responsible for establishing his/her eligibility for medicaid. As part of this responsibility, the applicant/recipient must provide required information and documents or take the actions necessary to establish eligibility. Failure to do so will result in a decision that eligibility does not exist.

B. An applicant/recipient must also grant the human services department (HSD) permission to contact other persons, agencies or sources of information which are necessary to establish eligibility. [8.202.400.25 NMAC - N, 7-1-03]

**8.202.400.26** **ASSIGNMENT OF MEDICAL SUPPORT:** Refer to Medical Assistance Program Manual Subsection F of 8.200.420.12 NMAC.

[8.202.400.26 NMAC - N, 7-1-03]

**8.202.400.27** **REPORTING REQUIREMENTS:** A medicaid recipient must report any change in circumstances which may affect his/her eligibility to the local income support division (ISD) office within ten (10) days of the change. [8.202.400.27 NMAC - N, 7-1-03]

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

This is an amendment to 8.232.400 NMAC, Section 12, which will be effective on July 1, 2003. The Medical Assistance Division amended Subsection B by removing language describing assignments of medical support and inserted a citation for this subsection.

**8.232.400.12** **RECIPIENT RIGHTS AND RESPONSIBILITIES:**

A. An applicant/recipient is responsible for establishing his/her eligibility for medicaid.

(1) As part of this responsibility, the applicant/recipient must provide required information and documents or take the actions necessary to establish eligibility. Failure to do so must result in a decision that eligibility does not exist.

(2) An applicant/recipient must also grant the human services department (HSD) permission to contact other persons, agencies or sources of information which are necessary to establish eligibility.

(3) An applicant can voluntarily withdraw an application any time prior to the determination of eligibility. The income support specialist (ISS) advises an applicant that withdrawing an application has no effect upon his/her right to apply for assistance in the future.

~~B. [Assignment Of Support:~~

~~(1) Assignments of medical support: [As a condition of eligibility, an applicant/recipient must [42 CFR section 433.146; NMSA 1978 section 27-2-28 (G)(Repl. Pamp. 1991);~~

~~(a) Assign rights to medical support and payments to the Human Services Department (HSD). The assignment authorizes HSD to pursue and make recoveries from liable third parties on the recipient's behalf;~~

~~(b) Assign the rights to medical support and payments of other individuals eligible for Medicaid, for whom he/she can legally make an assignment; and~~

~~(c) Assign his/her individual rights to any medical care/support available under an order of a court or an administrative agency.~~

~~(2) Assignment of Parental~~

~~Support: Assignment of parental support rights is required for all minor Medicaid recipients with absent or deceased parents. By signing applications and receiving Medicaid benefits, applicants/recipients have assigned support rights and agreed to cooperate with parental support requirements. See 8.200.430.13 NMAC, ASSIGNMENT OF SUPPORT. Medicaid benefits are not denied to an otherwise eligible applicant/recipient solely because he/she cannot legally assign his/her own support rights when the individual who is legally able to assign his/her rights refuses to assign or cooperate, as required by law.] Refer to Medical Assistance Program Manual Subsection F of 8.200.420.12 NMAC.~~

~~[2-1-95; 4-1-95; 8.232.400.12 NMAC – Rn, 8 NMAC 4.KID.430, 434, 7-1-01; A, 10-1-02; A, 7-1-03]~~

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

This is an amendment to 8.302.1 NMAC, Sections 11, 13 and 18 which will be effective on July 1, 2003. The Medical Assistance Division added language to comply with law regarding HIPAA.

**8.302.1.11** **PROVIDER RESPONSIBILITIES AND REQUIREMENTS:**

Providers who furnish services to medicaid recipients agree to comply with all federal and state laws and regulations relevant to the provision of medical services, including but not limited to, Title XIX of the Social Security Act, the Medicare and Medicaid Anti-Fraud Act, the Health Insurance Portability and Accountability Act (HIPAA), and the state Medicaid Fraud Act. Providers also agree to conform to MAD policies and instructions as specified in this manual and its appendices, as updated.

A. **Eligibility determination:** Providers must verify that services they furnish are provided to eligible recipients.

(1) Providers may verify eligibility through several mechanisms, including using an automated voice response system, contacting the medicaid fiscal agent contractor eligibility help desk, contracting with a medicaid eligibility verification system (MEVS) vendor, or contracting with a medicaid magnetic swipe card vendor. Providers must verify that recipients are eligible and remain eligible for medicaid throughout periods of continued or extended services. By verifying client eligibility, a provider is informed of restrictions that may apply to a recipient's eligibility.



(2) A recipient becomes financially responsible for a provider claim if the recipient fails to furnish identification before service and MAD denies payment because of the resulting administrative error. Settlement of these claims is between the provider and recipient.

**B. Requirements for updating information:** Providers must furnish MAD or the MAD claims processing contractor with complete information on changes in their address, license, certification, board specialties, corporate name or corporate ownership, and a statement as to the continuing liability of the provider for any recoverable obligation to MAD which occurred or may have occurred prior to any sale, merger, consolidation, dissolution or other disposition of the health care provider or person. MAD or the MAD claims processing contractor must receive this information at least 60 days before the change. Any payment made by MAD based upon erroneous or outdated information is subject to recoupment.

**C. Additional requirements:** Providers must meet all other requirements stated in this manual, the billing instructions, manual revisions, supplements, signed application forms or re-verification forms, as updated. MAD may require a letter of credit, a surety bond, or a combination thereof, from the health care provider. The letter of credit, surety bond or combination thereof may be required if any one of the following conditions is met:

(1) the health care provider is the subject of a state or federal sanction or of a criminal, civil, or departmental proceeding in any state;

(2) a letter of credit, surety bond, or any combination thereof is required for each health care provider in that category of health care provider; or

(3) the health care provider can not reasonably demonstrate that they have assumed liability and are responsible for paying the amount of any outstanding recoveries to MAD as the result of any sale, merger, consolidation, dissolution, or other disposition of the health care provider or person.

(4) the secretary determines that it is in the best interest of the medical assistance programs to do so, specifying the reasons.

[2-1-95, 2-1-99; 8.302.1.11 NMAC - Rn, 8 NMAC 4.MAD.701.2 & A, 7-1-01; A, 7-1-03]

**8.302.1.13 PATIENT SELF DETERMINATION ACT:** Medicaid certified hospitals, nursing facilities, intermediate care facilities for the mentally retarded, hospice agencies, and home health agencies are required to give patients informa-

tion about their right to make their own health decisions, including the right to accept or refuse medical treatment, pursuant to the Omnibus Budget Reconciliation Act (OBRA) of 1990. Individuals are not required by this legislation to execute advance directives. Advance directives, such as living wills or durable power of attorney documents, must be established in a manner which is recognized under New Mexico state law. See applicable state law. Health care providers cannot object on the basis of conscience when a recipient wishes to implement an advance directive. However, providers may decline to participate in the care if the recipient's care is transferred to other qualified physicians.

**A. Information requirements:** Providers are required to provide written information to all adults concerning their right to do the following at the time of admission:

(1) make decisions about their medical care;

(2) accept or refuse medical or surgical treatment; ~~and~~

(3) execute advance directives;

(4) execute their rights under HIPAA; and

(5) if recipients who are already incapacitated are admitted, providers must provide recipients' families or authorized representatives with this information. If recipients are no longer incapacitated, providers must discuss these rights with recipients.

**B. Policies and procedures:** Providers must give written information to all recipients over eighteen (18) years of age about provider policy and procedures concerning advance directive rights. Providers must verify that the advance directive complies with state law.

**C. Documentation requirements:** Providers must document in each recipient's medical record whether he/she has established an advance directive. If the recipient or his/her family or representative presents an advanced directive, providers must comply with the terms of the document, as directed by state law. If recipients are incapacitated, unable to communicate, or family members or representatives do not present an advance directive, providers must document that recipients were unable to receive information or communicate whether advance directives exist. Providers must inform recipients that it furnishes information and proper forms for completion of advance directives.

**D. Provision of care:** Providers must not condition the provision of care or discriminate against a recipient based on whether he/she has established advance directives. If a recipient is entitled to necessary care ordered by a physician

which providers under normal procedures must furnish, care cannot be delayed while waiting for the execution of an advance directive. Once the existence of an advance directive is documented, the directive takes precedence over normal procedures.

**E. Changing the advanced directives:** Providers must inform a recipient that he/she has a right to reaffirm an advance directive or change an advance directive at any time and in any manner, including oral statements.

[2-1-95; 2-1-99; 8.302.1.13 NMAC - Rn, 8 NMAC 4.MAD.701.4, 7-1-01; A, 7-1-03]

**8.302.1.18 PATIENT CONFIDENTIALITY:** Providers are required to comply with the HIPAA Privacy regulations. Confidential medical information regarding medicaid applicants/recipients must be released by providers to MAD, other state, or federal agencies, or their employees at no cost when:

A. the agency is involved in the administration of medicaid;

B. the information is to be used to establish eligibility, determine the amount of assistance or provide services related to medicaid;

C. the agency is subject to the same standards of confidentiality as MAD; ~~and~~

D. the agency has the actual consent of applicants or recipients for release of the information; and

E. consent is obtained when a recipient or a member of the assistance group makes application for benefits or services with the human services department.

[2-1-95; 2-1-99; 8.302.1.18 NMAC - Rn, 8 NMAC 4.MAD.701.9, 7-1-01; A, 7-1-03]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.3 NMAC, Section 10 which will be effective on July 1, 2003. The Medical Assistance Division added language to comply with law regarding HIPAA.

**8.305.3.10 CONTRACT MANAGEMENT:** HSD is responsible for management of the managed care contracts issued to MCOs. HSD shall provide the oversight and administrative functions to ensure MCO compliance with the terms of the managed care contract.

**A. General contract requirements:** MCOs must meet all specified terms of the medicaid managed care contract including the requirement that the MCOs must be HIPAA compliant.

**B. Subcontracting requirements:** The MCO may subcontract to a qualified individual or organization the provision of any service defined in the benefit package or other required MCO function (except as they relate to the provision of behavioral health services). The MCO shall be legally responsible to HSD for all work performed by any MCO subcontractor. The MCO must submit boilerplate contract language and sample contracts for various types of subcontracts. Any substantive changes to contract templates must be approved by HSD prior to issuance.

(1) **Credentialing requirements:** The MCO shall maintain policies and procedures for verifying that the credentials of its providers and subcontractors meet applicable standards.

(2) **Review requirements:** The MCO shall maintain a fully executed original of all subcontracts and make them accessible to HSD on request.

(3) **Minimum requirements:** Subcontracts shall contain the following provisions:

(a) subcontracts shall be executed in accordance with applicable federal and state laws, regulations, policies and rules;

(b) subcontracts shall identify the parties of the subcontract and the parties' legal basis of operation in the state of New Mexico;

(c) subcontracts shall include procedures and criteria for terminating the subcontract;

(d) subcontracts shall identify the services to be performed by the subcontractor and the services to be performed under other subcontracts. Subcontracts must describe how services provided under the subcontract are accessed by members;

(e) subcontracts shall include reimbursement rates and risk assumption, where applicable;

(f) subcontractors shall maintain records relating to services provided to members for six years;

(g) subcontracts shall require that member information be kept confidential, as defined by federal or state law;

(h) subcontracts shall provide that authorized representatives of HSD have reasonable access to facilities, personnel and records for financial and medical audit purposes;

(i) subcontracts shall include a provision for the subcontractor to release to the MCO any information necessary to perform any of its obligations;

(j) the subcontractor shall accept payment from the MCO for any services included in the benefit package and cannot request payment from HSD for services performed under the subcontract;

(k) if the subcontract includes pri-

mary care, provisions for compliance with PCP requirements delineated in the MCO contract with HSD apply;

(l) the subcontractor shall comply with all applicable state and federal statutes, rules and regulations, including the prohibition against discrimination;

(m) the subcontract shall provide that subcontracts may be terminated, rescinded or canceled for a violation of applicable HSD requirements;

(n) the subcontract shall not prohibit a provider or other subcontractor from entering into a contractual relationship with another MCO;

(o) the subcontract may not include any incentive or disincentive that encourages a provider or other subcontractor to not enter into a contractual relationship with another MCO;

(p) the subcontract shall not contain any gag order provisions nor sanctions against providers who assist members in accessing the grievance process or otherwise protecting member interests; and

(q) the subcontract shall specify the time frame for submission of encounter data to the MCO.

(4) **Excluded providers:** The MCO shall not contract with an individual provider, or an entity, or an entity with an individual who is an officer, director, agent, or manager who owns or has a controlling interest in the entity, who has been convicted of crimes specified in Section 1128 of the Social Security Act, excluded from participation in any other state's medicaid program, medicare, or any other public or private health or health insurance program, assessed a civil penalty under the provision of Section 1128, or who has a contractual relationship with an entity convicted of a crime specified in Section 1128.

**C. Provider incentive plans:** The MCO shall ensure that direct or indirect incentives offered in the subcontract shall not serve as an inducement to reduce or limit medically necessary services to members.

[8.305.3.10 NMAC – Rp 8 NMAC 4.MAD.606.2.2, 7-1-01; A, 7-1-03]

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.6 NMAC, Section 9 which will be effective on July 1, 2003. The Medical Assistance Division added language to comply with law regarding HIPAA.

**8.305.6.9 GENERAL NETWORK REQUIREMENTS:** The MCO shall establish and maintain a comprehen-

sive network of providers willing and capable of serving members enrolled with the MCO.

**A. Service coverage:** The MCO shall provide or arrange for the provision of services described in 8.305.7 NMAC, Benefit Package in a timely manner. The MCO is solely responsible for the provision of covered services and must ensure that its network includes providers in sufficient numbers and required specialists to make all services included in the package available and in accordance with access standards.

**B. Comprehensive network:** The MCO shall contract with the full array of providers necessary to deliver a level of care at least equal to, or better than, community norms. The MCO shall contract with a number of providers sufficient to maintain equivalent or better access than that available under medicaid fee-for-service. The MCO contracts with providers shall require that the provider be in compliance with the HIPAA regulations.

**C. Maintenance of provider network:** The MCO shall notify HSD within five working days of unexpected changes to the composition of its provider network that negatively affects members access or the MCO's ability to deliver services included in the benefit package in a timely manner. Anticipated material changes in an MCO provider network shall be reported to HSD in writing when the MCO knows of the anticipated change or within 30 calendar days, whichever comes first.

(1) **Required policies and procedures:** The MCO shall maintain policies and procedures on provider recruitment and termination of provider participation with the MCO. The recruitment policies and procedures shall describe how an MCO responds to a change in the network that affects access and its ability to deliver services in a timely manner.

(2) **General information submitted to HSD:** The MCO shall maintain an accurate unduplicated list of contracted, subcontracted, pending and terminated PCPs, specialists, hospitals and other providers participating or affiliated with the MCO. The MCO shall submit the list to HSD on a regular basis, determined by HSD, and include a clear delineation of all additions and terminations that have occurred since the last submission.

(3) **Information in notice of network changes:** A notice of significant network changes must be submitted to HSD and contain the following information:

(a) the nature of the change;

(b) how the change affects delivery of or access to covered services; and

(c) the MCO's plan for maintain-

ing access and the quality of member care. [8.305.6.9 NMAC - Rp 8 NMAC 4.MAD.606.5.1, 7-1-01; A, 7-1-03]

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

This is an amendment to 8.352.2 NMAC, Section 14 which will be effective on July 1, 2003. The Medical Assistance Division added language to comply with law regarding HIPAA.

**8.352.2.14 RECIPIENT RIGHTS AT THE HEARING:**

**A. Recipient rights at the hearing:** The recipient is given an opportunity to:

(1) examine the summary of evidence prior to, during, and after the hearing;

(2) present his case or have it presented by an authorized representative; bring witnesses to present information that is relevant to the case and submit evidence to establish all pertinent facts and circumstances in the case;

(3) advance arguments without undue interference; and

(4) question or contradict any testimony or evidence, including an opportunity to confront and cross-examine HSD's and, when contractor is party to the fair hearing, the contractor's witnesses.

**B. Hearing officer:** Hearings are conducted by an impartial official who: 1) does not have any personal stake or involvement in the case; 2) was not directly involved in the determination of the action that is being contested. If the hearing officer had any involvement with the action in question, including giving advice or consultation on the points in issue, or is related in any relevant degree to the claimant or HSD staff member, the hearing officer shall disqualify himself as the hearing officer for that case.

**(1) Authority and duties of the hearing officer:** The hearing officer shall:

(a) explain how the hearing will be conducted to participants at the start of the hearing, before administering oaths;

(b) administer oaths and affirmations;

(c) make sure that all relevant issues are considered during the hearing;

(d) request, receive and make part of the record all evidence necessary to decide the issues raised;

(e) regulate the content, conduct, and course of the hearing to ensure an orderly hearing. If a recipient, the recipient's authorized representative, any witness or other participant in the hearing refuses to cooperate or comply with rulings on the

procedures and issues as determined at the discretion of the hearing officer, or acts in such a manner that an orderly hearing is not possible, the hearing officer may take appropriate measures to ensure that order is fully restored so that the recipient's opportunity to amply and fairly present his case is safeguarded. Appropriate measures include, but are not limited to, excluding or otherwise limiting the presentation of irrelevant evidence, or terminating the hearing and recommending a decision based on the record up to the point when order was lost;

(f) request, if appropriate, an independent medical assessment or professional evaluation from a source mutually satisfactory to the recipient and HSD; and

(g) provide a hearing report and recommendation for review and final decision.

**(2) Appointment of hearing officer:** A hearing officer is appointed by the hearings bureau chief or designee upon receipt of the request for hearing.

**C. Evidence:** Formal rules of evidence and civil procedure do not apply. Instead, free, orderly exchange of information is necessary for the decision-making process. All relevant evidence is admissible, subject to the hearing officer's authority to limit repetitive or unduly cumulative evidence and his ability to conduct an orderly hearing. Information that is not available to the recipient may not be presented to the hearing officer or used in making the hearing decision.

**(1) Confidentiality:** The confidentiality of records must be maintained. See 42 CFR Section 431.300-307 and 45 CFR 164.504(c).

**(2) Administrative notice:** The hearing officer may take administrative notice of any matter for which courts of this state may take judicial notice.

**(3) Privilege:** The rule of privilege applies to the extent that it is requested and recognized in civil actions in the district courts of New Mexico.

**(4) Medical issues:** In a case involving medical care the parties have the right to examine any documents that may influence the decision. Any medical reports are made available to HSD, the involved MCO, and the recipient. If HSD has the reports, copies are provided to the recipient or his representative, without charge. When the evidence presented at the hearing does not adequately address the relevant medical issues, additional medical information may be obtained at the discretion of the hearing officer. The additional medical information may include, but is not limited to, a medical evaluation or analysis obtained at HSD's or an MCO's expense, from a source satisfactory to the recipient.

**D. Burden of proof:** HSD

and the involved MCO, when party to the hearing, have the burden of establishing support for its proposed action by a preponderance of the evidence. The action or proposed action being appealed will be upheld if the evidence supporting the action is more convincing than the evidence offered in opposition to the action.

**E. Record of the hearing:**

A hearing is electronically recorded. The recording is kept on file in the hearings bureau for 60 days after the date of the hearing decision. In addition to the recorded proceedings, the record of the hearing includes any pleadings, documents or other exhibits admitted into the record. If a hearing decision is appealed, a written transcript of the hearing is prepared by HSD and a copy of the transcript shall be supplied to the recipient, or his representative, free of charge. The records and decisions must be safeguarded. See 45 CFR 164.504(c).

[1-1-00; 8.352.2.14 NMAC - Rn, 8 NMAC 4.MAD.975 & A, 7-1-01; A, 7-1-03]

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

This is an amendment to 8.200.410 NMAC, Section 11 which will be effective on July 1, 2003. The Medical Assistance Division amended the section to add a group of aliens. This rule was also renumbered and reformatted from 8.NMAC 4.MAD.410 to comply with NMAC requirements.

**8.200.410.11 CITIZENSHIP:** To be eligible for medicaid, an individual must be a citizen of the United States; or an alien who entered the United States prior to August 22, 1996, as one of the classes of aliens described in Subsection A of 8.200.410.11 NMAC or an alien who entered the United States as a qualified alien on or after August 22, 1996, and who has met the five-year bar listed in Subsection B of 8.200.410.11 NMAC.

**A. Aliens who entered the United States prior to August 22, 1996:** Aliens who entered the United States prior to August 22, 1996, will not be subject to the five-year bar on eligibility for purposes of medicaid eligibility, and will continue to be eligible for medicaid on the basis of alien regulations in effect prior to August 22, 1996. These classes of aliens are as follows:

(1) Aliens who entered the United States prior to August 22, 1996, and remained continuously present in the United States until the date they obtained qualified alien status on or after August 22, 1996. Any single absence from the United States of more than 30 days, or a total

aggregate of absences of more than 90 days, is considered to interrupt "continuous presence."

(2) Aliens lawfully admitted for permanent residence or permanently residing in the United States under color of law as follows:

(a) The individual may be eligible for medicaid if the individual is an alien residing in the United States with the knowledge and permission of the immigration and naturalization services (INS) and the INS does not contemplate enforcing the aliens departure. The INS does not contemplate enforcing an aliens departure if it is the policy or practice of INS not to enforce the departure of aliens in the same category, or if from all the facts and circumstances in a particular case it appears that INS is otherwise permitting the alien to reside in the United States indefinitely, as determined by verifying the aliens status with INS.

(b) Aliens who are permanently residing in the United States under color of law are listed below. None of the categories include applicants for an immigration and naturalization service status other than those applicants listed in Item (vi) of Subparagraph (b) of Paragraph (2) of Subsection A of 8.200.410.11 NMAC or those covered under Item (xvi) of Subparagraph (b) of Paragraph (2) of Subsection A of 8.200.410.11 NMAC. None of the categories [~~allows~~] allow medicaid eligibility for non-immigrants; for example, students or visitors. Also listed are the most commonly used documents that the INS provides to aliens in these categories.

(i) aliens admitted to the United States pursuant to 8 U.S.C. 1153(a)(7)(Section 203(a)(7) of the Immigration and Nationality Act). Ask for a copy of INS Form I-94 endorsed "refugee-conditional entry";

(ii) aliens, including Cuban/Haitian entrants, paroled in the United States pursuant to 8 U.S.C. 1182(d)(5)(Section 212(d)(5) of the Immigration and Nationality Act. For Cuban/Haitian entrant (Status Pending) reviewable January 15, 1981. (Although the forms bear this notation, Cuban/Haitian entrants are admitted under section 212(d)(5) of the Immigration and Nationality Act);

(iii) aliens residing in the United States pursuant to an indefinite stay of deportation. Ask for an immigration and naturalization services letter with this information or INS Form I-94 clearly stated that voluntary departure has been granted for an indefinite period of time;

(iv) aliens residing in the United States pursuant to an indefinite voluntary departure. Ask for an immigra-

tion and naturalization services letter or INS Form I-94 showing that voluntary departure has been granted for an indefinite time period;

(v) aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi)) and whose departure the immigration and naturalization service does not contemplate enforcing. Ask for a copy of INS Form I-94 or Form I-210 or a letter clearly stating that status;

(vi) aliens who have filed applications for adjustment of status pursuant to Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that the immigration and naturalization services has accepted as properly filed (within the meaning of 8 CFR 245.2(a)(1) or (2) and whose departure the immigration and naturalization service does not contemplate enforcing. Ask for a copy of INS Form I-94 or I-181 or a passport appropriately stamped;

(vii) aliens granted stays of deportation by court order, statute, or regulation, or by individual determination of the immigration and naturalization services pursuant to Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105 a) or relevant immigration and naturalization services instructions, whose departure that agency does not contemplate enforcing. Ask for a copy of INS Form I-94 or a letter from the immigration and naturalization service, or a copy of a court order establishing the aliens status;

(viii) aliens granted asylum pursuant to Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158). Ask for a copy of INS Form I-94 and a letter establishing this status;

(ix) aliens admitted as refugees pursuant to Section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or Section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)). Ask for a copy of INS Form I-94 properly endorsed;

(x) aliens granted voluntary departure pursuant to Section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) or 8 CFR 242.5 whose departure the Immigration and Naturalization Service does not contemplate enforcing. Ask for a Form I-94 or Form I-210 bearing a departure date;

(xi) aliens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1(a)(ii) prior to June 15, 1984 or 242.1(a)(22) issued June 15, 1984 and later. Ask for a copy for INS Form I-210 or a letter showing that departure has been deferred;

(xii) aliens residing in the United States under orders of supervision pursuant to Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252(d)). Ask for a copy of Form I-220 B;

(xiii) aliens who have entered and continuously resided in the United States since before January 1, 1972, (or any date established by Section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259). Ask for any proof establishing this entry and continuous residence;

(xiv) aliens granted suspension for deportation pursuant to Section 244 of the Immigration and Naturalization Act (8 U.S.C. 1254) and whose departure the immigration and naturalization service does not contemplate enforcing. Ask for an order from an immigration judge showing that deportation has been withheld;

(xv) aliens whose deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)). Ask for an order from an immigration judge showing that deportation has been withheld;

(xvi) any other aliens living in the United States with the knowledge and permission of the immigration and naturalization service and whose departure the agency does not contemplate enforcing (including permanent non-immigrants as established by Public Law 99-239, and persons granted extended voluntary departure due to conditions in the alien's home country based on a determination by the secretary of state).

(3) Aliens granted lawful temporary resident status under Section 245A and 210A of the Immigration and Nationality Act if the individual is aged, blind or disabled as defined in Section 1614(a)(1) of the Act, under 18 years of age, or a Cuban/Haitian entrant as defined in Section 510(e)(1) and (2)(A) of the Public Law 96-422; or

(4) Aliens granted lawful temporary resident status under Section 210 of the Immigration and Nationality Act unless the alien would, but for the 5-year bar to receipt of AFDC contained in such section, be eligible for AFDC.

#### B. Aliens who entered the United States on or after August 22, 1996:

(1) Aliens who entered the United States on or after August 22, 1996, are barred from medicaid eligibility for a period of five years, other than emergency services (under category 85). The five-year bar begins on the date of the aliens entry into the United States with a status of qualified alien. The following classes of qualified aliens are [~~excepted~~] exempt from the five-year bar:

(a) an alien admitted to the United

States as a refugee under Section 207 of the Immigration and Nationality Act; ~~or~~

(b) an alien granted asylum under Section 208 of the Immigration and Nationality Act;

(c) an alien whose deportation is withheld under Section 243(h) of the Immigration and Nationality Act;

(d) an alien who is lawfully residing in the state and who is a veteran with an honorable discharge not on account of alien status; who is on active duty other than on active duty for training, in the armed forces of the United States; or who is the spouse or unmarried dependent child under the age of 18 of such veteran or active duty alien;

(e) an alien is granted status as a Cuban and Haitian entrant, as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;

(f) an alien granted Amerasian immigrant status as defined under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988;

(g) victims of a severe form of trafficking, in accordance with Section 107(b)(1) of the Trafficking Victims Protection Act of 2000, P.L. 106-386;

(h) battered aliens who meet the conditions set forth in Section 431(c) of PRWORA, as added by Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208 (IIRIRA), and amended by Section 5571 of the Balanced Budget Act of 1997, P.L. 105-33 (BBA), and Section 1508 of the Violence Against Women Act of 2000, P.L. 106-386. Section 431(c) of PRWORA, as amended, is codified at 8 USC 1641(c);

(i) members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e); and

(j) American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies.

(2) **Qualified alien:** A "qualified alien", for purposes of this regulation, is an alien, who at the time the alien applies for, receives, or attempts to receive a federal public benefit, is:

(a) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act; or

(b) an alien who is granted asylum under Section 208 of such Act; or

(c) a refugee who is admitted to the United States under Section 207 of the Act (including certain Amerasian immigrants as refugees); or

(d) an alien who is paroled into the United States under Section 212(d)(5) of such Act for a period of at least 1 (one) year; or

(e) an alien whose deportation is being withheld under Section 243(h) of

such Act; or

(f) an alien who is granted conditional entry pursuant to 203(a)(7) or such Act as in effect prior to April 1, 1980; or

(g) an alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980); or

(h) certain battered women and alien children of battered parents (only those who have begun the process of becoming a lawful permanent resident under the Violence Against Women Act).

(i) victims of a severe form of trafficking; or

(j) members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e); or

(k) American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies.

(3) **Alien sponsors (where an affidavit of sponsorship was executed pursuant to Section 213 of the Immigration and Nationality Act subsequent to August 22, 1996):** The income and resources of an alien sponsor, and the spouse of the sponsor, of any individual applying for medicaid, is deemed available to the applicant, when an affidavit of support is executed pursuant to Section 213 of the Immigration and Nationality Act, on or after August 22, 1996. This counting of alien sponsor income and resources is effective until the sponsored alien achieves citizenship, or can be credited with 40 qualifying quarters.

(4) **Quarters of coverage:** For purposes of determining the number of quarters of coverage under Title II of the Social Security Act, an alien will be credited with all of the quarters that were worked by him/her, as well as all of the qualifying quarters of coverage worked by such parent of an alien, while the alien was under 18; and all of the quarters credited to a spouse, if the alien remains married to the spouse or such spouse is deceased. Beginning January 1, 1997, any quarter in which the alien received a means-tested federal benefit is not counted as a qualifying quarter.

(5) **Federal means-tested benefit:** For purposes of determining whether an alien has or has not received any federal means-tested benefits during a quarter, starting with January 1, 1997, the definition of federal means-tested benefits will not include:

(a) medical assistance under Title XIX of the Social Security Act (medicaid) for emergency treatment of an alien, not related to an organ transplant procedure, if the alien otherwise meets eligibility for medical assistance under the state plan;

(b) short-term, noncash, in-kind emergency disaster relief;

(c) assistance or benefits under the National School Lunch Act;

(d) assistance or benefits under the Child Nutrition Act of 1966;

(e) public health assistance (not including any assistance under Title XIX medicaid) for immunizations, and testing or treatment of symptoms of communicable diseases, whether or not such symptoms are caused by communicable diseases;

(f) payments for foster care and adoption assistance under Part B and E of Title IV of the Social Security Act for a parent or child who would, in the absence of the restriction of eligibility for aliens contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, be eligible for such payments made on the child's behalf, but only if the foster or adoptive parent (or parents) of such child, is a qualified alien;

(g) programs, services, or assistance, delivering in-kind services at the community level and necessary for the provision of life or safety; that do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided, on the individual recipient's income or resources;

(h) programs of student assistance under Titles IV, V, IX, and X of the Higher Education Act of 1965, and Titles III, VII, and VIII of the Public Health Services Act;

(i) means-tested programs under the Elementary and Secondary Education Act of 1965;

(j) benefits under the Head Start Act;

(k) benefits under the Job Training Partnership Act.

[2/1/95; 1/1/97; 4/1/98; 8.200.410.11 NMAC - Rn, 8 NMAC 4.MAD.412 & A, 7/1/03]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.201.400 NMAC, Sections 19 and 20 which will be effective on July 1, 2003. The Medical Assistance Division amended Section 19 by removing language describing assignments of medical support and inserted a citation for this section. In Section 20 language was changed for clarity purposes. This rule was also renumbered and reformatted from 8 NMAC 4.EXT.400 to comply with current NMAC requirements.

**8.201.400.19** ~~ASSIGNMENT OF SUPPORT;~~ **ASSIGNMENT OF MEDICAL SUPPORT:** [As a condition of eligibility, applicants/recipients of benefits must, [42 CFR Section 433.146; Section 27-

~~2-28 (G) NMSA 1978 (Repl. Pamph. 1991):~~

~~(1) assign individual rights to medical support and payments to HSD. The assignment authorizes HSD to pursue and make recoveries from liable third parties on behalf of a applicant/recipient;~~

~~(2) assign the rights to medical support and payments of other individuals eligible for medicaid, for whom they can legally make an assignment; and~~

~~(3) assign their individual rights to any medical care support available under an order of a court or an administrative agency.~~

**B. Assignment of parental support:** Assignment of parental support rights is required for all minor medicaid applicant/recipients with absent or deceased parents. By signing applications and receiving medicaid benefits, applicants/recipients agree to assign and cooperate with parental support requirements. See Section MAD 425, Eligibility Assignment and Cooperation Requirements. Medicaid benefits are not denied to otherwise eligible applicant/recipients solely because they cannot legally assign their own support rights when the individual who is legally able to assign their rights refuses to assign or cooperate, as required by law. Refer to Medical Assistance Program Manual Subsection F of 8.200.420.12 NMAC. [2/1/95; 8.201.400.19 NMAC - Rn, 8 NMAC 4.EXT.434 & A, 7/1/03]

**8.201.400.20 REPORTING REQUIREMENTS:** Medicaid applicant/recipients must report any change in circumstances which may affect eligibility [within ten (10) days after the change] to the local income support division (ISD) office within ten (10) days of the change. [2/1/95; 8.201.400.20 NMAC - Rn, 8 NMAC 4.EXT.450 & A, 7/1/03]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.206.400 NMAC, Section 19, which will be effective on July 1, 2003. The Medical Assistance Division is repealing Section 8 NMAC 4.CYM.450, Recipient Rights and Responsibilities. Also in Section 19, language was amended describing assignments of medical support and a citation was inserted. This rule was also reformatted and renumbered from 8 NMAC 4.CYM.400 to comply with current NMAC requirements.

~~**[8 NMAC 4.CYM.430 RECIPIENT RIGHTS AND RESPONSIBILITIES:** An applicant/recipient is responsible for establishing his/her eligibility for medicaid.~~

~~As part of this responsibility, the applicant/recipient must provide required information and documents or take the actions necessary to establish eligibility. Failure to do so must result in a decision that eligibility does not exist. An applicant/recipient must also grant the human services department (HSD) permission to contact other persons, agencies or sources of information which are necessary to establish eligibility.] [Repealed] [10/1/94; 8 NMAC 4.CYM.430, Repealed, 7/1/03]~~

### **8.206.400.19 [ASSIGNMENT OF SUPPORT:] ASSIGNMENT OF MEDICAL SUPPORT:**

~~[(1) Applicant/recipient requirements: As a condition of eligibility, medicaid applicants/recipients must do the following [42 CFR Section 433.146; NMSA 1978 27-2-28 (G)(Repl. Pamph. 1991):~~

~~(a) Assign his/her right to medical support and payments to the human services department (HSD). Medicaid eligibility is denied or terminated if an applicant/recipient refuses or fails to cooperate with the assignment process. The assignment authorizes HSD to pursue and make recoveries from liable third parties in recipient's behalf;~~

~~(b) Assign the rights to medical support and payments of other individuals eligible for medicaid, for who they can legally make an assignment; medicaid benefits are not denied to otherwise eligible recipient solely because he/she cannot legally assign his/her own support rights when the individual who is legally able to assign the rights refuses to assign or cooperate, as required by law.~~

~~(c) Assign his/her individual rights to any medical care support available under an order of a court or an administrative agency; and~~

~~(d) Cooperate in obtaining medical support. To cooperate, an individual is required to:~~

~~(i) appear at a state of local office designated by HSD to provide information or evidence relevant to the care;~~

~~(ii) appear as a witness at a court of other proceeding;~~

~~(iii) provide information or attest to lack of information, under penalty of perjury;~~

~~(iv) pay HSD any support of medical care funds received which are part of the assignment of rights; and~~

~~(v) take any other reasonable step to assist in establishing paternity or securing medical support and payments.] Refer to Medical Assistance Program Manual Subsections E and F of 8.200.420.12 NMAC.~~

**A. CYFD requirements:**

The authorized representative of CYFD who signs the application on behalf of he recipient must notify the third party liability unit at the medical assistance division of any third party medical coverage available to the child.

~~**[B. Assignment of parental support:** Assignment of parental support rights is required for all minor medicaid applicants/recipients with absent or deceased parents who have not met their support obligations. Medicaid benefits are not denied to an otherwise eligible recipient solely because he/she cannot legally assign his/her own support rights when the individual who is legally able to assign the rights refuses to assign or cooperate, as required by law.~~

~~(1) Deprivation defined: Deprivation of parental support or care due to continued absence exists when all of the following facts are established:~~

~~(a) parent does not live in the home;~~

~~(b) absence interrupts or terminate the parent's function as a provider of maintenance, physical care or guidance for the child; and~~

~~(c) the known or indefinite duration of the absence precludes counting on the parent's performance of his/her function in planning for the present support, care, or guidance for the child.~~

~~(d) if these conditions exist, the parent may be absent for any reason and may have left only recently or at some previous time. However, it is expected that the absence lasts thirty (30) days or more following either the date of application or, for ongoing cases, the date on which the factor of deprivation is being considered.~~

~~(2) Assignment of rights with application: By signing the application and receiving medicaid benefits, applicants/recipients agree to assign and cooperate with parental support requirements. The authorized representative from CYFD who signs the medicaid application on behalf of the recipient under eighteen (18) years of age must advise the human services department child support enforcement division (CSED) of all available pertinent information regarding the child and the absent parent.~~

~~(3) CSED responsibilities for parental support: CSED has the following responsibilities:~~

~~(a) enforcement of state laws to establish the child/medical support obligations of responsible parents and the paternity of children born out of wedlock;~~

~~(b) collection of child/medical support obligations for medicaid recipients whose rights of support have been assigned to the state, including location and contact with absent parent(s); and~~

(e) distribution of child support payment collected in accordance with federal regulations governing such distribution.]

**B. CYFD responsibilities for cooperation with CSED:** CYFD is responsible for cooperating with CSED activities which include:

- (1) identifying and locating the absent parent(s) of the recipients receiving medicaid;
- (2) establishing paternity of children born out of wedlock;
- (3) obtaining child/medical support for child;
- (4) identifying and providing information necessary to pursue third party health coverage;
- (5) obtaining other payments and property due the applicant/recipient receiving medicaid; and
- (6) developing procedures for referrals and determination of good cause for not pursuing child support or not requiring cooperation in pursuing such support. [10/1/94; 8.206.400.19 NMAC - Rn, 8 NMAC 4.CYM.434 & A, 7/1/03]

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

This is an amendment to 8.227.400 NMAC, Sections 17 and 18 which will be effective on July 1, 2003. The Medical Assistance Division amended section 17 by removing language describing assignments of medical support and inserted a citation for this section. In Section 18 language was changed for clarity purposes. This rule was also renumbered and reformatted from 8 NMAC 4.CSM.400 to comply with current NMAC requirements.

**8.227.400.17 [ASSIGNMENT OF SUPPORT:] ASSIGNMENTS OF MEDICAL SUPPORT:** [As a condition of eligibility, applicants/recipients must [42 CFR section 433.146; section 27-2-28 (G) NMSA 1978 (Repl. Pamp. 1991):

- (1) assign rights to medical support and payments to the human services department (HSD). The assignment authorizes HSD to pursue and make recoveries from liable third parties on the recipient's behalf;
- (2) assign the rights to medical support and payments of other individuals eligible for medicaid, for whom he/she can legally make an assignment; and
- (3) assign his/her individual rights to any medical care/support available under an order of a court or an administrative agency.

**B. Assignment of parental support:** Assignment of parental

support rights is required for all minor medicaid recipients with absent or deceased parents. By signing applications and receiving medicaid benefits, applicants/recipients have assigned support rights and agreed to cooperate with parental support requirements. See Section MAD 425, Eligibility Assignment and Cooperation Requirements. Medicaid benefits are not denied to an otherwise eligible applicant/recipient solely because he/she cannot legally assign his/her own support rights when the individual who is legally able to assign his/her rights refuses to assign or cooperate, as required by law.] Refer to Medical Assistance Program Manual Subsection F of 8.200.420.12 NMAC [2/1/95; 8.227.400.17 - Rn, 8 NMAC 4.CSM.434 & A, 7/1/03]

**8.227.400.18 REPORTING REQUIREMENTS:** A medicaid recipient must report any changes in circumstances which might affect his/her eligibility [~~within ten (10) days of a change~~] to the local county income support division (ISD) office within ten (10) days of a change. [2/1/95; 8.227.400.18 - Rn, 8 NMAC 4.CSM.450 & A, 7/1/03]

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

This is an amendment to 8.228.400 NMAC, Sections 18 and 19 which will be effective on July 1, 2003. The Medical Assistance Division amended section 18 by removing language describing assignments of medical support and inserted a citation for this section. In Section 19 language was changed for clarity purposes. This rule was also renumbered and reformatted from 8 NMAC 4.TME.400 to comply with NMAC requirements.

**8.228.400.18 [ASSIGNMENT OF SUPPORT:] ASSIGNMENTS OF MEDICAL SUPPORT:** [As a condition of eligibility, applicants/recipients must [42 CFR Section 433.146; NMSA 1978 Section 27-2-28 (G)(Repl. Pamp. 1991):

- (1) Assign rights to medical support and payments to the human services department (HSD). The assignment authorizes HSD to pursue and make recoveries from liable third parties on the recipient's behalf;
- (2) Assign the rights to medical support and payments of other individuals eligible for medicaid, for whom the applicant/recipient can legally make an assignment; and
- (3) Assign his/her individual rights to any medical care/support available

under an order of a court or an administrative agency.

**B. Assignment of parental support:** Assignment of parental support rights is required for all minor medicaid recipients with absent or deceased parents. By signing applications and receiving medicaid benefits, applicants/recipients have assigned support rights and agreed to cooperate with parental support requirements. See Section MAD 425, Eligibility Assignment and Cooperation Requirements. Medicaid benefits are not denied to an otherwise eligible applicant/recipient solely because he/she cannot legally assign his/her own support rights when the individual who is legally able to assign his/her rights refuses to assign or cooperate, as required by law.] Refer to Medical Assistance Program Manual Subsection F of 8.200.420.12 NMAC. [2/1/95, 6/1/95; 8.228.400.18 NMAC - Rn, 8 NMAC 4.TME.434 & A, 7/1/03]

**8.228.400.19 REPORTING REQUIREMENTS:** A medicaid recipient must report any change in circumstances which may affect his/her eligibility [~~within ten (10) days of the change~~] to the local income support division (ISD) office within ten (10) days of the change. [2/1/95; 8.228.400.19 NMAC - Rn, 8 NMAC 4.TME.450 & A, 7/1/03]

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

This is an amendment to 8.230.400 NMAC, Sections 20 and 21, which will be effective on July 1, 2003. The Medical Assistance Division amended section 20 by removing language describing assignments of medical support and inserted a citation for this section. In section 21 language was changed for clarity purposes. This rule was also renumbered and reformatted from 8 NMAC 4.PWN.400 to comply with NMAC requirements.

**8.230.400.20 [ASSIGNMENT OF SUPPORT:] ASSIGNMENTS OF MEDICAL SUPPORT:** [A. As a condition of eligibility, applicants/recipients must [42 CFR Section 433.146; NMSA 1978 Sections 27-2-28 (G)(Repl. Pamp. 1991):

- (1) assign rights to medical support and payments to the human services department (HSD). The assignment authorizes HSD to pursue and make recoveries from liable third parties on the recipient's behalf;
- (2) assign the rights to medical support and payments of other individuals

eligible for medicaid, for whom they can legally make an assignment; and

(3) assign their individual rights to any medical care/support available under an order of a court or an administrative agency.

**B. Assignment of parental support:** Assignment of parental support rights is required for all minor medicaid recipients with absent or deceased parents. By signing applications and receiving medicaid benefits, applicants/recipients have assigned support rights and agreed to cooperate with parental support requirements. See Section MAD 425, Eligibility Assignment and Cooperation Requirements. Medicaid benefits are not denied to an otherwise eligible applicant/recipient solely because he/she cannot legally assign his/her own support rights when the individual who is legally able to assign his/her rights refuses to assign or cooperate, as required by law.

(1) If deprivation exists for a minor pregnant woman who is not emancipated, assignment of parental support rights must be obtained against her absent parent(s).

(2) A woman who is pregnant is not required to assign support rights against the father of the unborn child if he is absent from the home.] Refer to Medical Assistance Program Manual Subsection F of 8.200.420.12 NMAC.

[2/1/95, 6/30/98; 8.230.400.20 NMAC - Rn, 8 NMAC 4.PWN.434 & A, 7/1/03]

**8.230.400.21 REPORTING REQUIREMENTS:** A medicaid recipient must report any changes in his/her circumstances which might affect eligibility [with in ten (10) days of a change] to the local county income support division (ISD) office within ten (10) days of the change. [2/1/95, 8.230.400.21 NMAC - Rn, 8 NMAC 4.PWN.450 & A, 7/1/03]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.233.400 NMAC, Sections 17 and 18 which will be effective on July 1, 2003. The Medical Assistance Division amended section 17 by removing language describing assignments of medical support and inserted a citation for this section. In Section 18 language was changed for clarity purposes. This rule was also renumbered and reformatted from 8 NMAC 4.IAF.400 to comply with current NMAC requirements.

**8.233.400.17 [ASSIGNMENT OF SUPPORT:] ASSIGNMENTS OF MED-**

**ICAL SUPPORT:** [As a condition of eligibility, applicants/recipients must [42 CFR Section 433.146; Sections 27-2-28 (G) NMSA 1978 (Repl. Pamp. 1991):

(1) assign rights to medical support and payments to the human services department (HSD). The assignment authorizes HSD to pursue and make recoveries from liable third parties on the recipient's behalf;

(2) assign the rights to medical support and payments of other individuals eligible for medicaid, for whom he/she can legally make an assignment; and

(3) assign his/her individual rights to any medical care/support available under an order of a court or an administrative agency.

**B. Assignment of parental support:** Assignment of parental support rights is required for all minor medicaid recipients with absent or deceased parents. By signing applications and receiving medicaid benefits, applicants/recipients have assigned support rights and agreed to cooperate with parental support requirements. See Section MAD 425, Eligibility Assignment and Cooperation Requirements. Medicaid benefits are not denied to an otherwise eligible applicant/recipient solely because he/she cannot legally assign his/her own support rights when the individual who is legally able to assign his/her rights refuses to assign or cooperate, as required by law.] Refer to Medical Assistance Program Manual Subsection F of 8.200.420.12 NMAC.

[2/1/95; 8.233.400.17 NMAC - Rn, 8 NMAC 4.IAF.434 & A, 7/1/03]

**8.233.400.18 REPORTING REQUIREMENTS:** A medicaid recipient must report any change in circumstances which may affect his/her eligibility [with in ten (10) days of the change] to the local income support division (ISD) office within ten (10) days of the change.

[2/1/95; 8.233.400.18 NMAC - Rn, 8 NMAC 4.IAF.450 & A, 7/1/03]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.235.400 NMAC, Section 20 which will be effective on July 1, 2003. The Medical Assistance Division amended section 20 by removing language describing assignments of medical support and inserted a citation for this section. This rule was also renumbered and reformatted from 8 NMAC 4.PSO.400 to comply with NMAC requirements.

**8.235.400.20 [ASSIGNMENT OF**

**SUPPORT:] ASSIGNMENTS OF MEDICAL SUPPORT:** [As a condition of eligibility, applicants/recipients must [42 CFR Section 433.146; Section 27-2-28 (G) NMSA 1978 (Repl. Pamp. 1991):

(1) assign rights to medical support and payments to the human services department (HSD). The assignment authorizes HSD to pursue and make recoveries from liable third parties on the recipient's behalf;

(2) assign the rights to medical support and payments of other individuals eligible for medicaid, for whom he/she can legally make an assignment; and

(3) assign his/her individual rights to any medical care/support available under an order of a court or an administrative agency.

**B. Assignment of parental support:** Assignment of parental support rights is required for all minor medicaid recipients with absent or deceased parents. By signing applications and receiving medicaid benefits, applicants/recipients have assigned support rights and agreed to cooperate with parental support requirements. See Section MAD 425, Eligibility Assignment and Cooperation Requirements. Medicaid benefits are not denied to an otherwise eligible applicant/recipient solely because he/she cannot legally assign his/her own support rights when the individual who is legally able to assign his/her rights refuses to assign or cooperate, as required by law.

(1) If deprivation exists for a minor pregnant woman who is not emancipated, assignment of parental support rights must be obtained against her absent parent(s).

(2) A woman who is pregnant is not required to assign support rights against the father of the unborn child if he is absent from the home.] Refer to Medical Assistance Program Manual Subsection F of 8.200.420.12 NMAC.

[2/1/95; 8.235.400.20 NMAC - Rn, 8 NMAC 4.PSO.434 & A, 7/1/03]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.240.400 NMAC, Sections 18 and 19 which will be effective on July 1, 2003. The Medical Assistance Division amended section 18 by removing language describing assignments of medical support and inserted a citation for this section. In Section 19 language was changed for clarity purposed. This rule was also renumbered and reformatted from 8 NMAC 4.QMB.400 to comply with NMAC requirements.



**8.240.400.18** ~~[ASSIGNMENT OF SUPPORT]: ASSIGNMENTS OF MEDICAL SUPPORT: [As a condition of eligibility, an applicant/recipient of QMB must [42 CFR 433.146; NMSA 1978 27-2-28 (G)(Repl. Pamp. 1991):~~

~~(1) assign rights to medical support and payments to the human services department (HSD). The assignment authorizes HSD to pursue and make recoveries from liable third parties on the recipient's behalf;~~

~~(2) assign the rights to medical support and payments of other individuals eligible for medicaid, for whom he/she can legally make an assignment; and~~

~~(3) assign his/her individual rights to any medical care/support available under an order of a court or an administrative agency.~~

**B. Assignment of parental support:** Assignment of parental support rights is required for all minor medicaid recipients with absent or deceased parents. By signing applications and receiving medicaid benefits, an applicant/recipient has assigned support rights and agreed to cooperate with parental support requirements. See Section MAD 425, Eligibility Assignment and Cooperation Requirements. Medicaid benefits are not denied to an otherwise eligible applicant/recipient solely because he/she cannot legally assign his/her own support rights when the individual who is legally able to assign his/her rights refuses to assign or cooperate, as required by law.] Refer to Medical Assistance Program Manual Subsection F of 8.200.420.12 NMAC. [2/1/95; 9/15/95; 8.240.400.18 NMAC - Rn, 8 NMAC 4.QMB.434 & A, 7/1/03]

**8.240.400.19** **R E P O R T I N G REQUIREMENTS:** All medicaid recipients must report any change in their circumstances which can affect eligibility [~~within ten (10) days after the change~~] to the local income support division (ISD) office within ten (10) days of the change. [2/1/95; 9/15/95; 8.240.400.19 NMAC - Rn, 8 NMAC 4.QMB.450 & A, 7/1/03]

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.259.400 NMAC, Section 18, which will be effective on July 1, 2003. The Medical Assistance Division amended the section by removing language describing assignments of medical support and inserted a citation for this section. This rule was also renumbered and reformatted from 8 NMAC 4.RSD.400 to comply with NMAC requirements..

**8.259.400.18** ~~[ASSIGNMENT OF SUPPORT:] ASSIGNMENTS OF MEDICAL SUPPORT: [As a condition of eligibility, applicants/recipients must [42 CFR Section 433.146; NMSA 1978 Section 27-2-28 (G)(Repl. Pamp. 1991):~~

~~(1) assign rights to medical support and payments to the human services department (HSD). The assignment authorizes HSD to pursue and make recoveries from liable third parties on the recipient's behalf;~~

~~(2) assign the rights to medical support and payments of other individuals eligible for medical assistance, for whom he/she can legally make an assignment; and~~

~~(3) assign his/her individual rights to any medical care/support available under an order of a court or an administrative agency.~~

**B. Assignment of parental support:**

~~(1) Assignment of parental support rights is required for all minor recipients with absent or deceased parents. By signing applications and receiving benefits, applicants/recipients have assigned support rights and agreed to cooperate with parental support requirements. See Section MAD 425, Eligibility Assignment and Cooperation Requirements.~~

~~(2) Medical assistance benefits are not denied to an otherwise eligible applicant/recipient solely because he/she cannot legally assign his/her own support rights when the individual who is legally able to assign his/her rights refuses to assign or cooperate, as required by law.] Refer to Medical Assistance Program Manual Subsection F of 8.200.420.12 NMAC. [2/1/95; 8.259.400.18 NMAC - Rn, 8 NMAC 4.RSD.434 & A, 7/1/03]~~

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.281.400 NMAC, Sections 22 and 23 which will be effective on July 1, 2003. The Medical Assistance Division amended section 22 by removing language describing assignments of medical support and inserted a citation for this section. In Section 23 language was changed for clarity purposed. This rule was also renumbered and reformatted from 8 NMAC 4.ICM.400 to comply with NMAC requirements.

**8.281.400.22** ~~[ASSIGNMENT OF MEDICAL SUPPORT:] ASSIGNMENTS OF MEDICAL SUPPORT:~~

~~[A: Assignment of medical support: As a condition of eligibility, applicants/recipient must, [42 CFR Section~~

~~433.146; Section 27-2-28 (G) NMSA 1978 (Repl. Pamp. 1991):~~

~~(1) assign individual rights to medical support and payments to the human services department (HSD). The assignment authorizes HSD to pursue and make recoveries from liable third parties in recipients' behalf;~~

~~(2) assign the rights to medical support and payments of other individuals eligible for medicaid for who he/she can legally make an assignment; and~~

~~(3) assign his/her individual rights to any medical care/support available under an order of a court or an administrative agency.~~

~~B. Medicaid benefits are not denied to otherwise eligible applicants/recipients solely because they cannot legally assign their own support rights when the individual who is legally able to assign their rights refuses to assign or cooperate, as required by law.] Refer to Medical Assistance Program Manual Subsection F of 8.200.420.12 NMAC. [2/1/95; 8.281.400.22 NMAC - Rn, 8 NMAC 4.ICM.434 & A, 7/1/03]~~

**8.281.400.23** **R E P O R T I N G REQUIREMENTS:** Medicaid recipients must report any change in circumstances, which may affect his/her eligibility [~~within ten (10) days of the change~~] to their local income support division (ISD) office within ten (10) days of the change. [2/1/95; 8.281.400.23 NMAC - Rn, 8 NMAC 4.ICM.450 & A, 7/1/03]

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.300.11 NMAC, Sections 9 through 11 which will be effective on July 1, 2003. The Medical Assistance Division added language to comply with law regarding HIPAA. This rule was also renumbered and reformatted from 8 NMAC 4.MAD.030 to comply with NMAC requirements.

**8.300.11.9** **CONFIDENTIALITY:** The following applicant/recipient information is confidential and is safeguarded by the human services department (HSD), all state agencies, their contractors and other designees, and all providers of medicaid services. See 42 CFR 431.305(b) and 45 CFR 164.530(c):

- A. name, address and social security number;
- B. medical services furnished to the recipient;
- C. social and economic conditions or circumstances;

D. agency evaluation of personal information;

E. medical data, including diagnosis and past history of disease or disability;

F. information received to verify income eligibility and the amount of medical payments, including information received from the social security administration and the internal revenue service; ~~and~~

G. information received in connection with the identification of legally liable third parties;

H. telephone numbers;

I. fax numbers;

J. electronic mail addresses;

K. medical record numbers;

L. health plan beneficiary numbers;

M. account numbers; and

N. certificate/license numbers.

[2/1/95; 4/30/97; 8.300.11.9 NMAC - Rn, 8 NMAC 4.MAD.030 & A, 7/1/03]

#### **8.300.11.10 CONFIDENTIALITY OF APPLICANT/RECIPIENT INFORMATION:**

A. Safeguarding of confidential applicant/recipient information includes the methods of receiving, maintaining, and communicating ~~[such information]~~ individually identifiable health information. See 45 CFR Section 164.530(c).

B. **Confidentiality of medical information:** Confidential information regarding applicants or recipients will be available to those identified in 8.300.11.9 NMAC for use only in connection with the administration of the New Mexico medicaid program (medicaid) and only on a need-to-know basis. See 42 CFR Section 431.300-307. Those using confidential information will only use the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. See 45 CFR Section 164.502(b).

(1) **Use of confidential medical information:** The following individuals have access to medical information:

(a) employees of private firms, other divisions within HSD or other state agencies who are performing work or providing services for MAD under contract or business associate agreement or who are providing services, as required by federal law;

(b) employees or agents of the federal department of health and human services; and

(c) providers of health care services to medicaid recipients.

(2) **Sanctions for the improper**

**use of confidential information:** Improper disclosure or use of confidential information by a MAD employee or designee is grounds for immediate dismissal, demotion or suspension (see 8.300.2.24 NMAC). Employees or designees are solely liable for all damages resulting from their improper use of confidential information.

[2/1/95; 4/30/97; 8.300.11.10 NMAC - Rn, 8 NMAC 4.MAD.031 & A, 7/1/03]

#### **8.300.11.11 CONFIDENTIALITY OF ELECTRONIC DATA:**

A. ~~[Fax]~~ **Electronic transmission/reception of confidential information:** To ensure that the confidential medical information of recipients and applicants is kept confidential, transmission and reception of this information is limited to those individuals allowed to have access to medical information as stated in the use of confidential medical information policy (Paragraph (1) of Subsection B of 8.300.11.10 NMAC) and safeguarding protected health information policy 8.300.2.22 NMAC).

B. **Provider participation:** Providers who choose to send and/or receive confidential medical information via fax must have a dedicated fax line and/or fax machine. Confidential medical information should not be received at a commercial fax center where employees or customers may have access to the information. Providers who choose to send and/or receive confidential medical information via fax or email must follow the minimum necessary standard. See 45 CFR Section 164.502.

C. **Responsibility for failure to follow policy:** Providers who fail to adhere to this policy are solely liable for any consequences resulting from the use of this method of transmitting confidential medical information, including any attorney fees, costs or damages. MAD shall mitigate any harmful effect from improper disclosure of individually identifiable health information in accordance with 45 CFR Section 164.530(f).

[2/1/95; R 5/31/97; Re-pr, 3/1/99; 8.300.11.11 NMAC - Rn, 8 NMAC 4.MAD.034 & A, 7/1/03]

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

This is an amendment to 8.300.17 NMAC, Section 10 which will be effective on July 1, 2003. The Medical Assistance Division added language to comply with law regarding HIPAA. This rule was also renumbered and reformatted from 8 NMAC 4.MAD.042 to comply with NMAC requirements.

#### **8.300.17.10 PENALTIES:**

Violation of any of the above provisions by an employee is grounds for dismissal, demotion or suspension. A former employee who violates any of the provisions is subject to assessment by the human services department (department) of a civil monetary penalty of two hundred and fifty dollars (\$250.00) for each violation. MAD shall mitigate any harmful effect from improper disclosure of individually identifiable health information in accordance with 45 CFR Section 164.530(f). Any employee or former employee who violates these provisions may also be subject to criminal prosecution. See Section 10-16-17 NMSA 1978 (Cum. Supp. 1993).

[2/1/95; 8.300.17.10 NMAC - Rn, 8 NMAC 4.MAD.042.1 & A, 7/1/03]

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

This is an amendment to 8.351.2 NMAC, Sections 9 through 11 which will be effective on July 1, 2003. The Medical Assistance Division added language to comply with law regarding HIPAA. This rule was also renumbered and reformatted from 8 NMAC 4.MAD.960 to comply with NMAC requirements.

#### **8.351.2.9 SANCTIONS AND REMEDIES:**

The New Mexico human services department (HSD) is required to impose sanctions or penalties against providers for fraud, violations of federal or state law, violations of the HIPAA regulations, failure to meet professional standards of conduct, non-compliance with medicaid policies promulgated by the medical assistance division (MAD), violations of the Medicaid Provider Act, and/or other misconduct. See 42 CFR Part 455; Section 30-44-3 NMSA 1978 (Repl. Pamp. 1998). HSD is also required to recover overpayments made to medicaid providers. This part describes the types of sanctions and remedies which can be imposed by HSD.

[11/1/96; 8/1/99; 8.351.2.9.9 NMAC - Rn, 8 NMAC 4.MAD.960 & A, 7/1/03]

#### **8.351.2.10 SANCTIONS:**

HSD is required to impose sanctions against providers for violation of the provisions outlined in the Medical Assistance Program Manual. HSD has discretion to impose monetary or non-monetary sanctions against providers for fraud or other forms of misconduct. See Subsection H of 8.351.2.11 NMAC, Sanctions and Remedies for Noncompliance with Nursing Facility and Intermediate Care Facility Certification Requirements.

A. **Provider fraud:** Fraud is the intentional misappropriation, deception or misrepresentation made by a provider with the knowledge that the deception could result in some unauthorized benefit to the provider or some other person and includes, but is not limited to, the following conduct as specified in the New Mexico Medicaid Fraud Act, Section 30-44-7(A) NMSA 1978:

(1) paying, soliciting, offering or receiving:

(a) a kickback or bribe in connection with the furnishing of treatment, services or goods for which payment is or may be made in whole or in part under the medicaid program;

(b) a rebate of a fee or charge made to a provider for referring a recipient to a provider;

(c) anything of value, with intent to retain it, and knowing it to be in excess of amounts authorized under the medicaid program, as a precondition of providing treatment, care, services or goods or as a requirement for continued provision of treatment, care, services or goods; or

(d) anything of value, with intent to retain it, and knowing it to be in excess of the rates established under the medicaid program for the provision of treatment, services or goods.

(2) providing the following with intent that a claim be relied upon for the expenditure of public money:

(a) treatment, services, or goods that have not been ordered by a treating provider;

(b) treatment that is substantially inadequate when compared to generally recognized standards within the profession or industry; or

(c) merchandise that has been adulterated, debased or mislabelled or is outdated.

(3) presenting or causing to be presented for allowance or payments with intent that a claim be relied upon for the expenditure of public money, any false, fraudulent, excessive, multiple or incomplete claims for furnishing treatment, services or goods.

B. **Misconduct defined:** Provider misconduct includes, but is not limited to, any of the following:

(1) engaging in a course of conduct or performing an act that violates any provision of federal or state law or regulation including HIPAA, or continuation of conduct after receipt of notice that the conduct should cease;

(2) failure to meet federal or state licensing or certification standards required of the provider, including the revocation or suspension of a license, and/or to notify HSD of such failure;

(3) failure to correct deficiencies in provider operations within time limits specified by HSD or its designee after receiving written notice of these deficiencies;

(4) failure to maintain and retain any medical or business records as are necessary to verify the treatment or care of any client for which the provider received payment from HSD to provide that benefit or service, services or goods provided to any client for which the provider received payment from HSD, amounts paid of HSD on behalf of any client, and other records required by HSD for at least six (6) years from the date of creation or until ongoing audits are settled, whichever is longer;

(5) furnishing services to medicaid recipients or billing medicaid for services which fall outside the scope of the provider's practice or outside the scope of prescribed practice;

(6) failure to comply with the terms of the provider certification on the medicaid claim form;

(7) failure to provide complete, accurate, and current information on a medicaid provider participation agreement;

(8) breach of the terms of the medicaid provider participation agreement;

(9) failure to provide or maintain services which meet professionally recognized standards of care and quality;

(10) engaging in negligent or abusive practices which result in death or physical, emotional, or psychological injury to recipients;

(11) failure to repay or make arrangements to repay identified overpayments;

(12) failure to make records available upon request to HSD or its designees;

(13) violation of any laws, regulations or code of ethics governing the conduct of providers;

(14) convicted of crimes relating to the neglect or abuse of patients;

(15) conviction of a felony relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance;

(16) convicted of program-related crimes under medicare and/or any other programs administered by the federal government or any state health care program or suspension or termination of a provider's participation by this or another state's medicaid agency;

(17) seeking payment from a medicaid client or any financially responsible relative or representative of that client for services furnished to the client, except as allowed and specifically delineated by HSD;

(18) refusing to furnish services to a medicaid recipient because he/she has

HMO or health coverage from another insurer which is liable for payment; or

(19) advising a medicaid recipient to terminate his/her HMO or health care coverage.

C. **Violation of Medicaid Provider Act:** Violations of the Medicaid Provider Act include the following:

(1) material breach of a provider's obligation to furnish medicaid services to clients or any other duty specified under the terms of the medical assistance division provider participation agreement;

(2) violation of any provision of the Public Assistance Act or the Medicaid Provider Act or any rules issued pursuant to those Acts;

(3) provider intentionally or with reckless disregard made false statements with respect to any report or statement required by the Public Assistance Act, Medicaid Provider Act or rules issued pursuant to either of those Acts;

(4) provider intentionally or with reckless disregard advertised or marketed or attempted to advertise or market, services to clients in a manner to misrepresent its service or capacity for services, or engaged in any deceptive, misleading or unfair practice with respect to advertising or marketing;

(5) provider hindered or prevented the secretary of the human services department from performing any duty imposed by the Public Assistance Act, the Human Services Act, the Medicaid Provider Act or any rules issued pursuant to those Acts; or

(6) provider fraudulently procured or attempted to procure any benefit from HSD.

[11/1/96; 8/1/99; 8.351.2.10 NMAC - Rn, 8 NMAC 4.MAD.961 & A, 7/1/03]

**8.351.2.11 TYPES OF SANCTIONS:** HSD is allowed to impose monetary or non-monetary sanctions against any medicaid provider for misconduct. HSD is required to impose certain sanctions against medicaid providers for fraud, HIPAA violations, and other actions.

A. **Prior approval:** As a condition of medicaid payment, HSD can require providers to obtain prior approval before delivering all or certain services. The prior approval requests must be submitted to the MAD utilization review (UR) contractor or UR agent in a manner prescribed for general utilization review. Failure to obtain prior approval prior to furnishing service may result in imposition of sanctions. In addition, MAD may sanction a provider by requiring that provider to obtain prior approval before furnishing all or certain services, even if other providers may furnish that service without the requirement of obtaining prior approval

from MAD. See Section MAD-705, Prior Approval and Utilization Review [8.302.5 NMAC, Prior Approval and Utilization Review].

**B. Education:** As a condition of medicaid payment, HSD can require a provider to attend an educational program if misconduct could be remedied with the provision of identified education. HSD may also require a provider who is seeking reinstatement to attend an educational program prior to the approval of the new application. Provider education programs may include, but are not limited to, the following:

- (1) claim form completion;
- (2) use and format of the MAD provider policy manual;
- (3) use of procedure codes;
- (4) substantive provisions of the New Mexico medicaid program;
- (5) reimbursement rates;
- (6) assistance in claims coding and billing; and
- (7) continuing medical education.

**C. Closed-end agreements:** HSD can transfer the provider to a closed-end provider agreement. A closed-end medicaid provider participation agreement is an agreement for a specified period of time which terminates on a defined date not to exceed twelve (12) months. At the end of this term, a new provider agreement must be executed for continued medicaid participation.

**D. Suspension:** "Suspension" is an exclusion from participation in the medicaid program for a specified period or time.

(1) **Medicaid suspension:** HSD may suspend a provider from medicaid participation for misconduct or fraud.

(a) HSD is permitted to suspend a provider for up to thirty-six (36) months. The period of suspension is not less than the term of any court-imposed suspension.

(b) If the suspension is imposed by medicaid, the effective date of the medicaid suspension is the date of the notice of suspension. If the suspension is concurrent with a court-imposed suspension, the effective date is the date of the court-imposed suspension.

(2) **Medicare suspension:** HSD must suspend a provider who is suspended by medicare or any other federal or state-funded health program.

(a) HSD is required to suspend a provider for the suspension term imposed by the medicare program or other federal or state-funded health programs.

(b) When the medicaid suspension is concurrent with a medicare suspension, the effective date of the medicaid suspension is the same day as the medicare suspension.

(3) **Special exception for health manpower shortage areas:** After assessing the nature of the violation or misconduct, HSD has the option of requesting action from the secretary of the federal department of health and human services (DHHS) if the suspension of a provider would result in the lack of adequate medical services for recipients in a given area. The secretary can be asked to:

(a) designate the community as a health manpower shortage area and place national health services corps personnel in the community; and/or

(b) waive the provider's suspension based upon submission of adequate documentation that the suspension would deprive the community of needed medical services because of a shortage of practitioners in the area.

(4) **Submission of claims following suspension:**

(a) If a provider is suspended from participation in the medicaid program, the provider is prohibited from submitting claims for payment to the MAD claims processing contractor.

(b) HSD will not pay claims submitted by clinics, groups, corporations, associations or other entities associated with a provider who is suspended from participation in the medicaid programs for services furnished by such provider after the effective date of the suspension.

(c) Claims for services, treatment or supplies furnished by the provider before the effective date of the suspension can be submitted. The claims may be subject to pre-payment review.

(5) **Reinstatement:** Providers can apply for reinstatement at the end of a suspension period. Reinstatement is not automatic or guaranteed. A provider must furnish written documentation that he/she meets all relevant licensing, certification, or register requirement as specified by HSD, children, youth and families department, or department of health.

**E. Termination:** "Termination" is the termination of the provider's medicaid provider participation agreement for a specified period of time. HSD must terminate the agreement in certain specified instances and is permitted to terminate the agreement in other instances.

(1) **Mandatory termination:** HSD must terminate the agreement when any of the following events occur:

(a) provider is convicted of medicaid or medicare fraud;

(b) provider has a previous suspension from medicaid with failure to correct identified deficiencies; or

(c) provider is terminated from participation in the medicare program or another federal or state-funded health pro-

gram.

(2) **Discretionary termination:** HSD may terminate the agreement when the violation(s) is so egregious, in the discretionary opinion of HSD, that other sanctions are not sufficient to address, reduce or eliminate the violation(s) or when the identified deficiency or violation(s) reflect a pattern of violation.

(3) **Effective date of termination:** The effective date of medicaid termination is the date of conviction for medicaid or medicare fraud or the date of termination from the medicare program. If termination follows a prior suspension from the medicaid program or the termination is discretionary, the date of termination is set by HSD.

(4) **Termination of nursing facility or intermediate care facility provider agreement:**

(a) MAD can terminate an NF or ICF-MR provider agreement instead of or in addition to other alternative remedies. Termination can occur in the instances which include, but are not limited to, the following:

(i) immediate jeopardy to NF or ICF-MR resident's health and safety which have not been removed;

(ii) provider is not in substantial compliance with participation requirements regardless of whether immediate jeopardy to NF or ICF-MR residents is present;

(iii) provider fails to submit an acceptable plan of correction within the specified timeframes;

(iv) provider fails to relinquish control to temporary manager; or

(v) DOH recommends termination as the most appropriate remedy.

(b) Termination of the agreement ends payment to the NF or ICF-MR provider.

(c) Notwithstanding Subparagraph (b) of Paragraph (4) of Subsection E of 8.351.2.11 NMAC, payment to the NF or ICF-MR provider can be continued for up to thirty (30) calendar days after the effective date of the agreement termination if the following conditions are met:

(i) The payments are for NF or ICF-MR residents admitted to the NF or ICF-MR before the effective date of the agreement termination; and

(ii) MAD is making reasonable efforts to transfer those residents to other facilities or to alternate care.

(iii) For purposes of this provision, the thirty (30) day period begins on the effective date of the agreement termination by HCFEA, MAD, or the NF or ICF-MR provider.

(d) Before termination of a NF or ICF-MR provider agreement, MAD must

notify the provider and the public at least fifteen (15) calendar days before the effective date of the termination with non-immediate jeopardy deficiencies that constitute the noncompliance. For termination due to deficiencies that pose immediate jeopardy to residents, MAD must notify the provider and the public at least two (2) working days before the effective date of the termination.

(e) If termination of provider agreement is chosen due to immediate jeopardy to NF or ICF-MR residents, the effective date of the termination is within twenty-three (23) calendar days of the last date of the survey.

**(5) Submission of claims following termination:**

(a) If a provider is terminated from participation in the medicaid program, the provider is prohibited from submitting claims for payment to the MAD claims processing contractor.

(b) HSD will not pay claims submitted by clinics, groups, corporations, associations, or other entities associated with a provider who is terminated from participation in the medicaid programs for services furnished by such provider after the effective date of the termination.

(c) Claims for services, treatment or supplies furnished by the provider before the effective date of the termination can be submitted. The claims may be subject to pre-payment review.

**(6) Re-application for medicaid participation:** Providers must submit a new application after the end of the termination period to participate in medicaid. Providers must meet certification and licensing requirements specified by HSD, children, youth and families department, or department of health to be eligible to once again become a medicaid provider.

**F. Civil monetary penalties:** HSD is permitted to impose civil monetary penalties in addition to other penalties, in accordance with the Medicaid Fraud Act. See Section 30-44-1 et.seq. NMSA 1978.

(1) **Amount of penalty:** The provider is liable for the following:

(a) payment of interest on the amount received by the provider from MAD in excess of payment at the maximum legal rate in effect on the date the payment was made, for the period from the date payment was made to the date of repayment to HSD;

(b) a civil monetary penalty in an amount of up to two times the amount of such excess payment;

(c) a civil monetary penalty of \$500 for each false or fraudulent claim submitted for furnishing treatment, services, or goods; and

(d) payment of legal fees and costs of investigation and enforcement of

civil remedies.

(2) **Payment of penalty amounts:** Penalties and interest amounts must be remitted to the state. Any legal fees, costs of investigation and costs of enforcement of civil remedies recovered on behalf of the state must also be remitted to the state.

(3) **Criminal action:** The filing of a criminal action for violation of the Medicaid Fraud Act is not a condition precedent to HSD's imposition of civil monetary penalties.

**G. Reduction of payment:** HSD may reduce the amount of any payment due a provider, in addition to other sanctions, if the provider seeks to collect an amount in excess of the medicaid allowable amount from a medicaid recipient, his/her family or financially responsible relative or any other source. See 42 CFR Section 447.20 - 447.21.

(1) The reduction may be equal to up to three (3) times the amount that the provider sought to collect.

(2) For purposes of this provision, the "medicaid allowable amount" is equal to the amount payable under the state plan.

**H. Sanctions and remedies for noncompliance with nursing facility or intermediate care facility certification requirements:** The New Mexico medicaid program is required to impose additional remedies against nursing facility (NF) providers who fail to comply with federal and state medicaid participation requirements with respect to licensing and certification. One or more of the following remedies can be imposed by MAD for each deficiency constituting noncompliance or for all deficiencies constituting noncompliance: termination of the NF provider's medicaid provider participation agreement; temporary management; denial of payment for new admissions; civil money penalties; NF closure and/or transfer of residents; state monitoring; directed plan of correction; directed inservice training; and other state remedies approved by the health care financing administration. HSD is also required to impose remedies against intermediate care facilities for the mentally retarded (ICF-MR) providers who fail to comply with federal and state medicaid licensing and certification requirements. HSD may terminate a ICF-MR provider's certification or deny payment for new admissions if the provider fails to meet the conditions for participation or certain deficiencies are identified by the DOH.

(1) **Authority of survey agency:** The licensing and certification bureau of the New Mexico department of health (DOH) is the survey agency. When the rationale for imposition of the remedies is tied to DOH's licensing and certification responsibilities,

criteria for imposition of remedies and description of these specific remedies are based on regulations promulgated by the DOH. See DOH Regulations.

(2) **Recommendations for imposition of additional remedies:** Following completion of a survey, DOH may recommend that specified remedies be imposed against a NF or ICF-MR provider for failure to meet certification or licensing required which are based on the type, extent and seriousness of an identified deficiency(ies). HSD has five (5) working days from receipt of the DOH recommendation to impose remedies or to oppose the DOH recommendation. Unless a response from HSD is received in writing prior to the expiration of the time period, the DOH recommendations are accepted by HSD as submitted and the recommended remedy is imposed.

(3) **Informal reconsideration for ICF-MR providers:** An ICF-MR provider can request an informal reconsideration of the decision to deny, terminate or not renew the medicaid provider participation agreement if the decision requesting through the formal provider hearing process will not be completed prior to the effective date of the termination. The informal reconsideration must be completed prior to the effective date of the termination. The informal reconsideration includes the following:

(a) written notice to the ICF-MR provider of the denial, termination or nonrenewal of the agreement;

(b) reasonable opportunity for the ICF-MR provider to refute the findings upon which the decision was based; and

(c) a written affirmation or reversal of the denial, termination or nonrenewal of the agreement.

**I. Sanction for violation of the Medicaid Provider Act:** HSD may take any or any combinations of the following delineated actions against a provider for violations of the Medicaid Provider Act.

(1) imposition of an administrative penalty of not more than \$5,000 for engaging in any practice that violates the Act; each separate occurrence of such practice constitutes a separate offense;

(2) issue an administrative order requiring the provider to:

(a) cease or modify any specified conduct or practices engaged in by it or its employees, subcontractors, or agents;

(b) fulfill its contractual obligations in the manner specified in the order;

(c) provide any service that has been denied;

(d) take steps to provide or arrange for any services that it has agreed to or is otherwise obligated to make available; or

(e) enter into and abide by the

terms of binding or nonbinding arbitration proceeding, if agreed to by any opposing parties.

(3) suspend or terminate the provider's medical assistance division provider participation agreement. [11/1/96; 8/1/99; 8.351.2.11 NMAC - Rn, 8 NMAC 4.MAD.962 & A, 7/1/03]

**NEW MEXICO  
DEPARTMENT OF LABOR  
JOB TRAINING DIVISION**

NOTICE OF REPEAL

The New Mexico Department of Labor, Job Training Division (NMDOL JTD) State Administrative Entity (SAE), State Planning, Policy and Technical Assistance (SPPTA) Bureau is repealing Issuance 11.2.4 NMAC "Workforce Investment Act (WIA) Policy/Program Issuance and State Information Notice (SIN) System" and Issuance 11.2.13 NMAC "Workforce Investment Act (WIA) Participant Eligibility," effective July 1, 2003.

The Issuances will be replaced by Rule 11.2.4 NMAC "Workforce Investment Act (WIA) Program Policies and State Technical Assistance Guide (STAG) System" and Rule 11.2.13 NMAC "Workforce Investment Act (WIA) Participant Eligibility," effective July 1, 2003.

**NEW MEXICO  
DEPARTMENT OF LABOR  
JOB TRAINING DIVISION**

**TITLE 11            LABOR            AND  
WORKERS' COMPENSATION  
CHAPTER 2        JOB TRAINING  
PART 4            W O R K F O R C E  
INVESTMENT ACT (WIA) PROGRAM  
POLICIES AND STATE TECHNICAL  
ASSISTANCE GUIDE (STAG) SYSTEM**

**11.2.4.1            ISSUING AGENCY:**  
New Mexico Department of Labor.  
[11.2.4.1 NMAC - Rp 11.2.4.1 NMAC,  
7/1/03]

**11.2.4.2            SCOPE:** The state administrative entity (SAE), state workforce development board (WDB), New Mexico workforce development areas/local workforce development boards (NMWDAs/LWDBs), and other state funded and/or WIA subrecipients as applicable. [11.2.4.2 NMAC - Rp 11.2.4.2 NMAC, 7/1/03]

**11.2.4.3            S T A T U T O R Y**

**AUTHORITY:** The Workforce Investment Act and the Federal Register volume 64, Number 72, dated April 15, 1999, Part 661, "Statewide and Local Governance of the Workforce Investment Act," Section 506(c), Pub. L. 105-220; 20 U.S.C. 9276(c) and the New Mexico Workforce Development Act, New Mexico House Bill 740, Chapter 260, Laws of 1999, Forty-fourth Legislature. [11.2.4.3 NMAC - Rp 11.2.4.3 NMAC, 7/1/03]

**11.2.4.4            D U R A T I O N :**  
Permanent.  
[11.2.4.4 NMAC - Rp 11.2.4.4 NMAC,  
7/1/03]

**11.2.4.5            EFFECTIVE DATE:**  
July 1, 2003 unless a later date is cited at the end of a section.  
[11.2.4.5.NMAC - Rp 11.2.4.5 NMAC,  
7/1/03]

**11.2.4.6            OBJECTIVE:** To update and consolidate the state SAE program rule format to assure conformance with legal requirements, uniformity in the policy development and timeliness in policy transmittal. This amendment defines the nomenclature used to designate policy and non-policy materials issued by the SAE as defined at Section 11.2.4.7 "DEFINITIONS".  
[11.2.4.6 NMAC - Rp 11.2.4.6 NMAC,  
7/1/03]

**11.2.4.7            DEFINITIONS:**  
**A.** "Rule" - Permanent written policy, rules, regulations or procedures that are determined by the state and monitored for WIA compliance. Rules enhance, add, supplement or elaborate on federal requirements making them more specific to the state of New Mexico.

**B.** "State technical assistance guide (STAG)" - Informational guidance or procedures that are non rule and not subject to state records center and archives (SRCA) processes. However, STAGs may contain policy required by federal statutes, regulations or other dictate for immediate implementation by USDOL, the SAE and/or NMWDAs/LWDBs.

**C.** "New Mexico Administrative Code" - Rules administered by the SRCA, which maintains rules filed by all state agencies.  
[11.2.4.7 NMAC - Rp 11.2.4.7 NMAC,  
7/1/03]

**11.2.4.8            ACTION:** A formal system of developing and issuing policy and guidance to NMWDAs/ LWDBs is necessary for the effective administration of WIA programs. The SAE's rule and technical information and non-rule guidance develop-

ment system was originally established and maintained via SAE Issuance and State Information Notice (SIN) format. Under this system, state rule/policy guidance, non-rule material and information was developed and distributed to the WIA network. This rule revises the Issuance/SIN format by establishing the rule and STAG format and procedures.

**A.** Rules. In accordance with the New Mexico commission of public records - state records center Rule No. 1.24.1 NMAC, "General Provisions," definitions, a rule means "any rule, regulation, order, standard or statement of policy, including amendments thereto or repeals thereof, issued or promulgated by an agency of state government and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency...." State Workforce Investment Act (WIA) policies are rules developed and issued by the SAE on behalf of the governor and/or the New Mexico workforce development board. In order to be consistent with the state records center definition, policies previously issued under Issuances shall henceforth be referred to as "rules". For purposes of this rule, a rule is distinguished from the agency's internal policies or operational procedures such as personnel actions, time and attendance, approval of leave, and other related internal operational policy/procedures. Rules are subject to system-wide review and comment, public hearing, review by legal counsel, and the final rule filed with the SRCA. Notification of a public hearing will be published 30 working days prior to the public hearing. Publication of the notice of public hearing for rule-making will be coordinated with the SRCA and other printed media as required. The rule will be disseminated for formal review and comment not less than 30 working days prior to the public hearing. At a minimum, such notice shall be published in the New Mexico Register and in at least one (1) newspaper of general circulation by the SAE. After a period of no less than 30 working days, the hearing will be conducted by designated staff of the SAE.

**B.** Owing to specific requirements of the NM SRCA, amendments to rules will be made only to those sections of the original rule affected. The entire rule will not be revised/reissued to NMWDAs/LWDBs and other state/WIA subrecipients. These entities shall provide all their subrecipients/service providers with copies of SAE rules and any amendments as appropriate.

**C.** NMWDAs/LWDBs may use the SAE rule development system to structure their rule development systems. NMWDAs/LWDBs implementing this poli-

cy system may revise it, as needed per their internal procedures. NMWDAs/LWDBs not subject to the SRCA filing requirements will adhere to appropriate and required laws and ordinances for the adoption of rules.

**D. State Technical Assistance Guides (STAGs)** transmit information and material and do not contain official rule(s) promulgated by the state and therefore are not subject to the formal review and comment process. STAGs will be used to provide information related to WIA activities. STAGs may transmit regulatory requirements and direction already established by federal law, rule or policy. STAGs shall replace SINS.

**E. Rules** will be distributed to NMWDA/LWDB and other state/WIA subrecipients. The effective date of the latest amendment to a rule will be in a bracket following the paragraph or section that has been changed. The SAE will update and distribute summary indexes of Rules and STAGs periodically. It is the responsibility of each NMWDA/LWDB and other state/WIA subrecipient to keep current on all rules and STAGs.

**F. NMWDAs/LWDBs** may draft rules, policies and guidelines, etc., which are more restrictive than state requirements provided they are consistent with WIA and state regulations. They shall be submitted to the SAE for a 30-day review and approval prior to their finalization. The SAE will ordinarily respond to the local boards within 15 working days barring any complex or regulatory issues that may need to be researched or considering the amount of rule material to be reviewed. This process will assure that such local rules/policies, and guidelines are consistent with the WIA, federal regulations, the state WIA plan and LWDB guidelines. No NMWDA/LWDB rule shall be effective without prior approval from the SAE. NMWDAs/LWDBs shall provide a current listing of all their rules/policies to the SAE at the beginning of each program year.  
[11.2.4.8 NMAC - Rp 11.2.4.8 NMAC, 7/1/03]

**11.2.4.9 CONTACT ENTITY:** Inquiries regarding this rule should be directed to the job training division at (505) 827-6827 in Santa Fe.  
[11.2.4.9 NMAC - Rp 11.2.4.10 NMAC, 7/1/03]

**11.2.4.10 DISTRIBUTION:** NM state and local WDB chairpersons, SAE NMDOL legal counsel, SAE NMDOL EEO officer, NMWDAs/LWDBs administrative staff, other state/WIA subrecipients, USDOL federal representative, and New Mexico records center and archives.  
[11.2.4.10 NMAC - Rp 11.2.4.11 NMAC,

7/1/03]

**11.2.4.11 ATTACHMENTS:**  
[RESERVED]  
[11.2.4.11 NMAC - Rp 11.2.4.12 NMAC, 7/1/03]

#### **HISTORY OF 11.2.4 NMAC:**

##### **History of the Repealed Material:**

11.2.4 NMAC, Workforce Investment Act (WIA) Policy/Program Issuance and State Information Notice (SIN) System, filed 6/16/2000 – Repealed 7/01/03

## **NEW MEXICO DEPARTMENT OF LABOR JOB TRAINING DIVISION**

### **TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 13 WORKFORCE INVESTMENT ACT (WIA) PARTICIPANT ELIGIBILITY**

**11.2.13.1 ISSUING AGENCY:**  
New Mexico Department of Labor.  
[11.2.13.1 NMAC – Rp 11.2.13.1 NMAC, 7/1/03]

**11.2.13.2 SCOPE:** The state administrative entity (SAE), state workforce development board (WDB), New Mexico workforce development areas/local workforce development boards (NMWDAs/LWDBs), and other state funded and/or WIA subrecipients as applicable.  
[11.2.13.2 NMAC – Rp 11.2.13.2 NMAC, 7/1/03]

**11.2.13.3 STATUTORY AUTHORITY:** Title I of the Workforce Investment Act of 1998 and the Final Rules codified in Federal Register volume 65, Number 156, dated August 11, 2000, Part 663, "Adult and Dislocated Worker Activities" and Part 664 "Youth Activities," Pub. L. 105-220; 20 U.S.C. 9276(c) and the New Mexico Workforce Development Act, New Mexico House Bill 740, Chapter 260, Laws of 1999, Forty-fourth Legislature.  
[11.2.13.3 NMAC – Rp 11.2.13.3 NMAC, 7/1/03]

**11.2.13.4 DURATION:**  
Permanent.  
[11.2.13.4 NMAC – Rp 11.2.13.4 NMAC, 7/1/03]

**11.2.13.5 EFFECTIVE DATE:**  
July 1, 2003 unless a later date is cited at the end of a section.  
[11.2.13.5 NMAC – Rp 11.2.13.5 NMAC, 7/1/03]

**11.2.13.6 OBJECTIVE:** To provide New Mexico rules that extend and support federal and state laws and regulations. All NMWDAs/ LWDBs and WIA subrecipients operating programs starting July 1, 2003 must distribute and follow the eligibility requirements and verification guides transmitted in State Technical Assistance Guide (STAG) 01.03, "Workforce Investment Act (WIA) Participant Eligibility" which will go into effect immediately and remain in effect until further notice. This STAG is to be used when enrolling adults and dislocated workers into core, intensive and training services and youth as appropriate.  
[11.2.13.6 NMAC – Rp 11.2.13.6 NMAC, 7/1/03]

**11.2.13.7 DEFINITIONS:** Definitions related to this rule appear in State Technical Assistance Guide (STAG) 01.03, "Workforce Investment Act (WIA) Participant Eligibility."  
[11.2.13.7 NMAC – Rp 11.2.13.7 NMAC, 7/1/03]

**11.2.13.8 ACTION:** The WIA Title I provides for services to adults and dislocated workers at three service levels (core, intensive and training services) and for youth with differing criteria for eligibility. This rule transmits eligibility criteria and acceptable verification documentation requirements that all one-stop centers and service providers must follow. State Technical Assistance Guide (STAG) 01.03, "Workforce Investment Act (WIA) Participant Eligibility," and any amendments thereto, incorporated into this rule by reference, provides instruction forms and procedures for determining and verifying eligibility for Title I programs.  
[11.2.13.8 NMAC – Rp 11.2.13.8 NMAC, 7/1/03]

**11.2.13.9 CONTACT ENTITY:** Inquiries regarding this rule should be directed to the job training division at (505) 827-6827 in Santa Fe.  
[11.2.13.9 NMAC – Rp 11.2.13.10 NMAC, 7/1/03]

**11.2.13.10 DISTRIBUTION:** NM state and local WDB chairpersons, SAE NMDOL legal counsel, SAE NMDOL EEO officer, NMWDAs/LWDBs administrative staff, other state/WIA subrecipients, USDOL federal representative, and New Mexico records center and archives.  
[11.2.13.10 NMAC – Rp 11.2.13.11 NMAC, 7/1/03]

**11.2.13.11 ATTACHMENTS:** State Technical Assistance Guide (STAG) "Workforce Investment Act (WIA)

Participant Eligibility" 01-03.  
[11.2.13.11 NMAC - Rp 11.2.13.12  
NMAC, 7/1/03]

#### HISTORY OF 11.2.13 NMAC:

##### History of the Repealed Material:

11.2.13 NMAC, Workforce Investment Act  
(WIA) Participant Eligibility, filed 5/17/01  
- Repealed 7/01/03

### NEW MEXICO PUBLIC REGULATION COMMISSION TRANSPORTATION DIVISION

18 NMAC 60.1, General Provisions; 18  
NMAC 60.2, Reports Required for New  
Master Meters and Third Party Damage; 18  
NMAC 60.3, Requirement of Filing of  
Procedural Manual; 18 NMAC 60.4,  
Classification and Repair of Leaks; 18  
NMAC 60.5, Pipeline Safety Program  
Procedures; 18 NMAC 60.6, Transportation  
of Natural and Other Gas by Pipeline:  
Minimum Federal Safety Standards:  
Annual and Incident Reports; 18 NMAC  
60.7, Transportation of Natural and Other  
Gas by Pipeline: Minimum Federal Safety  
Standards; 18 NMAC 60.8, Transportation  
of Hazardous Liquids by Pipeline; 18  
NMAC 60.9, Pipeline Safety Regulations:  
Drugs & Alcohol Testing; 18 NMAC 60.10,  
Procedures for Transportation Workplace  
Drug & Alcohol Testing Programs, all filed  
5-1-96, are repealed effective 7-1-03 and  
replaced by 18.60.2 NMAC, Pipeline  
Safety, effective 7-1-03.

### NEW MEXICO PUBLIC REGULATION COMMISSION TRANSPORTATION DIVISION

#### TITLE 18: TRANSPORTATION AND HIGHWAYS CHAPTER 60: PIPELINE CON- STRUCTION AND MAINTENANCE PART 2: PIPELINE SAFETY

**18.60.2.1 ISSUING AGENCY:**  
New Mexico Public Regulation  
Commission.  
[18.60.2.1 NMAC - Rp, 18 NMAC 60.1.1-  
18 NMAC 60.10.1, 7-1-03]

**18.60.2.2 SCOPE:** This rule  
applies to all owners and operators of gas  
and hazardous liquid pipelines and under-  
ground facilities and excavators in New  
Mexico subject to the jurisdiction of the  
Commission pursuant to applicable laws.  
[18.60.2.2 NMAC - Rp, 18 NMAC 60.1.2-  
18 NMAC 60.10.2, 7-1-03]

**18.60.2.3 STATUTORY  
AUTHORITY:** NMSA 1978, Sections 8-  
8-4, 62-14-9.1, 62-14-10, and 70-3-13.  
[18.60.2.3 NMAC - Rp, 18 NMAC 60.1.3-  
18 NMAC 60.10.3, 7-1-03]

**18.60.2.4 DURATION:**  
Permanent.  
[18.60.2.4 NMAC - Rp, 18 NMAC 60.1.4-  
18 NMAC 60.10.4, 7-1-03]

**18.60.2.5 EFFECTIVE DATE:**  
July 1, 2003, unless a later date is cited at  
the end of a section.  
[18.60.2.5 NMAC - Rp, 18 NMAC 60.1.5-  
18 NMAC 60.10.5, 7-1-03]

**18.60.2.6 OBJECTIVE:** The  
purpose of this rule is to implement the New  
Mexico Excavation Law, NMSA 1978  
Sections 62-14-1 et seq., and the Pipeline  
Safety Act, NMSA 1978 Sections 70-3-11  
to 70-3-20.  
[18.60.2.6 NMAC - Rp, 18 NMAC 60.1.6-  
18 NMAC 60.10.6, 7-1-03]

**18.60.2.7 DEFINITIONS:** In  
addition to the definitions in 49 CFR Parts  
40, 190, 191, 192, 195, and 199, and NMSA  
1978 Sections 62-14-2 and 70-3-12, as used  
in this rule:

**A. applicable laws** means  
the NMEL, PSA, HLPESA, NGPSA, HMTA,  
and this rule, and Commission orders issued  
pursuant to them.

**B. business district**  
means, when applying the federal regula-  
tions adopted by this rule, a location where  
gas mains are utilized to serve customers  
that are predominantly commercial in  
nature, and where the street and/or sidewalk  
paving generally extends from the center-  
line of a thoroughfare to the established  
building line on either side, or as designated  
by the Director.

**C. Director** means the  
Director of the Transportation Division of  
the New Mexico Public Regulation  
Commission or his designee.

**D. HLPESA** means the  
Hazardous Liquid Pipeline Safety Act, 49  
USC Sections 2001 et seq.

**E. HMTA** means the  
Hazardous Materials Transportation Act, 49  
USC Sections 1801 et seq.

**F. NGPSA** means the  
Natural Gas Pipeline Safety Act, 49 USC  
Sections 60101 et seq.

**G. NMEL** means the New  
Mexico Excavation Law, NMSA 1978  
Sections 62-14-1 et seq.

**H. PSA** means the  
Pipeline Safety Act, NMSA 1978 Sections  
70-3-11 to 70-3-20.

**I. respondent** means an  
owner or operator of gas and hazardous liq-

uid pipelines or underground facilities or an  
excavator.

**J. staff** means the staff of  
the Pipeline Safety Bureau of the  
Transportation Division of the Public  
Regulation Commission.  
[18.60.2.7 NMAC - Rp, 18 NMAC 60.1.7,  
7-1-03]

#### 18.60.2.8 ADOPTION OF PORTIONS OF THE CODE OF FED- ERAL REGULATIONS:

**A. Adoption by refer-  
ence.** Except for the variances set forth in  
subsection B of this section, the  
Commission adopts the following portions  
of the Code of Federal Regulations pertain-  
ing to gas and hazardous liquid pipeline  
operators and facilities, and concerning the  
health, safety, and welfare of persons and  
property in New Mexico, as part of this  
rule:

(1) Pipeline safety programs and  
procedures. 49 CFR 190.5, 190.233(a) and  
(b), and 190.237.

(2) Annual, incident, and safety  
related condition reports. 49 CFR Part 191.

(3) Minimum federal safety stan-  
dards. 49 CFR Part 192.

(4) Transportation of hazardous  
liquids by pipeline. 49 CFR Part 195.

(5) Drug and alcohol testing. 49  
CFR Parts 40 and 199.

#### **B. New Mexico variances to adopted federal regulations.**

(1) The reporting threshold in  
New Mexico shall be \$5,000 instead of the  
\$50,000 reporting threshold established in  
49 CFR 191.3.

(2) Leakage surveys of transmis-  
sion lines in New Mexico shall be conduct-  
ed using leak detection equipment but shall  
otherwise be conducted in accordance with  
49 CFR 192.706(b).

#### **C. Interpretation of ref- erences in federal regulations.**

(1) References in the Code of  
Federal Regulations to "state agency" shall  
be deemed references to the Transportation  
Division of the New Mexico Public  
Regulation Commission;

(2) References in 49 CFR  
190.233(a) and (b) to the "Associate  
Administrator, OPS" shall be deemed refer-  
ences to the Director of the Transportation  
Division of the New Mexico Public  
Regulation Commission; and

(3) References in 49 CFR  
190.233(a) and (b) to 49 CFR 190.233(c),  
49 CFR 190.233(c)(2), or 49 CFR 190.  
233(g) shall be deemed references to  
18.60.2.10 NMAC through 18.60.2.16  
NMAC.

[18.60.2.8 NMAC - Rp, 18 NMAC 60.1.23,  
60.1.24, 60.1.26, 60.5.8, 60.6.8, 60.7.8,  
60.8.8, 60.9.8, and 60.10.8, 7-1-03]



**18.60.2.9 INSPECTIONS AND INVESTIGATIONS:**

**A.** Staff is authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, those records and pipeline facilities of an owner or operator relevant to determining whether the owner or operator is in compliance with applicable laws.

**B.** Staff may conduct an inspection pursuant to:

- (1) scheduling by staff;
- (2) a written complaint received from a member of the public;
- (3) information obtained from a previous inspection;
- (4) an accident or incident; or
- (5) whenever the Commission or the Director deems it appropriate.

**C.** If, after an inspection, staff believes that further information is needed to determine appropriate action, staff may send a request for specific information to the owner or operator. The owner or operator shall answer the request within thirty (30) days of its receipt.

**D.** The Commission may, subject to applicable laws, require testing of portions of facilities that have been involved in, or affected by, an accident. The Commission shall make every effort to negotiate with the owner or operator of the facility a mutually acceptable plan for performing the testing.

**E.** When the information obtained from an inspection or from other appropriate sources indicates that further Commission action is warranted, the Director shall issue a notice of probable violation or notice of intent to issue a hazardous facility order, as appropriate. [18.60.2.9 NMAC - Rp, 18 NMAC 60.1.8, 7-1-03]

**18.60.2.10 SERVICE OF PROCESS:** Whenever this rule requires notice or other process to be served on a respondent, the notice or other process shall be served at the last known business address of the respondent. [18.60.2.10 NMAC - N, 7-1-03]

**18.60.2.11 NOTICE OF PROBABLE VIOLATION:**

**A.** Except as otherwise provided in this rule, the Director shall begin an enforcement proceeding by serving a notice of probable violation on the respondent.

**B.** A notice of probable violation shall include a statement of those provisions of applicable laws that the respondent is alleged to have violated, a statement of the evidence upon which the allegations are based, and a statement that the respondent may request a compliance

conference. A respondent shall respond to the allegations within ten (10) days of receipt of the notice of probable violation. Any request for a compliance conference shall also be made within ten (10) days of receipt of the notice of probable violation.

**C.** If, in his discretion, the Director determines that a compliance conference would be useful, the notice of probable violation shall also contain a date, time and location for a compliance conference, and a statement that if the respondent fails to appear for the compliance conference, the Director may request a hearing or file a petition in district court for injunctive action.

**D.** The Director may amend a notice of probable violation at any time prior to issuance of a final order. [18.60.2.11 NMAC - Rp, 18 NMAC 60.1.9, 7-1-03]

**18.60.2.12 COMPLIANCE CONFERENCE:**

**A.** The Director may conduct a compliance conference with the respondent at the date, time and place set forth in the notice of probable violation, or at such other time agreed to by the Director and the respondent. At the compliance conference, the Director shall explore with the respondent the possibility of obtaining voluntary compliance with applicable laws. If the respondent does not agree to terms, conditions, and a timetable that is satisfactory to the Director, or if the respondent fails to appear for the compliance conference, the Director may request a hearing or file a petition in district court for injunctive action.

**B.** Nothing in this section shall be construed to prohibit the Director from requesting a hearing or filing a petition in district court for injunctive action without a compliance conference when the Director deems it to be in the public interest. [18.60.2.12 NMAC - Rp, 18 NMAC 60.1.10, 7-1-03]

**18.60.2.13 REQUEST FOR HEARING:**

If, after the notice of probable violation has been served on the respondent, a compliance conference was not held or was unsuccessful, or the respondent failed to appear, staff shall request a hearing to determine the nature and extent of the violation. The request for a hearing shall include: a statement of the applicable laws the respondent is alleged to have violated; a summary of the respondent's response to the notice of probable violation; and copies of inspection reports pertinent to the alleged violations. The Commission shall appoint a hearing examiner within ten (10) days of receipt of the request for hearing. [18.60.2.13 NMAC - Rp, 18 NMAC 60.1.12, 7-1-03]

**18.60.2.14 HEARING:**

**A.** Within ten days after appointment, the hearing examiner shall:

- (1) fix a time and location for a public hearing on the alleged violations; and
- (2) serve notice of the hearing upon the respondent not less than ten (10) days prior to the date of the hearing.

**B.** The hearing will be conducted in accordance with the PRC Rules of Procedure. The hearing examiner shall prepare a detailed record of the hearing.

[18.60.2.14 NMAC - Rp, 18 NMAC 60.1.13, 7-1-03]

**18.60.2.15 ORDER ADOPTING STIPULATION:**

**A.** At any time before the issuance of a final order, the Director and the respondent may agree to resolve any case by stipulation. Such stipulation may include an assessment or waiver of a civil penalty. If the Commission approves the stipulation, it shall adopt it as a final order.

**B.** A stipulation shall include:

- (1) an admission by the respondent of all jurisdictional facts;
- (2) an express waiver of the right to pursue further procedural remedies before the Commission and of the right to seek judicial review or otherwise challenge or contest the validity of the order adopting the stipulation;

(3) an acknowledgement that the notice of probable violation may be used to construe the terms of the order adopting the stipulation; and

(4) a statement of the actions to be taken by the respondent and the time by which such actions shall be accomplished.

[18.60.2.15 NMAC - Rp, 18 NMAC 60.1.14, 7-1-03]

**18.60.2.16 FINAL ORDER:**

After a hearing, the Commission shall issue a final order that includes:

**A.** findings of fact and conclusions of law;

**B.** the amount of the penalty and the procedure for its payment, if a civil penalty is assessed; and

**C.** a statement of the actions required to be taken by the respondent and the time by which such actions must be accomplished.

[18.60.2.16 NMAC - Rp, 18 NMAC 60.1.15, 7-1-03]

**18.60.2.17 PAYMENT OF PENALTY:**

**A.** A respondent shall pay a civil penalty assessed in a final order by certified check or money order made payable to the New Mexico Public

Regulation Commission and shall address the payment to the Public Regulation Commission, Transportation Division Director, Post Office Box 1269, Santa Fe, New Mexico 87504-1269.

**B.** If a respondent fails to pay the full amount of a civil penalty within twenty (20) days of receipt of a final order, the Commission may file an action in district court to collect the assessed penalty. [18.60.2.17 NMAC - Rp, 18 NMAC 60.1.22, 7-1-03]

**18.60.2.18 NOTICE OF INTENTION TO CONSTRUCT:** Prior to the start of construction of any new or replacement intrastate natural gas pipeline with a total construction value of \$50,000 or more, the operator of such pipeline shall give written notice of its intent to construct to the Transportation Division Director, Post Office Box 1269, Santa Fe, New Mexico, 87504-1269. The notice of intent to construct shall state:

**A.** the pipe material;  
**B.** the finished diameter, length, and approximate location of the pipeline;

**C.** the size and capacity of any compressors or pumps;

**D.** and the contemplated date construction will commence.

[18.60.2.18 NMAC - N, 7-1-03]

**18.60.2.19 REPORTS OF MASTER METERS:**

**A.** Annually, by March 15, each owner or operator of a gas distribution or transmission system shall report to the Director the name, address, and location of any master meter operator connected to its facilities.

**B.** Each owner or operator of a gas distribution or transmission system shall report to the Director the name, address, and location of any master meter operator for whom a meter has been requested. Such report shall be made by the 15th day of the month following the month of request.

[18.60.2.19 NMAC - Rp, 18 NMAC 60.2.8, 7-1-03]

**18.60.2.20 REPORTS OF THIRD PARTY DAMAGE:**

**A.** In addition to all other reports required by applicable laws, each owner or operator of an underground facility, as defined in NMSA 1978 Section 62-14-2, shall report to the Director, in writing, any incident in which the owner or operator's underground facility is damaged, or any person is injured by any person not employed by the owner or operator. For purposes of this subsection, incident is to be taken in its general sense and is not to be

restricted to the definition given in 49 CFR 191.3.

**B.** The report shall include the identity of the alleged violator, if known, and all pertinent information required by the Director.

**C.** The report shall be made by the 15th day of the month following the month of occurrence, or within thirty (30) days of occurrence, whichever is later.

**D.** The operator shall make available to the Director within a reasonable time such other information or documentation as the Director may require regarding any incident reportable under this section.

[18.60.2.20 NMAC - Rp, 18 NMAC 60.2.9, 7-1-03]

**18.60.2.21 OPERATION AND MAINTENANCE MANUAL:**

Each owner or operator of gas or hazardous liquid pipeline facilities in New Mexico, whether above ground or underground, shall file with the Director a manual prescribing its procedures for emergencies and for inspection and maintenance of each pipeline facility it owns or operates and a plan for classification and repair of leaks consistent with 18.60.2.20 NMAC. Each change to the manual must be filed with the Director within twenty (20) days after the change is made.

[18.60.2.21 NMAC - Rp, 18 NMAC 60.3.8, 7-1-03]

**18.60.2.22 CLASSIFICATION AND REPAIR OF LEAKS:** Immediately upon discovery, and in accordance with generally accepted industry criteria, an owner or operator shall classify a leak as:

**A.** a hazardous leak, Grade I or C, if it is a leak which, due to its location and/or magnitude, constitutes an immediate hazard to persons or property;

**B.** a potentially hazardous leak, Grade II or B, if it is a leak that does not constitute an immediate hazard, but may become hazardous if not repaired within a reasonable time period; or

**C.** a non-hazardous leak, Grade III or A, if it is a leak which does not constitute a hazard and shows no indication of becoming hazardous before routine scheduled repair could be accomplished.

[18.60.2.22 NMAC - Rp, 18 NMAC 60.4.8, 7-1-03]

**18.60.2.23 EXCAVATION DAMAGE TO UNDERGROUND FACILITIES:**

**A. Alternative dispute resolution available.**

**(1)** The Commission encourages owners and operators of underground facil-

ities and excavators to privately negotiate and settle disputes arising from excavation damage to underground facilities.

**(2)** In the event the parties are unable to resolve such disputes privately, any owner or operator of underground facilities or any excavator may request mediation or arbitration from the Commission.

**B. Participation by staff.** Staff may participate in mediation or arbitration proceedings.

[18.60.2.23 NMAC - N, 7-1-03]

**18.60.2.24 MEDIATION OF EXCAVATION DAMAGE DISPUTES:**

**A. Designation of mediator.** If any of the parties request mediation, the Commission shall designate a mediator. The mediator may be a permanent or temporary employee of the Commission or another state agency or any other individual acceptable to the parties. If the parties request a mediator who is not an employee of the Commission, the Commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services. The mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time the mediator is assigned by the Commission and all parties agree that the mediator may serve. The mediator shall not, subsequent to serving as a mediator in an excavation damage dispute, participate in any subsequent proceeding in the same cause as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding.

**B. Duties of mediator.** The mediator shall notify the parties by telephone or mail of the time and place of the mediation conference, which will be held at Commission offices unless otherwise directed by the mediator. The notice may direct the parties to send the mediator, but not other parties, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the damage. In addition, the mediator may require counsel to have their clients present at the mediation conference or accessible by telephone. The mediation conference shall be held within twenty (20) days of the date of the notice unless good cause is shown for an extension. If the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution. If the parties are unable to reach a complete settlement of their dispute, the mediator shall

advise the parties that they may request arbitration or file an action for civil liability for damages in district court.

**C. Inadmissibility of settlement offers.** Offers of settlement and statements in furtherance of settlement made in the course of mediation are privileged and, except by agreement among all parties, shall not be admissible as evidence in any formal hearing before the Commission nor disclosed by the mediator voluntarily or through discovery or compulsory process.

[18.60.2.24 NMAC - N, 7-1-03]

**18.60.2.25 BINDING ARBITRATION OF EXCAVATION DAMAGE DISPUTES:**

**A. Request for arbitration.** Any party to a dispute arising from excavation damage to underground facilities may request binding arbitration of the dispute. The request shall be in writing to the Commission and shall include a concise statement of the grounds for the dispute, the remedy sought, and an acknowledgment that the requesting party agrees to be bound by the decision of the arbitrator. The Commission shall forward the request for arbitration to all other parties and require that they submit a written response within ten (10) days of receipt of the Commission's letter forwarding the request.

(1) If the other parties agree to arbitration of the dispute, they shall include in their response to the Commission a concise statement of their position with regard to the merits of the dispute and an acknowledgment that they agree to be bound by the decision of the arbitrator.

(2) If the other parties will not agree to arbitration, they shall so state in their response.

(3) If the other parties either fail to respond to a request for arbitration or do not agree to arbitration, the requesting party retains the right to proceed with an action for civil liability for damages in district court.

**B. Designation of arbitrator.** If all parties agree to arbitration, the Commission shall designate an arbitrator. The arbitrator may be a permanent or temporary employee of the Commission or another state agency or any other individual who is acceptable to the parties to the dispute. The designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the Commission's designation and all parties agree that the arbitrator may serve. The parties shall be required to indicate their consent in writing to the designated arbitrator within ten (10) days of the date of the

Commission's letter of designation. If the parties request an arbitrator who is not an employee of the Commission, the Commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the arbitrator's services. Any employee of the Commission designated to arbitrate a dispute under these provisions shall not participate in any subsequent proceeding in the same cause regarding excavation damage to underground facilities as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding.

**C. Duties of arbitrator.**

(1) The arbitrator shall render a decision in the arbitration proceeding within sixty (60) days of the date the parties approved the arbitrator, unless good cause exists to extend the time.

(2) The arbitrator shall fix a time and place for an arbitration and shall serve notice of arbitration on all parties at least ten (10) days in advance of the arbitration. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths. The parties may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator shall decide the relevancy and materiality of the evidence offered. The arbitrator shall give consideration to but shall not be bound by the New Mexico Rules of Evidence. No stenographic or electronic record will be made of the testimony at the hearing unless requested by a party, who shall bear the cost of the record.

(3) The arbitrator shall permit discovery only if it will not unduly complicate, burden, or impede the expeditious and informal nature of the proceeding.

(4) At the close of or soon after the hearing, the arbitrator will issue a brief written decision, which need not contain findings of fact and conclusions of law. The arbitrator's decision will be binding on the parties, but will not be deemed a decision of the Commission and shall have no precedential effect.

**C. Inadmissibility of settlement offers.** Unless agreed to by all the parties, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process. Nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclu-

sions and the bases for them.  
[18.60.2.25 NMAC - N, 7-1-03]

**18.60.2.26 REFERRAL FOR PROSECUTION:** If an employee of the Transportation Division of the New Mexico Public Regulation Commission becomes aware of any actual or possible activity subject to criminal penalties under NMSA 1978, Section 70-3-19, the employee shall report such actual or possible activity to the office of the Attorney General for the state of New Mexico.

[18.60.2.26 NMAC - N, 7-1-03]

**NEW MEXICO PUBLIC REGULATION COMMISSION UTILITY DIVISION**

17 NMAC 10.572, which was recompiled as 17.9.572 NMAC, Renewable Energy Development Program, is repealed effective 7-1-03 and replaced by 17.9.572 NMAC, Renewable Energy as a Source of Electricity, effective 7-1-03.

**NEW MEXICO PUBLIC REGULATION COMMISSION UTILITY DIVISION**

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES CHAPTER 9 ELECTRIC SERVICES PART 572 RENEWABLE ENERGY AS A SOURCE OF ELECTRICITY**

**17.9.572.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.  
[17.9.572.1 NMAC - Rp, 17 NMAC 10.572.1, 7-1-03]

**17.9.572.2 SCOPE:** This rule applies to every person generating or selling electric energy for ultimate consumption in New Mexico that is subject to the jurisdiction of the New Mexico Public Regulation Commission as provided by the Public Utility Act.  
[17.9.572.2 NMAC - Rp, 17 NMAC 10.572.2, 7-1-03]

**17.9.572.3 STATUTORY AUTHORITY:** The New Mexico Constitution, Article XI, Section 2; NMSA 1978 Sections 8-8-4, 8-8-12, 8-8-15, 62-3-1, 62-3A-2, 62-3A-19, 62-3A-20, 62-6-4, 62-6-19, 62-8-1, 62-8-2, and 62-8-7.

[17.9.572.3 NMAC - Rp, 17 NMAC 10.572.3, 7-1-03]

**17.9.572.4 DURATION:** Permanent.

[17.9.572.4 NMAC - Rp, 17 NMAC 10.572.4, 7-1-03]

**17.9.572.5 EFFECTIVE DATE:** July 1, 2003, unless a later date is cited at the end of a section.

[17.9.572.5 NMAC - Rp, 17 NMAC 10.572.5, 7-1-03]

**17.9.572.6 OBJECTIVE:** The purpose of this rule is to establish a process for promoting the use and development of renewable energy in New Mexico to assure that electric consumers obtain adequate and reliable electric services at just and reasonable rates. Encouraging the use of renewable resources will provide diversity and so strengthen the stability of electricity supply. It will also enhance the health and welfare of the state by preserving the environment, stimulating economic development, and conserving water and non-renewable resources, while reducing the state's reliance on fossil fuel resources and vulnerability to market fluctuations.

[17.9.572.6 NMAC - Rp, 17 NMAC 10.572.6, 7-1-03]

**17.9.572.7 DEFINITIONS:** Unless otherwise specified, as used in this rule:

**A. biomass co-firing** means the simultaneous combustion of biomass with a fossil fuel to produce electrical energy either at a new facility or at an existing facility modified to accept biomass fuels.

**B. certifying source** means a generator or seller of renewable energy who issues renewable energy certificates in accordance with the values established in Paragraph 1 of Subsection C of 17.9.572.10 NMAC, certifying that the output or energy supplies produced comply with the definition of renewable energy set forth in subsection E of this section.

**C. procure** means to contract for the purchase of renewable energy through renewable energy certificates from a certifying source for a period of at least ten (10) years.

**D. renewable energy** means electrical energy generated by means of a low- or zero-emissions generation technology that has substantial long-term production potential and may include, without limitation, solar, wind, hydropower, geothermal, biomass, including but not limited to agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from

river basins or watersheds in New Mexico, landfill gas, anaerobically digested waste biomass or fuel cells that are not fossil fueled, but does not include fossil fuel or nuclear energy.

**E. renewable energy certificate** means a certificate issued by a certifying source which evidences the procurement or acquisition of renewable energy by a public utility to satisfy the portfolio standard requirement of this rule.

**F. renewable portfolio standard** means the amount of renewable energy required by this rule, expressed as a percentage of total energy, generated or procured, and distributed by a public utility to its retail New Mexico customers.

[17.9.572.7 NMAC - Rp, 17 NMAC 10.572.7, 7-1-03]

**17.9.572.8 LIBERAL CONSTRUCTION:** This rule shall be liberally construed to carry out its intended purposes. If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, the remainder of the rule, or the application of such provision to other persons or circumstances, shall not be affected thereby.

[17.9.572.8 NMAC - N, 7-1-03]

**17.9.572.9 RELATIONSHIP TO OTHER COMMISSION RULES:** This rule repeals NMPRC rule 572, which had been suspended by Commission Order in Utility Case No. 2860 on August 25, 1999. This rule contemplates that the Commission will re-open Case Number 3312, the rule-making proceeding for self-generation and interconnection standards in which the proposed rule is also numbered 572. Unless otherwise specified, this rule does not supersede any other rule of the Commission but supplements rules applying to public utilities, including, but not limited to, NMPRC rules 570 and 571. In the case of conflict, the provisions of this rule shall apply.

[17.9.572.9 NMAC - Rp, 17 NMAC 10.572.8, 7-1-03]

**17.9.572.10 RENEWABLE ENERGY OFFER OF SERVICE:**

**A. Renewable portfolio standard.**

(1) Each public utility shall develop an energy portfolio appropriate to its suppliers and customers. The portfolio shall include a progressively greater percentage of service from renewable sources, on a reasonable cost basis. The portfolio shall be diversified as to type of renewable resource, taking into consideration the overall reliability, availability, dispatch flexibility and cost of the various renewable resources made available by providers and

generators. Other factors being equal, preference shall be given to renewable energy generated in New Mexico.

(2) By January 1, 2006, the renewable portfolio standard shall be at least five percent (5%) of retail jurisdictional energy sales. The renewable portfolio standard shall then increase by an amount of not less than one percent (1%) per year for each year until the renewable portfolio standard of ten percent (10%) is attained in the year 2011. Upon and after January 1, 2011 the renewable portfolio standard shall be at least ten percent (10%) of all retail jurisdictional energy sales.

**B. Renewable energy preference.** In procuring, acquiring or constructing facilities for its electric energy supply, a public utility shall prefer renewable energy over non-renewable sources if the life cycle costs of the renewable energy are similar to non-renewable sources on a net present value cost basis.

**C. Renewable energy transactions.** All transactions between public utilities and suppliers of renewable energy shall be documented through renewable energy certificates.

(1) Certificates shall be issued in the following values:

(a) Each kilowatt hour of electricity generated by wind or hydroelectric technologies, plants, or sources shall represent one (1) kilowatt hour toward compliance with the renewable portfolio standard.

(b) Each kilowatt hour of electricity generated by biomass, geothermal, landfill gas, or fuel cell technologies, plants, or sources shall represent two (2) kilowatt hours toward compliance with the renewable portfolio standard.

(c) Each kilowatt hour of electricity generated by solar technologies, plants or sources shall represent three (3) kilowatt hours toward compliance with the renewable portfolio standard.

(d) Only the biomass contribution to the electricity generated from a co-firing facility will be accepted as renewable energy generation for the purposes of meeting the renewable portfolio standard. Existing or new facilities that fuel-switch between biomass and other fuels can also contribute to the renewable portfolio standard. For a fuel-switching facility, only the biomass contribution to a facility's generation can count toward the renewable portfolio standard.

(e) A renewable energy source may be certified for purposes of this rule if it is developed in combination with a fossil fuel source; however, only the amount of energy from the renewable resource shall qualify for purposes of meeting the renewable portfolio standard.

(f) Hydroelectric generation shall

be limited to new facilities of five (5) megawatts or less for the purposes of complying with the renewable portfolio standard.

(2) Renewable energy certificates are owned by producers of renewable energy in amounts corresponding to the total output available for actual delivery to customers in New Mexico in accordance with the values established in paragraph 1 of this subsection, until transferred by sale to a public utility.

(3) Renewable energy certificates may be traded, sold, or otherwise transferred by their owner to any other party. Such transfers do not require the physical delivery of electrical energy represented by the certificate, provided that the energy is metered in New Mexico in accordance with paragraph 9 of this subsection.

(4) Renewable energy certificates once used by a public utility to satisfy its renewable portfolio standard shall be retired. A retired certificate cannot be further transferred or used by any public utility to meet the renewable portfolio standard.

(5) Unless retired, a renewable energy certificate issued for any year that is not used by a public utility to satisfy its renewable portfolio standard may be carried forward for use in subsequent years. In no event shall any renewable energy certificate have a value beyond four (4) years from the date of its issuance.

(6) Renewable energy certificates shall state, at a minimum, the producer, the source, the location of the source, the date of original issue, and the value of the number of kilowatt hours in accordance with paragraph 1 of this subsection that are included in the transaction. All certificate transactions shall be documented by both the transferor and transferee in a manner that would allow the Commission to track the transactions and the certificates.

(7) The Commission shall examine the records of renewable energy certificates maintained by a public utility in its review of each public utility's annual portfolio summary as set forth in Subsection C of 17.9.572.11 NMAC.

(8) Public utilities shall be responsible for demonstrating that any and all renewable energy certificates used to meet the renewable portfolio standard of this rule are derived from eligible resources, are valid, and have not been retired or transferred to another party.

(9) Each renewable energy certificate shall represent kilowatt hours of renewable energy produced by a certifying source and valued in accordance with paragraph 1 of this subsection that is metered in New Mexico.

#### **D. Voluntary renewable tariffs.**

(1) Each public utility shall offer a voluntary renewable energy tariff for those customers who want the option to purchase additional renewable energy. The tariff shall set out any applicable conditions as to price, quantity and term of agreement.

(2) The voluntary renewable tariff may also include provisions to enable consumers to purchase renewable energy within certain energy blocks and by source of renewable energy. Additionally, each public utility shall develop an educational program on the benefits and availability of its voluntary renewable energy program. The tariff, along with the details of the consumer educational program, shall be filed with the Commission not later than sixty (60) days after the effective date of this rule.

(3) Those investor-owned utilities that, as of December 17, 2002, have all-requirements contracts that expire after January 1, 2006 shall be exempt from the renewable portfolio standard until the earlier of the date of their next contract forward or the date on which the all-requirements contract is amended or renegotiated.

[17.9.572.10 NMAC - Rp, 17 NMAC 10.572.14 & 17 NMAC 10.572.18, 7-1-03]

#### **17.9.572.11 PORTFOLIO FILINGS:**

##### **A. Renewable energy plan.**

(1) By November 1, 2003, each public utility shall file with the Commission its general long-term strategy for satisfying the renewable portfolio standard set forth in Subsection A of 17.9.572.10 NMAC. The plan shall provide a diversified renewable energy portfolio, incorporating reasonable levels of the following renewable resource types: wind, geothermal, solar, biomass, and hydro. The plan shall address the manner of generating or procuring energy and capacity from renewable resources and how the renewable energy resource preference requirements of Subsection B of 17.9.572.10 NMAC are to be met and quantified. The plan shall also explain in detail, by type of renewable resource, the manner of assessing transmission capacity availability, the location of and transmission access to the renewable energy resource, the long and short term marginal costs of the renewable energy and capacity, the dispatch flexibility of the renewable energy and capacity, and the reliability, availability and environmental benefits of the renewable energy and capacity to be generated or procured. In addition, the plan may consider issues of timing, contracting, incentives, and cost recovery mechanisms.

(2) Notice and a copy of the renewable energy plan shall be served by first class mail on all interested persons, including renewable resource providers

requesting such notice from the Commission, the Attorney General, and the intervenors in the public utility's most recent rate case, and shall be posted on the public utility's website. Any person challenging the renewable energy plan shall file its objections within fourteen (14) days after service of the notice, and set forth in detail the reasons for the objections. If the Commission finds probable cause to hold a hearing on the plan and objections, the Commission shall set the matter for hearing as provided by statute. If no objections are filed, the Commission shall approve or modify the renewable energy plan within sixty (60) days of the filing.

##### **B. Portfolio filing.**

(1) By October 1, 2004 and then by October 1 of each subsequent year, each public utility shall file with the Commission its specific proposed portfolio of power supply, including anticipated power, energy, and ancillary services requirements and power, energy, and ancillary services resources anticipated to be relied upon, including estimated costs, for the following calendar year. The portfolio filing shall set forth in detail:

(a) the efforts by the public utility to ensure that the filing is consistent with the renewable energy plan; and

(b) the cost impact on customers by customer class.

(2) Notice and a copy of the portfolio filing shall be served by first class mail on all interested persons, including renewable resource providers requesting such notice from the Commission, the Attorney General, and the intervenors in the public utility's most recent rate case, and shall be posted on the public utility's website. Any person challenging the portfolio filing shall file its objections within fourteen (14) days after service of the notice, and set forth in detail the reasons for the objections. If the Commission finds probable cause to hold a hearing on the filing and objections, the Commission shall set the matter for hearing as provided by statute. If no objections are filed, the Commission shall approve or modify the portfolio filing within sixty (60) days of the filing.

**C. Annual portfolio summary.** By July 1, 2004 and then by July 1 of each subsequent year, each public utility shall file with the Commission a report on its power supply for the previous calendar year. This report shall include an itemization of all power and energy purchases and sales, and a complete list, with copies, of all renewable energy certificates. This report shall set forth the renewable energy certificate purchases and sales, including those to be applied in future years, and shall indicate the seller's name, term of each transaction, quantity purchased, the purchase price, and

other data useful to the Commission in evaluating the public utility's efforts to acquire power at the lowest reasonable price consistent with reliability, availability and portfolio requirements, including renewable resource diversity. The public utility shall be required to verify that all renewable energy procured as documented by renewable energy certificates is sold at retail or consumed in New Mexico. This report shall describe and quantify the implementation of the voluntary renewable tariff requirements set forth in Subsection C of 17.9.572.10 NMAC. This report shall also include a reconciliation of the public utility's monthly purchased power adjustment factor, if any.

**D. Review by Commission.** The Commission shall review the renewable energy plan, portfolio filing and annual portfolio summary of each public utility. If the Electric Utility Restructuring Act of 1999 is not repealed, then prior to asset separation under that Act, approval of a portfolio filing or annual portfolio summary by the Commission means the public utility's actions to acquire renewable resources described in the portfolio filing or annual portfolio summary shall be deemed prudent through the date of that approval. The public utility shall be entitled to one hundred percent (100%) recovery of any resulting stranded costs.

**E. Biennial review.** By December 1, 2005, and by December 1 of every subsequent odd-numbered year, the Commission shall examine the progress of public utilities in achieving compliance with this rule, including but not limited to an examination of the renewable energy production market, the economic impact on the utilities' customers by class or otherwise, the use of renewable energy certificates as a market transaction system, the effectiveness of the weighted values established in Paragraph (1) of Subsection C of 17.9.572.10 NMAC, the need to specifically address new technologies or resources, and any other factor the Commission deems appropriate.

[17.9.572.11 NMAC - 17 NMAC 10.572.14, 7-1-03]

**17.9.572.12 EXEMPTION AND VARIANCE:** Any interested person may file an application for an exemption or a variance from the requirements of this rule. Such application shall:

**A.** identify the section of this rule for which the exemption or variance is requested;

**B.** describe the situation that necessitates the exemption or variance;

**C.** set out the effect of complying with this rule on the public utility and its customers if the exemption or variance is not granted;

**D.** define the result which the request will have if granted;

**E.** state how the exemption or variance will achieve the purposes of this rule;

**F.** state why no other reasonable alternative is available; and

**G.** state why the proposed alternative is in the public interest and is a better alternative than that provided by the existing rule.

[17.9.572.12 NMAC - N, 7-1-03]

**17.9.572.13 COMPLAINTS:** Any interested person may file a complaint against any person who is alleged to be in violation of this rule or any public utility that allegedly refuses to negotiate in good faith regarding an offer of sale of renewable energy. The Commission shall review complaints in accordance with Utility Division procedures.

[17.9.572.13 NMAC - N, 7-1-03]

**17.9.572.14 RURAL ELECTRIC COOPERATIVES:** Rural electric cooperatives shall be exempt from all provisions of this rule, except that rural electric cooperatives must offer a voluntary renewable energy tariff, but only to the extent that their suppliers under their all-requirements contracts make such renewable resources available. Rural electric cooperatives must report to the Commission by July 1 of each year concerning the annual demand for renewable energy pursuant to their voluntary tariff.

[17.9.572.14 NMAC - N, 7-1-03]

**17.9.572.15 ENFORCEMENT:** The Commission shall promulgate rules necessary for the administration and enforcement of this rule. The rules shall include enforcement mechanisms that are necessary and reasonable to ensure that each public utility complies with its renewable portfolio standard and shall include provisions governing the imposition of administrative fines.

[17.9.572.15 NMAC - N, 7-1-03]

**History of 17.9.572 NMAC:**

Pre-NMAC History: none

**History of Repealed Material:** 17 NMAC 10.572, Renewable Energy Development Program, filed 11-30-98.

**Other History:** 17 10.572 NMAC, Renewable Energy Development Program, filed 11-30-98 was replaced by 17.9.572 NMAC, Renewable Energy as a Source of Electricity, effective 7-1-03.

**NEW MEXICO  
DEPARTMENT OF  
PUBLIC SAFETY  
TRAINING AND RECRUITING  
DIVISION  
Law Enforcement Academy**

**This is an amendment to 10.29.6 NMAC, Section 10.**

**10.29.6.10 ELIGIBILITY OF RETIREES:** In the event a retired certified officer who has appropriately separated from law enforcement service makes application to retain or regain New Mexico certification by waiver of basic training, such applicants shall satisfy the following requirements:

**A.** Applicant must have graduated from a certified law enforcement academy that was comparable to or exceeded the standards of the programs of the New Mexico academy.

**B.** Separation period shall not exceed twenty (20) years.

**C.** Separation must be under honorable conditions.

**D.** Biennial training shall be complete and current.

**E.** Applicant shall complete current DPS/TRD basic firearms qualifications.

**F.** Complete all other conditions required under the current certification by waiver of basic training, except for the physical fitness and agility requirements.

**G.** Complete any other requirements imposed on applicant by sponsoring agency.

[10.29.6.10 NMAC - N, 07-01-03]

**NEW MEXICO  
RESPIRATORY CARE  
ADVISORY BOARD**

**This is an amendment to Section 7 of 16.23.1 NMAC effective July 10, 2003.**

**16.23.1.7 DEFINITIONS:**

**A.** "16 NMAC 23" means the Respiratory Care Advisory Board's Rules and Regulations as published in Title 16 of the New Mexico Administrative Code.

**B.** "Applicant" means a person who has applied to the Department for a temporary permit or a respiratory care practitioner's license.

**C.** "Approval" means the review and acceptance of a specific activity.

**D.** "Approval Body" means the agency, institution, or organiza-

tion with the authorization to award continuing education credit.

**E. "Approved Training and Education Program"** means a program [approved] supported by the Committee on Accreditation for Respiratory Care (CoARC), or its predecessor the Joint Review Committee for Respiratory Therapy Education (JRCRTE), or accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP), or its successor approval body.

**F. "Audit"** means an examination and verification of continuing education documents by the Department.

**G. "Board"** means the Respiratory Care Advisory Board.

**H. "CRTT"** means a certified respiratory therapy technician.

**I. "Clock Hour"** means a unit of measurement to describe a continuing education offering which equals a 60-minute clock hour.

**J. "Continuing Education" or "CE"** means a learning experience intended to enhance professional development.

**K. "Department"** means the New Mexico Regulation and Licensing Department.

**L. "Expired License"** means a license that has not been renewed on or before the end of the license renewal period.

**M. "CRT"** means certified respiratory therapist.

**N. "Initial Licensure"** means the process of achieving the legal privilege to practice within a professional category upon the completion of educational and other licensing requirements.

**O. "Inspection of Public Records Act"** refers to Section 14-2-1 through Section 14-2-10, NMSA 1978 (1993 Repl. Pam.).

**P. "Medical Board"** as it applies to respiratory care, means a group of medical experts that review clinical practice in a facility to assure that the practice of health care meets the standard of care in the health care community.

**Q. "Lapsed License"** means an expired license which has not been reactivated within the time limitations set forth in Section 11 of Part 11 in 16 NMAC 23.

**R. "License"** means a document identifying the legal privilege and authorization to practice within a professional category.

**S. "License Reactivation"** means the process of making current a license that has expired as a result of failure to comply with the necessary renewal requirements.

**T. "Must"** means

required.

**U. "NBRC"** means the National Board for Respiratory Care, Inc.

**V. "National Licensing Exam"** means the national examination for respiratory care practitioners administered by the National Board for Respiratory Care resulting in obtaining CRTT, CRT, or RRT credentials.

**W. "New Mexico Administrative Code" or "NMAC"** means the organizing structure for rules filed by New Mexico State agencies. The NMAC is also the body of filed rules and the published versions thereof. The NMAC is structured by Title, Chapter, and Part.

**X. "Medical Direction"**, as it applies to respiratory care, means a prescription or order by a physician authorized to practice medicine or by any other person authorized to prescribe under the laws of New Mexico.

**Y. "Open Meetings Act"** refers to Section 10-15-1 through Section 10-15-4, NMSA 1978 (1993 Repl. Pam.).

**Z. "Parental Responsibility Act" or "PRA"** refers to Section 40-5A-1 through Section 40-5A-13, NMSA 1978 (1995 Supp.) herein referred to as the Parental Responsibility Act or PRA.

**AA. "Public Records Act"** refers to Section 14-3-1 through Section 14-3-25, NMSA 1978 (1995 Repl. Pam.).

**BB. "Facility"** means the employer of a licensed respiratory care practitioner or temporary permit holder.

**CC. "RRT"** means a registered respiratory therapist.

**DD. "Reinstatement"** means the process whereby a license that has been subject to revocation or suspension is returned to former status.

**EE. "Respiratory Care Act"** refers to Section 61-12B-1 through Section 61-12B-16, NMSA 1978 (1996 Repl. Pam.).

**FF. "Respiratory Care Practitioner" or "RCP"** means a person who is licensed to practice respiratory care in New Mexico.

**GG. "Respiratory Therapy Training Program"** means a program approved by the Commission on Accreditation of Allied Health Education Programs (CAHEP), or its successor approval body.

**HH. [RESERVED]**

**II. "Shall"** means a mandatory requirement.

**JJ. "State Rules Act"** refers to Section 14-4-1 through Section 14-4-9, NMSA 1978 (1995 Repl. Pam.).

**KK. "Superintendent"** means the Superintendent of the Regulation and Licensing Department.

**LL. "Uniform Licensing**

**Act" or "ULA"** refers to Section 61-1-1 through Section 61-1-33, NMSA 1978 (1993 Repl. Pam.).

## NEW MEXICO RESPIRATORY CARE ADVISORY BOARD

**This is an amendment to Sections 1, 5, 8, 9, 10, and 19 of 16.23.2 NMAC effective July 10, 2003.**

**16.23.2.1 ISSUING AGENCY:**  
New Mexico Regulation and Licensing Department Respiratory Care Advisory Board [725 St. Michael's Drive, P.O. Box 25101, Santa Fe, New Mexico 87504]

**16.23.2.5 EFFECTIVE DATE:**  
November 29, 1997, unless a later date is cited at the end of a Section [or Paragraph].

**16.23.2.8 INITIAL PRACTITIONER LICENSE FEES:**

[A. Applications — post-marked from August 1 of the odd numbered year through September 30 of the even-numbered year.] **\$125.00.**

[B. Applications — post-marked from October 1 of the even-numbered year through May 31 of the odd-numbered year.] **\$75.00.**

[C. Applications — post-marked from June 1 of the odd-numbered year through July 31 of the odd-numbered year.] **\$25.00.**

**16.23.2.9 PRACTITIONER LICENSE RENEWAL FEE:** ~~[\$105.00]~~ **\$135.00.**

**16.23.2.10 PENALTY FEE FOR REACTIVATION OF EXPIRED LICENSES.** ~~[\$75.00]~~ **\$100.00.** The penalty fee must accompany any license reactivation application postmarked after September 30th of the odd-numbered year but before August 1 of the succeeding odd-numbered year. The penalty fee is in addition to the renewal fee set forth in 16.23.2.9 of this rule.

**16.23.2.19 REACTIVATION FROM INACTIVE STATUS FEE:** A ~~[\$75.00]~~ **\$115.00** fee must accompany the request for reactivation from inactive status as set forth in 16.23.9.16 NMAC.

## NEW MEXICO RESPIRATORY CARE ADVISORY BOARD

**This is an amendment to Sections 1, 5, 8,**

and 9 of 16.23.3 NMAC effective July 10, 2003.

**16.23.3.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board [2055 South Pacheco, Suite 400 P.O. Box 25101 Santa Fe, New Mexico 87504]

**16.23.3.5 EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a Section [~~or Paragraph~~].

**16.23.3.8 LICENSE REQUIRED TO PRACTICE.** The applicant may not engage in the practice of respiratory care in New Mexico until approval for licensure has been given, and [~~an initial license has been issued by the Department~~] the Department has issued an initial license. The applicant may not represent or hold him or herself out to be a respiratory care practitioner or RCP without a valid license.

**16.23.3.9 LICENSURE REQUIREMENTS.** In accordance with Section 61-12B-7 and Section 61-12B-8 and those qualifications set forth therein, the applicant must provide verification of the following:

A. Being of good moral character,

B. Successful completion of a respiratory care [~~training~~] education program [~~approved~~] supported by the Committee on Accreditation for Respiratory Care (CoARC), or its predecessor the Joint Review Committee for Respiratory Therapy Education (JRCRTE), or accredited by the Commission on Accreditation of Allied Health Education Programs (CAHEP), or its successor approval body; and

C. Having successfully passed the NBRC national standard examination resulting in either CRTT, CRT, or RRT credentialing; ~~or~~

D. Current licensure in another state [~~which~~] that has educational and examination requirements at least equal to or better than those established for licensure in New Mexico at the time of original licensure.

## NEW MEXICO RESPIRATORY CARE ADVISORY BOARD

This is an amendment to Sections 1, 5, and 8 of 16.23.4 NMAC; and new provision, Section 15, to 16.23.4 NMAC, both effective July 10, 2003.

**16.23.4.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department Respiratory Care Advisory Board [2055 South Pacheco Suite 400 P.O. Box 25101 Santa Fe, New Mexico 87504]

**16.23.4.5 EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a Section [~~or Paragraph~~].

~~[16.24.4.8]~~ **16.23.4.8 DOCUMENTATION REQUIREMENTS FOR PRACTITIONERS.** Applicants for licensure must provide the following items of documentation to the Department. [~~All document copies must be certified by a notary public to be a true and correct copy of the original~~] A notary public must certify all document copies as a true and correct copy of the original.

A. A Practitioners Application form approved by the Department, completed by the applicant, and signed by the applicant in the presence of a notary public;

B. A passport-type photograph of the applicant taken within the last year, and which the applicant has signed the back of, in the presence of a notary public;

C. A copy of the applicant's birth certificate;

D. At least one letter of character reference written within the preceding three years from someone unrelated to the applicant;

(1) The letter must include a return address and phone number; and

(2) The letter may be sent directly to the Department by the reference; ~~or,~~

(3) If the reference letter is included with the application, the reference's signature on the letter must have been witnessed by a notary public.

E. A copy of the transcript for the completed respiratory care program; ~~or~~ a copy of the respiratory care program completion certificate or diploma;

F. A copy of the National Board for Respiratory Care, Inc.'s CRTT, CRT, or RRT certificate; or a copy of the applicant's NBRC CRTT, CRT, or RRT identification card; or a copy of the exam results showing successful passing of the NBRC CRTT, CRT, or RRT examination if the applicant has not yet received the NBRC certificate.

G. A check or money order made payable to the Board in the amount of the applicable fee as provided in 16.23.2.8 NMAC;

H. If applicable, a statement of other professional licenses held by the applicant either in New Mexico or in other licensing jurisdictions, and copies thereof; and Verification of licensure status sent directly to the Department by all state licensing boards where the applicant is or

has ever been licensed.

**16.23.4.15 INCOMPLETE APPLICATIONS PURGED:** Incomplete applications for licensure will be purged from board files one year from the date the first item of documentation was received and board staff created a hard copy file.

## NEW MEXICO RESPIRATORY CARE ADVISORY BOARD

**Explanatory Paragraph:**

This is amendment to 16.23.6 NMAC by adding a new provision, Section 21 and the adjustment of the numeration to Subsection B of 16.23.6.13 NMAC by deleting Paragraph number (1) and moving the text up into Subsection B, effective July 10, 2003.

**16.23.6.21 INCOMPLETE APPLICATIONS PURGED:** Incomplete applications for licensure will be purged from board files one year from the date the first item of documentation was received and board staff created a hard copy file.

## NEW MEXICO RESPIRATORY CARE ADVISORY BOARD

This is an amendment to Sections 1 and 5 of 16.23.8 NMAC effective July 10, 2003.

**16.23.8.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board [725 St. Michael's Drive P.O. Box 25101 Santa Fe, New Mexico 87504]

**16.23.8.5 EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of the Section [~~or Paragraph~~].

## NEW MEXICO RESPIRATORY CARE ADVISORY BOARD

This is an amendment to Sections 1, 5, 12, and 19 of 16.23.9 NMAC effective July 10, 2003.

**16.23.9.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory



Board [~~725 St. Michael's Drive, P.O. Box 25101, Santa Fe, New Mexico 87504~~]

**16.23.9.5 EFFECTIVE DATE:** November 29, 1997 unless a later date is cited at the end of the Section [~~or Paragraph~~].

**16.23.9.12 APPLICATION REJECTED.** Any inactive status application, corrected or otherwise returned to the Department, postmarked **after** September 30, of the odd-numbered (renewal) year, will **not** be processed for Inactive Status. The rejected application will be returned to the applicant, and the status of the license will be expired and invalid and the late penalty fee will apply if reactivation is sought within the time limitations set forth in 16.23.11 NMAC.

**16.23.9.19 CONTINUING EDUCATION REQUIREMENTS FOR ~~[RENEWAL]~~ REACTIVATION.** For the next renewal cycle, the number of continuing education hours that will be required will depend upon the reactivation date as follows:

**A. Twenty Hours.** If the completed reactivation application is received by the Department postmarked **on or before** September 30 of the **even**-numbered year, the number of continuing education hours due at the next renewal (September 30 of the next odd-numbered year) will be twenty (20).

**B. Ten Hours.** If the completed reactivation application is received by the Department postmarked **on or after** October 1 of the **even**-numbered year through May 31 of the odd-numbered year, the number of continuing education hours due at the next renewal (September 30 of the same year) will be ten (10).

**C. Zero Hours.** If the completed reactivation application is approved by the Department postmarked **on or after** June 1 of the **odd**-numbered (renewal) year through July 31 of the same year, the number of continuing education hours due at the next renewal (September

**NEW MEXICO  
RESPIRATORY CARE  
ADVISORY BOARD**

**This is an amendment to Sections 1 and 5 of 16.23.11 NMAC effective July 10, 2003.**

**16.23.11.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board [~~725 St. Michael's Drive, P.O. Box 25101, Santa Fe, New Mexico 87504~~]

**16.23.11.5 EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of the Section [~~or Paragraph~~].

**NEW MEXICO  
RESPIRATORY CARE  
ADVISORY BOARD**

**This is an amendment to Sections 1, 5, and 8 of 16.23.12 NMAC effective July 10, 2003.**

**16.23.12.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board [~~725 St. Michael's Drive P.O. Box 25101 Santa Fe, New Mexico 87504~~]

**16.23.12.5 EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a Section [~~or Paragraph~~].

**16.23.12.8 CONTINUING EDUCATION REQUIREMENTS.** Continuing education is a requirement for biennial license renewal or license reactivation.

**A.** Continuing education hours must be [~~in respiratory care, or in related areas of health care~~] directly related to respiratory therapy, pulmonary function technology, or related inter-disciplinary areas of health care.

**B.** The Department may consult with the Board to resolve questions as to appropriate continuing education hours.

(1) The Department shall be the final authority on acceptance of any educational activity submitted by a licensee or a sponsor for approval.

(2) Each respiratory care practitioner must participate in at least **twenty (20)** clock hours of continuing education activities every two years, or as provided by 16.23.12.12 NMAC and 16.23.12.13 NMAC.

**NEW MEXICO  
RESPIRATORY CARE  
ADVISORY BOARD**

**This is an amendment to Sections 1, 5, 9, 17, and 18 of 16.23.16 NMAC effective July 10, 2003.**

**16.23.16.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board [~~725 St. Michael's Drive Santa Fe, New Mexico 87501 (505) 827-7170~~]

**16.23.16.5 EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a Section [~~or Paragraph~~].

**16.23.16.9 STANDARDS OF PRACTICE COMMITTEE.** On an annual basis, the Board Chair shall appoint a member or members of the Board to a Standards of Practice Committee. The Board may also appoint the Board Administrator and/or a Complaint Manager to the Standards of Practice Committee.

**A.** The Standards of Practice Committee will review all documentation provided to it in reference to the subject complaint.

**B.** The Standards of Practice Committee may be authorized by the Board to employ, without prior Board approval, the services of an investigator or other persons determined by the Committee to be necessary in order to expedite the investigation of a complaint. In such cases, the Board Administrator will contract for any such required services once budgetary availability is determined.

**C.** Upon completion of its investigation, the Standards of Practice Committee shall present a summary of the complaint to the Board, in a redacted form, for the purpose of enabling the Board to act upon the Standards of Practice Committee's recommendations concerning the disposition of the subject complaint.

**D.** The Standards of Practice Committee may be authorized by the Board to discuss a settlement agreement or mediation agreement with the Respondent as a means of resolving the complaint.

(1) The settlement or mediation agreement shall be presented to the Board for consideration and approval.

(2) Depending on the Board's decision and action on any settlement or mediation agreement presented, the Board may make recommendation for further action to the Department Superintendent.

**16.23.16.17 FEDERAL FRAUD AND ABUSE DATA BANK.**

**A.** In accordance with federal requirements imposed by the enactment of the Health Insurance Portability and Accountability Act (HIPAC) of 1996, also known as the Kassebaum-Kennedy bill, the Department, in consultation with the Board, shall report any final adverse actions taken against a licensee or applicant, which contain an admission or finding of guilt or liability, to the federal fraud and abuse data bank established under HIPAC.

**B.** The Department, in consultation with the Board, has the discretion not to report any final adverse action taken against a licensee or applicant, which

does not contain an admission or finding of guilt or liability, to the federal fraud and abuse databank established under HIPAC.

**16.23.16.18 NATIONAL RESPIRATORY CARE DISCIPLINARY DATABASE.** All final adverse actions shall also be reported by the Department, in consultation with the Board, to the National Respiratory Care Disciplinary Database established by the National Board for Respiratory Care, Inc. (NBRC) and the American Association for Respiratory Care, Inc. (AARC) in accordance with the provisions contained in 16.23.16.18 NMAC.

## NEW MEXICO RESPIRATORY CARE ADVISORY BOARD

**This is an amendment to Sections 1, 5, and 8 of 16.23.17 NMAC effective July 10, 2003.**

**16.23.17.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board [~~725 St. Michael's Drive Santa Fe, New Mexico 87504~~]

**16.23.17.5 EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a Section [~~or Paragraph~~].

**16.23.17.8 DISCIPLINARY GUIDELINES:** In accordance with the provisions contained within the Uniform Licensing Act, the Department may take disciplinary action as provided in Section 61-1-3, if the Department, in consultation with the Board, determines that a respiratory care licensee or temporary permittee has violated the Respiratory Care Act or the Department's Rules and Regulations governing respiratory care [~~(16.24 NMAC)~~ 16.23 NMAC]. The Superintendent of the Department may refuse to issue or may suspend or revoke any permit or license for any cause listed below:

**A.** Making fraudulent representations to any respiratory care licensing board in any jurisdiction in the procurement of an initial or a renewal temporary permit or practitioner's license.

**B.** Having had a temporary permit or practitioner's license denied, suspended or revoked by a respiratory care board in another licensing jurisdiction for any cause listed in 16.23.17 NMAC (this rule). However, the disciplinary action imposed by the Department shall not exceed the length of time or severity of the action imposed by the other licensing jurisdiction.

**C.** Having been convicted

of a crime, which substantially relates to the qualifications, functions or duties of a respiratory care practitioner. The record of conviction or the certified copy of the record of conviction shall be conclusive evidence of the conviction.

**D.** Engaging in the habitual or excessive use of alcohol or controlled substances.

**E.** Using or being under the influence of alcohol, controlled substances, or drugs that impair judgment, while on duty in any facility of employment.

**F.** Obtaining, possessing, administering, or using any narcotic or controlled substance in violation of any Federal or State criminal law.

**G.** Being responsible for gross negligence in the performance and delivery of health care while engaged in the practice of respiratory care.

**H.** Violating any provision of the Respiratory Care Act or the rules and regulations governing respiratory care adopted by the Department, or aiding or abetting any other person in violating these laws.

**I.** Engaging in acts of unprofessional conduct such as, but not limited to, the following:

(1) Failing to maintain minimum acceptable and prevailing standards of respiratory care practice;

(2) Performing procedures and functions beyond which the respondent is individually competent to perform or which are outside the scope of accepted and responsible practice of respiratory care;

(3) Failing to respect and protect the legal and personal rights of the patient, including the right to informed consent and refusal of treatment;

(4) Intentionally or negligently causing physical or emotional injury to a patient;

(5) Assaulting or committing battery on a patient;

(6) Abandoning or neglecting a patient requiring immediate respiratory care without making reasonable arrangements for continuation of such care;

(7) Failing to maintain for each patient a record which accurately reflects the respiratory care treatment of the patient;

(8) Failing to take appropriate action to safeguard the patient's welfare or to follow policies and procedures established by the respiratory care practitioner's employer;

(9) Divulging confidential information regarding any patient or family unless disclosure is required for responsible performance of duty, or as required by law;

(10) Failing or refusing to provide health care to a patient for reasons of dis-

crimination;

(11) Failing to protect the health, safety, and welfare of the patient by abiding by and practicing established policies of disease prevention;

(12) Failing to take appropriate action in the health care setting to protect a patient whose safety or welfare is at risk from incompetent health care practice including, but not limited to, reporting such practice to employment and licensing authorities;

(13) As a supervisor, failing to supervise persons under one's direction or assigning the performance of functions governed by the Respiratory Care Act to persons who are untrained and unqualified to perform those functions;

(14) Removing narcotics, drugs, supplies, or equipment from any health care facility or other work place location without authorization;

**J.** Committing any fraudulent, dishonest, or unscrupulous act which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. Such acts shall include, but not be limited to:

(1) Engaging in fraud, misrepresentation, or deceit in writing the national licensing exam.

(2) Impersonating an examination candidate in order to write a certification or licensing examination for him or her.

(3) Impersonating another licensed practitioner.

(4) Practicing respiratory care without a current license.

(5) Permitting or allowing another person to use his or her license for any purpose.

## NEW MEXICO RESPIRATORY CARE ADVISORY BOARD

**This is an amendment to Sections 1, 5, and 22 of 16.23.18 NMAC effective July 10, 2003.**

**16.23.18.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board [~~725 St. Michael's Drive Santa Fe, New Mexico 87504~~]

**16.23.18.5 EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a Section [~~or Paragraph~~].

**16.23.18.22 ABSENCE OF A VOLUNTARY REQUEST FOR RESTRICTION:** In the absence of a request by the temporary permittee or

licensed practitioner for voluntary restriction of his or her temporary permit or practitioner's license as provided in ~~[16.23.17.19 NMAC]~~ 16.23.18.20 NMAC (this rule), the Department may, in its discretion, initiate proceedings for the restriction, suspension, or revocation of the temporary permit or practitioner's license in accordance with the Impaired Health Care Provider Act and the Uniform Licensing Act.

## NEW MEXICO SECRETARY OF STATE

This is an amendment to 12.6.2 NMAC, Sections 7, 10, 12, 17, 19, 28, 32, 129, 167, 207 and 299.

12.6.2.7 DEFINITIONS. The following terms shall have the respective meanings provided in this rule. Terms not defined in this rule which are defined in the UCC shall have the respective meanings accorded such terms in the UCC.

A. "Amendment" means a UCC document that purports to amend the information contained in a financing statement. Amendments include assignments, continuations and terminations.

B. "Assignment" is an amendment that purports to reflect an assignment of all or a part of a secured party's power to authorize an amendment to a financing statement.

C. "Continuation" means an amendment that purports to continue the effectiveness of a financing statement.

D. "Correction statement" means a UCC document that purports to indicate that a financing statement is inaccurate or wrongfully filed.

E. "File number" means the unique identifying information assigned to a financing statement by the filing officer for the purpose of identifying the financing statement and UCC documents relating to the financing statement in the filing officer's information management system. For a financing statement with an initial financing statement filed prior to July 1, 2001, the file number consists of a 2 digit year, 2 digit month, 2 digit day, and a 3 digit sequential number (yymmddXXX). For a financing statement with an initial financing statement filed after June 30, 2001 but before March 26, 2003, the file number consists of a 4 digit year, 2 digit month, 2 digit day, 3 digit sequential number, and 2 digit check number (yyyymmddXXXcc). ~~[Paper filings will start with XXX of 001. File numbers issued automatically for electronic filings will have the same format except XXX will start with 501. This allows filing numbers to be assigned both automatically for the electronic filings and for the paper filings~~

~~data entered by the staff.] For a financing statement with an initial financing statement filed on or after March 26, 2003, the number includes three segments: the year of filing expressed as a four digit number, followed by a unique seven digit number assigned to financing statement by the filing office and ending with a one digit verification alphabetic character assigned by the filing office but mathematically derived from the numbers in the first two segments.~~ The same file format will be used for amendments as initial filing statements, including ~~[check digits] the verification alphabetic character.~~ Though ~~[check digits are] the verification alphabetic character is not as important here, [they guarantee] it guarantees~~ the integrity of the file number. The filing number bears no relation to the time of filing and is not an indicator of priority.

F. "Filing office" and "filing officer" mean the secretary of state's office, operations division.

G. "Filing Officer Statement" means a statement entered into the filing office's information system to correct an error by the filing office.

H. "Financing statement" means a record or records composed of an initial financing statement and any filed record(s) relating to the initial financing statement.

I. "Individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate.

J. "Initial financing statement" means a UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by Sections-55-9-512, 55-9-514 or 55-9-518 NMSA 1978.

K. "Organization" means a legal person who is not an individual as defined in item H of this section.

L. "Remitter" means a person who tenders a UCC document to the filing office for filing, whether the person is a filer or an agent of a filer responsible for tendering the document for filing. "Remitter" does not include a person responsible merely for the delivery of the document to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

M. "Secured party of record" means, with respect to a financing statement, a person whose name is provided as the name of a secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under chapter 55, article 9 section 514(a) NMSA 1978, the assignee named in the initial financing statement is the secured party of record with respect to the financing state-

ment. If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under Section 55-9-514(b) NMSA 1978, the assignee named in the amendment is a secured party of record. A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

N. "Termination" means an amendment intended to indicate that the related financing statement has ceased to be effective with respect to the secured party authorizing the termination.

O. "UCC" means the Uniform Commercial Code as adopted in this state and in effect from time to time.

P. "UCC document" means an initial financing statement, an amendment, an assignment, a continuation, a termination or a correction statement. The word "document" in the term "UCC document" shall not be deemed to refer exclusively to paper or paper-based writings; it being understood that UCC documents may be expressed or transmitted electronically or through media other than such writings. (Note: this definition is used for the purpose of these rules only. The use of the term "UCC document" in these rules has no relation to the definition of the term "document" in Section 55-9-102(a)(30) NMSA 1978.)

[12.6.2.7 NMAC – N, 7/1/2001; A, 7/1/2003]

12.6.2.10 FILING OFFICE IDENTIFICATION. In addition to the promulgation of these rules, the filing office will disseminate information of its location, mailing address, telephone and fax numbers, and its internet and other electronic "addresses" through usual and customary means.

A. Addresses to file.

(1) Via postal service: Office of the Secretary of State, State Capitol North – Suite 300, 325 Don Gaspar, Santa Fe, New Mexico 87503.

(2) Via courier service: Office of the Secretary of State, State Capitol North – Suite 300, 325 Don Gaspar, Santa Fe, New Mexico 87501.

B. On-line information service. The filing office offers on-line information services on its web site at [www.sos.state.nm.us](http://www.sos.state.nm.us).

~~[E. Electronic Mail and telefacsimile transmission. Electronic mail and telefacsimile cannot be used to file UCC documents.]~~

[12.6.2.10 NMAC – N, 7/1/2001; A, 7/1/2003]

12.6.2.12 UCC DOCUMENT DELIVERY. UCC documents may be tendered for filing at the filing office as follows:

A. Personal delivery, at the filing office's street address. The file time for a UCC document delivered by this method is the time of delivery of the UCC document to the filing office (even though the UCC document may not yet have been accepted for filing and subsequently may be rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will be given the same file time as UCC documents retrieved at the U.S. Postal Service on the next day the filing office is open for business.

B. Courier delivery, at the filing office's street address. The file time for a UCC document delivered by this method is the time of delivery of the UCC document to the filing office (even though the UCC document may not yet have been accepted for filing and subsequently may be rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will be given the same file time as UCC documents retrieved at the U.S. Postal Service on the next day the filing office is open for business.

C. Postal service delivery, to the filing office's mailing address. Because mail addressed to the filing office is not delivered by the U.S. Postal Service to the filing office but must be retrieved by the filing office at the postal service, the file time for a UCC document delivered by this method is ~~[the time that filing office mail is opened and time stamped]~~ 8:00 a.m. (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will be given the same filing time as UCC documents retrieved at the U.S. Postal Service on the next day the filing office is open for business. [12.6.2.12 NMAC – N, 7/1/2001; A, 7/1/2003]

12.6.2.17 FILING FEES. The fees to file UCC documents as set forth in chapter 55, article 9, section 525 NMSA 1978 are as follows.

A. For UCC documents communicated in writing on a form prescribed by the filing office, the fee for filing and indexing a UCC document of one, two or three pages is \$20.00. For a UCC document of at least 4 pages but no more than 25 pages, the fee is \$40.00. If the total number of pages exceeds 25 pages, the fee is \$100.00 plus \$5.00 for each page which

exceeds 25 pages. For filings transmitted electronically, the fee is \$10.00 if the record consists of fifteen thousand or fewer bytes. If the record exceeds fifteen thousand bytes, the fee is \$20.00.

B. For UCC documents communicated in writing but not on a form prescribed by the filing office, the fee is double those identified in subsection A of this section for a record of the same length.

C. Additional fees. In addition to the fees set forth in subsections A and B of this section, a fee of \$100.00 shall be paid for an initial financing statement that indicates that it is filed in connection with a public-finance transaction, a fee of \$100.00 shall be paid for an initial financing statement that indicates that it is filed in connection with a manufactured-home transaction, and a fee of \$100.00 shall be paid for an initial financing statement that indicates that a debtor is a transmitting utility.

D. A correction statement is treated as an amendment to an initial financing statement and is subject to the fees set forth in subsections A, B and C of this section.

E. Copies. In addition to the fees identified in this section which are established by statute, the fee for copies of UCC records ordered from and provided by the filing office is \$1.00 per page. Copies of UCC records filed after June 30, 1998 are available on the filing office web site at no charge.

[12.6.2.17 NMAC – N, 7/1/2001; A, 7/1/2003]

12.6.2.19 METHODS OF PAYMENT. Filing fees and fees for public records services may be paid by the following methods.

A. Cash. The filing officer discourages cash payment unless made in person at the filing office.

B. Checks. Checks made payable to the 'office of the secretary of state', including checks in an amount to be filled in by a filing officer but not to exceed a particular amount, will be accepted for payment. Although, if previous checks were returned unpaid, future payments from the same party must be made by cashiers checks, certified checks, or money orders.

~~[C. Charge account. Filers may apply for a charge account on an application furnished by the filing. Upon approval, fees for filings and copy requests may be charged to this account and invoiced monthly. Account holders who do not pay the account balance in full within 15 days of the invoice will have the charge account closed. Future filings or copy requests will not be permitted until the account balance is paid in full. A charge account may be can-~~

~~celled or closed at the discretion of the filing officer with written notice to the account holder.]~~

C. Electronic funds transfer. The filing office will accept payment via electronic funds transfer under National Automated Clearing House Association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

D. Prepaid deposit account. A remitter may open an account for prepayment of filing fees. The filing officer will issue an account number to be used by a remitter who chooses to pay filing fees in advance. The filing officer shall deduct filing fees from the remitter's prepaid deposit account when authorized to do so by the remitter.

[12.6.2.19 NMAC – N, 7/1/2001; A, 7/1/2003]

12.6.2.28 GROUNDS FOR REFUSAL OF UCC DOCUMENT. The following grounds are the sole grounds for the filing officer's refusal to accept a UCC document for filing. As used herein, the term "legible" is not limited to refer only to written expressions on paper: it requires a machine-readable transmission for electronic transmissions and an otherwise readily decipherable transmission in other cases.

A. Debtor name and address. An initial financing statement or an amendment that purports to add a debtor shall be refused if the document fails to include a legible debtor name and address for a debtor, in the case of an initial financing statement, or for the debtor purporting to be added in the case of such an amendment. If the document contains more than one debtor name or address and some names or addresses are missing or illegible, the filing officer shall index the legible name and address pairings, and provide a notice to the remitter containing the file number of the document, identification of the debtor name(s) that was (were) indexed, and a statement that debtors with illegible or missing names or addresses were not indexed.

B. Additional debtor identification. An initial financing statement or an amendment adding one or more debtors shall be refused if the document fails to identify whether each named debtor (or each added debtor in the case of such an amendment) is an individual or an organization, if the last name of each individual debtor is not identified, or if, for each debtor identified as an organization, the document does not include in legible form the organization's type, state of organization and organization number (if it has one) or a

statement that it does not have one. Debtors identified as individuals are not required to include a social security number. Social security numbers are provided voluntarily and will be made available on copies of UCC records.

C. Secured party name and address. An initial financing statement, an amendment purporting to add a secured party of record, or an assignment, shall be refused if the document fails to include a legible secured party (or assignee in the case of an assignment) name and address. If the document contains more than one secured party (or assignee) name or address and some names or addresses are missing or illegible, the filing officer shall refuse the UCC document.

D. Lack of identification of initial financing statement. A UCC document other than an initial financing statement shall be refused if the document does not provide a file number of a financing statement in the UCC information management system that has not lapsed.

E. Identifying information. A UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by chapter 55, article 9, sections 512, 514 or 518 NMSA 1978, is an initial financing statement.

F. Timeliness of continuation. A continuation shall be refused if it is not received during the six month period concluding on the day upon which the related financing statement would lapse. In the event that the day upon which the related financing statement would lapse falls on a day on which the filing office is not open, the last day is then the first business day immediately preceding the day that the office is closed. A postmark stamped on an envelope by the U.S. Postal Service does not cause timely filing of the continuation if the continuation is received by the filing office after the last day upon which the related financing statement would lapse.

(1) First day permitted. The first day on which a continuation may be filed is the date of the month corresponding to the date upon which the financing statement would lapse, six months preceding the month in which the financing statement would lapse. If there is no such corresponding date during the sixth month preceding the month in which the financing statement would lapse, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse, although filing by certain means may not be possible on such date if the filing office is not open on such date.

(2) Last day permitted. The last day on which a continuation may be filed is

the date upon which the financing statement lapses.

G. Fee. A document shall be refused if the document is accompanied by less than the full filing fee tendered by a method described in 12.6.2.19 NMAC. In the event that more than one filing is submitted with one payment for all filings and one or more filings are refused pursuant to this rule, the filing office will file the accepted filings and receipt the payment received (if the payment is not less than the full filing fee for the total of the accepted filings) for the filings which were acceptable without a refund or credit for the payment due for the unaccepted filing(s) unless the filer demonstrates that the rejected filings should not have been refused under this rule. Otherwise, the filer must correct and resubmit the rejected filing(s) with a new payment.

H. Means of communication. UCC documents communicated to the filing office by a means of communication not authorized by the filing officer for the communication of UCC documents shall be refused.

I. Non-UCC filings not accepted. Filings (such as those pursuant to the Farm Products Secured Interest Act or Federal Tax Liens) which are not included in Chapter 55, Article 9 NMSA 1978 (Chapter 139, Laws of 2001) but submitted on forms prescribed in 12.6.2.14 NMAC will be refused and returned without processing.

J. Transmitting utility debtors. For records that contain a debtor identified as a transmitting utility, the filing officer may require proof of the debtor's authority to operate as a transmitting utility. [12.6.2.28 NMAC – N, 7/1/2001; A, 7/1/2003]

12.6.2.32 A C K N O W L E D G - M E N T. ~~[At the request of a filer or remitter who files a paper or paper-based UCC document, the filing officer shall either (i) send to said filer or remitter an image of the first page of the UCC document showing the file number assigned to it and the date and time of filing or, (ii) if such filer or remitter provides a copy of such UCC document, note the file number and the date and time of filing on the copy and deliver or send it to said filer or remitter.]~~ The filing officer shall submit to the filer or remitter a filing acknowledgment which contains the file number of the filing, the date and time of filing, the lapse date, and the names and addresses for debtors and secured parties as data entered by the filing officer. For UCC documents not filed in paper or paper-based form the filing officer shall communicate to the filer or remitter the information in the filed document, the file number and the date

and time of filing.

[12.6.2.32 NMAC – N, 7/1/2001; A, 7/1/2003]

12.6.2.129 N A M E S O F D E B T O R S W H O A R E I N D I V I D U A L S. For the purpose of this rule, "individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate. This rule applies to the name of a debtor or a secured party on a UCC document who is an individual.

A. Individual name fields. The names of individuals are stored in files that include only the names of individuals, and not the names of organizations. Separate data entry fields are established for first (given), middle (given), and last names (surnames or family names) of individuals. A filer should place the name of a debtor with a single name (e.g., "Cher") in the last name field. The filing officer assumes no responsibility for the accurate designation of the components of a name but will accurately enter the data in accordance with the filer's designations.

B. Titles and prefixes before names. Titles and prefixes, such as "doctor," "reverend," "Mr.," and "Ms.," should not be entered in the UCC information management system. However, as provided in Subsection B of 12.6.2.205 NMAC, when a UCC document is submitted with designated name fields, the data will be entered in the UCC information management system exactly as it appears.

C. Titles and suffixes after names. Titles or indications of status such as "M.D." and "esquire" are not part of an individual's name and should not be provided by filers in UCC documents. Suffixes that indicate which individual is being named, such as "senior," "junior," "I," "II," and "III," are appropriate. In either case, as provided in 12.6.2.205 NMAC, they will be entered into the information management system exactly as received.

D. Truncation - individual names. For records filed after June 30, 2001 but before March 26, 2003, personal name fields in the UCC database are fixed in length. Although filers ~~[should continue to provide]~~ provided full names on their UCC documents, a name that ~~[exceeds]~~ exceeded the fixed length ~~[is]~~ was entered as presented to the filing officer, up to the maximum length of the data entry field. The length of data entry name fields are as follows.

- (1) First name: 40 characters.
- (2) Middle name: 30 characters.
- (3) Last name: 80 characters.
- (4) Suffix: 10 characters.

E. For UCC records filed on or after March 26, 2003, name fields in the UCC data base are not fixed in length.

[12.6.2.129 NMAC – N, 7/1/2001; A, 7/1/2003]

12.6.2.167 XML Documents. A remitter may be authorized for XML transmission upon the written authorization of the filing officer. The filing officer may authorize a remitter to engage in XML transmissions if the remitter holds an account for the billing of fees by the filing officer and the filing officer determines, after appropriate testing of transmissions in accordance with the filing officer's specifications, that the remitter is capable of transmitting XML documents in a manner that permits the filing officer to receive, index, and retrieve the XML documents. The filing officer may suspend or revoke the authorization when, in the filing officer's sole discretion, it is determined that a remitter's transmissions are incompatible with the filing officer's XML system. A request to be authorized to transmit XML documents shall be in writing and delivered to the filing officer. Upon receipt of a request for authorization, the filing officer shall provide the remitter with necessary information on the requirements for XML transmission, including format, address for transmission, and other necessary specifications.

[12.6.2.167 NMAC – N, 7/1/2003]

12.6.2.207 VERIFICATION OF DATA ENTRY. The filing officer uses the following procedures to verify the accuracy of data entry tasks. Visual inspection and dual data entry of data entry [changes] is employed for data in the following fields except that dual data entry is only utilized for debtor name fields.

- A. Document identification fields.
- B. Document type fields.
- C. Name fields.
- D. Address fields.

[12.6.2.207 NMAC – N, 7/1/2001; A, 7/1/2003]

12.6.2.299 SEARCHES OF UCC RECORDS NOT CONDUCTED BY FILING OFFICE.

A. Search requests received by the filing office will be returned without processing.

B. The filing office will provide a search engine on its web site (www.sos.state.nm.us) for use by anyone wanting a search of a record. There is no fee for unlimited use of the search engine. The search logic utilized by the search engine is provided in 12.6.2.300 NMAC and on the agency's web site.

C. The filing office also provides on its web site a search engine that provides non-standard search options. This

non-standard search engine and its search results do not meet standard Revised Article 9 search logic and are merely provided for the convenience of the searcher.

[12.6.2.299 NMAC – N, 7/1/2001; A, 7/1/2003]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

**TITLE 18: TRANSPORTATION  
AND HIGHWAYS**

**CHAPTER 18: MOTOR VEHICLE  
ADMINISTRATION**

**PART 4: P A R E N T A L  
RESPONSIBILITY ACT COMPLIANCE**

**18.18.4.1 ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630

[18.18.4.1 NMAC - N, 6/30/03]

**18.18.4.2 SCOPE:** This Part applies to all persons subject to the Motor Vehicle Code.

[18.18.4.2 NMAC - N, 6/30/03]

**18.18.4.3 STATUTORY AUTHORITY:** The Taxation and Revenue Department, Motor Vehicle Division, adopts this Rule pursuant to the Parental Responsibility Act, Section 40-5A-1 et seq., NMSA 1978, Section 9-11-6.2, NMSA 1978, and Sections 66-2-16(E) and 66-2-17, NMSA 1978.

[18.18.4.3 NMAC - N, 6/30/03]

**18.18.4.4 DURATION:** Permanent.

[18.18.4.4 NMAC - N, 6/30/03]

**18.18.4.5 EFFECTIVE DATE:** 6/30/03, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[18.18.4.5 NMAC - N, 6/30/03]

**18.18.4.6 OBJECTIVE:** The objective of this Part is to interpret, exemplify, implement and enforce the provisions of the Motor Vehicle Code and Parental Responsibility Act.

[18.18.4.6 NMAC - N, 6/30/03]

**18.18.4.7 DEFINITIONS:** The terms defined in Section 18.18.4.7 NMAC apply throughout Title 18, Chapter 18, Part 4.

A. "HSD" means the state of New Mexico human services department;

B. "MVD" means the

motor vehicle division of the state of New Mexico taxation and revenue department;

C. "certificate of compliance" means a certified statement from HSD stating that a licensee is in compliance with a judgment and order for support or in compliance with a subpoena or warrant relating to paternity or child support proceedings;

D. "notice of intent to suspend driver's license and right to a hearing" means a written statement that MVD intends to suspend or not renew a driver's license, the basis for the proposed suspension, and the process afforded a licensee by MVD or HSD; and

E. "license" means an individual driver's license or a commercial driver's license.

F. All other terms in Title 18, Chapter 18, Part 4 shall have the same meaning as they have in the Parental Responsibility Act or the Motor Vehicle Code, except that the term "board" shall mean the MVD or its designate.

[18.18.4.7 NMAC - N, 6/30/03]

**18.18.4.8 MVD ACTION:** If a licensee is not in compliance with a valid judgment and order for support or is not in compliance with a subpoena or a warrant relating to paternity or child support proceedings, MVD shall:

A. deny the renewal of a license;

B. suspend the license; or

C. deny any application for a license.

[18.18.4.8 NMAC - N, 6/30/03]

**18.18.4.9 CERTIFIED LIST:** Upon receipt of an HSD-certified list of obligors not in compliance, MVD shall match the certified list against the current list of MVD licensees. If a listed MVD licensee appears on the HSD-certified list of obligors not in compliance, then MVD shall mail to a licensee or licensees a notice of proposed non-renewal or suspension. By the end of the month in which the certified list is received, MVD shall report to HSD the names of MVD licensees who are on HSD's certified list of obligors and any action MVD has taken in connection with such licensees.

[18.18.4.9 NMAC - N, 6/30/03]

**18.18.4.10 NOTICE:** Prior to taking any action specified in Section 18.18.4.8 NMAC, MVD or HSD shall mail to the licensee a written notice stating that MVD has grounds to take MVD action, and that MVD shall suspend or deny a license or renewal unless the licensee:

A. files a timely written request for hearing protesting the proposed

suspension or denial within thirty (30) days from the date the notice is mailed; or

B. provides MVD, within thirty (30) days from the date the notice is mailed, with a certificate of compliance from HSD.

[18.18.4.10 NMAC - N, 6/30/03]

18.18.4.11 **HEARINGS:** The licensee may request a hearing by filing a written request for hearing protesting the proposed non-renewal or suspension of the license. In the request for hearing, the licensee shall provide the licensee's name; any one of either the social security number, the individual tax identification number (ITIN), or the acceptable substitute for a social security number or ITIN; the action in dispute; the grounds for protest, and the affirmative action requested.

A. The request for hearing must be filed within thirty (30) days from the date the notice is mailed. The request may be mailed to Parental Responsibility Hearings, P.O. Box 630, Santa Fe, New Mexico 87504-0630 or by delivering the request in person to the Legal Services Bureau, Joseph M. Montoya Building, 1100 S. St. Francis Drive, Suite 1100, Santa Fe, New Mexico.

B. The secretary of the New Mexico taxation and revenue department or the secretary's delegate shall appoint a hearing officer who shall set the matter for hearing within ninety (90) days from the date of the request. MVD or HSD will notify the licensee of the hearing ten (10) days prior to the date of the hearing. The notice shall be mailed to the address listed on the request for hearing or, if no return address is listed, then to the licensee's last known address as shown on MVD records.

C. The hearing officer shall make and preserve a record of the proceedings.

D. A licensee may appear at a hearing on the licensee's own behalf or be represented by an attorney.

E. All hearings will be conducted telephonically. The hearing officer may at the hearing officer's discretion specify an in-person hearing.

F. Hearings shall be closed to the public except upon request of the licensee and may be postponed or continued at the discretion of the hearing officer.

G. In all hearings before the hearing officer, the technical rules of evidence shall not apply, but in ruling on the admissibility of evidence, the hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

H. In hearings before the

hearing officer, the Rules of Civil Procedure for the district courts shall not apply, but the hearing shall be conducted so that both complaints and defenses are fairly presented. To this end, the hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, or require written expositions of the case as the circumstances justify, and shall render a decision according to the law and the evidence presented and admitted.

I. The hearing officer, within thirty (30) days of the hearing, shall issue a decision granting or denying the relief requested or granting such part thereof as seems appropriate and shall inform the licensee of the licensee's right to and the requirements for perfection of, an appeal to the district court and of the consequences of a failure to appeal.

[18.18.4.11 NMAC - N, 6/30/03]

18.18.4.12 **ISSUES:** The issues to be decided at the hearing are limited to whether:

A. the licensee is in compliance with a judgment and order for support;

B. the licensee is in compliance with a subpoena or warrants relating to paternity or child support proceedings; or

C. the licensee is the person whose name appears on the certified list sent to MVD from HSD.

[18.18.4.12 NMAC - N, 6/30/03]

18.18.4.13 **EVIDENCE AND PROOF:**

A. In any hearing under Title 18, Chapter 18, Part 4, relevant evidence shall be limited to the following:

(1) a valid certificate of compliance, if one has been issued between the date of the notice and the hearing date;

(2) evidence of compliance with a judgment or order of support, subpoena or warrant relating to paternity or child support proceedings to rebut the absence of a certificate of compliance in cases in which the licensee has cured any non-compliance with a judgment or order of support, subpoena or warrant after the notice date but before the date of hearing, and

(3) evidence that the licensee is not the same person as the person whose name appears on the certified list of obligors sent to MVD by HSD.

B. In lieu of a hearing, a licensee may present a valid certificate of compliance to any MVD field office and pay all applicable fees and have the license reinstated.

[18.18.4.13 NMAC - N, 6/30/03]

18.18.4.14 **ORDER:** An order entered under Title 18, Chapter 18, Part 4

solely because the licensee is not in compliance with the judgment and order for support or not in compliance with a subpoena or a warrant relating to paternity or child support proceedings, the order shall provide that the license is to be reinstated upon presentation of a subsequent certificate of compliance to MVD and payment of applicable fees. MVD may order additional reasonable conditions necessary to compel compliance with MVD requirements for reapplication or reinstatement of lapsed licenses.

[18.18.4.14 NMAC - N, 6/30/03]

18.18.4.15 **APPEALS:** All appeals shall be filed in accordance with Section 39-1-1.1 NMSA 1978 and Rule 1-074 of the Rules of Civil Procedure for the district courts.

[18.18.4.15 NMAC - N, 6/30/03]

18.18.4.16 **FEES:** MVD shall charge a twenty-five dollar (\$25.00) fee to defray the cost of conducting the hearing.

[18.18.4.16 NMAC - N, 6/30/03]

History of 18.18.4 NMAC: [RESERVED]

## **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

This is an amendment to 18.19.5 NMAC, Sections 11, 12, 13 and 104, effective 6/30/03.

18.19.5.11 **CONTRACTING  
DRIVER'S KNOWLEDGE AND SKILL  
TESTS:**

A. Under Subsection C of Section 66-5-14 NMSA 1978, the department is permitted to contract for certain testing of individuals applying for driver's licenses. Any contract entered into may provide that all or only some of the individuals applying for driver's licenses are to be tested by the contractor. Any contract entered into may be limited to testing at certain field offices or within certain political subdivisions or geographic areas.

B. Only the following persons are eligible to enter into contracts authorized under Subsection C of Section 66-5-14 NMSA 1978:

(1) Public educational institutions; and

(2) Commercial driving schools licensed by the ~~[state highway and transportation]~~ department of transportation pursuant to the Driving School Licensing Act and regulations thereunder.

C. Any contract entered into will specify an expiration date, provided the department may terminate the contract prior to its expiration date.

18.19.5.12 ~~[FOREIGN NATIONALS APPLYING FOR DRIVER'S LICENSES:~~

~~A. Persons who are not citizens of the United States (foreign nationals) and who are ineligible for a social security number may apply for a driver's license, other than a commercial driver's license, by providing proof of identity, proof they are living in New Mexico and proof they are in the United States legally or in compliance with United States immigration and naturalization service (INS) regulations.~~

~~B. Examples of acceptable proof of the applicant's identity include but are not limited to:~~

~~(1) valid passport issued by country of citizenship;~~

~~(2) valid documentation issued by INS such as, I-551 "resident alien" card, I-151 "alien registration receipt" card, I-688 "temporary resident" card, or I-797 "notice of action" or~~

~~(3) matricula consular issued by the Mexican consulate in Albuquerque~~

~~C. Examples of acceptable proof that the applicant is living in New Mexico include but are not limited to:~~

~~(1) documents such as utility bills, rental agreements, current student identification cards, and employment payroll receipts, or~~

~~(2) matricula consular issued by the Mexican consulate in Albuquerque.~~

~~D. Examples of acceptable documents proving the applicant is in the United States legally or in compliance with INS regulations include but are not limited to:~~

~~(1) valid passport issued by country of citizenship, a visa issued by the United States, and valid documentation issued by INS showing legal status, or~~

~~(2) INS document titled I-797 "notice of action".~~

~~E. In lieu of a social security number the motor vehicle division will use the applicant's unique identifying number in the document evidencing immigration status.~~

~~F. The motor vehicle division may require foreign nationals applying for a driver's license to provide a certified copy of their driving record with an English language translation of the certified copy from the jurisdiction where the foreign national is currently or was previously licensed.~~

~~G. Section 18.19.5.12 NMAC becomes effective within thirty days of the effective date of the provisions of Section 66-5-9(B) NMSA 1978.]~~

**PROOF OF IDENTIFICATION NUMBER, IDENTITY AND RESIDENCY:**

A. Applicants for a New Mexico permit, provisional or driver's license, other than a commercial driver's license, must provide documentary proof of their identification number, identity and residency.

B. Applicants must produce documentary proof of a social security number, individual tax identification number (ITIN), or an acceptable substitute for a social security number or ITIN.

(1) The applicant's social security card, or any of the following documents containing the applicant's social security number, will provide sufficient documentary proof of the applicant's social security number: a driver's license; a government-issued photo-identification card; a military identification card; an identification card from an educational institution; an original employment payroll receipt; tax forms such as a W-2, W-4, W-8, W-9 or other IRS official documents; a medical card; or a statement from a financial institution.

(2) The applicant's letter from the IRS issuing the ITIN, or tax forms or other IRS official documents using the applicant's ITIN, will provide sufficient documentary proof of the applicant's ITIN.

(3) The following may be accepted as a substitute for a social security number or ITIN:

(a) a valid passport issued by country of citizenship;

(b) valid documentation issued by the INS such as an I-551 "resident alien" card, I-151 "alien registration receipt" card, I-688 "temporary resident" card, or an I-797 "notice of action; or

(c) a matricula consular issued by the Mexican consulate in Albuquerque.

C. Applicants must produce one of the following documents as proof of identity: original birth certificate; certified copy of birth certificate; valid passport issued by country of citizenship; Indian census card; matricula consular issued by the Mexican consulate in Albuquerque; current driver's license from another state or country.

D. Applicants must provide two of the following documents, showing a New Mexico address for the applicant, as proof that the applicant lives in New Mexico: a rental agreement or purchase agreement; any original government-issued document; a utility bill; an insurance bill; a bank statement; a check book; an employment pay stub; a local property tax statement; proof of a minor child enrolled in a public or private school; a voter registration card; a library card; original documents from a New Mexico community service organization; original documents from a city, county, state or federal government service organization attesting to the fact that

the applicant is a New Mexico resident; a matricula consular issued by the Mexican consulate in Albuquerque.

E. The motor vehicle division may require foreign nationals applying for a driver's license to provide a certified copy of their driving record with an English language translation of the certified copy from the jurisdiction where the foreign national is currently or was previously licensed.

18.19.5.13 ~~[FOREIGN NATIONALS MAY APPLY FOR LICENSURE:~~

~~The motor vehicle division will consider persons who are not citizens of the United States but who meet the requirements of Section 18.19.5.12 NMAC as residents of this state for purposes of requiring and issuing driver's licenses, other than commercial driver's licenses.] [RESERVED]~~

18.19.5.104 ~~[COMMERCIAL DRIVER'S LICENSE DISQUALIFICATION PURSUANT TO PARENTAL RESPONSIBILITY ACT - HEARINGS:~~

~~A. Requests for hearing must be in writing and must be made within ten days after receipt of notification of disqualification. Incomplete requests or requests received after this time will not be honored. Timeliness of the request shall be determined either by the date of personal delivery to the department's headquarters in Santa Fe or, if mailed, by the postmark date of the envelope containing the request delivered through the U.S. postal service.~~

~~B. The department will notify the driver or the driver's agent by certified mail of the time and place scheduled for the hearing. This notice will be directed to the address contained on the request for hearing or, if no return address is indicated, to the address last given the division pursuant to Section 66-5-22 NMSA 1978.~~

~~C. The secretary shall designate a hearing officer to conduct the hearings, continue hearings, receive evidence and issue decisions on behalf of the department. Only hearing officers designated by the secretary may conduct hearings on a disqualification of a commercial driver's license pursuant to the Parental Responsibility Act.~~

~~D. The hearing shall be strictly limited to the issue of whether the obligor named by the human services department is the same person whose commercial driver's license has been disqualified.~~

~~E. This regulation is applicable to disqualifications by the human services department under the Parental Responsibility Act on or after August 1, 1995.] [RESERVED]~~



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**End of Adopted Rules Section**

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## Other Material Related to Administrative Law

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**NEW MEXICO  
COMMISSION OF  
PUBLIC RECORDS  
HISTORICAL RECORDS  
ADVISORY BOARD**

**NOTICE OF REGULAR MEETING**

The New Mexico Historical Records Advisory Board will meet on Tuesday July 1, at 9:00 A.M. The meeting will be held at the New Mexico State Records and Archive Center in Santa Fe, New Mexico. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Kathy Mattison at the New Mexico State Records Center and Archives by June 25, 2003. Public documents, the agenda, and minutes can be provided in various accessible formats. Please contact Kathy Mattison at the State Records Center and Archives, 476-7902, if a summary or other type of accessible format is needed. A copy of the proposed agenda may be obtained at the State Records Center and Archives' website at <http://www.nmcpr.state.nm.us/>, or onsite at 1205 Camino Carlos Rey, Santa Fe, New Mexico 87507.

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**UNIVERSITY OF  
NEW MEXICO**

**Notice of Adoption of Amended Regulation by the University of New Mexico Purchasing Department**

The University of New Mexico Purchasing Department has adopted amendments to its regulation governing Invitations for Bids (Regulation Number 5). The amendments add sections 17.2 – 17.6 describing how the University of New Mexico will conduct multi-step sealed bidding. The amended regulation is available on the Purchasing Department's website at <http://www.unm.edu/~purch/> under "Policies and Procedures." Interested persons may also request a copy of Regulation Number 5 by calling the Purchasing Department at (505) 277-2036 or by writing to the University of New Mexico Purchasing Department, Onate Hall, Room 116, Albuquerque, New Mexico 87131. A copying fee of ten cents (.10) per page will be charged.

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**NEW MEXICO WATER  
QUALITY CONTROL  
COMMISSION**

**Water Quality Control Commission  
Final Scheduling Order and Hearing  
Guidelines for The Triennial Review of  
Surface Water Quality Standards**

The Hearing Officer appointed by the Water Quality Control Commission in the matter of the Triennial Review of Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC, docketed as WQCC 03-05, has, following public input, finalized a Scheduling Order and Hearing Guidelines. They are available on the web at:

[http://www.nmenv.state.nm.us/OOTS/WQCC-WQSTriennialReview/Final\\_Scheduling+Procedural\\_Order.pdf](http://www.nmenv.state.nm.us/OOTS/WQCC-WQSTriennialReview/Final_Scheduling+Procedural_Order.pdf)

or by submitting a request in writing or by telephone, facsimile, or e-mail to the Hearing Officer. Her contact information is below:

Felicia Orth, Hearing Officer  
New Mexico Environment Department  
1190 St. Francis Drive, P.O. Box 26110  
Santa Fe, New Mexico 87502-6110  
Tele: (505) 827-0339  
Fax: (505) 827-2836  
E-mail: [felicia\\_orth@nmenv.state.nm.us](mailto:felicia_orth@nmenv.state.nm.us)

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**End of Other Related  
Material Section**

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**SUBMITTAL DEADLINES AND PUBLICATION DATES**

**2003**

<b>Volume XIV</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 3	February 14
Issue Number 4	February 17	February 28
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 13
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 18	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 13
Issue Number 22	November 14	November 26
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.